

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 559 of 2017****Monday, this the 13<sup>th</sup> day of September, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

Smt Janki Devi, Widow of No. 13984939-P Late Sepoy/Nursing Assistant Mahiman Singh, resident of Village & Post Office – Walthi, District – Pithoragarh, Tehsil – Bangapani, Pincode – 262554 (Uttarakhand).

**.... Applicant**

Ld. Counsel for the: **Shri KKS Bisht**, Advocate.  
Applicant

**Versus**

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of Army Staff, Integrated Headquarters of Ministry of Defence (Army), DHQ PO, New Delhi-110011.
3. Commandant and Officer-in-Charge Records, AMC Centre and College, Lucknow – 226002.
4. PCDA (P), Draupadi Ghat, Allahabad-211014.

**... Respondents**

Ld. Counsel for the **Shri Kaushik Chatterji**, Advocate  
Respondents.

**ORDER (Oral)**

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-

(a) *Issue/pass an order or direction of appropriate nature to the respondents to quash/set aside the PCDA (P) Allahabad, respondent No. 4 letter No. G4/5/2000/5014/734/V dated 20.06.2000, after summoning the same, which was communicated by the Records, respondent No. 3 vide letter No.13984939/FP-II dated 11.10.2006 {Annexure No. A-1(ii)}, rejecting the Special Family Pension (SFP) in respect of the applicant being highly arbitrary, capricious and illegal.*

**(b) *Issue/pass an order or direction of appropriate nature to the respondents to quash/set aside letter No. B/38046/14/07/AG/PS-4(Imp-I) dated 26.07.2007 {Annexure No. A-1 (iii)} passed by the Appellate Committee on First Appeals, rejecting the Appeal of the applicant with respect to Special Family Pension (SFP) claim of the applicant in an in arbitrary, capricious and illegal manner.***

(c) *Issue/pass an order or direction of appropriate nature to the respondents to quash/set aside the letter No. 2(14)/2008/D (Pen. A&AC) dated 17.02.2002 {Annexure No. A-1(v)} passed by the Defence Minister's Appellate Committee on Pension, rejecting the Second Appeal of the applicant with respect of the applicant being highly arbitrary, capricious and illegal.*

(d) *To pass and order or direction of appropriate nature to the respondent to grant her Special Family Pension (SFP) with effect from 28.08.1999 for life along with arrears @ 18% per annum till date of payment to which she is entitled as a matter of right.*

(e) *Issue/pass and order or direction of appropriate nature to the respondents to grant her Ex-Gratia Compensation Award of Rs. 10 Lac.*

(f) *To pass and order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.*

(g) *Allow this application with costs.*

2. Brief facts of the case giving rise to this application are that the applicant's husband was enrolled in the Indian Army on 30.01.1992 and he died on 28.08.1999 at 161 Military Hospital, C/o 99 APO due to

disability “**MALIGNANT FIBROUS HISTIOCYTOMA (RT) ILIAC FOSSA OPTD (Stage IVB, G3, T2 NOM-1**”. Certificate of attribution (AFMSF-93 Part II) dated 17.12.1999 issued by 161 Military Hospital held that death of her husband was neither attributable to nor aggravated by military service (NANA). Claim for grant of Special Family Pension in respect of applicant was rejected by PCDA (P), Allahabad vide order dated 20.06.2000 on the ground of death being NANA. Thereafter, applicant preferred first and second appeals against rejection of Special Family Pension which were also rejected vide order dated 26.07.2007 and 17.02.2009 respectively. Applicant is in receipt of Ordinary Family Pension vide PPO No. F/NA4247/2000 dated 14.07.2000. This O.A. has been filed for grant of Special Family Pension and Ex-Gratia lump-sum-compensation of Rs 10 Lacs.

3. Ld. Counsel for the applicant pleaded that as per Appendix II of Pension Regulations for the Army, 1961 which deals with Entitlement Rules for Pensionary Awards, 1982 and Rules 5, 9, 14 (b) and 20 of Entitlement Rules for Casualty Pensionary Awards, 1982 applicant is entitled to Special Family Pension. The learned counsel has quoted relevant rules which are reproduced below:-

*“5. The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions:-*

**Prior to and during service.**

*(a) A member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance.*

*(b) In the event of his subsequently being discharged from service on medical grounds any deterioration in his health which has taken place is due to service.*

**Onus of Proof.**

9. *The claimant shall not be called upon to prove the conditions of entitlement. He/she will receive the benefit of any reasonable doubt. This benefit will be given more liberally to the claimants in field/afloat service cases.*

**Disease**

14. ***In respect of disease, the following rules will be observed:-***

(a) *For acceptance of a disease as attributable to military service, the following two conditions must be satisfied simultaneously:*

(i) *That the disease has arisen during the period of military service, and*

(ii) *That the disease has been caused by the conditions of employment in military service.*

(b) *If medical authority holds, for reasons to be stated, that the disease although present at the time of enrolment could not have been detected on medical examination prior to acceptance for service, the disease, will not be deemed to have arisen during service. In case where it is established that the military service did not contribute to the onset or adversely affect the course disease, entitlement for casualty pensionary award will not be conceded even if the disease has arisen during service.*

(c) *Cases in which it is established that conditions of military service did not determine or contribute to the onset of the disease but, influenced the subsequent course of the disease, will fall for acceptance on the basis of aggravation.*

(d) *In case of congenital, hereditary, degenerative and constitutional diseases which are detected after the individual has joined service, entitlement to disability pension shall not be conceded unless it is clearly established that the course of such disease was adversely affected due to factors related to conditions of military services.”*

4. He pleaded that since applicant's husband died while in service, therefore, his death should be attributable to military service and applicant should be entitled to Special Family Pension alongwith Ex-Gratia lump-sum-compensation.

