

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

OA 4199/2023 WITH MA 5506/2023

Smt Lokendri Devi Wd/o ..... Applicant  
Late Nk Vinay Kumar  
Versus .....  
Union of India and Ors. .... Respondents

For Applicant : Ms. Archana Ramesh, Advocate  
For Respondents : Mr. Anil Gautam, Sr. CGSC

CORAM :

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

ORDER

MA 5506 /2015

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 by the applicant seeking condonation of delay of 1534 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of Union of India and Ors. Vs Tarsem Singh [2009 (1) AISLJ 371] and in Ex Sep Chain Singh Vs Union of India and Ors (Civil Appeal No. 30073/2017), the MA 5506/2023 is allowed despite opposition on behalf of the respondents and the delay in filing the OA 4199/2023 is thus condoned. The MA is disposed of accordingly.

OA 4199/2023

2. The applicant who is the widow of No. 3194937 Y 'Naik Vinay Kumar, vide the present OA makes the following prayers:-

*“8A. Issue directions to grant Ex Gratia Fund of Rs.10 lakhs to the applicant in the light of the Government of India, Ministry of Defence Letters dated 22 Sep 1998 as also of 03 Nov 2009 both of are placed as Annexure A-11 (Colly) as also in the light of the Hon’ble Armed Forces Tribunal, Principal Bench Judgments in OA No.506/2013 in Re Smt Bhawna Pawar Vs Union of India dated 30 Oct 2014 along with Intelligence Corps Implementation Order vide letter dated 07 Jan 2016 placed as Annexure A-12 (Colly) as also Hon’ble Armed Forces Tribunal judgment in OA No.407/2016 in Re Smt Saroj Devi Vs. Union of India dated 04 Jan 2019 placed as Annexure A-13.*

*B.. Pass such other and further orders to the Respondents by way of an adequate exemplary compensation in the attendant genuine circumstances of the case, to meet the ends of justice.”*

### CONTENTIONS OF THE APPLICANT

3. The applicant’s late husband was enrolled in the Indian Army on 28<sup>th</sup> October, 2000 as a Sepoy. He was granted 19 days annual leave from 19<sup>th</sup> September, 2019 to 7<sup>th</sup> October, 2019 with permission to suffix 8<sup>th</sup> October, 2019 being Sunday/Holiday but as averred by the applicant while returning to his Regimental Centre he was found unconscious at around 01.00 PM in the Bagh Express train on 9<sup>th</sup> October, 2019 whereafter he was taken to the Government Medical College and Sushila Tiwari Hospital, Haldwani, Nainital, Uttrakhand and was declared dead. As per the post mortem report No.526/19 dated 10<sup>th</sup> October, 2019 the opinion of the doctor who conducted the post mortem, annexed as Annexure A-6 to the OA, was to the effect:

*“The cause of death to the best of my knowledge and belief is due to heart ailment. The course of death is natural.”*

As a result thereof the applicant was sanctioned Special Family Pension which she submits she is drawing regularly. It is further averred that during the service of her late husband, he sustained a Gun Shot Wound (Right) thigh with fracture shaft femur (Right) during fire fighting with terrorists in Kachhdora District Shopian in OP Rakshak, Jammu and Kashmir and was thus declared a Battle Casualty. The applicant submits that as she was granted Special Family Pension, she is entitled to ex gratia allowance at the rate of Rs.10 lacs in terms of Policy letter No.20(1)/98/D(Pay)/Services, Government of India, Ministry of Defence dated 22<sup>nd</sup> September, 1998, as amended vide Policy Letter No.B/38207/Ex-G/AV/PS-5, Integrated HQ of MoD (Army, Adjutant General Branch, Addl Dte Gen Personnel Services, 'A' Wing Sena Bhawan, New Delhi dated 3<sup>rd</sup> November, 2009, placed as (Annexures A-11 [Copy]) to the OA, which has been denied to her in spite of her making a claim through a legal representation submitted on 26<sup>th</sup> August, 2022.

4. The applicant places reliance on the judgment dated 30<sup>th</sup> October, 2014 in Smt Bhawna Pawar Vs. Union of India and Ors. (OA No.506/2013) in which case the husband of the applicant who was found to be suffering from fatty liver and Hepatitis, while on annual leave, was evacuated to the hospital where he died and in Smt Saroj Devi Vs. Union of India and others (OA 407/2016) of the AFT, Principal Bench, New Delhi dated 4<sup>th</sup> January, 2019 wherein

the husband of the applicant died of a cardiac arrest during Commando training while posted to the National Security Guard.

CONTENTIONS OF THE RESPONDENTS

5. On the contrary it is averred in the counter affidavit of the respondents dated 27<sup>th</sup> August, 2024, that the applicant's late husband while returning to the Regimental Centre after availing annual leave was found dead at Kathgodam Railway station on 9<sup>th</sup> October, 2019 and according to the Post Mortem Report No.526/19, the cause of death of the husband of the applicant was heart ailment and the death was natural. However, the Court of Inquiry held to look into the matter considered the death of the applicant's late husband as attributable to military service and, therefore, the Ordinary Family Pension initially granted to the applicant was later revised to Special Family Pension vide PPO No.164202000140 dated 24<sup>th</sup> December, 2020.

