

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

OA 853/2018

Smt Rajendery

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. S.M. Dalal, Advocate

For Respondents : Mr. Avdhesh Kumar Singh, Advocate

CORAM :

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

ORDER

Invoking the jurisdiction of this Tribunal under Section 14, the applicant has filed this application and the reliefs claimed in Para 8 read as under:

- (a) ***Direct the respondents to grant ex-gratia payment of Rs. 10 Lakhs to the applicant, with further direction to deduct Rs. 5 Lakhs already paid.***
- (b) ***Direct the respondents to pay interest @ 12 p.a over the arrears wef 11 Jul 1999.***
- (c) ***Pass any other or further order(s) which this Hon'ble Tribunal considers appropriate in the facts and circumstances of this case.***

BRIEF FACTS

2. The applicant's husband, Nk (GD) Mange Ram, was enrolled in the Indian Army on 27.02.1981. During service, on 13.07.1999, the deceased soldier got electrocuted and suffered extensive burn injuries and died on 25.08.1999 which was initially classified as physical casualty and the applicant was granted Special Family Pension. The learned counsel for the applicant submitted that the applicant was paid ex-gratia amount of Rs.5 Lakhs which is applicable to physical casualty. The applicant filed an appeal for enhancement of the rate of the ex- gratia as per policy letter no. 20(1)/98/D(Pay/Service) dated 03.08.1999 whereby the notification dated 22.09.1998 was amended. However, the respondents did not enhance the rate of ex gratia lump sum in accordance with the said letter.

3. Vide order dated 13.11.2017 in OA 296/2015 the Tribunal held that:

“12. Consequently, in the light of the preceding, the OA is allowed with the following directions:

(a).....

(b) The husband of the applicant is held as having died on official duty during induction of unit into an operational area, attributable to military service:

(c) The applicant is entitled to liberalized family pension from the date next to the occurrence of death of her husband i.e 26.08.1999:"

CONTENTIONS OF THE PARTIES

4. The learned counsel for the applicant submitted that 73 Medium Regiment, unit of applicant moved on 10 July 1999 from its permanent location by rail for participation in OPERATION VIJAY (Kargil War) and he got electrocuted on 13 July 1999 and suffered extensive burn injuries upto 65% and the applicant succumbed to his injuries on 25.08.1999 and his death was declared as 'Physical Casualty' and conceded it as attributable to military service and the applicant was granted Special Family Pension.

5. The learned counsel submitted that as observed herein above vide order dated 13.11.2017 in OA 296/2015 of this Tribunal the applicant was held entitled to liberalized family pension, as it was held that the applicant's husband died on official duty during induction into an operational area, attributable to military service.

6. The learned counsel for the applicant further submitted that the applicant was granted ex-gratia amount of Rs. 5 Lakhs in terms of MoD notification dated 22 Sep 1998 treating it as "Death occurring to accident in the course of performance of duty".

7. The learned counsel for the applicant submitted that the applicant is entitled to receive ex-gratia amount of Rs. 10 Lakhs in terms of the policy read with the corrigendum dated 03.08.1999 and the said corrigendum is applicable from 01 May 1999 and covers the case of the applicant's husband as he died on 25.08.1999.

8. The respondents' right to file the counter affidavit already stood closed in terms of order dated 16.01.2019.

ANALYSIS

9. We have heard the learned counsel for the parties and have perused the record.

10. Though vide proceedings dated 17.05.2019 it was observed to the effect:-

"2. Besides hearing O.A on merits the applicant will also have to satisfy regarding the maintainability of

present O.A. as to why at the time of filing O.A 296/2015 claiming liberalized family pension no claim was made regarding ex-gratia amount.”,-

it is essential to observe that as held by this Tribunal in **Maj Amar Singh Chandel (Retd.) vs Union of India & Ors** in OA 1480/2018 vide order dated 01.09.2023 and in OA 1870/2020 in the case of **Lt Col Saurabh Dutt vs Union of India & Ors** dated 25.04.2024, in terms of Sections 23 of the Armed Forces Tribunal Act 2007, this Tribunal is not bound by the procedure of the Code of Civil Procedure 1908, but shall be and is to be guided by the principles of natural justice.

11. Furthermore, Rule 25 of the Armed Forces Tribunal (Procedure), 2008 also ordains to the effect:-

“25. Powers of the Tribunal with regard to certain orders and directions.-

Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders or give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.”

(emphasis supplied)

Thus we consider it appropriate to consider the prayer made by the applicant seeking the grant of ex-gratia payment on the basis of the amended policy letter dated 03.08.1999.

12. We find that the applicant has made an innocuous prayer with regard to the grant of ex-gratia lump sum amount at Rs.10 Lakhs instead of Rs.5 lakhs, which had been sanctioned by the respondents earlier admittedly as per the policy dated 22.09.1998. The deceased husband of the applicant had expired during movement by rail for induction in 'Operation Vijay (Kargil war)' and was initially declared to be physical casualty case. Later on, the death of the husband of the applicant/ deceased soldier was classified as a 'Battle Casualty' which occurred while participating in 'Operation Vijay'. As observed hereinabove vide order dated 13.11.2017 in OA 296/2015 of this Tribunal, the applicant was held entitled to Liberalized Family Pension due to the same.

13. The Govt. of India, Ministry of Defence had notified a Corrigendum dated 03.08.1999 (to the earlier policy letter dated 22.09.1998) on the subject of payment of ex-gratia lump sum compensation to the families of the defence service

personnel who die in harness. The extract of said Corrigendum policy letter is reproduced as under:

“Existing para 1(c) may be deleted and substituted by the following:-

(c) Death occurring (i) during border skirmishes and (ii) action against militants, terrorists, extremists etc.	Rs. 7.50 lakhs
(d) Death occurring during enemy action in 'International war or such war like engagements which are specifically notified by Ministry of Defence.	Rs. 10.00 lakhs

”

According to the aforesaid corrigendum policy letter dated 03.08.1999, ex gratia lump sum compensation of Rs.10 lakhs to the next of kin of deceased Defence personnel is payable in the matter as per clause (d) which reads **“death occurring during participation in war like engagements which are specifically notified by the Ministry of Defence.”** It is admitted that the deceased soldier participated in ‘Operation Vijay’ (Kargil War) and during that, the deceased soldier was electrocuted on 13.07.1999 and suffered extensive burn injuries and succumbed to his injuries and died on 25.08.1999 and vide 73 Medium Regiment Part II order No. 1/4316/2013 dated 26.10.2013, the death of the husband of

the applicant was classified as 'Battle Casualty' and the death of the applicant's husband while on duty is fully covered by the aforesaid letter.

14. In view of the aforesaid, OA 853 of 2018 is allowed. The respondents are directed to sanction and pay the *ex-gratia* lump sum compensation of Rs.10 lakhs to the applicant, after deducting/adjusting the amount of Rs. 5 Lakhs, already paid to the applicant as per the old policy letter.

15. The respondents are further directed to comply with the order within four months from the date of receipt of a copy of this order, failing which, the applicant shall be entitled to be paid interest on the unpaid amount @ 6% per annum.

Pronounced in the open Court on this 14 day of December, 2024.

[REAR ADMIRAL **DHIREN VIG**]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

Pooja