

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

O.A. No. 218/2010

Smt. Kiran Thakur

.....Applicant

Versus

Union of India & Others

.....Respondents

For applicant: Maj. (Retd.) K. Ramesh with Ms. Archana K.
Ramesh, Advocates.

For respondents: Sh. Ankur Chibber, Advocate.

CORAM:

**HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.
HON'BLE LT. GEN. M.L. NAIDU, MEMBER.**

**ORDER
24.09.2010**

1. Applicant by this petition has prayed that respondents may be directed to convene a court of inquiry to investigate the high degree of humiliation caused by the Commanding Officer namely respondent No. 4 leading to the untimely death of the husband of the applicant under mysterious circumstances and a direction may be issued to release the pensionary benefits to the applicant along with ex-gratia pay as admissible to Central Government employees as also by the Bihar state.

2. Husband of applicant was the Subedar Major in Indian Army and he collapsed on 22.02.2009 and placed in Comma. He died untimely death by way of Cardiac arrest on 26.08.2009. A Court of Inquiry was held in which it was found that husband of applicant died as a result of Cardiac arrest and Court of Inquiry has recorded that cause of death was on account of Military Service. A certificate was given by the Commanding Officer which reads as under :-

"There is no foul play suspected and no one is to be blamed for the incident. The death of the JCO is attributable to Military Service. The terminal benefits as admissible to JC-829041N Sub. Major (Hony. Lt.) Rambaran Thakur be paid to the NOK.

3. A reply was filed by the respondents and respondents have taken the position that husband of applicant died a natural death on account of Cardiac arrest, as result of cerebral haemorrhage. A Court of Inquiry was held and in that Court of Inquiry the cause of death was said to be Cardiac arrest due to cerebral haemorrhage and copy of Court of Inquiry has already been given to applicant and applicant has already placed on record copy of this Court of Inquiry with rejoinder.

4. It is also submitted that the allegations made against Respondent No. 4 is absolutely baseless and they have been made out of sheer ignorance and they are devoid of any facts.

5. Learned counsel for applicant had admitted that applicant already received most of the post retiral benefits except two items i.e. Rs. 30,000/- against ACWF and Rs. 6,000/- against AWWA Grant and she has already been granted an ordinary family pension. But learned counsel for respondents has invited our attention to an order dated 27th August, 2010 under which both these amounts in question has been released to applicant. Therefore, this grievance of learned counsel for applicant does not survive.

6. Learned counsel for applicant submits that it is true that no specific prayer was made with regard to special family pension as applicant did not know till she received copy of the Court of Inquiry that the Commanding Officer has certified that the death of deceased husband of applicant was attributed to the Military Service. Therefore, he could not make a specific prayer in this petition. Learned counsel for applicant further submits that it

is always open for the Tribunal/Court to modulate the relief looking into the exigencies of the matter. Therefore, he raised this plea that when a certificate has already been issued by the Commanding Officer that the cause of death was on account of the Military Service and it should have been accepted by the Medical Board but it has held otherwise and recorded that it is not attributable to the Military Service. In this connection, learned counsel for applicant has invited our attention to a Circular issued by the Government of India, Ministry of Defence dated 07th February, 2001 for implementation of the recommendations of the Fifth Central Pay Commission contained in paras 164.10 and 164.22 of the report regarding the findings of the Medical Boards. In this connection, our attention was invited to Clause 2 which reads as under :-

"2. Attributability : Decision regarding attributability would be taken by the authority next higher to the commanding officer which in no case shall be lower than a brigade/sub area commander or equivalent."

In this connection, our attention was also invited to Clause (d) of Regulation 520 of Defence Service Regulations which also says that in such cases where the Court of Inquiry does not express opinion with regard to attributability, CO will record his opinion on

the evidence stating whether the injured person was on duty or whether he/she has to be blamed. Relevant para 520 (d) of Defence Service Regulation reads as under :-

"(d) The court of inquiry will not give an opinion, but the injured person's CO will record his opinion on the evidence, stating whether the injured person was on duty and whether he or she was to blame. When no evidence as to the circumstances attending the injury beyond that of the injured person is forthcoming it should be stated in the proceedings. The proceedings will then be sent to the brigade commander or the officer who has been authorised under Section 8 of the Army Act to exercise the legal and disciplinary powers of a brigade commander who will record thereon his decision whether disability or death was attributable to military service and whether it occurred on field service. After confirmation, the medical officer, will, in all cases except those of JCOs, WOs and OR, record his opinion in the proceedings as to the effect of the inquiry on the injured person's service. The proceedings will then be forwarded by the CO through the prescribed channel to Army Headquarters Org. Dte in the case of non-medical officers and Medical Dte in other cases, a copy being retained at command or other headquarters. In the case of a JCO, WO or OR a record will be made in the primary medical examination report (AFMSF-2-A) by the CO that a court of inquiry has been held, and also as to whether the man was on duty and whether he was to blame. The primary medical examination report will then be passed to the medical officer who will record his opinion as to the effect of the injury on the man's service. The proceedings of the court of inquiry will then be forwarded to the office i/c records for enclosure with the injured person's original attestation (see sub para (b) above), except in the case of a court of inquiry under sub-para (c) (v) above, in which case the proceedings, together with a copy of the medical opinion as to the effect of the injury on the man's service, will be forwarded without delay to Army Headquarters."

7. On the basis of this, learned counsel for applicant submits that since this has been recorded by the Brigadier A.P. Bam, Brig. Station Commander as quoted above the death of the incumbent is attributable to the Military Service and that is decisive of the matter. Therefore, the Authorities instead of granting of ordinary family pension should have granted the special family pension as contemplated in Regulation 213 of Pension Regulations for the Army, 1961 which contemplates that the special family pension may be granted to the family of an individual if his death was due to or hastened by a wound, injury or disease which was attributable to military service. The certificate has been given by the Commanding Officer who is alone competent to say whether the death is attributable to the Military Service. Once death has been caused on account of attributability of Military Service, the other Authorities have no say in the matter and they have to act on that finding of CO. In the present case, ordinary family pension have been released whereas she is entitled to special family pension. We also record our displeasure that applicant has levelled certain allegations against Respondent No. 4 which are unwarranted. Consequently,

we allow this petition and direct respondents to release special family pension to applicant from the date of death of her husband. Difference of arrears may be worked out and paid to applicant within three months. Petition is accordingly allowed. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
September 24, 2010.