

COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA 1233/2019 WITH MA1970/2019

Smt. Birmla Deepak Wd/o
Late Nb Sub Rajender Singh Khola
Versus
Union of India & Ors.

... Applicant

... Respondents

For Applicant : Mr. V.S. Kadian, Advocate
For Respondents : Mr. Y.P. Singh, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT. GEN. C.P. MOHANTY, MEMBER (A)

ORDER

MA1970/2019

Keeping in view the averments made in the application and in the light of the decision in *Union of India and others* Vs. *Tarsem Singh* [(2008) 8 SCC 648], the delay in filing the OA is condoned. MA stands disposed of.

OA 1233/2019

2. This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant, seeking grant of Special Family Pension and other benefits as admissible to the applicant from the date of death of the husband.
3. The Husband of the applicant joined the Indian Army on 26.09.1971 in Corps of EME, and while serving with Light

Repair Workshop 43 Armoured Regiment, the individual died of sudden cardiac arrest on 08.04.2000 at Section Hospital, Lalgarh Military Station. As per certificate of attributability, the cause of death of the individual was due to Ethyl Alcohol Ingestion, and was held to be attributable to military service. The duly constituted Court of Inquiry has opined that no foul play is suspected and the JCO died a natural death and that as per the opinion of the Commandant, 43 Armoured Regt, the death of the individual has been held to be attributable to service. Voicing the same opinion, the Commander 150 Armoured Brigade, on CoI held that the death of the individual is attributable to military service.

4. With regard to the grant of Special Family Pension, though the death of the individual was held to be attributable to military service, but the Competent Authority had considered the case of death as neither attributable nor aggravated by service, and therefore, the applicant was held to be not eligible for grant of Special Family Pension.

5. We have given our balanced consideration to the submissions of both parties and have gone through various documents/circulars brought to our notice and now, the only pertinent aspect for consideration remain as to whether the Applicant is entitled to get relief as sought for in the above

mentioned OA for the reasons and grounds stated in the said Original Application.

6. Before proceeding to adjudicate the issue under consideration, it is relevant to examine the policy on the subject, which leads us to Para 105 of the Pension Regulations for Army, 2008 (Part-I) reproduced as under:

(a). A special family pension may be granted to the family of service personnel if his death occurred in the circumstances mentioned in category B and category C of Regulation 82 of these regulations due to or hastened by--

(i) a wound, injury or disease which was attributable to military service. Or

(ii) was due to aggravation by service of a wound, injury or disease which existed before or arose during service and in case of death after retirement/discharged. Provided that the service personnel had retired/discharged otherwise than voluntarily/at own request on compassionate grounds before completion of terms of engagement.

7. A basic analysis of the aforesaid provision read with Category 'B' of the Regulation 82 of the Pension Regulations for Army, 2008 (Part-I) along with Para 4.1 of the MoD letter no. 1(2)97/D/(Pen-C) dated 31.01.2001 clarifies that if the disability which caused the death of the individual (applicant's husband) had been held attributable to or aggravated by military service, applicant would have been entitled for grant of Special Family Pension, which would have been admissible in case of any injury, wound or disease.

8. It is indeed an irony that a service personnel rendering crucial 29 years of life to the Indian Army dies due to a disease which in no way can be held as not attributable to the military service by virtue of the fact that nothing was detected in the initial medical examination when he entered into service, and 29 years of unblemished selfless service, is ironically considered less to reward attributability to the soldier.

9. While holding that the death of the applicant to be attributable to service, and the applicant's husband to be 'on duty' at the time of his death for the purpose of grant of 'Special Family Pension' to the applicant, we are of the considered opinion that a sympathetic view is required to be taken by the competent authority in such cases, not bound by mechanical manner of disposal of cases, where a service personnel has rendered almost a substantial part of his life to the Indian Army, but his family is not granted benefit of a beneficial provision for the sake of technical and mechanical mechanism being followed by the administrative authority in such cases.

10. With regard to the grant of Ex-Gratia Lump Sum Compensation, we find it pertinent to refer to Ministry of Defence Letter No. 20(1)/98/D(Pay/Services)

dated 22.09.1998, applicable at the time of the death of the individual:

<i>S.No</i>	<i>Circumstances</i>	<i>Rates (in Rs)</i>
(a)	<i>Death occurring due to accidents in the course of duties</i>	<i>5.0 Lakhs</i>
(b)	<i>Death in the course of duties attributable to acts of violence by terrorist, anti-social elements etc.</i>	<i>5.0 Lakhs</i>
(c)	<i>Death occurring during (i) enemy action in international war or border skirmishes and (ii) action against militants, terrorist, etc.</i>	<i>7.5 Lakhs</i>

11. We find that the aforesaid Ministry of Defence Letter No.20(1)/98/D(Pay/Services) dated 22.09.1998 was subsequently amended from time to time, with the latest letter dated 04.06.2010 reproduced as under :-

<i>S.No</i>	<i>Circumstances</i>	<i>Rates (in Rs)</i>
(a)	<i>Death occurring due to accidents in the course of duties</i>	<i>10 Lakhs</i>
(b)	<i>Death in the course of duties attributable to acts of violence by terrorist etc.</i>	<i>10 Lakhs</i>
(c)	<i>Death occurring during (i) enemy action in international war or border skirmishes and (ii) action against militants, terrorist, etc.</i>	<i>15 Lakhs</i>
(d)	<i>Death occurring while on duty in the specified high altitude, inaccessible border posts, etc. on account of natural disasters, extreme weather conditions</i>	<i>15 Lakhs</i>
(e)	<i>Death occurring during enemy action in international war or war like engagements specifically notified</i>	<i>20 Lakhs</i>

12. On a perusal of aforesaid policy letters, we find that there is no dispute to the effect that the death of the individual was 'on duty', but the same is not sufficient to entitle the applicant for grant of ex-gratia lump sum compensation, wherein the death of the individual does not fall within any of the criteria mentioned above.

13. In view of the aforesaid analysis, we are of the opinion that while the applicant is not entitled to grant of Ex-gratia lump sum compensation, she is entitled to grant of Special Family Pension w.e.f. the date of death of her husband, i.e. 08.04.2000. However, the arrears shall be restricted to three years prior to the date of filing of OA (25.07.2019) keeping in view the law laid down in the case of Union of India and others Vs. Tarsem Singh [2008 (8)SCC 649].

14. Therefore, the Respondents are directed to give effect to this order within a period of three months from the date of pronouncement of this order. Default will invite interest @ 8% per annum till actual payment.

15. No order as to costs.

16. Pending miscellaneous application(s), if any, stand disposed of accordingly.

Pronounced in the open Court on 18 day of October, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

(LT GEN C.P. MOHANTY)
MEMBER (A)

/Akc/