

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI
(Court No.2)**

O.A NO. 429 of 2010

IN THE MATTER OF:

Smt. Chander Lekha

.....APPLICANT

Through : Mr. S.S. Pandey, counsel for the applicant

Vs.

UNION OF INDIA AND OTHERS

...RESPONDENTS

Through: Mr. Ankur Chhibber, counsel for the respondents

CORAM:

HON'BLE MR. JUSTICE MANAK MOHTA, JUDICIAL MEMBER

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

JUDGMENT

Date: 13.12.2011

1. This petition was filed before the AFT (Principal Bench) on 23.07.2010 as OA No. 429/2010. Earlier this petition was dismissed as withdrawn vide order dated 20.04.2011 passed by Hon'ble Court no. 1 of this Tribunal. Thereafter, vide order dated 18.07.2011 passed by the same court, two miscellaneous applications filed by the petitioner were dismissed. The applicant/petitioner approached the Hon'ble High Court vide WP(C) No. 6408/2011 against the orders passed by this Tribunal. The Hon'ble Delhi High Court vide order dated 02.09.2011 set aside the order dated 18.07.2011 as also the order dated 20.04.2011 passed by this Tribunal and remanded the matter back to this Tribunal for adjudication on merits.

2. The applicant vide this OA has prayed for grant of Special Family Pension to the applicant w.e.f. 18.04.1961 with interest @ 18% from said date till its disbursement. It is also prayed that benefit of respondent's letter dated 30.10.1987 and 31.01.2001 with regard to ex-gratia pension may also be granted to the applicant.

3. The brief facts of the case are that husband of the applicant late Major P.S. Yadav was commissioned in the Indian Army in Infantry (Bihar Regiment) on 12.09.1948. He expired on 17.04.1961 while in service. The husband of the applicant had applied for casual leave and while travelling from Saharanpur to Meerut met with an accident and was evacuated to civil hospital in an unconscious state where he died at the hospital.

4. The Army HQ, Adjutant General Branch on 17.03.1962 issued a death certificate (**Annexure A-2**) certifying that the husband of the applicant was on casual leave w.e.f. 17.04.1961 to 19.04.1961, died in an accident with a train which was declared attributable to military service in peace area. The husband of the applicant having died in harness was granted ordinary family pension w.e.f 18.04.1961. The applicant made several representations dated 05.02.1965, 10.06.1976, 16.09.1988, 04.02.2002 and 14.11.2002 for grant of special family pension but it was not allowed by the Government.

5. The applicant approached the Hon'ble Delhi High Court by filing a Writ Petition (Civil) No.1744 of 2003 seeking grant of Special Family Pension. The said writ petition was disposed of by the Hon'ble High Court vide order dated 23.05.2008 (**Annexure A-3**) observing that *"the entitlement of the applicant cannot be verified by reason of absence of record. However, the Hon'ble Court gave liberty to the applicant that in case any records are traced out or any other material comes into hand of the applicant to substantiate that her husband passed away for reasons attributable to military service, it will be open to the applicant to make necessary representation to the respondents to grant special family pension"*.

6. The applicant submitted a representation on 08.07.2008 to the Hon'ble President of India for grant of special family pension, however respondents without application of mind rejected the representation by letter dated 25.09.2008 on the same ground taken earlier before the Hon'ble High Court that the service records are not available and it is not possible to reconstruct the facts and no new material has been produced and hence rejected the claim for grant of special family pension in the absence of any fresh material to indicate that the husband of the applicant died due to reasons attributable to military services.

7. It is further submitted by the applicant that thereafter in the first week of May, 2009, one day while the applicant was in the process of

weeding out old house hold goods, books and files by chance stumbled upon a copy of death certificate of her husband (**Annexure A-5**) bearing a signature of official of the respondents under the appointment block of Adjutant General, who has signed for the Adjutant General and also bearing the rubber stamp of the office of the Adjutant General dated 7 March, 1962 which clearly mentioned that the death of the husband of the applicant was attributable to military service. The certificate also bears a diary entry of a U.P. Government office dated 25.08.1998 thereon.

