

COURT NO. 2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA No 335/2018

Smt. Neetu Teotia W/o
Late Devendra Singh Teotia, ME-1

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. V S Kadian, Advocate

For Respondents : Gp Capt Karan Singh Bhati, Sr. CGSC

CORAM :

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)

HON'BLE LT GEN CP MOHANTY, MEMBER (A)

ORDER

The applicant vide the present O.A 335/2018 has made the following prayers:-

- Ak, lib*
- "(a) Quash and set aside the impugned letter No. PEN/FP/B/1432 dated 24.07.2017 and treat the death of the husband of the applicant as attributable to by Naval service.***
 - (b) Direct respondents to grant Special Family Pension with all consequential benefits to the applicant with due arrears with effect from the date of death of her husband with interest @ 12% per annum.***
 - (c) Direct respondents to grant Ex-gratia lump sum compensation to the applicant with interest @ 12% per annum from the date of death of her husband.***
 - (d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.***

2. The applicant's husband Devendra Singh Teotia, ME-1, was enrolled in the Indian Navy on 27.01.2003 and whilst serving in the **FMU (V), Visakhapatnam** **expired on 09.11.2015 in a road traffic accident while in service.** On 06.11.2015 after taking permission through Sailor's Liberty Book maintained at his Unit, he proceeded to computer class but unfortunately met with an road accident and was admitted to INHS Kalyani. The next day, he was shifted to CARE Hospital Visakhapatnam for better treatment. However, the applicant was declared dead on 09.11.2015. A One Man Inquiry (OMI) was constituted to assess the cause of his death which considered the death of the soldier as 'Attributable to Naval Service' and the same was approved by IHQ/PSMS(HA) for the purpose of grant of Special Family Pension.

CONTENTIONS OF THE PARTIES

3. On behalf of the applicant, Learned Counsel submits that the applicant's husband was enrolled in

the Indian Navy and while posted at FMU (V), Visakhapatnam, he died due to a road accident on 09.11.2015. The Learned Counsel for the applicant further submits that the applicant was permitted to take computer class from a civil institution and that he booked out in Sailor's Liberty Book maintained at his unit for the computer class but unfortunately met with a road accident and died on 09.11.2015.

4. The Learned Counsel further submits that an OMI was constituted to establish the cause of the death which considered the death as Attributable to Naval Service and accordingly, his Next of Kin (NOK) was granted Special Family Pension which was duly approved by IHQ/PDMS (HS).

5. The Learned Counsel for the applicant submits that the Naval Pension Office vide letter no PEN/600/F/1/134578-K dated 21.10.2016 submitted the service documents of the deceased sailor to the PCDA (Navy), Pension Cell, Mumbai and took up the

case for grant of Special Family Pension in favour of the applicant and the Naval Pension Office also intimated the applicant that the cause of the death was viewed by Audit Authorities as attributable to Naval Service and thus, the applicant is entitled for Special Family Pension. However, the same was rejected by the pension sanctioning authority i.e. PCDA(Navy), Pension Cell, Mumbai vide their letter No PEN/FP/B/1432 dated 23.03.2017.

6. It is further submitted by Learned Counsel for the applicant that PCDA (Navy), Pension Cell, Mumbai vide their letter No PEN/FP/B/1432 dated 24.07.2017 intimated that there was contradiction in the attributability and the recommendations of the Board of Investigation (BOI) (copy submitted as Annexure A-1 Impugned Order of the Applicant). The letter further intimated that the BOI has stated that the deceased sailor was on Normal Liberty/Short Leave as per witness statement which is considered as duty and

hence, considered the death of the soldier as attributable to service.

7. Learned Counsel further submits that the NOK of the deceased was eligible for Special Family Pension as the death was held attributable to Naval service but only Ordinary Family Pension in favour of the applicant was granted vide PCDA(Navy), Pension Cell, Mumbai, Pension Payment Order No. 09/97/B/F/0001/2017 dated 22.03.2017.

8. The Learned Counsel for the applicant submits that the PCDA has no authority to take a different view, once the disability is held attributable to service by the Competent Authority.

