

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

OA 1459/2019

**Mrs Deepa Bhoj Widow of
Late Nk Mahesh Singh**

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Bharat Singh, Advocate and
Mr. Durgesh Kumar Dubey, Advocate
For Respondents : Mr. Karan Singh Bhati, Sr. CGSC

CORAM :

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

ORDER

Invoking the jurisdiction of the Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this OA and the reliefs claimed in Para 8 reads as under:-

(a) Issue directions to the Respondents to call for the records including the Court of Inquiry proceedings, inquest report as the findings and opinion as approved by the competent authority, base on which the respondents in most illegal manner rejected the claim of the applicant for special family pension in respect of death in harness/death during proceeding on casual leave and thereafter quash all such orders passed by the Respondents placed as ANNEXURE-A being arbitrary, whimsical and a total non-application of the Army authorities to meet the ends of equity, justice and fair play.

(b) Issue directions to the Respondents to grant special family pension and Ex-gratia fund of Rs 10 Lakhs in the light of GOI-MOD (Army) policy letter dated 22 Sep 1998 and 03 Nov 2009 placed as ANNEXURE-A5 (Colly) as also in the light of the Hon'ble Armed Forces Tribunal, Judgement in OA NO 507/2015 in Re Mst

Usha Sharma Vs Union of India dated 30 Oct 2014 placed as ANNEXURE-A6 to meet the ends of justice and fair play.

(c) Issue directions to the Respondents to grant LPG Agency to the applicant in the light of the policy letter placed herein as ANNEXURE-A7 to meet the ends of justice and fair play.

(d) Pass such order and further orders/directions to the Respondents for adequate compensation as may be deemed just and proper by the Hon'ble Armed Forces Tribunal in the attendant genuine circumstances of the case.

2. The applicant is the wife of the Late Nk Mahesh Singh, who was enrolled in the Indian Army on 26.10.1991. After completing his basic military training at The Kumaon Regiment Centre, Ranikhet he was posted to 16 KUMAON on 06.09.1992. While serving the unit the applicant's husband was granted 20 days Casual Leave from 19.11.2004 to 08.12.2004. On 28.11.2004, when the applicant's husband was returning from Kwarab (Distt-Nainital) along with his three friends, unfortunately, the car in which they all were travelling met with an accident and Late Nk Mahesh Singh sustained multiple injuries and immediately, he was taken to Base Hospital, Almora from where he was transferred to Krishna Nursing Home, Haldwani for further management. He was further referred to Ram Murti Smarak Institute of Medical Services, Bareilly, and while undergoing treatment he died on 29.11.2004. A Court of Inquiry was conducted at

Kumaon Regiment Centre to investigate into the circumstances under which Nk Mahesh Singh died due to road accident while he was on leave.

3. The applicant being the Next of Kin (NOK) as per records, she has preferred a case with PCDA (P) Allahabad seeking Special Family Pension vide letter No. 4184756/FP dated 02.05.2005 but the same was rejected by the competent authority i.e. PCDA(P), Allahabad, considering the cause of death of the applicant's husband as being 'Not Attributable to Military Service' vide letter No. G4/5/05/69/IX/3 dated 28.07.2005 and thus the applicant was sanctioned enhanced rate of Ordinary Family Pension along with death cum retirement gratuity vide PPO No. F/NA/010348/2005 w.e.f. 30.11.2004 to 29.11.2011. After November 2011, the pension of the applicant was reduced to normal rate of Ordinary Family Pension. The applicant filed first appeal for grant of Special Family Pension in January 2017 which was rejected by the Competent Authority vide Govt of India, Ministry of Defence letter No B/38039/Misc/2018/AG/PS-4 (Imp-II) dated 07.08.2018. The applicant has not filed any 2nd Appeal,

instead, she has filed the present OA. However, in the interest of justice, it is considered appropriate to take up the present OA for consideration, in terms of Section 21(1) of the Armed Forces Tribunal Act, 2007.

