

(UP). He was on one day Casual Leave on 07.10.2007 with permission to prefix 06.10.2007 to visit his family staying at New Delhi. On 06.10.2007, while proceeding for toilet existing on terrace at 3rd floor of his house, he accidentally fell down from the third floor at 23:45 hrs, he was evacuated to Base Hospital, Delhi Cantt, where he succumbed to his injuries at 1:30 hrs on 07.10.2007. As per AFMSF-93 Part-I death of Late Havaldar Sunderpal Singh occurred due to **"Multiple Injuries with Head Injury and Chest Injury"**. A Court of Inquiry (COI) was held and as per the opinion of the Court of Inquiry (COI) the death of the applicant's husband was **"Not Attributable to Military Service"**.

3. The applicant being legally wedded wife of Late Hav. Sunderpal Singh was granted usual family pension. She also applied for grant of Special Family Pension. The applicant's first appeal for grant of Special Family Pension filed on 18.12.2008 was rejected by Record JAT vide letter No. 4074488/FP/DS/JR dt. 20.01.2009. Subsequently, the applicant filed second appeal on 06.09.2018 which was again rejected by the respondents vide impugned order No. 4074488/FP/DS/JR dt. 19.09.2018 stating to the effect that the death of the applicant's husband is neither attributable to nor avated by military service being

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an accidentt occurred during casual leave at own home hence, the applicant (NOK) is not entitled for grant of Special Family Pension. Being aggrieved, the applicant has filed this OA.

CONTENTIONS OF THE PARTIES

4. Learned counsel for the applicant argued that the husband of the applicant Late Sunderpal Singh died after he fell down from the third floor of his house while he was on one day Casual Leave and as per Entitlement Rules 1982 any injury sustained during Casual Leave is to be treated as attributable to military service.
5. Placing releiance on AFT (RB) Lucknow, order dt. 13th July, 2016 in **OA No. 203/2015 Poonam Tomar Vs. UOI & Ors.**, counsel for the applicant contended that even while on Casual Leave the applicant's husband would deemed to be on "military duty" and the death incurred during that period would be taken as attributable to service and thus the applicant is entitled for grant of Special Family Pension.
6. *Per contra* learned counsel for the respondents submitted that the applicant is not entitled to the relief claimed since there was no causal connection between the death of the individual and military service. The counsel further submitted

that as per IHQ of Ministry of Defence (Army) letter No. B/41022MA (P)/AG/PS-5 dt 20.07.2006 Para 23 Note 3 and Para 12 of Entitlement Rules to Casualty Pensionary Award to the Armed Forces Personnel, 1982 and as per Rule 213 of Pension Regulations, the death of the applicant is not attributable to military service as rightly opined by the Court of Inquiry (COI) held and approved by the Competent Authority in the Attributability Certificate released on 19.04.2008.

7. Furthermore, the claim of the applicant for grant of family pension was forwarded to PCDA(P), Allahabad and she has been granted Ordinary Pension at enhanced rate wef 08.10.2007 and at Normal Rate from 08.10.2014 till her widowhood vide PCDA (P), Allahabad PPO No. F/NA/014499/2008 dt. 03.09.2008.

Analysis

8. Heard the learned counsel for the parties and also perused the materials available on record.

9. In the present case, the husband of the applicant died when he fell down from the third floor of his house while he was on casual leave. 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?

