

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI**

O.A. No. 139/10

Smt. Om Pati

.....Petitioner

Versus

Union of India and Ors.

.....Respondents

For petitioner: Sh. S.R. Kalkal, Advocate.

For respondent: Sh. Ankur Chibber, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.**

**HON'BLE LT. GEN. M.L. NAIDU, MEMBER.**

**ORDER**

**01.12.2010**

1. Learned counsel for the petitioner seeks the quashing of the order dated 30<sup>th</sup> January 2009 passed by the respondents and requests for releasing the special family pension to the applicant with 12% interest on arrears and also seeks direction to respondent No 2 to release 5 lacs as exgratia payment since her late husband died in harness.

2. In pursuance of the direction given by the Tribunal on 20.10.2010, the Medical Board has reconsidered the matter in the light of the papers sent to them and finally filed the Medical Board proceedings dated 18<sup>th</sup> November 2010. The findings of medical board dated 18.11.2010 reads as under:-

“10. Keeping all the above facts in mind, the benefit of doubt may be given to the deceased, especially in view of close time association of his fatal disablement with service in Fd/CI Ops area. Hence, the disablement is conceded aggravated by military service in



terms of Entitlement Rules 1982 and 2008 read in conjunction with the Guide to medical Officers (Mil Pens) 2002, amended 2008.”

3. Brief facts of the case are that applicant is the widow of deceased Nb./Risaldar Mange Ram. Nb. Risaldar Mange Ram was enrolled in the Army on 26.10.1971 and he died on 08.03.1993 while on duty. Wife of the deceased soldier made a claim for Special Family Pension but that was denied to her on account of the fact that death of her husband was not contributed or attributed by the Military Service. The claim of the applicant was rejected by PCDA, Allahabad on 02.11.1993 and likewise his appeal in 1993. Therefore, applicant approached Hon'ble Delhi High Court by filing a writ petition and that writ petition was disposed of by Hon'ble Delhi High Court vide its order dated 30.07.2008 directing respondents to consider the case sympathetically specially keeping in mind the long service rendered by the husband of the petitioner who died due to Arachnoids Haemorrhage while in service and on operational duty. Authorities considered the case of the applicant in the light of the decision given by Hon'ble Delhi High Court and they rejected the claim of the applicant by the order dated 30.01.2009 holding that death of the applicant's husband is not in any way related to duties of the Military Service and not attributed to Military Service. Now, applicant has filed this petition before this Tribunal challenging this order.

4. Learned counsel for the applicant submitted that respondents have not properly complied with the Entitlement Rules for the Pension and he has invited our attention to the Regulation 203 for grant of Special Family Pension Guidelines to the Medical Officers and submitted that Authorities have not properly considered the case of the applicant.



5. On the other hand, learned counsel for the respondents invited our attention to the reply filed and pointed out that since deceased husband did not die on account of Military Service, therefore, applicant widow of the deceased is not entitled to Special Family Pension. Learned counsel for applicant during the course of the arguments invited our attention to the Appendix-II of the Entitlement Rules for Casualty of War, 1962 according to which if the person has been entered into the service and there is no disease detected at that time then there is presumption that man is fit unless it is recorded by the Doctors that the disease could not be detected at the time of entering into service

7. In view of the findings of the medical board dated 8.11.2010 the disease was aggravated by the military service therefore the petitioner is so entitled for all the benefits in accordance to the rules. Consequently we allow the petition and set aside the order dated 13.01.2009 and hold that applicant is entitled the special family pension along with ex gratia payment of Rs. 5 lakhs. The arrears shall be worked and paid to petitioner with 12% interest within a period of 3 months from today. The petition is allowed with no order as to costs.

**A.K. MATHUR**  
(Chairperson)

**M.L. NAIDU**  
(Member)

**New Delhi**  
**December 01, 2010**