

**COURT No.2  
ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI**

**OA 1512/2017**

**Smt Sujata Kumari** ..... **Applicant**  
**VERSUS**  
**Union of India and Ors.** ..... **Respondents**

**For Applicant:** Mr. J P Sharma, Advocate  
**For Respondents:** Gp Capt Karan Singh Bhati, Sr CGSC

**CORAM**

**HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)**  
**HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)**

The applicant vide the present OA makes the following prayers:-

***“(a) quash and set aside the impugned order dated 12.05.2017 as Annexure A-1 Impugned order.***

***(b) Direct Respondents to grant Ex-Gratia lump sum compensation @10 lakhs as per GoI, MoD letter No 20(5)/2009 /D(Pay/Services) dated 04.06.2010 with interest @10% p.a.***

***(c) Issue any other appropriate order or direction which this Hon'ble Tribunal may be deem fit and proper in facts and circumstances of the case.”***

## **FACTS ON RECORD**

2. Late Naik Bhanwar Singh(2693408M) (husband of the petitioner) was enrolled in the Grenadiers Regiment on 25.04.1999 and on completion of basic Military Training was posted to 21 GRENADIERS on 08.02.2000. He was temporarily attached with 40 task force as a Cadre reliever of No 2688417K NK Poonam Singh Bhatti with effect from 25 May 2013(AN). On 23.07.2013, the husband of the petitioner was sleeping in the Guard Room after performing first term duty of Guard Commander at Main Gate(40 Task Force) from 1800 hrs to 2000 hrs. At 2355 hrs when NK Banwari Lal went to the Guard Room to wake up NK Bhanwar Singh for the next reliever, he was found lying unconscious on his bed and was immediately evacuated to KR Government Hospital, Mysore at around 0010 hrs on 24.07.2013 and declared brought dead by the Duty Medical Officer, KR Government Hospital, Mysore. The Post Mortem was carried out on 24.07.2013 and as per the Post Mortem report, the cause of death was stated to be MYOCARDIAL INFARCTION AS A

RESULT OF CORONARY ARTERY DISEASE DUE TO  
CARDIOMEGALY AND ATHEROSCLERROSIS. A Court of  
Inquiry was held by HQ ISF vide convening order no  
IFS/2033/A dated 25.07.2013. The Board after investigation,  
considered his death as attributable to Military service and  
the Special Family Pension was processed to PCDA(P),  
Allahabad vide the Grenadiers Records letter no  
2693408/SR/F-Pen dated 25.10.2013. Thus, the petitioner  
was granted Special Family Pension @ Rs 8700/- p.m with  
effect from 25.07.2013 till widowhood vide pension payment  
order no F/20242/2014.

3. In terms of proceedings dated 04.10.2023, the Annexures R-1, R-2 and R-3 to the Counter Affidavit dated 24.10.2017 filed by the respondents were submitted vide MA 4865/2024. Annexure R1 is the copy of the postmortem report of the Mysore Medical College Research Institute, Mysore dated 24.07.2013 wherein the death of the applicant's husband has been opined to be a natural death as under:-

Opinion as to the Cause of Death

Cause of death is due to myocardial infarction as a result of cardiomegaly + atherosclerotic [arterial death] leading to coronary artery disease

24/7/13

True copy

A. Anand PSC  
 Senior Lecturer  
 Mysore Medical College  
 Mysore

Date: \_\_\_\_\_  
 Place: Mysore

(A. Anand)  
 Senior Lecturer, PSC  
 Mysore Medical College  
 Mysore

---

Note: - The said cloths, viscera will be discarded after a period of 30 days without further notification.

4. In the Court of Inquiry proceedings, the opinion was given to the effect:

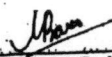
20  
OPINION OF THE COURT

Annexure A-2

The court is of the opinion that :-


- (a) The death of No 2693408M Nk Bhanwar Singh of 21 GRENADIERS, who was temporarily attached with 40 Task Force, occurred due to "MYOCARDIAL INFARCTION AS A RESULT OF CORONARY ARTERY DISEASE DUE TO CARDIOMEGALY AND ATHEROSCLEROSIS" at around 0100h on 24 Jul 2013.
- (b) The circumstantial evidence and the Post Mortem report confirm that No 2693408M Nk Bhanwar Singh died due to "MYOCARDIAL INFARCTION AS A RESULT OF CARDIOMEGALY & ATHEROSCLEROSIS (NATURAL DEATH) LEADING TO CORONARY ARTERY DISEASE".
- (c) Death of No 2693408M Nk Bhanwar Singh was natural, there is no likelihood of any foul play and nobody to be blamed.
- (d) No 2693408M Nk Bhanwar Singh was detailed for Main Gate night guard duty from 1800h on 23 Jul 2013 to 0600h on 24 Jul 2013. His death was occurred while on a bonafide military duty and hence, the death of No 2693408M Nk Bhanwar Singh is Attributable to Military Service.
- (e) All terminal benefits as applicable to the NOK of a deceased soldier while on active service, may be paid to the next of kin of No 2693408M Late Nk Bhanwar Singh as per existing rules.