CONTENTIONS OF THE PARTIES

4. The learned counsel for the applicant submitted that the applicant's husband was enrolled in the Indian Army as Sepoy on 26.10.1991 after completing his basic military training he was posted with 16 KUMAON, due to his sincerity and dedication, he was granted promotion to the rank of Naik at The Kumaon Regimental Centre, Ranikhet, Uttrakhand. It is the case of the applicant that her husband was granted 20 days' casual leave from 19.11.2004 to 08.12.2004 during the leave period he was travelling in a car, which got dis-balanced and fell from a bridge at 0425 hrs and sustained multiple injuries and was taken to Base Hospital, Almora, thereafter, he was taken to Krishna Nursing Home, Haldwani and from there he was referred to Ram Murti Smarak Institute of Medical Services, Bareilly and while undergoing treatment he died on 29.11.2004, a Court of Inquiry was also conducted at Kumaon Regiment Centre, to investigate into the

circumstances under which the husband of the applicant died due to road accident while proceeding on leave and based on the findings of the CoI, Competent Authority considered the applicant's husband's death as neither attributable to nor aggravated by military service.

5. In view of aforesaid, the applicant was granted enhanced rate of Ordinary Family Pension along with death cum retirement gratuity vide PPO No. F/NA/010348/2005 w.e.f. 30.11.2004 to 29.11.2011. After November 2011, the pension of the applicant was reduced to normal rate of Ordinary Family Pension.

6. The learned counsel for the applicant further submitted that the applicant had submitted an appeal on 17.07.2018 to The Kumaon Regiment Centre, Ranikhet through Rajya Sainik Board, New Delhi for grant of Special Family Pension (SFP), however, the first appeal filed by the applicant was rejected by the Competent Authority vide Army Headquarters letter No. B/38039/Misc/2018/AG/PS-4(Imp-II) dated 07.08.2018 on the ground that the claim is more than five year old.

7. The learned counsel further submitted that the applicant's husband died whilst proceeding on casual leave, which amounts to duty as thus it has causal connection with Military Service as per Rule 12 of the Entitlement Rules for Causality Pensionary Award, 1982.

8. Per contra, it was contended by the leaned counsel for the respondents that the applicant's husband was granted 20 days casual leave from 19.11.2004 to 08.12.2004 and he died during his casual leave while returning in a car (UA02 1269) from Kwarab with his three friends, which unfortunately met with an accident at around 0425 hrs on 28.11.2004 and he sustained multiple injuries and was taken to Base Hospital Almora, then he was transferred to Krishna Nursing Home, Haldwani. Thereafter he was further referred to Ram Murti Smarak Institute of Medical Services, Bareilly and during treatment, he died on 29.11.2004. The case for Special Family Pension was processed with PCDA (P) Allahabad vide letter No. 4184756/FP dated 02.05.2005 and the same was rejected by the Competent Authority vide letter No. G4/5/05/69/IX/3 dated 13.07.2005, as the death of the applicant's husband was held as neither attributable to nor

aggravated by military service and the applicant was advised to prefer an appeal if not satisfied with the decision of the PCDA (P) Allahabad, within 12 months and the same was communicated to the applicant vide letter No. 4184756/172/FP dated 02.09.2005 and therefore, she has been granted Ordinary Family Pension vide PPO No. F/NA/010348/2005. A Court of Inquiry was ordered at Training Office, KRC to investigate into the circumstances under which Late Nk Mahesh Singh of 16 KUMAON died on 29.11.2004 due to road accident while he was on 20 days CL and proceeding to Village Kasoon Near Kosi, Almora and the opinion of the COI is that no one is to be blamed for the death of Nk Mahesh Singh.

9. The learned counsel for the respondents submitted that after a period of 13 years applicant submitted an appeal against the decision of PCDA (P) Allahabad and the appeal was processed to IHQ of MoD (Army)/PS-4 vide letter No. 4184756/DWSFP/NE&PG dated 04.08.2018 and the same was rejected by the Competent Authority for the reason of not submitting of the appeal within the laid down time limit of 05 years and the said decision was communicated to the

applicant vide IHQ of MoD (Army)/PS-4 letter No. B/38039/Misc/2018/AG/PS-4(Imp-II) dated 07.08.2018 and therefore the OA deserves to be rejected.

ANALYSIS

10. We have heard the learned counsel for the parties and have perused the records produced before us.

11. In the instant case, it is not in dispute that the applicant's husband was granted 20 days causal leave from 19.11.2004 to 08.12.2004 and that on 29.04.2004 the applicant's husband died because of an road accident he met with on 28.11.2004.

12. The issue which is to be decided in this case is as to whether the death of the applicant's husband can be held to be attributable to or aggravated by military service or not so as to hold the applicant eligible for grant of Special Family Pension and Ex Gratia amount.

