

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 433 of 2020**Monday, this the 9th day of August, 2021**“Hon’ble Mr. Justice Umesh Chandra Srivastava (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Smt. Arati Dwivedi
 W/o Late Sigmn Abinash Dwivedi
 R/o Jera, Post – Jera
 Tehsil – Meja, District Allahabad (now Prayagraj)

..... Applicant

Counsel for the Applicant : **Shri Prabhat Kumar Tripathi**, Advocate
 & **Ms. Astha Singh Chauhan**, Advocate
 Versus

1. Union of India through Secretary, Ministry of Defence, Government of India, New Delhi.
2. Director General of Signals (Sigs 4 (b), General Staff Branch, Integrated HQ of MoD (Army), DHQ PO New Delhi – 110011.
3. Chief Records Officer, The Records Signals PIN 908770, C/o 56 APO.
4. Principal Controller of Defence Accounts (Pension), Allahabad (UP).

.....Respondents

Counsel for the Respondents : **Dr. Gyan Singh**,
 Central Govt. Counsel

ORDER

1. The instant Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 with the following prayers:

“(a) Issue an order, direction certiorari quashing the order dated 23.07.2012, contained in Annexure No. 1, passed by the respondent no. 3, rejecting

the claim of the applicant for grant of Special Family Pension.

- (b) Issue an order, direction and command to the respondents to grant Special Family pension to the applicant without reference to the order, contained in Annexure no. 1, impugned in the Application from due date alongwith its arrears as well as interest @ 12% per annum from the date of its due till the date of actual payment.*
- (c) Issue an order, direction and command to the respondent no. 2 to consider and decide the Appeal of the applicant dated 26.08.2012 within a time bound manner in accordance w3ith law by passing a reasoned and speaking order.*
- (d) Issue such other order/direction which may be deemed just and proper in the circumstances of the case.*
- (e) Allow the Original Application with cost against the respondents in view of the facts and circumstances, legal provisions and grounds raised in the Application.”*

2. Facts giving rise to Original Application in brief are that husband of applicant was enrolled in the Army on 10.07.2003 and died on 19.02.2012 due to “Shock and Haemorrhage as a result of Annihilating Fire Arm Injury”. The husband of the applicant died due to gun shot fired by two strangers while he was on 20 days Part of Annual Leave from 06.02.2012 to 25.02.2012 (with permission to prefix on 05.02.2012 and suffix on 26.02.2012). A Court of Inquiry was ordered and it was opined by the Court that cause of death of the individual is due to “Shock & Haemorrhage” and his death is not

attributable to military service. The Court of Inquiry was perused by GOC Purva UP & MP Sub Area and death of husband of the applicant was considered not attributable to military service and GOC directed to release all terminal benefits to the applicant being Next of Kin in accordance with existing rules. Accordingly, the applicant was granted Ordinary Family Pension w.e.f. 20.02.2012 vide PPO dated 19.11.2012. Thereafter, the applicant submitted a petition dated 02.09.2013 which was suitably replied by the respondents denying Special Family Pension vide their letter dated 22.01.2014. Thereafter, the applicant submitted another petition dated 17.05.2018 which was also replied by the respondents denying Special Family Pension. Being aggrieved, the applicant has filed this Original Application.

3. Learned counsel for the applicant submitted that in absence of any findings or reasons, according to Rule 14 (b) of Entitlement Rules, death of the husband of the applicant is deemed to be attributable to or aggravated by military service and applicant is entitled to Special Family Pension. He further submitted in view of various judgment of the Hon'ble Apex Court on the subject, death of husband of applicant should be treated attributable to military service and special family pension should be granted to the applicant.

4. Per contra, learned counsel for the respondents submitted that husband of applicant was enrolled in the Army on 10.07.2003 and died on 19.02.2012 due to "Shock and Haemorrhage, gun shot fired by two strangers while he was on 20 days Part of Annual Leave from 06.02.2012 to 25.02.2012. However, for grant of

the special family pension it is not only required that armed forces personnel should be on duty, but there must be some causal connection also between the injury and military service. He further submitted that unless injury sustained/death during leave has causal connection with military service, armed forces personnel cannot be allowed disability pension/special family pension merely on the reason of being on duty. He further submitted that in the given facts, husband of applicant was on leave at home and died due to gun shot by two strangers, there was no causal connection between the death and military service and, therefore, applicant is not entitled to special family pension, as she is claiming. In support, learned counsel for the respondents submitted that death of husband of applicant was opined as neither attributable to nor aggravated by military service and also not connected with military service by the Court of Inquiry. In terms of Para 213 of Pension Regulations for the Army, 1961 (Part-1) Special Family Pension may be granted to the family of an individual if his death was due to or hastened by :-

(a) A wound, injury or disease which was attributable to military service.