5. Per contra, the respondents have contended that as per para 213 of Pension Regulations for the Army, 1961 (Part-1), Special Family

Pension is granted to the family of an individual if death is due to or hastened by;-

- (a) A wound, injury or disease which was attributable to military service.
- (b) The aggravated by military service of wound, injury or decease which existed before or arose during military service.

6. His submission is that since the aforesaid conditions are not fulfilled in the case of applicant's husband, therefore, she is not entitled to Special Family Pension. He has further submitted that applicant's husband died on account of constitutional decease as held by the competent medical authorities and his death was neither attributable to nor aggravated by military service, hence applicant is not entitled for grant of Special Family Pension. The pension sanctioning authority while adjudicating the case of applicant has rejected grant of Special Family Pension claim on the basis of views expressed by medical authorities which held his death as NANA. Respondents' learned counsel further submitted that case of applicant's husband is not covered under paragraph-6 of Entitlement Rules for Casualty Pensionary Awards, 1982 and according to which there should be causal connection between death and military duty and since in this case there was no causal connection of death with military duty, therefore applicant is not entitled to Special Family Pension. His further contention is that main condition to be satisfied for grant of special family pension and the payment of Ex-Gratia lump sum compensation in the specified circumstances is that the death of the employee concerned should have occurred in the actual performance of a bonafide official duty. The Ex-Gratia lump sum

compensation may not be sanctioned in cases where the deceased soldier was not on duty in terms of Entitlement Rules. The Ld. Counsel for the respondents submitted that the question whether death was attributable to or aggravated by military service is to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982. He pleaded the O.A. to be dismissed.

7. After hearing both the sides and perusing the evidence on record, the questions which need to be answered are three folds:-

- (a) Whether a wound, injury or disease which was attributable to military service as per Entitlement Rules?
- (b) The aggravated by military service of wound, injury or decease which existed before or arose during military service
- (c) If yes, is the applicant entitled for Ex-Gratia lump sum compensation and Special Family Pension?

8. The Government of India, Ministry of Defence letter No.20(1)/98-D(Pay/Services) dated 22.09.1998 with regard to conditions of governing the payment of Ex-Gratia lump-sum compensation and guidelines reads as under :-

*"I am directed to refer to Government of India, Ministry of Personnel, Public Grievance & Pension, Department of Pension & Pensioners' Welfare O.M. No.45/55/97-P&PW(C) dated 11.9.98 and state that the President is pleased to decide that the families of Defence Service personnel who die in harness in the performance of their bonafide official duties, shall be paid the following ex-gratia lump sum compensation:-*

(a)	<i>Death occurring due to accident in the course of performance of duties.</i>	<i>Rs.5.00 lakhs”</i>
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Subsequently, this table has been modified in the year 2010.

9. Coming to the first limb i.e. is the death attributable to military service?” We find that the cause of death of husband of applicant (Late Sepoy/Nursing Assistant Mahiman Singh) is neither attributable to nor aggravated by military service as held by the competent medical authority, therefore, death of applicant’s husband shall be deemed to be NANA.

10. In view of above, we are of the considered opinion that since death of applicant’s husband had no relation with military service, therefore it was neither attributable to nor aggravated by military service.

11. Coming to the second issue, as to, “is the applicant entitled for Ex-Gratia lump sum compensation as also Special Family Pension?”

12. From the perusal policy with regard to payment of Special Family Pension it is obvious that NOK of deceased incumbent is entitled to Special Family Pension if a soldier dies in performance of his bonafied duties. In the case in hand we are clear that death in respect of Mahiman Singh was not due to harness and, therefore, the competent authority has given their opinion that his death was not attributable to military service. More so, it is apparent that Mahiman Singh died due to “**MALIGNANT FIRBOUS HISTIOCYTOMA (RT) ILIAC FOSSA OPTD (Stage IVB, G3, T2 NOM-1**” which has no causal connection with military service.

13. Since husband of the applicant, as per the provisions of Rule 12 of the Entitlement Rules for Casualty Pensionary Awards 1982, was not on bonafide military duty therefore, the death/disease which occurred on 29.08.1999 is to be deemed as NANA and hence deceased soldier's NOK is not entitled to grant of Ex-gratia lump sum.

14. Relying upon the Hon'ble Supreme Court judgment rendered in SLP(C) No. 23727 of 2008 in the case of ***Union of India vs. Damodaran AV***, learned counsel for the respondents averred that in the aforesaid judgment their Lordships have held that the Medical Board is an Expert body and its opinion be given due weight, value and credence. He submitted that since the competent medical authorities have held that his death has no relation to military service on the ground that malignant disease was caused due to cytogenetic abnormalities in soft tissues in body and is not influenced by military service, therefore the death has been regarded as NANA.

15. Admittedly, the husband of the applicant died due to disease **"MALIGNANT FIBROUS HISTIOCYTOMA (RT) ILIAC FOSSA OPTD (Stage IVB, G3, T2 NOM-1"** which has no causal connection with service as held by the medical authorities and the pension sanctioning authority. Thus, the refusal by the competent authority for grant of Ex-Gratia lump-sum compensation and Special Family Pension to applicant is only on the grounds aforesaid.

16. In view of the above, we are of the view that since death in respect of applicant's husband has no causal connection with military service,

applicant is not entitled to Special Family Pension and Ex-Gratia lump-sum compensation in view of the observations hereinabove.

17. Original Application deserves to be dismissed. It is accordingly **dismissed.**

18. No order as to costs.

19. Pending applications, if any, are disposed off.

**(Vice Admiral Abhay Raghunath Karve)**  
**Member (A)**

**(Justice Umesh Chandra Srivastava)**  
**Member (J)**

Dated :13<sup>th</sup> September, 2021  
rspal/\*