

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI
08.

O.A. No. 296 of 2010

Smt. Om Pati

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

With : M.A. No. 427 of 2010 IN O.A. No. 122 of 2010

For petitioner: Mr. S.R. Kalkal, Advocate. (OA No. 296/10)
Mr. S.M. Hooda, Advocate (OA No. 122/10)

For respondents: Mr. Ankur Chhiber, Advocate for R-1 to R-3 (OA No. 296/10)
Mr. S.M. Hooda, Advocate for R-4 (OA No. 296/10)
Mr. Anil Gautam, Advocate (OA No. 122/10)

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.
HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER
16.03.2012

1. Petitioner vide this petition has prayed that she may be granted special family pension as second life pensionary award being real mother of the deceased soldier along with the arrears and interest. Petitioner has also amended the prayer by moving amendment application and sought a relief that the opinion given by the Court of Inquiry be quashed and she may also be granted ex-gratia payment.

2. Petitioner is the mother of deceased soldier, Rifleman Surender Patter who was enrolled in the Indian Army as Combatant soldier on 07.01.2002. He married to one Maya Devi on 15.05.2005. He died while on service on 24.09.2005 and his wife was granted ordinary family pension. Thereafter, Smt. Maya Devi got remarried on 10.06.2007, therefore, family pension was

stopped by the respondents on 07.02.2008. Smt. Maya Devi, widow of Rifleman Surender Patter filed a petition bearing OA No. 122 of 2010 before this Tribunal which was allowed by the order dated 04.08.2010 and ordinary family pension was restored to her. Now the present petitioner being mother of deceased soldier has filed the present petition praying that she is entitled to special family pension and ex-gratia payment.

3. A reply has been filed by the respondents and they have taken the stand the Rfn Surender Patter died on Sentry duty while not discharging his duties but he committed suicide, therefore, his death is not attributable to military service. It is submitted that a Court of Inquiry was also held and as per opinion of Court of Inquiry, Rfn Surender Patter died by not discharging his duty but he committed suicide at his own. Therefore, mother of the deceased soldier i.e. the present petitioner is not entitled to the Special Family Pension. They also submitted that since Rfn Surender Patter has committed suicide, therefore, petitioner is also not entitled for ex-gratia payment.

4. We have heard both the parties and perused the record. As per rules, first and foremost condition for grant of special family pension is that an individual should have died while discharging his ordinary duties but in the present case, Rfn Surender Patter died by committing suicide. A Court of Inquiry was ordered and the Court of Inquiry has recorded its opinion that it is case of suicide which has been endorsed by the Brigade Commander.

5. Learned counsel for the petitioner submits that Court of Inquiry has no right to record their opinion and in that connection he has invited our attention to a decision given by Hon'ble High Court of Delhi in the case of **Hav. Rohtas Versus Union of India and Another 135 (2006) Delhi Law Times 8 (DB).**

6. The facts of the case of Hav. Rohtas Versus Union of India and Another (Supra) are distinguishable to the present facts and circumstances of the case. Suffice it to say that Regulation 522 of the Pension Regulations for the Army, 1961 clearly say that in such cases an opinion has to be given by the Court of Inquiry. Relevant portion of Regulation 522 reads as under;

*“522. Courts of Inquiry – Incidents and Offences:.....
Courts of inquiry held on cases of suicide will record their opinion and reasons thereof, as to the motive and the condition of the mind of the deceased prior to the death wherever possible. Certified true copies or translations of all papers relevant to the case such as the private correspondence of the deceased will be attached to the courts of inquiry proceedings. “*

7. Regulation 522 of Pension Regulations for the Army, 1961 clearly says that in case of suicide, Court of Inquiry will record their opinion and reasons thereof as to the motive and condition of the mind of the deceased prior to the death wherever possible. Therefore, in view of the clear mandate of the Regulation 522 that the Court of Inquiry has to record its opinion, the argument of learned counsel for the petitioner that Court of Inquiry has no right to record their opinion, is not of any help to him.

8. As far as grant of ex-gratia payment is concerned, in this connection, our attention has been invited to the notification dated 12.09.1998 as per which this special benefit is given when death occurs due to accidents in the course of performance of duties. In the present case, Rfn Surender Patter was of course on sentry duty but he committed suicide which is not a part of the official duty. Consequently, petitioner cannot be granted ex-gratia payment.

9. Hence, as a result of above discussion, we do not find any merit in the petition. Same is accordingly dismissed. No order as to costs.

M.A. No. 427/2010 IN OA No. 122/10 (For execution)

Since we have dismissed the petition (OA No. 296/2010), therefore, the interim stay order granted vide order dated 04.02.2011 stands vacated.

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

**S.S. DHILLON
(Member)**

**New Delhi
March 16, 2012
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