Presiding Offr


  
(IC-55932M Lt Col Madhab Boro)  
42 Task Force

Members

1.

  
(IC-64081M Maj Satkesh Kumar)  
40 Task Force

2.

  
(JC-308104F Sub Manjunatha BC)  
40 Task Force

CERTIFIED AS TRUE

  
Lt Col  
42 Task Force  
GRENADIERS

5. The recommendation of the Commander, HQ ISF on the Court of Inquiry was to the effect:-

“

1. I agree with the opinion of the court.
2. The death of No 2693408M Nk Bhanwar Singh of 21 GRENADIERS, who was temporarily attached with 40 Task Force, occurred due to "MYOCARDIAL INFARCTION AS A RESULT OF CORONARY ARTERY DISEASE DUE TO CARDIOMEGALY AND ATHEROSCLEROSIS" as mentioned in Post Mortem Report, it was a NATURAL DEATH.
3. His death occurred while on a bonafide military duty and hence, the death of No 2693408M Nk Bhanwar Singh is Attributable to Military Service.
4. All terminal benefits as applicable to the NOK of a deceased soldier while on active service, may be paid to the NOK of No 2693408M Late Nk Bhanwar Singh as per existing rules.

”

### **CONTENTIONS RAISED**

6. The avowed contention of the applicant is that in as much as the Court of Inquiry had opined the death of her late husband to having occurred whilst on bonafide military duty and as being attributable to military service, the applicant in terms of 2(a) of the Government of India, Ministry of Defence letter no. 20(5)/2009/D(Pay/Services) dated 04.06.2010, is entitled to the grant of Ex gratia payment to the tune of

Rs. 10 lakhs submitting to the effect that the demise of the applicant's late husband had occurred due to an accident in the course of his duties.

7. It is further sought to be submitted on behalf of the applicant that the demise of the applicant's husband due to the MYOCARDIAL INFARCTION AS A RESULT OF CORONARY ARTERY DISEASE DUE TO CARDIOMEGALY AND ATHEROSCLERROSIS, whilst he was on Bonafide military duty has to be considered to be an accident during the course of his duties.

8. Reliance was placed on behalf of the applicant on the order dated 22.07.2015 of this Tribunal in OA 320/2014 in **Sukhbiri Devi vs. UOI & Ors.** as well as on the order dated 12.09.2018 of this Tribunal in OA 303/2016 in the case of **Smt. Ranjana Kumari vs. UOI & Ors.** to contend to the effect that in similar circumstances as that of the applicant's late husband, Ex-gratia payment had been awarded to the applicants of OA 330/2014 and OA 303/2016, and that the applicant on a parity is entitled to the relief claimed.

9. On behalf of the respondents, reliance was placed on the contents of the letter no. 20(5)/2009/D(Pay/Services) dated 04.06.2010 issued by the Government of India, Ministry of Defence addressed to all the Chiefs of all the three forces vide Para- 1,2 and 3 which reads to the effect:-

“

1. I am directed to refer to this Ministry's letter No. 20/1/98/D(Pay/Services) dated 22.09.1998 as amended vide letter of even number dated 12<sup>th</sup> April,1999, 3<sup>rd</sup> August, 1999, 19<sup>th</sup> May, 2000 and 21<sup>st</sup> October, 2008 on the above subject.

2. Vide Para 1 of above mentioned letter dated 21<sup>st</sup> October, 2008, the existing rates of ex-gratia lump sum compensation to the next of kin of the deceased defence personnel have already been revised as follows:

(a)	Death occurring due to accidents in course of performance of duties.	Rs.10.00 Lakhs
(b)	Death in the course of duties attributable to acts of violence by terrorists, etc.	Rs.10.00 Lakhs
(c)	Death occurring during enemy action in war or border skirmishes or in action against militants, terrorists, etc.	Rs.15.00 Lakhs
(d)	Death occurring during enemy action in International war or war like engagements specifically notified.	Rs.20.00 Lakhs

”

3. A new clause(d) shall be added to para 1 of aforesaid letter dated 21<sup>st</sup> October,2008 as follows and existing clause(d) may be renumbered as (e).