8. The applicant submitted an application on 02.06.2009 to the respondents based on this death certificate seeking grant of special family pension but there has been no response from the respondents to this application and hence the present OA has been filed by the applicant before this Tribunal.

9. Learned counsel for the applicant submitted that Hon'ble High Court vide order dated 23.05.2008 has given liberty to applicant to make necessary representation for grant of special family pension on some additional record is found and she had filed the same in pursuance of that order of Hon'ble High Court. Despite the fact that the death certificate dated 17.03.1962 is issued by the office of the Adjutant General and also bears a diary entry of a U.P. Government office dated 25th August, 1998 thereon, respondents have not been able to verify the details. He, therefore, argued that applicant was left

with no other recourse than to file the present OA. He prayed that respondents should either verify the facts or produce the original death certificate which could state otherwise.

10. Learned counsel for the respondents submitted that despite their best efforts, they have not been able to verify the death certificate dated 17.03.1962 issued by the Adjutant General. However in the reply, it has been averred that the document has not been issued by the MoD who is the only competent authority to declare whether or not the death was attributable to military service. As such, learned counsel for respondents argued that the applicant was only entitled to ordinary family pension.

11. Learned counsel for the respondents relied upon the order dated 20.07.2011 passed by the Hon'ble Court no. 1 in OA No. 203/2010 titled "Smt. Shakuntala Devi Versus Union of India & Ors." wherein Hon'ble Court has held that :

"Now turning to the facts of the present case, the petitioner has died on account of road accident during casual leave wherein he was not leaving the place of posting to go home or on the way back, therefore, this cannot be treated to be attributable to military service and as such petitioner's widow or his mother is not entitled to the benefit of special family pension."

12. We have heard both the parties at length and also examined the documents placed before us by both sides. We are of the opinion that the death certificate dated 17.03.1962 produced by the applicant in pursuance of the order passed by the Hon'ble High Court dated 23.05.2008 needs to be looked into. The certificate reads as under ;

"No. 68505/180/Org 3 (Records) (a) (i)

*Adjutant General's Branch
Army Headquarters
17 March 62
26 Bhalguna 1883 SAKA*

DEATH CERTIFICATE

Certified that IC-4086 Major PIRTHI SINGH YADAVA, a Bihar Regiment, died on 17th April, 1961 at SAHARANPUR as a result of an accident with a train. A Court of Inquiry was held which has brought out the following facts :-

- (i) Maj YADAVA was granted casual leave from 17 April to 19 April 61 to see his ailing daughter at MEERUT.*
- (ii) He boarded the train at 1330 hours on 17 April 1961 from AMBALA CANTT. His train stopped at 1617 hours at the outer signal at SAHARANPUR railway station. It appears that the deceased preferred walking the short distance to catch the DEHRA DUN Express which was to leave at 1635 hours for MEERUT.*
- (iii) While walking towards the station it appears he got blinded by a dust storm resulting in his stumbling against the signal wire and falling on the rail track on which a train was coming from behind. He was hit by the engine and thrown between the track. Despite the best efforts of the engine driver to stop the train, the engine and one boggy passed over to him before it come to a halt resulting in*

injuries to the officer. He was picked up by the Guard and handed over to railway police in an unconscious state.

(iv) He expired in the civil hospital at 2356 hours.

(v) The death of Major YADAVA is attributable to Military service in peace area.

Sd/-
(Adjutant General)

*Rubber Stamp of Adjutant General's Branch * Army Headquarters
Dated 7 March 1962*

Letter No. UP30/00 P864-00 dated 25.8.98"

13. It is clear from the above death certificate that the husband of the applicant was on casual leave w.e.f. 17 to 19 Apr 1961. Besides, it has also been declared that the death of Major YADAVA is "*attributable to Military service in peace area*". In the present case, Court of Inquiry would have been held to look into the circumstances of the accidental demise of the husband of the applicant. Since the respondents are unable to confirm the veracity of this death certificate as also are unable to produce the original record, death certificate produced by the applicant is to be taken proof of facts, the correctness of the said document is also beyond doubt.