9. Addressing the issue of Ex-gratia, Learned Counsel for the applicant submits that the entitlement of Special Family Pension and grant of Ex-Gratia benefit of the applicant are also applicable under the provisions of Government of India

letter dated 04.06.2010 and as clarified vide GOI MoD letter No 2(2)/2011/A(Pen/pol) dated 26.12.2011.

10. Relying on Para 117 of Pension Regulations for the Navy, 1964, Ld Counsel for the applicant submits that, *"A special family pension may be granted to the family of an individual if his death was due to or hastened by a wound, injury or disease which was attributable to military service or the aggravation by military service of a wound, injury or disease which existed before or arose during such service"*.

11. Elaborating further, Learned Counsel for the applicant places reliance on Para 5.1 of Govt of India, Min of Def letter No 1(2)/97/D(Pen-C) dated 31.01.2001, reproduced as under :

"In case of death of an armed force personnel under the circumstances mentioned in category B and C of para 4 above, Special Family Pension shall continue to be admissible to the families of such personnel under the same conditions as in force hithertofores. There shall be no condition of minimum service

on the date of death for grant of Special Family Pension. As per 4(b) "death or disability due to causes which are accepted as attributable to or aggravated by military service as determined by the competent medical authorities. Disease contracted because of continued exposure to a hostile work environment, subject to extreme weather conditions or occupation hazards resulting in death or disability would be example".

"CATEGORY B"

Death or disability due to causes which are accepted as attributable to or aggravated by military service as determined by the competent medical authorities. Disease contracted because of continued exposure to a hostile work environment, subject to extreme weather condition or occupational hazards resulting in death or disability would be examples.

"CATEGORY C"

Death or disability due to accidents in the performance of duties such as:

- (i) Accidents while travelling on duty in Govt vehicles or public/private transport.*
- (ii) Accidents during air journeys.*
- (iii) Mishaps at sea while on duty.*
- (iv) Electrocution while on duty, etc.*

(v) *Accidents during participation in organized sports*
Events/adventure activities/expeditions training.

12. The Learned Counsel for the applicant submits that as per the Govt of India, MoD letter dated 04.06.2010, the family of defence service personnel who die in harness in the performance of their *bona fide* official duties shall be paid Ex-gratia compensation in the circumstances specified in these orders as per applicable rates :

S.No	Circumstances	Rate(in Rs)
(a)	Death occurring due to accidents in course of duties	10 Lakhs
(b)	Death in the course of duties attributable to acts of violence by terrorists, etc.	10 Lakhs
(c)	Death occurring during enemy action in War or border skirmishes or in action against militants, terrorists, etc	15 Lakhs
(d)	Death occurring during enemy action in International war or war like engagements specifically notified	20 Lakhs

and submitted that death is classified as attributable to Naval Service and the applicant is entitled for Ex Gratia benefit.

13. Per contra, Learned Counsel for the Respondents submits that the BOI proceedings considered the death of the soldier as Attributable to service but the Pension Disbursing Authority recommended for grant of Ordinary Family Pension.

14. It is further submitted by the Learned Counsel for the Respondents that the Naval Pension Office, Mumbai approached PDA (Navy), Pension Cell, Mumbai to reconsider the case for Special Family Pension as per clarification given by IHQ of MoD (Navy) but it was intimated by PCDA vide letter No PNE/FP/B/1432 dated 24.07.2017 that the husband of the applicant on the date of death reached his home after completion of his duty and met with road accident while returning from home and hence, the death of sailor occurred during his personal work and therefore cannot be

considered as attributable to service. Thus, grant of Ordinary Family Pension to the applicant is justified.

ANALYSIS

15. We have heard both the parties and have perused the documents produced before us. It is pertinent to refer to the Headquarters Eastern Naval Command, Visakhapatnam letter No AD/0153/14/2015 dated 28.03.2016 placed at Annexure R-2, wherein the case of applicant for grant of Special Family Pension was taken up by the Headquarters, Naval Command, and the same is reproduced as under :

"Telephone : 2812220

*Headquarters
Eastern Naval Command
Naval Base
Visakhapatnam 530014
28 Mar 16*

AD/0153/14/2015

*The Chief of the Naval Staff
(for PDPS)
integrated Headquarters of the
Ministry of Defence (Navy)
New Delhi 110011*

OMI - DEATH OF DS TEOTIA, ME I, PNO
134578-K, OF FMU (V)

1. Refer to this Headquarters Convening Order of even no dated 26 Nov 15.

2. The OMI Proceedings in the above stated subject has since been examined at this Headquarters. The Competent Authority has approved the following:-

(a) Death of Devendra Singh Teotia, ME-I, P No 134578-K is 'Attributable to Service'.