(d)	Death occurring while on duty in the specified high altitude, inaccessible border posts, etc.on account of natural disasters, extreme weather conditions.	Rs.15.00 Lakhs
-----	---	----------------

”

10. It was thus submitted by the respondents that the death of the applicant's husband which was a natural death as per the post mortem report dated 24.07.2013 of the Mysore Medical College Research Institute, Mysore, and which was due to MYOCARDIAL INFARCTION AS A RESULT OF CORONARY ARTERY DISEASE DUE TO CARDIOMEGALY AND ATHEROSCLERROSIS, though it occurred whilst the applicant's late husband was on bonafide military duty, the same cannot be held to be a death due to an accident and likewise cannot be held to be a death that took place due to an accident in the course of duty. It was thus prayed on behalf of the respondents that the OA be dismissed.

### **ANALYSIS**

11. A bare perusal of the letter dated 04.06.2010 relied upon on behalf of the applicant vide Para 2 thereof relied upon on behalf of the applicant brings forth that the grant of the Ex-gratia lump sum compensation to the next of kin of the deceased personnel in terms of para 2(a) of the said letter

is payable when the death of the deceased defence personnel occurred due to an accident in the course of performance of duties.

12. In the facts and circumstances of the instant case, the Court of Inquiry proceedings that have been produced by the respondents indicate that the applicant's late husband was detailed for main gate night guard duty from 1800 hours on 23.07.2013 to 2000 hours on 24.07.2013 and his death occurred whilst on bonafide military duty and was attributable to military service but as submitted by the applicant herself when Nk Banwari Lal went to the Guard room to wake up the applicant's late husband at 2355 hours on 23.07.2013 (*which the respondents submits was as he had gone to wake him up for the next reliever duty*), the late husband of the applicant was found lying unconscious on his bed and was taken to the KR Government Hospital, Mysore at around 0010 hours on 24.07.2013 and had been declared brought dead by the Duty Medical Officer, KR Government Hospital, Mysore.

13. The Postmortem report dated 24.07.2013 of the Mysore Medical College Research Institute, Mysore Postmortem Report Number 850/13 indicates as per the external examination conducted that there was no visible external injury seen over the body and that the internal examination of the deceased also indicated that:

- *his scalp and skull, membranes, brain and spinal cord;*
  - *the chest walls, ribs and Sternum, Pleura and Cavity, Larynx and trachea, lungs right and left and the forming part of the thorax;*
  - *the wall, peritoneum, mouth, pharynx and;esophagus, stomach and its contents, small and large intestines, liver and spleen in the abdomen and;*
  - *the kidneys, bladder, organs of generation, external and internal in the Genito Urinary system,-*
- were all intact.

14. Significantly, the time since death mentioned in the postmortem report of the postmortem conducted qua the

deceased from 2:15pm to 3:15pm on 24.07.2013 shows that the body of the deceased was brought dead at 1:30am and the time since death mentioned in the post mortem report is indicated to be less than 12 hours and thus corroborates that there is nothing to indicate any accident having occurred which caused the death of the applicant's late husband. Apparently the death of the deceased thus does not fall within the parameters of Para-2(a) the letter no. 20(5)/2009 /D(Pay/Services) dated 04.06.2010.

15. As regards reliance placed on behalf of the applicant on the order of this Tribunal in the case of **Sukhbiri Devi vs. UOI & Ors.** in OA 320/2014, it is essential to observe that, that applicant's late husband had suffered a severe head injury as he slipped in the bathroom in the night resulting into his death and his Court of Inquiry conducted had held that, that applicant's late husband had died whilst on bonafide duty and that his death was attributable to military service, that applicant had not been granted the relief of special family pension by the respondents and was granted

ordinary family pension and was also not granted Ex-gratia compensation and thus vide paras 4 and 5 of the said order, it was observed to the effect:-

**“4. In consequence thereof, it is held that the petitioner is entitled to Special Family Pension.**

**5. Since the petitioner's husband died while he was on bonafide duty as well as death occurred due to accident in the course of duties, therefore, the petitioner is entitled to ex gratia compensation of Rs.10 lakhs in view of the Government Order dated 14.06.2010. The petitioner will also entitle to more amount of ex- gratia, if it is enhanced by subsequent order. In the facts of the case, the petitioner will be entitled to all the benefits from the date of petitioner's husband death. The petitioner will also be entitled to interest @ 9% per annum for the arrears.”**

16. As regards the facts of the case relied upon by the applicant in OA 303/2016 decided on 12.09.2018 by this Tribunal in the case of **Smt. Ranjana Kumari vs. UOI & Ors**, the same indicate that that applicant's late husband late Naib Risaldar of the Armoured Corps, had died in harness on 24.02.2014 due to Cancer( DISSIMINATED CARCINOMA