13. As per Regulation 105 (a) of the Pension Regulations for the Army Part I 2008, Special Family Pension may be granted to the family of service personnel if his death occurred in the circumstances mentioned in category 'B' and category 'C' of Regulation 82 of the Regulations, due to or

hastened by a wound, injury or disease, which was attributable to military service, or was due to aggravation by service of a wound, injury or disease, which existed before or arose during service and in case of death after retirement/ discharged. Provided that the service personnel had retired/discharged otherwise than voluntarily/ at own request on compassionate grounds before completion of terms of engagement, wherein category 'B' and 'C' are considered for special family pension which read as under:-

“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 exposes to a hostile work environment, subject to extreme weather conditions 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 Government 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.”***

14. As per Category 'A' of Regulation 82, the accidents occurred while not on duty are neither attributable to nor aggravated by military service. Category 'B' provides certain circumstances in which causes of death are accepted as

attributable to or aggravated by military service as determined by competent medical authorities. Accordingly, the death of the applicant's husband does not fall under the said category. In Category 'C', it describes death or disability due to accidents in the performance of duties. The death of the applicant's husband does not fall under the circumstances prescribed under item (i) to (v) of Category 'C'.

15. For deciding the question whether there is a causal connection between the death of the applicant's husband and the military service, so as to decide attributability/aggravated of the disability so as which resulted into the death and the military service, it would also be pertinent to refer to the judgment of the Hon'ble Supreme Court in the case of **Secretary, Govt. of India Vs. Dharambir Singh [2019 Latest Caselaw 851 SC]** decided on 20.09.2019, which lays down as under:-

"...(10) In view of the provisions reproduced above, we find that the following questions arise for consideration:

(i) xxx xxx

(ii) Whether the injury or death caused even if, the armed forces personnel is on duty, has to have some causal connection with military service so as to hold that such injury or death is either attributable to or aggravated by military service?

(iii) xxx

Answer to Question No.1

Answer to Question No.2

(15) The 1982 Rules give expansive definition to the expression 'duty' being undertaken by the personnel of the Armed Forces. It includes the period when Armed Forces personnel is proceeding from his leave station or returning to duty from his leave station. It includes even an accident which occurs when a man is not strictly on duty provided that it involved risk which was definitely enhanced in kind or degree by the nature, conditions, obligations or incidents of his service and that the same was not a risk common to human existence in modern conditions in India. However, as per Regulation 423 of the Medical Regulations, such injury has to have causal connection with military service or such injury is aggravated by military service.

(16) In Regulation 423(a) of the Medical Regulations, it has been specifically mentioned that it is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a field service or active service area or under normal peace conditions, will be deemed to be duty. Regulation 423(a) mandates that it is essential to establish whether the disability or death bore a causal connection with the service conditions. All evidence, both direct and circumstantial, will be taken into account and benefit of reasonable doubt, if any, will be given to individual. For the sake of repetition, the said clause reads as under:

"(a) For the purpose of determining whether the cause of a disability or death is or is not attributable to service, it is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a field service/active service area or under normal peace conditions. It is, however, essential to establish whether the disability or death bore a causal connection with the service conditions..."

(17) Clause (b) of Regulation 423 of the Medical Regulations presumes that disability or death resulting from wound or injury, will be regarded as attributable to service if the wound or injury was sustained during actual performance of 'duty' in Armed Forces. This is in contradiction to "deemed to be duty" as per Rule 12(f) of 1982 Rules, as the Rule is when a man is not strictly on duty. However, the injuries which are self-inflicting or due to individual's own serious negligence or misconduct

even in the cases of active duty, are not to be conceded unless, it is established that service factors were responsible for such action.

(18) and (19) xxx xxx

(20) In view of Regulation 423 clauses (a), (b) and (d), there has to be causal connection between the injury or death caused by the military service. The determining factor is a causal connection between the accident and the military duties. The injury or death must be connected with military service howsoever remote it may be. The injury or death must be intervention of armed service and not an accident which could be attributed to risk common to human beings. When a person is going on a scooter to purchase house hold articles, such activity, even remotely has no causal connection with the military service.

[Emphasis supplied]

16. It would also be useful to refer to the Court of Inquiry conducted by the order of Station commander, Station HQ Ranikhet at KUMAON Regiment Centre on 15.01.2005, and the Opinion of the Court reads as under:-

“The Court after having examined the witnesses and documentary evidence available, is of the opinion that No. 4184756W Late Nk Mahesh Singh Bhoj of 16 KUMAON died due to car accident on the night of 28-29 Nov 2004. No one is to be blamed for his death.”