(b) Necessary action be initiated for grant of Special Family Pension to the NOK of the deceased sailor under Category 'B' in accordance with IHQ MoD(N) PDPA letter PN/7995 dated 27 Sep 13.

(c) Necessary action be initiated for disbursement of Terminal Benefits that accrue to the NOK of the deceased sailor at the earliest.

3. Copy No 1 of OMI Proceedings is forwarded herewith.

Sd/-
(Pradeep Rana)
Rear Admiral
Chief Staff Officer (P & A)
for Flag Officer
Commanding-in-Chief

Encl: Copy No 01 of OMI Proceedings"

16. We find that a subsequent letter has been forwarded by Naval Pension office to the applicant dated 24.10.2016 stating that the applicant was found to be eligible for grant of Special Family

Pension. The letter dated 24.10.2016 is produced
herein as under :

Tel: 26075455

BY REGD.AR

Email.navpen.-navy@nic.in

Reply should be addressed to
The Logistics Officer-In-Charge

Naval Pension Office
C/o. INS: Tanaji
Sion Trombay. Road
Mankhurd (Fast)
Mumbai - 400 088

PEN/600/F/134578-K

24 Oct 2016

SMT NEETU TEOTIA

W/o Late Dovendra S Teotia VIII-Vlayathnagar, PO - Gulaothl,
Dist - Bulandshahr, UP - 245 408

**STOPPAGE OF PENDING ENQUIRY AWARD IN
RESPECT OF SMT. NEETU TEOTIA, W/O LATE
DEVENDRAS TEOTIA MEI. NO. E4578-K**

Madam,

1. Refer to this office letter of even number
dated 15 DEC 2015.

2. The Audit Authorities have viewed that the cause of
death of your late husband as "**ATTRIBUTABLE TO NAVAL
SERVICE**" and hence you are entitled for **SPECIAL FAMILY
PENSION**. Pension Book Will be forwarded to you on receipt
of the same from the Principal Controller of Defence Accounts
(Navy), Mumbai.

3. The Pending Enquiry Award will be stopped with effect
from 01 Nov 2016 after notification or Pension Payment
Order.

Thanking you,

Yours faithfully,

Sd/--

(AK Meelu)

Captain (IN)

SSO (Pen)

For Logistic Officer-in-Charge

17. While the case for grant of Special Family Pension was taken up with the PCDA, (Navy) Mumbai, we find that vide letter dated 24.07.2017, PCDA (Navy) Pension Cell rejected the case for grant of Special Family Pension and instead sanctioned Ordinary Family Pension. The aforesaid letter is reproduced as under :

No PEN/FP/B/1432
O/O THE PCDA (NAVY)
PENSION/CELL
NO COOPERAGE ROAD
COLABA MUMBAI
DATE - 24.07.2017

To

Dy Dir (Pension)
Integrated Headquarters
Ministry of Defence (Navy)
Directorate of Pay & Allowances
D-I Wing, Sena Bhawan
New Delhi-110011

**SUB: Sanction of OFP against death declared
attributability by competent authority DS Teotia MIE-I
No 134578-K**

Ref: IHQ of MoD(Navy) No PN/9078/Misc/17 dt 04.05.2017
addressed to NAVPEN.

Please refer to IHQ MoD(N) letter cited above regarding grant of SFP to the NOK of late DS Teotia ME-I No 134578-K. In this connection it is stated that there is contradiction in the attributability of blame and recommendation of BOI. The BO have stated that the deceased sailor was on Normal Liberty/Short leave as per the witness statement which is considered as duty and therefore the death in this case is considered to be attributable to service. However the BOI has recommended Normal Family Pension for NOK.

It is observed that the deceased sailor on the date of death reached his home after completion of his duty on 17.00 hrs. At 17.30hrs he left his residence on motorcycle to attend the computer class to undertake minor repairs of his motorcycle and to purchase dress materials for children and met with road accident while returning from journey.