OR

(b) The aggravation by military service of a wound, injury or disease which existed before or arose during military service.

Since the circumstances of injury sustained/death are not related to the duties of military services and was opined as neither attributable to nor aggravated by military service, hence, applicant is not entitled for special family pension.

5. We have heard learned counsel for the parties and have also perused the record.

6. After having heard the submissions of learned counsel of both sides we find that in this case, a Court of Inquiry was ordered and it was opined by the Court that :-

- A. *No. 15687130A late Signalman Abinash Dwivedi of unit : 16 Corps Operational Signal Regiment, company Mob Communication, Formation : 16 Corps Headquarters was on part of annual leave w.e.f. 05.02.2012 to 26.02.2012 at his native place Village – Jeera, Police Station – Manda, District – Allahabad (now Prayagraj) was gun shot fired by two strangers without any provocation by individual, while he was on the way to Bada Maharaj Temple. The First Information Report was lodged.*
- B. *Cause of death of the individual is due to “Shock & Haemorrhage” as brought out in the Post Mortem report.*
- C. *The death of No. 15687130A Late Signal man Abinash Dwivedi is not attributable to military service.*

7. The respondents have denied special family pension to the applicant on the reason that for getting special family pension, there must be some causal connection between the injury sustained/death and military service, and this being lacking in applicant's case, as there was no causal connection between the death and military service, she is not entitled for the same.

8. This question has been considered time and again not only by the various Benches of AFT but by the Hon'ble High Courts and the Hon'ble Apex Court. In a more or less similar matter, **Secretary, Govt of India & Others Vs. Dharamveer Singh**, decided on 20 September

2019, in Civil Appeal No 4981 of 2012, the facts of the case were that respondent of that case met with an accident during the leave period, while riding a scooter and suffered head injury with '**Faciomaxillary and Compound Fracture 1/3 Femur (LT)**'. A Court of enquiry was conducted in that matter to investigate into the circumstances under which the respondent sustained injuries. The Brigade Commander gave Report, dated August 18, 1999 to the effect that injuries, occurred in peace area, were attributable to military service. One of the findings of the report recorded under Column 3 (c) was that "No one was to be blamed for the accident. In fact respondent lost control of his own scooter". In this case the respondent was discharged from service after rendering pensionable service of 17 years and 225 days. In pursuance to report of the Medical Board dated November 29, 1999, which held his disability to be 30%, the claim for disability pension was rejected by the Medical Board on the ground that the disability was neither attributable to nor aggravated by military service. An appeal filed by the respondent against the rejection of his claim for the disability pension was rejected by the Additional Directorate General, Personnel Services. Respondent then filed an O.A. in Armed Forces Tribunal against the order of denial of disability pension which after relying upon the judgment of Hon'ble Apex Court in the case of **Madan Singh Shekhawat v. Union of India & Ors**, (1999) 6 SSC 459 was allowed by the Tribunal holding that respondent was entitled to disability pension. Aggrieved by the same, this Civil Appeal was

filed in which the Hon'ble Apex Court framed following 3 points for consideration:-

(a) Whether, when Armed Forces Personnel proceeds on casual leave or annual leave or leave of any kind, he is to be treated on duty?.

(b) Whether the injury or death caused if any, the armed forces personnel is on duty, has to have some causal connection with military service so as to hold that such injury or death is either attributable to or aggravated by military service?.

(c) What is the effect and purpose of Court of Inquiry into an injury suffered by armed forces personnel?.

9. The Hon'ble Apex Court decided the question number 1 in affirmative holding that when armed forces personnel is availing casual leave or annual leave, is to be treated on duty.