GALL BLADDER)and that that the applicant had been denied special family pension on the grounds that the disease/ death of her husband was not attributable or aggravated by military service. It was observed vide paras 21,22 and 23 of the said order to the effect:-

**21. We take note of the fact that the deceased JCO was found fully fit medically at the time of his enrolment. Further, he served for 20 years in the Armoured (Tank) Corps, where he would have been exposed periodically to chemicals emanating from petroleum products and fumes released during tank driving and firing training. He has also participated in stressful conditions in a number of military operations, viz. Operation Vijay, Operation Rakshak and Operation Parakram. Therefore, it would be reasonable to presume that his disease could have developed and may have aggravated due to his military service conditions.**

**22. We find that the medical authorities have perfunctorily stated 'Cause of death Dissiminated Carcinoma Gall Bladder', which is neither attributable nor aggravated by military service" without giving out any reasoning whatsoever for this finding/operation. Further, the respondents have vaguely described the medical condition as a 'constitutional disease'. The said Medical Certificate that petitioner's husband's disease is neither attributable to nor**

**aggravated by service condition of the petitioner's husband cannot be accepted as a valid medical proof as in this certificate no reasons have been mentioned for arriving at the conclusion which has been mentioned in the certificate. Such a Certificate, in view of the decision of the Hon'ble Supreme Court given in Dharamvir Singh's case (Supra) cannot be accepted as valid medical opinion. The certificate without reasons has not been accepted by the Hon'ble Supreme Court in Dharamvir Singh's case. Therefore, such certificate cannot be accepted to deny the Special Family Pension to the petitioner, a widow of an employee.**

**23. In addition to above. we find more support from the judgments of the Division Bench of Delhi High Court delivered in case of Smt. Reshma Devi Vs. Union of India and Monika Sachdeva Vs. Union of India & Others and this Tribunal judgement delivered in case of Seema Devi Vs. Union of India (O.A. 327/2011), wherein the facts of the cases are somewhat similar to the facts of the case of deceased in this case. So far as service condition of the petitioner's husband is concerned, it cannot be disputed that petitioner's husband's last posting was in modified field area, and we are of the considered opinion that it may be one of the relevant issues, especially where there is no medical opinion as to when actually the cancer started developing in the body and when it was detected and spread. However, we are of the concerted view that in view of the petitioner's**

**posting at various places, here and there, he may have developed the cancer due to the service conditions and we take help of the presumption from the Rules and Regulations referred to above and that presumption has not been rebutted by the respondents. Therefore, we are of the considered opinion that the petitioner who made out her case for grant of Special Family Pension, has been wrongly denied especially when recommending the petitioner's case by the respondents themselves but rejected only on the ground that the respondents vide letter dated 09.02.2016 formed the opinion that there is no connection of the disease of the petitioner's husband with military service, for which said authority could not have formed any opinion.”,**

and thus that applicant was held entitled to the grant of special family pension.

17. Vide paras- 24 and 25 it was observed to the said order, it was observed to defect:-

**“24. Hence this OA is allowed. It is held that wife of the deceased employee late Naib Risaldar R.K. Singh is entitled to Special Family Pension. Therefore, the order dated 09.02.2016 is quashed. The respondents may release Special Family Pension to the petitioner with effect from the date of death of her husband i.e. 24.02.2014 along with**

**interest as prescribed in the rules, subject to a minimum of 6% per annum. 25. In the above fact situation the applicant is also entitled to get an ex-gratia payment of Rupees Ten Lakhs, however, without interest. Respondents are directed to calculate, sanction and issue requisite PPO within a period of four months from the date of receipt of this order."**

18. It is essential to observe that the order dated 12.09.2018 of this Tribunal in OA 303/2016 is wholly *sub silentio* in relation to the aspect of reference to the letter no. 20(5)/2009/D(Pay/Services) dated 04.06.2010 thereof already adverted to in Para-1 herein above.

19. Likewise in the order dated 22.07.2015 in OA 320/2014 though there is a mention of the said government order dated 04.06.2010, it has in the facts and circumstances of that case vide Para-5 thereof, been concluded to the effect that the death had occurred due to an accident in the course of duties in that case. Reliance thus that has been placed on **Smt. Ranjana Kumari vs. UOI & Ors** is fully misplaced in as much as the observations by this

Tribunal are wholly *sub silentio* in relation to the contents of that letter, and the facts of the instant case are wholly distinguishable from the facts of **Sukhbiri Devi** (Supra) before us. We are thus unable to hold that the death of the applicant's late husband was due to an accident in the course of performance of military duties to fall within the ambit of Para-2(a) of the said letter.