Further, the directions of the Station Commander, Ranikhet reads as under:-

- “1. I agree with the opinion of the court.***
- 2. No 4184756W (Late) Nk Mahesh Singh Bhoj of 16 KUMAON died in Shri Ram Murti Smarak Institute of Medical Sciences, Bareilly on 29 Nov 2004 due to injuries sustained in a veh accident while on CL wef 19 Nov 2004 to 08 Dec 2004.***
- 3. There is no foul play suspected and no one is to be blamed for the death of No 4184756W (Late) Nk Mohan Singh Bhoj.”***

The statement made by the applicant in Court of Inquiry as Witness No. 1 is as under:-

“My husband late No. 4184756W Nk Mahesh Bhoj, while coming back from Kwarab, Tehsil Kosyakotuki, Dist-Nainital towards Almora died in a car accident near Kwarab. He was travelling in a car No. UA-02-1269, which got disbalanced and fell from a bridge. My husband sustained injuries and was taken to Base Hospital at Almora. From there he was taken to Krishna Nursing Home at Haldwani and from there he was referred to Rammurthi Mission Hospital at Bareilly. Here he died during treatment on 29 Nov 2004.”

17. Moreover, the applicant, in her own statement, has admitted that her husband met with an accident while returning from Kwarab, District Nainital, in a car. However, she has not indicated the purpose of his visit to Kwarab or whether the journey was undertaken in connection with any official duty, service-related work, or pursuant to any instruction from the unit or officer. It, therefore, seems that the travel was for personal reasons, and the deceased unfortunately expired due to the injuries sustained in the said accident.

18. We have carefully gone through the record and found that the applicant's husband was granted 20 days casual leave with effect from 19.11.2004 to 08.12.2004, it is not

disputed that the accident occurred on 28.11.2004 and the applicant's husband sustained injuries which led to his death on 29.11.2004. Distance between the applicant's husband duty station (Ranikhet) to leave station (Village-Kasoon) is only 46 KM, which he could have covered easily in one day only, and, therefore, assuming that the deceased soldier left duty station (Ranikhet) on 19.11.2004, he should have reached his leave station (Vill-Kasoon) on the same day i.e., 19.11.2004. However, the accident occurred on 28.11.2004 when the deceased soldier was coming back from Kwarab as stated by the applicant in the Court of Inquiry conducted by Training Office, Kumaon Regiment Centre. As the applicant's husband was coming back from Kwarab on 28.11.2004, which is not a part of his journey from his duty station to his leave station, therefore, the death of the applicant's husband cannot be held attributable to military service. For a death to be held attributable, there has to be a relevant and reasonable causal connection, howsoever remote, between the accident resulting in such death and the military service. The applicant failed to show and has not filed any evidence, which prove that her husband was

assigned, even on verbal instruction, to complete the pending job despite at duty station having been accorded leave and performed his journey from duty station to leave station on 27.11.2004, which can prove causal connection between the death of her husband and military service. Even if the applicant is to be considered 'on duty' while on casual leave at the time of accident, still the mere fact of a person being 'on duty' or otherwise, at the place of posting or on leave, is not the sole criteria for deciding the attributability of the military service for the injuries sustained by him which led to his death.

19. Therefore, in the instant case, as per the record, it is brought forth sufficiently that the death of the applicant's husband while coming back from Kwarab in a car accident was not attributable to or aggravated to by Military service, as he was already on casual leave from 19.11.2004 to 08.12.2004 and coming back from Kwarab with his friends in a private car on 28.11.2004. There is nothing on record to show on the part of the applicant that her husband had gone to Kwarab or coming back from Kwarab due to any official work and thus it can be inferred that the said visit to Kwarab

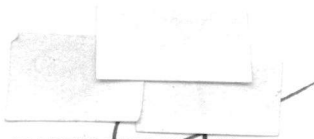
was only for his personal reasons. Accordingly, in the absence of any evidence on record to establish any causal connection between the death of the applicant's husband being due to military service, the applicant is not entitled to the grant of Special Family Pension and Ex-Gratia amount.

CONCLUSION

20. In view of our foregoing analysis, the OA 1459/2019 is dismissed being devoid of merit.

21. There is no order as to costs.

Pronounced in open Court on this 5th of December, 2025.


[REAR ADMIRAL DHIREN VIG]
MEMBER (A)


[JUSTICE NANDITA DUBEY]
MEMBER (J)

/AK/