14. We are also guided by the observations of the Hon'ble AFT Principal bench judgment dated 20.7.2011 in the matter of **Smt**

Shakuntala Devi Vs Union of India & ors., in which the Hon'ble Tribunal observed as under:-

“Therefore from this judgment it is clear that a person shall be considered to be on duty when he proceeds to his leave station or returning to his duty from his leave station at public expense. Therefore the parameter has been clearly laid down in Rule 48 that a person who is travelling to his leave station or returning to duty from his leave station at public expense is to be considered on duty. In fact, Regulation 48 was meant for persons going for official duties. However the Apex Court extended it to a person going on casual leave also. However their lordships have very clearly laid down that if a journey is undertaken on casual leave without authorisation, the person will not be entitled for disability pension since his act of undergoing such journey was unauthorised. Therefore the ratio of the judgment is that whenever a person goes on casual leave, with permission, the journey from his duty station to his home station and back will be treated to be on duty; and if anything happens during the journey from his place of posting or returning to his place of posting, he will be treated as on duty. Their lordships have not laid down a general proposition that if any person while on casual leave, travelling on a motorcycle for personal reasons and meets with an accident is to be considered as attributable to

military service. In this context our attention was invited to a Full Bench decision of the Punjab & Haryana High Court in Union of India & Ors. v. Khushbash Singh. The Punjab & Haryana High Court has delivered a detailed judgment considering the various other judgments delivered by Punjab & Haryana High Court and other High Courts and after detailed discussion they concluded in para 18 as under”

15. We have also examined the provisions contained in the definition of ‘duty’ read with Rule 10 of Leave Rules. Further, Rule 48 of the Regulations has been reproduced as under:-

“Disability pension when admissible-An officer who is retired from military service on account of a disability which is attributable to or aggravated by such service and is assessed at 20 per cent or over may, on retirement, be awarded a disability pension consisting of a service element and a disability element in accordance with the regulations in this section.”

In respect of accident the following rules will be observed:-

(a)...

(b)...

(c) A person is also deemed to be ‘on duty’ during the period of participation in recreation, organised or permitted by Service Authorities and of travelling in a body or singly under organised

arrangements. A person is also considered to be 'on duty' when proceeding to his leave station or returning to duty from his leave station at public expense."

16. We have also examined the judgment given in **"1995 Supp (3) SCC 232 in the case of Joginder Singh (Lance Dafadar) Vs Union of India & Ors.,"** wherein their Lordships have observed that *"It is rather not disputed that an Army personnel on casual leave is treated to be on duty. We see no justification whatsoever in denying the disability pension to the appellant."*

17. Similarly, the Hon'ble Apex Court in the matter of **"Madan Singh Shekhawat Vs Union of India & Ors., JT 1999 (6) SC 116"** have observed that *"Meaning thereby if such journey is undertaken even on casual leave but without authorisation to leave the place of posting, the person concerned will not be entitled to the benefit of the disability pension since his act of undertaking the journey would be unauthorised."* This is not the position in the present case. Contrary, he was travelling on leave after due sanction.

18. Having considered the above judgments and after examining the facts of the case, it is not contested that the husband of the applicant was on casual leave and he met with an accident which resulted in his ultimate demise on 17.4.1961 and thus there is no doubt that his death

should not be treated as “*death attributable to military service*” and the applicant was entitled to get the consequential benefits arising out of it. But she has been deprived of the same illegally.

19. In view of foregoing, we are of the opinion that the applicant is entitled for the special family pension w.e.f. 2000 i.e., three years prior to the date on which the applicant first approached the Court. The applicant will also be entitled to the interest @ 6% per annum on the difference between the special family pension and ordinary family pension (which is being paid to her) from the same date till the date of final payment.

20. The exercise to be completed within a period of 90 days from the date of issue of this order failing which the applicant will be entitled to a penal rate of interest @12% p.a. instead of 6% p.a. as awarded.

21. The OA is partly allowed. No orders as to costs.

(M.L. NAIDU)
(Administrative Member)

(MANAK MOHTA)
(Judicial Member)

Announced in the open Court
on this 13th day of December, 2011.