

Court No. 1 (E Court)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 301 of 2019

Tuesday, this the 06th day of July, 2021

**“Hon’ble Mr. Justice Umesh Chandra Srivastava (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Smt. Shanti Devi, (W/o No 1491242-X Hav (Late) Ranbir Singh, R/o Regimental Quarter No 7, Roorkee Cantt, Distt- Haridwar (Uttarakhand)- 247667.

..... Applicant

Counsel for the Applicant : **Shri Shailendra Kumar Singh,
Advocate**

Versus

1. Union of India through Secretary, Ministry of Defence, New Delhi- 110011.
2. Chief of Army Staff, Integrated Headquarters, Ministry of Defence, South Block, New Delhi - 110011.
3. Addl Dte Gen Pers Services (PS-4) Adjutant general’s Branch, IHQ of MoD (Army), Plot No 108 (West), Brassey Avenue, Church Road, New Delhi – 110001.
4. OIC Records, BEG Records, PIN- 900477, C/o 56 APO
5. PCDA (P) (Army) Draupadi Ghat, Allahabad (U.P.)- 211014.

.....Respondents

Counsel for the Respondents : **Shri Kaushik Chatterji
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) To quash or set aside the rejection of First Appeal dated 11 Dec 2015 (Annexure A-1) and Rejection of Second Appeal dated 22 Nov 2016 (Annexure A-2) being illegal and arbitrary.*
- (B) To issue order or direction to the Respondents to grant SPECIAL FAMILY PENSION with effect from 24.11.2014 as her husband died while being on duty and subsequent undergoing treatment at Command Hospital.*
- (C) To issue order or direction to the Respondents to pay arrears of difference after necessary adjustment from ORDINARY FAMILY PENSION already granted to her and SPECIAL FAMILY PENSION alongwith suitable rate of interest as deemed fit and proper by this Hon’ble Tribunal.*
- (D) Any other relief as considered deemed proper including imposing costs by the Hon’ble Tribunal in the nature and circumstances of the instant case be awarded in favour of the applicant.*

2. Facts giving rise to Original Application in brief are that husband of applicant was enrolled in the Army on 31.12.1994. After completion of training, he was posted to various units and he also served in UN Mission in Sudan and was awarded **“The United Nations Medal”** on 10.02.2007. Husband of the applicant while serving at 58 Engineer Regiment was admitted in Command Hospital (Eastern Command) Kolkata for treatment on 07.11.2014 and ultimately expired on 23.11.2014 as a case of (a) **ACUTE ON CHRONIC CELL FAILURE- ALCOHOL RELATED** (b) **HEPATIC ENCEPHALOPATHY** and (c) **HEPATORENAL SYNDROME**. Applicant was granted ordinary family pension vide PPO No

F/NA/20170/2015 with effect from 24.11.2014. Her claim for grant of special family pension was rejected by the respondents vide order dated 09.05.2015 on the ground that cause of death of her husband has been conceded as neither attributable to nor aggravated by military service. Hence, she is not entitled to special family pension in terms of Regulation 105 of the Pension Regulations for the Army 2008 (Part-1). Accordingly her first and second appeals were also rejected vide order dated 11.12.2015 and 06.12.2016 respectively. Being aggrieved, the applicant has filed this Original Application.

3. Learned counsel for the applicant submitted that Second Appellate Committee has rejected the claim for grant of special family pension on the ground that husband of the applicant had a chronic alcohol abuse since 2003 and disease of her husband is a direct consequence of uncontrolled intake of alcohol but in death certificate dated 23.11.2014 no such reason has been given. Learned counsel for the applicant further submitted that Section 213 of Pension Regulations for the Army, 1961 provides that 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.

Learned counsel for the applicant pleaded that in view of aforesaid rulings, death of husband of applicant should be treated

attributable to military service and special family pension to be granted to the applicant.