6. To support their contentions the respondents have also placed reliance on the orders passed by this Tribunal in the matter of Ex Nk Satyandera Kumar Vs. Union of India and Ors. (OA No.647/2015) decided on 1<sup>st</sup> August, 2024 in which case the applicant during the period of annual leave, while visiting his son, who was admitted in the hospital, met with an accident and suffered the disability of Fracture Clavicle (LT) and Smt Bharti Maggu W/o Late Col Alok Maggu Vs. Union of India and Ors. (OA No.286/2019) decided

on 6<sup>th</sup> December, 2023 wherein the husband of the applicant developed a cardiac arrest and in spite of having been provided with treatment he could not be revived and was declared dead. In both these cases the claims for grant of Ex-gratia Lump Sum Compensation were rejected on the ground that death of the deceased armed force personnel and or the injury sustained by the service personnel did not occur in performance of their bona fide official duties.

7. The respondents vide their counter affidavit have also submitted to the effect that as per IHQ of MoD (Army) letter No.A/20037/MP 8 (1 of R) (a) (i) dated 9<sup>th</sup> December, 2015, Corrigendum LPC-cum sheet for grant of Ex Gratia lump sum Compensation in favour of the applicant was processed to PCDA (P) Prayagraj by Records, The Jat Regiment vide letter No.3194937/FP/DS/JR dated 23<sup>rd</sup> June, 2021 and in response thereto the PCDA (Pension), Prayagraj vide letter No.G-4/VIII/PFC-1129/2021 dated 6<sup>th</sup> August, 2021 have rejected the same with the remarks that

*“No.3194937Y Late Vinay Kumar of 7<sup>th</sup> Battalion The JAT Regiment is not entitled for Ex Gratia compensation as he was not on bona fide Military Duty and as per Government of India Ministry of Defence letter No.20(2)/98/D(pay/services) dated 22<sup>nd</sup> September, 1998, the NOK of the deceased soldier does not fulfil the condition for grant of Ex-Gratia Compensation.”*

## ANALYSIS

8. Through the pleadings on record it is brought forth admittedly
- that the applicant's husband was on annual leave
  - and while returning to his Regimental Centre,
  - he was found dead at the Kathgodam Railway station;
  - the death of the applicant's husband, after the Court of Inquiry, was considered as attributable to military service
  - and the applicant is in receipt of Special Family Pension.

9. The payment of Ex Gratia lump sum compensation to families of defence personnel who die in harness is governed by Government of India Ministry of Defence letter No.20(1)98/D(Pay)/Services dated 22<sup>nd</sup> September, 1998 and the relevant provision of the same reads as under:

“...the families of Defence Service personnel who die in harness *in performance of their bona fide official duties* shall be paid the following ex gratia lump sum compensation. (emphasis supplied).

Thus, from the above it is evident that for the families of the defence personnel to seek grant of Ex gratia lump sum compensation, the death of the defence personnel should have taken place while on bona fide official duty.

10. For the purpose of deciding the issue raised before us it is essential to advert to Section 140(a) of the Defence Services Regulations Pension Regulations for the Army 2008, Part I, which is as under:

*“Payment of ex gratia lump sum compensation is admissible to families when service personnel dies in harness in specified circumstances in the actual performance of bona fide official duties where a causal connection and nexus exists between the occurrence of death and military service.”*

11. The judgments relied upon by the applicant in the cases of Smt Bhawna Pawar and Smt Saroj Devi (*supra*) are distinguishable as the facts thereof are not in *pari materia* with the facts of the case of the applicant herein. In the case of Smt Bhawna Pawar (*supra*), the husband of the applicant had fatty liver with Hepatitis which he suffered due to the service conditions. In the case of Smt Saroj Devi the applicant's husband died of a cardiac arrest during Commando training whilst carrying out Commando duties at NSG, Manesar and the cardiac arrest was after rigorous physical exercise during battled physical efficiency tests (BPET) whereas in the present case the applicant was found dead at the Kathgodam Railway station and the cause of death was declared heart ailment and the course of death is stated to be natural. The Government of India, Ministry of Defence letter No.20(1)98/D(Pay)/Services dated 22<sup>nd</sup> September, 1998, relied upon by the applicant, relevant portion of which has been referred to hereinabove, clearly stipulates that families of the defence personnel who dies in harness *in performance of their bona fide official duties* are only granted Ex-gratia Lump Sum compensation. The husband of the applicant died of a natural death while on annual leave which cannot be held to be a death in the *performance of bona fide official duty* and,

therefore, does not fall within the ambit of Section 140 (a) of the Defence Services Regulations Pension Regulations for the Army 2008, Part I, nor within the ambit of the MoD letter No.20(1)98/D(Pay)/Services dated 22<sup>nd</sup> September, 1998 read with Policy Letter No.B/38207/Ex-G/AV/PS-5 dated 3<sup>rd</sup> November, 2009.

### CONCLUSION

12. In view of the facts and circumstances of the instant case as analyzed hereinabove, since the case of the applicant does not fall within the parameters for grant of ex gratia lump sum compensation, she is not entitled to the relief claimed. The OA is accordingly dismissed with no order as to costs.

Pronounced in the open Court on this 2<sup>0</sup> day of December, 2024.

  
[RASIKA CHAUBE]  
MEMBER (A)

  
[JUSTICE ANU MALHOTRA]  
MEMBER (J)

/vks/