20. It is essential to observe that vide order dated 14.03.2024 of the Larger Bench of this Tribunal in OA 57/2020 in the case of **Hav Rajkumar(Retd)vs. UOI & Ors.**, it has been specifically observed vide para 23 of the said verdict to the effect:-

“

- *The subsequent Bench of equal strength as the previous Bench adjudicating a lis, is bound to follow the decision of the previous Bench of coordinate strength in relation to the ratio decidendi and principle laid down in an adjudication;*
- *Thus, it is the statement of the principle of law applicable to the legal problem disclosed by the facts of the case, which is the ratio decidendi of a case and thus where the facts of a case before a subsequent Bench are distinguishable from the facts of a case adjudicated by a previous Bench of coordinate strength, or where the adjudication of the lis, before the previous Bench is sub silentio in relation to an issue which is fundamentally required to*

*be adjudicated upon in the matter before the subsequent Bench for grant of relief or otherwise, even though where the same has not been adjudicated upon by the previous Bench, it would be open to the subsequent Bench to apply the applicable law on the given facts and circumstances of a case and;*

- *The ratio of the case has to be deduced from the facts involved in the case and the particular provision(s) of law which the Court has applied or interpreted and the principle upon which the case has been decided and the decision has to be read in the context of the particular statutory provisions and principles involved in the matter.*

.....”

20. It is also essential to observe that vide order dated 06.12.2023 in OA 286/2019 in the case of **Smt Bharti Maggu w/o Late Col Alok Maggu vs. UOI & Ors.**, the prayer made by that applicant seeking the grant of Ex-gratia lump sum compensation was declined with observations therein vide Para 23, whereby it was observed to the effect:-

“23.

*However, though the applicant's late husband died while in harness and it stands established that the death was attributable to and aggravated by military service, nevertheless the death of the deceased armed force personnel does not fall within the ambit of the category of death stated in the letter no. 20(1)/98/D(Pen/Service) dated 22.09.1998, nor within the ambit of the category of the death stated*

*in letter no. 20(1)/98/D(Pen/Services) dated 21.10.2008, in as much as the death of the late deceased armed force personnel in the instant case, did not occur due to any accident in the course of his duties, nor did the death take place in the course of duties attributable to acts of violence by terrorists etc, nor during enemy action in war or border skirmishes, nor in action against militants, terrorists etc., during enemy action in international war or war like engagements specifically notified. Thus the applicant is not entitled to the grant of any ex-gratia payment."*

21. It is essential to observe that vide order dated 01.08.2024 in OA 647/2015 in the case of **Ex NK Satyendra Kumar Vs. UOI & Ors.**, the prayer made by the applicant thereof seeking grant of Ex-gratia payment wherein that applicant had sustained an injury when he was coming back to the Air Force station and was on his way to a hospital in a car to meet his son, it was held that the grant of Ex-gratia payment was to be made only to those defence personnel who were disabled or incapacitated in the performance of their bonafide official duties.

22. Qua the contention raised on behalf of the applicant that the applicant's late husband died whilst he was in

harness with reliance placed on the subject of the letter which reads to the effect:

**“Subject: Special benefits in cases of death and disability in service-Payment of ex-gratia lump sum compensation to the families of the Defence Service Personnel who die in harness-Recommendations of the Sixth Central Pay Commission.”,-**

it is essential to observe that the subject of the letter has to be read in consonance with the contents of para 2(a) of the letter and the subject of the letter cannot be read *de hors* the contents of the letter to consider the aspect of the grant of Ex-gratia lump sum compensation to the Next of Kin(NOK) of the deceased defence personnel. In the facts and circumstances of the instant case, it is thus held that the death of the late husband of the applicant was a natural death, as per the postmortem report and though it occurred whilst the applicant's late husband was on bonafide military duty, nevertheless the said death **did not occur due to any accident that took place during the performance of**

bonafide military duties as is also reflected by the absence of any injury whatsoever to any portion of the body of the applicant's late husband as indicated by the post mortem report.

### **CONCLUSION**

23. In view of our analysis hereinabove that the death of the applicant's late husband was a natural death and not a death which occurred due to any accident in the course of his military duties, the prayer made by the applicant seeking grant of Ex-gratia lump sum compensation in terms of letter dated 04.06.2010 cannot be granted. The OA 1512/2017 is thus dismissed.

Pronounced in the open Court on the 22 day of November, 2024.

[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)

[JUSTICE ANU MALHOTRA]  
MEMBER (J)

/TS/