

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

O.A. No. 397/2010

Smt. Ram Sri .....Applicant

Versus

Union of India & Others .....Respondents

For applicant: Col. (Retd.) S.R. Kalkal, Advocate.

For respondents: Brig. (Retd.) A.K.Srivastava, Advocate.

**CORAM:**

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

**ORDER  
01.10.2010**

1. Applicant by this petition has prayed that direction may be given to respondents to grant special family pension in favour of applicant with effect from the date of death of her husband along with arrears with interest @ 12%. She also prayed that respondents may be directed to pay her ex-gratia payment in the sum of Rs. 5 Lacs and prayed that order dated 19.07.2006 and May, 2007 may be quashed.

2. Brief facts of the case are that applicant is the wife of deceased Sub. K.N. Chourasia who was enrolled in the Army as combatant soldier on 30.03.1975. He was on leave on 07.03.2005 with permission to prefix 06.03.2005 and suffix 08.03.2005 being Sunday and holiday respectively. While the deceased was coming from the casual leave to rejoin his duty met with an accident on 08.03.2005 and he was taken to Air Force Hospital, Kanpur for treatment but was declared dead. A Court of Inquiry was held and death was declared attributable to Military Service as per Regulations of the Army, 1987. Therefore, claim of wife of late Sub. K.N. Chaurasia was worked out and sent to PCDA (P), Allahabad for release. Same was rejected by PCDA (P), Allahabad then an appeal was preferred that too was rejected. Ultimately, applicant was driven to file present petition before this Tribunal.

3. A reply was filed by respondents and they contested the matter and submitted that all the amount which was due to applicant i.e. credit balance, AFPP Fund balance, regular Insurance benefits, regular maturity benefits, Death-cum-Retirement Gratuity was released to widow of the deceased. As

regards the family pension it is submitted that claim of applicant was not maintainable as death of her husband was neither attributable nor aggravated by Military Service. It is pointed out that in the Court of Inquiry it was found that deceased soldier had gone to their village at Baraigarh, Teh. Ghatampur to meet their parents and on 08.03.2005 at around 5.00 p.m., he was returning from his parents, a speeding LML Freedom Motor cycle near Narora Bamba at Kanpur coming from wrong side had a collusion with the deceased soldier's LML Vespa scooter due to which deceased suffered a severe head injury and died on 08.03.2005 at about 1900 hours. It is pointed out that on 08.03.2005 actually deceased soldier required to report to his unit i.e. 508, Army Base Workshop, Allahabad as his leave was expiring. But he had not done so and was still returning from his parents' house and that accident occurred and he died. Therefore, death of the deceased cannot be considered as on duty as per Rule 12 of Entitlement Rules.

4. We have heard learned counsel for the parties and perused the record. Since the Court of Inquiry has found that husband of applicant was on duty and same has been certified by

Station Commander. We examined this question that whether PCDA (P), Allahabad was right in rejecting the findings of the Commanding Officer in the matter of attributability or aggravation by military service. Normally finding of Station Commander and Brigade Commander under Regulation 520 of the Army Regulations, 1987 and Section 8 of Army Act read with recommendations of the Fifth Central Pay Commission dated 07.02.2001, shall be final and not the PCDA (P), Allahabad. In the present case, PCDA (P) tried to split hair, according to the PCDA (P), Allahabad the leave was to expire on 08<sup>th</sup> March, therefore, he could not be treated on leave as he could not join on 08<sup>th</sup> March. But the findings of the PCDA (P), Allahabad is erroneous for simple reason that applicant was to report on 08<sup>th</sup> March and he has met with accident on 08<sup>th</sup> March that means he shall be treated to be on duty. There is no reason why he should not be treated on duty. Therefore, we allow this petition and direct that applicant's husband shall be treated to be on duty and applicant shall be entitled to special family pension as the husband of applicant had died on the duty. Applicant being the widow of the deceased Sub. K.N. Chaurasia will also be entitled to ex-gratia payment in accordance with rules bearing on the

subject. We direct respondents to release special family pension along with arrears with interest @ 12% from the date of death of her husband along with ex-gratia payment as admissible as per rules. Petition is allowed. No order as costs.

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

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

**New Delhi**  
**October 01, 2010.**