10. As regards the first issue i.e. Is the death attributable to military service? The husband of the applicant died as a result of the injuries sustained when he accidentally fell down from the 3rd floor of his house, while he was on casual leave. Rule 12 of the Entitlement Rules for casualty Pensionary Awards, 1982 defines the term 'Duty' for ascertaining the attributability and is reproduced for ready reference as under:

"Rule 12: Duty: the Entitlement Rules 1982

A person subject to the disciplinary code of the Armed Forces is on duty:-

- (a) *When performing an official task or a task, failure to do which would constitute an offence triable under the disciplinary code applicable to him;*
- (b) *When moving from one place of duty to another place of duty irrespective of the mode of movement;*
- (c) *During the period of participation in recreation and other unit activities organized or permitted by service authorities and during the period of travelling in a body or singly by a prescribed or organized rout.*
- (d) *Note 1: xxx xxx xxx Note 2: xxx xxx xxx*
- (e) *Personnel while travelling between place of duty to leave station and vice versa to be treated on duty irrespective of whether they are in physical possession of railway warrant/ concession vouchers/ cash TA etc or not. An individual on authorized leave would be deemed to be entitled to travel at public expense.*
- (f) *The time of occurrence of injury should fall within the time an individual would normally take in reaching the leave station from duty station or vice versa using the commonly authorized mode(s) of transport. However, injury beyond this time period during the leave would not be covered.*
- (g) *An accident which occurs when a man is not strictly 'on duty' as defined may also be attributable to service, 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*

11. It is further provided in Rule 8, Appendix II, of the Entitlement Rules for Casualty Pensionary Awards, 1982 that attributability/ aggravation shall be conceded if there is a causal connection between death/disablement and military service is certified by a competent medical authority.

12. A perusal of the aforestated clause makes it clear that time taken by a personnel while travelling between place of duty to leave station and visa versa shall be treated as 'on duty', however, injury beyond this period during the leave would not be covered. It further signifies that an accident which occurs when a man is not strictly 'on duty' as defined may also be attributable to service provided it involves risk related to condition, obligation or incidents of his service within the ambit of Entitlement Rules, 1982. In view of the aforesaid the death of applicant's husband could by no stretch of imagination be taken as attributable to service condition.

13. This issue stands settled in the case of **Secretary, Ministry of Defence v. Dharambir Singh [Civil Appeal No. 4981/2012 dt 20.09.2019]** wherein the Hon'ble Supreme Court has held as under:

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

- (i) Whether, when armed forces personnel proceeds on casual leave, annual leave or leave of any other kind, he is to be treated on duty?
- (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 hold that such injury or death is either attributable to or aggravated by military service? to
- (iii) What is the effect and purpose of COI into an injury suffered by armed forces personnel?

Answer to Question No.1

11) In terms of Section 3(i) of the Act, the active service means time during which a person who is subject to the Act, is attached to, or forms part of, a Force which is engaged in operations against an enemy engaged in military operations in, or is on the line of march to, a country or place wholly or partly occupied by an enemy, or is attached to or forms part of a Force which is in military occupation of a foreign country. The present is not the case covered by the definition of Section 3(i) of the Act. OA 13/2018 Ex JWO Firke Amarendr Janardan Page 6 of 10

12) Section 9 of the Act empowers the Central Government to declare that any person or class of persons subject to the Act, with reference to any area in which they may be serving or with reference to any provision of this Act or of any other law for the time being in force, will be deemed to be on active service within the meaning of the Act. In pursuance of such provision, the Central Government has notified that all persons who are subject to the Act shall, wherever they may be serving, be deemed to be in active service within the meaning of the Act and of any other law for the time being in force.

13) Still further, in terms of leave rules, the casual leave and annual leave count as duty. However, in terms of Rule 11(a) of the Leave Rules for the Services, Volume-I (Army), an individual on casual leave is not deemed to actually perform duty during such leave. 1982 Rules provide that a person is on duty when he is proceeding from his leave station or returning to duty from his leave station. Still further, in terms of clause (f) of Rule 12 of the 1982 Rules, an accident can be said to be attributable to service when a man is not strictly 'on duty' as defined, 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. Therefore, a person if killed or injured by another person for the reason he belongs to the Armed Forces, he shall be deemed to be 'on duty'.

14) Thus, it is held that when Armed Forces personnel is availing casual leave or annual leave, is to be treated on duty.

