

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 402 of 2021**Thursday, this the 19th day of May, 2022**“Hon’ble Mr. Justice Umesh Chandra Srivastava (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**Smt Sushma, W/o No 6947790M (Late) Sep Pawan Kumar,
Resident of Village – Jagat Kheda, Near Cent Martin Academy, Kalli
Pashchim, Lucknow.

..... Applicant

Counsel for the Applicant : **Shri Angrej Nath Shukla, Advocate**

Versus

1. Union of India through Directorate General of Ord Services (OS-8C), Master General of Ord Branch, IHQ of MoD (Army), New Delhi 110001.
2. PCDA (P) (Army) Draupadi Ghat, Allahabad (U.P.)- 211014.
3. Senior Record Officer, AOC Records, PIN – 900453, C/o 56 APO.
4. Officer Commanding HQ Lucknow.
5. Zila Sainik Welfare Office, Raibareli, U.P.

.....Respondents

Counsel for the Respondents : **Shri Rajiv Pandey,
Central Govt. Counsel**

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

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 direct the opposite parties/ appointing authority to consider the case of applicant for payment of Ex gratia compensation regarding which she has submitted application on 31.03.2021 as contained in Annexure No 1.*
- “(b) To issue any other appropriate order or direction as this Hon’ble Tribunal deem fit and proper in nature and circumstances of the case.*
- “(c) To allow this application in favour of the applicant with cost.*

2. Facts giving rise to Original Application in brief are that husband of applicant was enrolled in the Army on 29.11.2003. He was granted 30 days Part of Annual Leave cum posting to 3 Rashtriya Rifles (Jammu and Kashmir) with effect from 30.06.2016 to 29.07.2016. While on leave husband of the applicant met with a road traffic accident and died on 14.07.2016. A Court of Inquiry was held and death was found not attributable to military service. Claim of the husband of applicant for grant of Ex Gratia was rejected. Being aggrieved, the applicant has filed this Original Application for grant of grant of other benefits.

3. Learned counsel for the applicant submitted that when armed forces personnel are availing casual leave or annual leave, he or she is to be treated on duty. As per rule “death occurring due to accidents in course of performance of duties” entitles the deceased soldier for grant of ex gratia. Learned counsel for the applicant submitted that in case of Ritu Raj Pandey Vs Union of India, Hon’ble Regional Bench Kolkata has held in Paragraph 19 that :-

“19. A close analysis of the afore quoted regulations of the Entitlement Rules which are laid down as Appendix II to the Pension Regulations for Army 1961 reveals that as per 12 (k) of the Entitlement Rules the disability sustained during the course of an accident which occurs when the personnel of the Armed Forces is not strictly on duty may also be attributable to service on fulfillment of certain conditions which include involvement of risk enhanced in kind by natural condition, obligations or incidence of his service enumerated therein. In such a situation injured Army Personnel shall be on deemed duty at the relevant time. It is further clarified in unequivocal term that such benefit will be given more liberally to the claimant in cases occurring on active service as defined in the Army, Navy/Air Force Act. The aspect of duty has thus been defined and discussed in detail in Entitlement Rules to dispel all sorts of ambiguities. It can also contextually be noted that as per Regulation 13 - 9 of the Entitlement Rules the claimant of the disability pension shall not be called upon to prove the conditions of entitlement and further the benefit of any reasonable doubt shall be received by the incumbent. Such benefit without reasonable doubt will be given more liberally to the claimants. Further, Regulation 13 (a) & (b) speaks about observance of certain rules in respect of accidents and injuries, when the personnel of the Armed Forces is ‘on duty’ as defined and sustained injuries. Such injuries shall be deemed to have resulted from military service but in case of injuries due to serious negligence/misconduct, the question of reducing the

disability pension will be considered. In case of self inflicted injuries whilst on duty, attributability shall not be conceded. Thus injury related disability which does not occur due to the negligence/or misconduct of concerned Army Personnel or on account of self infliction shall be considered to have causal connection with the military service, even though on leave”.

4. Learned counsel for the applicant submitted that as per Para 12 (k) of Entitlement Rule “An accident which occurs when a person is not strictly “on duty” as defined may also be attributable to service, provided that it involved risk which was definitely enhanced in kind or degree by the nature, conditions, obligations or incidents of his service and that the same was not a risk common to human existence in modern conditions in India. Husband of the applicant died while he was on Part of Annual Leave hence applicant is entitled for Ex Gratia.

5. Per Contra, learned counsel for the respondents submitted that husband of the applicant died while travelling on his Active Scooty to Raebareli for treatment of his daughter and he was hit by an over speeding civil truck from behind. As a result of this collision husband of the applicant fell down and died on spot. Death was classified as physical casualty not attributable to military service. As per entitlement, applicant was granted enhanced rate of Family Pension alongwith AGI Insurance, AGI Maturity Benefits, Death Cum retirement Gratuity, etc. The applicant submitted application for

grant of Ex Gratia lump sum compensation. Respondents vide letter dated 05 May 2021 informed the applicant that as per Para 5 of Entitlement Rules for Casualty Award 2008, there should be causal connection between death/injury and military duty for grant of Ex Gratia compensation. Death of her husband did not meet the criteria for grant of Ex Gratia compensation from Central Government. Learned counsel for the respondents submitted that all dues as per entitlement have been paid to the applicant and nothing is pending to her.

6. Learned counsel for the respondents further submitted that 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. 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. We have heard learned counsel for the parties and have also perused the record.

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

(a) Whether death of husband of the applicant was attributable to and aggravated by military service?

(b) If yes, is the applicant entitled for Ex-Gratia lump sum compensation?

9. 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.

10. Coming to the first limb i.e. is the death attributable to and aggravated by military service?” The husband of the applicant died in road accident while on Part of Annual Leave. The opinion of Court of Inquiry is death of husband of the applicant is not attributable to military service. We find that death of husband of applicant had no relation with military service, therefore it was considered as neither attributable to nor aggravated by military service. Hence, death of applicant’s husband shall be deemed to be NANA.

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

12. From the perusal of policy with regard to payment of Ex Gratia Lump sum compensation, it is obvious that if a soldier dies in performance of his bonafied duties, then his NOK shall be entitled for payment of Ex Gratia compensation by Central Government. In the case in hand we are clear that death in respect of husband of the applicant was not due to harness and,

therefore, the Court of Inquiry has given their opinion that his death was not attributable to military service. More so, it is apparent that death of husband of the applicant 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 and Para 47 of Chapter VI, GMO 2002, was not on bonafide military duty therefore, the death which occurred on 14.07.2016 was deemed as neither attributable to nor aggravated by military service 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 death of the husband of the applicant has no relation to military service and was not influenced by military service, therefore the death was regarded as NANA.

15. Admittedly, the activity in which he was involved resulting in death of the husband of the applicant having no causal connection with service as held by the Court of Inquiry and the pension sanctioning authority, the applicant was not granted Ex Gratia Compensation but was rightly granted enhanced rate of Family Pension. Thus, the refusal by the competent authority for grant of Ex-Gratia lump-sum compensation to applicant is only on the grounds aforesaid.

16. In view of the above, we are of the view that since activity resulting in death in respect of applicant's husband having no causal connection with military service, applicant is not entitled to 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 cost.

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

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

Dated: 19 May, 2022

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