4. Per contra, learned counsel for the respondents submitted that it is not disputed that husband of applicant died on 23.11.2014 at Command Hospital, Kolkota and cause of death was due to DECOMPENSATED MICONODULAR CIRRHOSIS OF LIVER WITH HEPATORENALSYNDROME RELATED TO ALCOHOLIC ABUSE. Her claim for grant of special family pension was considered but death of husband of the applicant was found as neither attributable to nor aggravated by military service, hence her claim was rejected in terms of Regulation 105 of the Pension Regulation for the Army 2008 (Part-1).

5. Learned counsel for the respondents further submitted that it is evident from enclosed medical and service documents that onset of disease was due to chronic alcohol abuse started from 2003. He was diagnosed to be having alcoholic liver disease and was evacuated to a territory care service hospital. However, his clinical condition continued to deteriorate with ascites, coagulopathy, encephalopathy and hepatorenal syndrome. Despite aggressive management, he continued to deteriorate and he went into deep coma necessitating mechanical ventilation and finally succumbed to death on 23.11.2014. The disease is a direct consequence of uncontrolled alcohol intake, which is under the individual's own voluntary control. Hence disease was conceded as neither attributable to nor aggravated by military service.

6. In support, learned counsel for the respondents has placed reliance on Regulation 105 of the Pension Regulations for the Army (Part-1), 2008 which reads as under:-

(a) *Special family pension may be granted to the family of service personnel if his death occurred in the circumstances mentioned in category B and category C of Regulation 82 of these Regulations due to or hastened by:-*

(i) *a wound, injury or disease which was attributable to military service, or*

(ii) *was due to aggravation by service of a wound, injury or disease which existed before or arose during service and in case of death after retirement/discharged. Provided that the service personnel had retired/discharged otherwise than voluntarily/ at own request on compassionate grounds before completion of terms of engagement.*

(b) *The question whether death is attributed to or aggravated by military service shall be determined under the Entitlement Rule For Casualty Pensionary Awards, 1982 contained in APPENDIX-IV to these Regulations.*

Category – B and C of Regulation 82 Pension Regulations for Army (Part-1), 2008 reads as under:-

(i) *Category – B*

Death or disability due to causes which are accepted as attributable to or aggravated by military service as determined by the competent medical authorities. Disease contracted because of continued exposure to hostile work environments subject to extreme weather conditions or occupational hazards resulting in death or disability would be examples.

(ii) *Category C*

Death or disability due to accidents in the performance of duties such as:-

(i) *Accidents while travelling on duty in Government vehicles or public/private transport.*

(ii) *Accidents during air journeys.*

(iii) *Mishaps at sea while on duty.*

(iv) *Electrocution while on duty etc.*

(v) *Accidents during participation in organized sports events/adventure activities/expeditions or training.*

7. It is not a case where the death of the deceased soldier took place due to service conditions but death took place due to his bad habit of uncontrolled alcohol intake which resulted in alcoholic liver disease. Hence the Special Family pension cannot be granted to the applicant.

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

9. After having heard the submissions of learned counsel of both sides we find that certain facts are admitted to both the parties and husband of applicant while in service died on 23.11.2014 due to DECOMPENSATED MICONODULAR CIRRHOSIS OF LIVER WITH HEPATORENALSNDROME RELATED TO ALCOHOLIC ABUSE and death of husband of the applicant was considered as 'Neither Attributable to nor aggravated by military service' as the individual was in habit of uncontrolled alcohol intake.

10. 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 death and military service, and this being lacking in instant case, as there was no causal connection between the death and military service, she is not entitled for the same.

11. 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 and it has been held that for grant of special family pension, there must be some causal connection between death and military service.

12. We have considered the applicant's case and we find that death of husband of the applicant was considered as neither attributable to nor aggravated by military service due to uncontrolled alcohol intake which resulted to death being not connected with his military duties in any manner, hence applicant is not entitled to special family pension.

13. 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**.

14. No order as to cost.

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

Dated: July, 2021

Ukt