It appears that the deceased sailor was not performing Naval duty at the time of accident and had gone for personal work. Further the BOI has stated that as per witness statement he was on Normal liberty/short leave. Further this office has also requested to clarify the rule position on Official liberty vide this office letter of even No dt 23.03.2017 addressed to the NAVPEN. Clarification for the same has not yet been furnished and authority letter provided.

The Govt of India, Min of Defence vide letter No 1(2)/97/1/D(Pen-C) dt 31.01.2001 has issued guidelines for pensionary benefits on Death/Disability in Attributable/Aggravated cases. As per para 41 of above letter death or disability due to accidents in the performance of duties such as (i) accidents while travelling on duty in Government vehicles or public/private transport (ii) accidents during air journeys are categorized as 'C' and in such cases SFP can be granted.

In this case death of late DS Teotia occurred while travelling to personal work hence it cannot be considered as attributable to service accordingly ordinary family pension was granted to the NOL of deceased sailor.

It is requested to provide the authority under which death in this case has been categorized as attributable to service by the competent authority. Further, it is requested to provide a copy of authority letter regarding what types of leave are considered as duty and a copy of Entitlement Rule for Casualty Pensionary Award for regulations of such cases.

*Sd/xxxxxx
It CDA (N)*

18. On a perusal of letter dated 18.10.2017 we find that the case for grant of Special Family Pension was again taken up for consideration with the PCDA (Navy) Pension Cell, Mumbai, but the same was not

acceded to. The aforesaid letter is placed herein as
under :

Tele: 0891-2813067, Fax: 0891-2752771
email: crsoeast navy@gmail.com

Headquarters
Eastern Naval Command
Naval Base
Visakhapatnam-530014

18 Oct 17

NRS/0125/NEETU TEOTIA

The Officer-in Charge
NAVPEN NS Tanaji
sion Trombay Road
Mankurd, Mumbai - 400 088

SANCTION OF OFP AGAINST DEATH DECLARED
ATTRIBUTABLE BY COMPETENT AUTHORITY
LATE DEVENDRA S TEOTIA, ME I, P NO
134578-K

1. Refer to the following (copies enclosed)
(a) IHQ, MoD (N)/PDPA letter PN/9078/Misc/17 dated 12 Sep 17.
(b) HQENC letter AD/0153/14/2015 dated 28 Mar 17.

2. It is intimated that, Ordinary Family Pension is being sanctioned to the NOK of late sailor. However, the OMI clearly states that death of the sailor is considered as Attributable to service and has recommended for grant of Special Family Pension to the NOK.

3. In view-of the above, it is requested that the case for Special Family Pension may be taken up with higher authorities under intimation to this office.

Sd/-
(S Sreekanth)
Captain
Command Regimental System Officer (East)
for Flag Officer Commanding-in-Chief

Enclosures: As above

19. We observe that the demise of the late husband of the applicant was held to be attributable to Naval service, which was approved by the competent authority and thus, the applicant in terms of Govt of India MoD letter No 1(2)/97/D(Pen-C) dated 31.01.2001 is entitled to the grant of the Special Family Pension. It is pertinent to observe that the PCDA cannot sit over in appeal on the observation and recommendations of the competent authority.

20. The applicant is, thus, held entitled to the grant of the ex-gratia payment to the extent of Rs 10,00,000/- as the death of the late soldier has been held to be in the performance of the official duty, after taking proper permission to attend the class after office hours.

CONCLUSION

21. In view thereof, as observed above, the OA is allowed and the applicant is entitled to the grant of the Special Family Pension from the date of death of her

adjoining

husband i.e. 09.11.2015 after deducting the amount of Ordinary Family Pension received by the applicant which amount is directed to be paid to the applicant by issuance of Corrigendum PPO within a period of three months from the date of receipt of copy of this order failing which it shall carry interest @8% p.a. to the applicant. The applicant is also held entitled to the grant of the ex-gratia payment of Rs 10,00,000/- in the facts and circumstances of the instant case.

Pronounced in the open Court on the 12 day of January 2024.

[LT GEN CP MOHANTY]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/akc/