10. While deciding the second question the Hon'ble Apex Court in para 20 of the judgment held as under:-

“ In view of Regulations 423 clauses (a) , (b), there has to be causal connection between the injury or death caused by the military service. The determining factor is a causal connection between the accident and the military duties. The injury be connected with military service howsoever remote it may be. The injury or death must be connected with military service. The injury or death must be intervention of armed forces service and not an accident which could be attributed to risk common to human being. When a person is going on a scooter to purchase house hold articles, such activity, even remotely, has no causal connection with the military service”.

11. Regarding question number 3, the Hon'ble Apex Court held that if a causal connection has not been found between the disabilities and military service, applicant would not be entitled to the

disability pension. While deciding this issue, the Hon'ble Apex Court has discussed several cases decided by itself as well as various Benches of the Armed Forces Tribunal and the High Courts and has held that when armed forces personnel suffers injury while returning from or going to leave, it shall be treated to have causal connection with military service and, for such injury, resulting in disability, the injury would be considered attributable to or aggravated by military service.

12. The Hon'ble Apex Court while summing up took note of following guiding factors by the Armed Forces Tribunal, Regional Bench, Chandigarh, in the case of **Jagtar Singh v. Union of India & Ors**, Decided on November 02, 2020 in TA No 61 of 2010 approved in the case of **Sukhwant Singh** and **Vijay Kumar** case, and held that they do not warrant any modification and the claim of disability pension is required to be dealt with accordingly. Those guiding factors are reproduced below for reference:-

“(a) The mere fact of a person being on 'duty' or otherwise, at the place of posting or on leave, is not the sole criteria for deciding attributability of disability/death. There has to be a relevant and reasonable causal connection, howsoever remote, between the incident resulting in such disability/death and military service for it to be attributable. This conditionality applies even when a person is posted and present in his unit. It should similarly apply when he is on leave; notwithstanding both being considered as 'duty'.

(b) If the injury suffered by the member of the Armed Force is the result of an act alien to the sphere of military service or in no way be connected to his being on duty as understood in the sense contemplated by Rule 12 of the Entitlement Rules 1982, it would not be legislative intention or nor to our mind would be permissible approach to generalise the statement that every injury suffered during such period of leave would necessarily be attributable.

(c) The act, omission or commission which results in injury to the member of the force and consequent disability or fatality must relate to military service in some manner or the other, in other words, the act must flow as a matter of necessity from military service.

(d) A person doing some act at home, which even remotely does not fall within the scope of his duties and functions as a Member of Force, nor is remotely connected with the functions of military service, cannot be termed as injury or disability attributable to military service. An accident or injury suffered by a member of the Armed Force must have some casual connection with military service and at least should arise from such activity of the member of the force as he is expected to maintain or do in his day-to-day life as a member of the force.

(e) The hazards of Army service cannot be stretched to the extent of unlawful and entirely un-connected acts or omissions on the part of the member of the force even when he is on leave. A fine line of distinction has to be drawn between the matters connected, aggravated or attributable to military service, and the matter entirely alien to such service. What falls ex-facie in the domain of an entirely private act cannot be treated as legitimate basis for claiming the relief under these provisions. At best, the member of the force can claim disability pension if he suffers disability from an injury while on casual leave even if it arises from some negligence or misconduct on the part of the member of the force, so far it has some connection and nexus to the nature of the force. At least remote attributability to service would be the condition precedent to claim under Rules 173. The act of omission and commission on the part of the member of the force must satisfy the test of prudence, reasonableness and expected standards of behavior”.

(f) The disability should not be the result of an accident which could be attributed to risk common to human existence in modern conditions in India, unless such risk is enhanced in kind or degree by nature, conditions, obligations or incidents of military service.”

13. We have considered the applicant's case in view of above guiding factors and we find that husband of applicant was on Part of annual leave at his home when he was gun shot by two strangers and died and the death being '***neither attributable to nor aggravated by military service and not connected with his military duties in any manner***', she is not entitled to special family pension for the same. There is also no evidence or proof, placed by the applicant to establish that when her husband died due to gunshot, the said act would be treated to have causal connection with military service. The facts of the case clearly suggest that activity in which applicant's husband sustained gunshot wound and died had no causal

connection in any manner with military service, it was a simple case of murder which cannot be associated with service.

14. In the result, we hold that the claim of special family pension has rightly been rejected by the respondents which needs no interference. Resultantly, O.A. is **dismissed**.

15. No order as to cost.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 9th August, 2021
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