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COURT No.3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 1025/2020

Smt Kamlesh Devi Wd /o
Late NC (E) Rajendra Kumar

.....Applicant

VERSUS

Union of India and Ors.

....Respondents

For Applicant : Mr. Praveen Kumar, Advocate
For Respondents : Mr. S.R Swain, Advocate
Sgt. Pradeep Sharma, DAV In-Charge, Legal Cell,
Mr. Karaj Yadav, Legal Cell

CORAM

HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)
HON'BLE MS. RASIKA CHAUBE, 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) Quash and set aside the impugned letter dtd 09 Oct 2019.*
(b) Direct Respondents to declare the disabilities/death of Late NC (E) Rajendra Kumar husband of the applicant as attributable to or aggravated by military service because it has causal connection with services. In the light of The Hon'ble Supreme Court of India judgment in Dharamvir Singh Vs UOI & Ors (Civil Appeal NO 4949 of 2013) 2013 AIR SCW4236. The spouse of the applicant expired due to fatal scooter accident on 14 Oct 2001.
(c) Direct respondents to grant Special family Pension to the applicant w.e.f 15 Oct 2001 the date of death of her spouse along with arrears and 12% interest per annum till the payment is made.
(d) Direct the respondents to grant Ex-gratia amount of Rs. 9,00,000/- by considering the death of Late Rajendra Kumar as attributable to and aggravated by military service.
(e) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.”

BRIEF FACTS

2. Briefly stated, the Husband of the applicant (Late NC (E) Rajender Kumar) was enrolled in the Indian Air Force on 01.09.1998. While serving with 7 Sqn AF at Gwalior, Madhya Pradesh, he met with a fatal two-wheeler accident on 14.10.2001. The accident occurred on the National Highway, Gwalior-Bhind Road, approximately 4 kms away from the Air Force Camp, when the deceased was allegedly run over by a heavy vehicle (Dumper).

3. He was admitted to a Government Hospital in Gwalior by civil police and was declared dead on reaching the hospital. The post-mortem report dated 15.10.2001, recorded the cause of death as '**Shock and Hemorrhage as a result of injury to brain, lungs and liver.**' The applicant is recorded as the Next of Kin (NOK). A court of Inquiry was convened on 18.02.2002, which considered the cause of death as not attributable to military service and thus the applicant's claim for special family pension was rejected by the adjudicating authority and she was sanctioned ordinary family pension as well as Death Cum Retirement Gratuity (DCRG) *vide* PPO No. 08/14/B/F/P/1328/2002. Applicant represented her case for grant of Special Family Pension which was rejected. Being aggrieved, applicant has filed the present Original Application.

CONTENTIONS OF THE PARTIES

4. The Learned Counsel for the Applicant submitted that her late husband was enrolled in a medically fit condition on 01.06.1990, was allotted the trade of Lascar, and was posted to various units (peace and field). It was further contended that he

died in a fatal motor accident while returning from duty, and therefore, his death ought to be considered as attributable to or aggravated by military service.

5. It was further pointed out that as per Rule 213 of Pension Regulation for the Army, 1961, the Special Family Pension can 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 or aggravated by military service. Since the applicant's husband was returning from his duty station, and the travelling period is to be treated as 'on duty,' the said injury ought to be considered as having occurred while he was on duty. Consequently, his death squarely falls within the scope of Clause (a) of Para 213 of the Pension Regulations, 1961. Learned Counsel, therefore, strongly urged that Special Family Pension (SFP) be granted from the date of death of the applicant's husband.

6. Learned Counsel further submitted that the benefit of Special Family Pension has already been extended to the widow of late NC (E) M Elsier Vincent, the pillion rider in the very same accident, by considering his death as 'on duty' and attributable to service. In support of this contention, learned counsel has submitted PPO No. 08/14/B/F/P/0631/2002. Reliance was also placed on the order of AFT (PB) dated 01.07.2019 in the matter of *Yashoda Devi Vs. UOI & Ors.* [O.A. No. 788 of 2015 with M.A. No. 815 of 2015], order dated 09.09.2011 in the matter of *Smt. Raj Bala Vs. Union of India & Others* [O.A. No. 666 of 2010] and also judgment of the Hon'ble High Court of Delhi dated 31.07.2013 in the matter of *Kamlesh Devi Vs. Union of India and Ors.* [W.P. (C) No. 4774/2012] in support of the applicant's case.

7. *Per contra*, learned counsel for respondent submitted that the applicant is in receipt of the ordinary family pension as well as DCRG. Though the applicant's husband was in service on the date of his death and on the date when he met with the fatal accident, nevertheless his death was considered neither attributable to nor aggravated to military service in terms of Para 8 of the Entitlement Rules for Casualty Pensionary Awards, 1982 as there was no causal connection with the death of the deceased airman with military service, in as much as the applicant's late husband did not expire during the course of performance of actual duty.

8. Learned counsel has further relied on Government of India, Ministry of Defence letter No.20(1)/98-D(Pay/Services) dated 22.09.1998 which deals with conditions for payment of Ex-Gratia lump-sum compensation and guidelines, asserting that a causal connection should be established between the occurrence of death and government service for grant of Ex-gratia lump sum compensation. As the late NC (E) Rajender Kumar expired in a two-wheeler accident and not during performance of any bonafide official duty hence shall not be entitled for grant of ex-gratia lump sum compensation.

ANALYSIS

9. Heard learned counsel for the parties and also perused the material available on record.

10. In the present case, the husband of the applicant died in a fatal scooter accident while he was returning from his duty. Now, the questions that arise in the above case are *(a) Whether the death of the deceased soldier was attributable to or*

aggravated by Army Service? If yes, is the applicant eligible for grant of Special Family Pension?

11. As regards the first issue i.e. *Is the death attributable to military service?* The claim of the applicant is that her late husband was returning from work along with pillion rider Late NC (E) M Elsier Vincent when he was hit by a dumper. He was taken to the hospital where he was declared dead. A Court of Inquiry was held wherein Witness No. 1 has stated that Late NC (E) Rajender Kumar and late Late NC (E) M Elsier Vincent was working in the billets at 14.00 hrs.

12. Notwithstanding the conclusion of the Commanding Officer and the Court of Inquiry that the death was 'not attributable to service,' however, the benefit of Special Family Pension has already been extended to the widow of late NC (E) M Elsier Vincent, the pillion rider in the very same accident, by considering his death as 'on duty' and attributable to service.

13. The principle of parity and non-discrimination mandates that identical facts should result in identical benefits. Since the facts surrounding the death of both servicemen are inseparable and arise from the same incident, denying the same benefit to the Applicant would amount to an arbitrary distinction.

14. The Tribunal finds no justifiable basis to treat the Applicant differently from the widow of late NC (E) M Elsier Vincent. Since the benefit of special family pension has been extended to the widow of late NC (E) M Elsier Vincent, the same would also be applicable in case of present applicant.

15. In light of the foregoing analysis, and based on the principles of natural justice and parity, the OA 1025/2020 is hereby allowed.

16. There shall be no order as to costs.

17. Pending miscellaneous application(s), if any, shall stand disposed of.

Pronounced in open Court on 23rd day of December, 2025.

(JUSTICE NANDITA DUBEY)

MEMBER (J)

(RASIKA CHAUBE)

MEMBER (A)

/SJ/