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 Regulation 423 of the Medical Regulations, such injury has to have causal connection with military service or such injury is aggravated by military service. Per

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: OA 13/2018 Ex JWO Firke Amarendr Janardan Page 7 of 10 "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..." as

17) Clause (b) of Regulation 423 of the Medical Regulations presumes that disability or death resulting from wound or injury, will be regarded 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.
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18) The question whether a disability or death is attributable to or aggravated by military service or not, is to be decided by the Medical Board. The opinion of Medical Board with regard to actual cause disability or death and the circumstances under which it originated will be regarded as final in terms of Rule 17 of 1982 Rules which is to the effect that at initial claim stage, medical views on entitlement and assessment shall prevail for decisions in accepting or rejecting the claim.

19) Regulation 423(d) provides that the question whether a disability or death is attributable to or aggravated by service or not, will be decided as regards to its medical aspects by a Medical Board/ medical officers. Such opinion of the Medical Board insofar as it relates to the actual cause of disability or death and the circumstances in which originality will be regarded as final. The Commanding Officer has to record his opinion as to whether injured person was on duty and whether he or she was to blame in a COI. Therefore, the scope of COI is to

examine the conduct of the injured person to determine whether the person has made himself liable to be proceeded against departmentally. In respect of the injury, causal connection of injury to the army service is not final in the COI proceedings.

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 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.

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24) Having considered the provisions of the statutes, rules and regulations, we now refer to the judgments referred to by the learned counsel for the parties.

25) The judgments in Madan Singh Shekhawat, Pension Sanctioning Authority, PCDA(P), Allahabad & Ors. v. M.I. George, Ex. SGT, Nand Kishore Mishra v. Union of India & Ors. and Union of India & Anr. Surendra Pandey, are the cases where the Armed Forces personnel have suffered injuries while returning from or going on leave. In terms of Rule 12 Note 2 (d) of 1982 Rules read with Regulation 423(a), any injury or death while returning from or going to duty has a causal connection with military service and, thus, such injury or death is considered attributable to or aggravated by military service. the

26) The Full Bench judgment of Punjab and Haryana High Court in Khushbash Singh has devised a new expression 'unmilitary activity'. Since the rules and regulations framed under the Act provide for disability pension only if there is causal connection of injuries with the military service, thus warranting a positive finding. The 'unmilitary activity' is not an expression used in the rules or regulations and is based on negative proof. What is unmilitary activity is vague, indefinite and is based upon surmises and conjectures. Therefore, we find that in terms of the provisions of the Act, Rules and instructions keeping in view the policy decisions of the appellants, the disability pension is admissible only if injury is either attributable to or aggravated by military service and not that any activity which is unmilitary activity.

27) Mr. Sehgal has relied upon Division Bench judgment of Delhi High Court in Vardip Singh & Anr. v. Union of India & Ors. It was a case where a Captain saved 150-160 lives in a tragic fire incident in Uphaar Cinema, New Delhi. The High Court has considered it appropriate to grant disability pension to the family of the deceased Major. Said judgment is in the peculiar facts of that case.

28) However, the reliance of Mr. Sehgal upon Division Bench judgment in Barkat Masih is not tenable. We find that the judgment is correct to the limited extent that personnel of Armed Forces when on leave are also on duty. However, the subsequent

question, whether an injury or death suffered by a personnel has some causal connection with military service, was not examined except referring to Full Bench judgment of that Court wherein, it was held that unmilitary service activity alone will be excluded from the expression 'death' or injury' caused by military service aggravated to military service. We find that such conclusion is not sustainable as per the applicable rules and regulations. or

29) In Barkat Masih, such Armed Forces person was riding a scooter which was hit by army truck in the cantonment area. Such accident with the army truck has no causal connection with the military service as the deceased was on casual leave. Even a civilian could meet with an accident with the army truck within or outside the cantonment area. Such accident has no causal connection with the military service of an injured or the deceased. Therefore, the Full Bench judgment of Punjab & Haryana High Court in Khushbash Singh and that of the Division Bench of that Court in OA 13/2018 Ex JWO Firke Amarendr Janardan Page 9 of 10 Barkat Masih are not the good law. It may be noticed that special leave petition in the Barkat Masih order was dismissed but it was dismissed on the ground of delay, therefore, in view of the judgment of this Court in Khoday Distilleries Limited & Ors. v. Sri Mahadeshwara Sahakara Sakkare Karkhane Limited, Kollegal, it does not amount to merger of the order passed by the High Court with that of this Court. XXX XXX XXX xxx"

(emphasis supplied)

14. Coming to the second issue, as to, 'Is the applicant entitled to Special Family Pension?' a perusal of the Policy with regard to payment of Special Family Pension governed under Part III Para 5.1 of the Government of India, Ministry of Defence letter dated 31.01.2001 (applicable to Armed Forces Personnel who were in service on 01.01.1996 and thereafter), read in conjunction with Regulation 213 of the Pension Regulations for the Army, 1961 (Part-I). Para 5.1 of the said policy letter, dated 31.01.2001, is reproduced below for ready reference:-

"PART III – FAMILY PENSIONARY BENEFITS IN ATTRIBUTABLE/

AGGRAVATED CASES

5. Special Family Pension (SFP)

"5.1 In case of death of an Armed Forces Personnel, under the circumstances mentioned in category "B" or "C" of Para 4.1, Special Family Pension shall continue to be admissible to the families of such personnel under the same conditions as in force hitherto."

"213. A special family pension may be granted to the family of an individual if his death was due to or hastened by -

(a) a wound, injury or disease which was attributable to military service. OR

(b) the aggravation by military service of a wound, injury or disease which existed before or arose during military service."

PART II Para 4.1 on PENSIONARY BENEFITS ON DEATH/ DISABILITY IN ATTRIBUTABLE/ AGGRAVATED CASES is also

reproduced below:-

"PART II - PENSIONARY BENEFITS ON DEATH/ DISABILITY IN ATTRIBUTABLE/AGGRAVATED CASES

4.1 For determining the pensionary benefits for death or disability under different circumstances due to attributable/ aggravated causes, the cases will be broadly categorised as follows:

Category A:

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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 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 organised sports events/adventure activities/expeditions/ training.

15. From the perusal of the aforestated policy with regard to Special Family Pension, it is apparent that if a personnel dies in performance of his bonafide duties, then his next of kin (NOK)

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shall be entitled for Special Family Pension. In the instant case the death of applicant's husband did not fall in any of the Provisions, and Rules & Regulations governing the grant of Special Family Pension reproduced earlier. Looking to the facts we do not find any causal connection of the death of the applicant's husband with the military service as he died due to unfortunate accident that happened at own house when he fell down from the terrace/third floor.

16. Reliance placed by the applicant on AFT order in the case of **Poonam Tomar Vs. UOI & Ors.**, (supra) is of no help to him as in that case the Court of Inquiry (CoI) held the cause of death as attributable to military service whereas in the present case as per the opinion of Court of Inquiry (COI) the death of the individual was not attributable to military service.

17. Consequently, both the questions raised in this O.A. stand answered in the negative. The claim of the applicant for grant of Special Family Pension, instead of ordinary family pension which she is already getting, therefore, deserves to be rejected in view of the rules and the law discussed above.

16. In view of the foregoing discussion, we find no merit in this O.A. It is, accordingly, dismissed with the observation that the

ordinary family pension already granted to the applicant sufficiently serves the ends of justice.

18. Consequently, the OA 77/2019 is dismissed

19. No order as to costs.

20. Pending miscellaneous applications, if any, stand closed.

Pronounced in the open Court on this 26th day of August, 2025.

(JUSTICE NANDITA DUBEY)
MEMBER (J)


(RASIKA CHAUBE)
MEMBER (A)

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