

**ARMED FORCES TRIBUNAL, CHANDIGARH REGIONAL BENCH
AT CHANDIMANDIR**

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OA 1954 of 2013

Paramjit Kaur **Petitioner(s)**

Vs

Union of India and others **Respondent(s)**

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For the Petitioner (s) : Mr Navdeep Singh, Advocate

For the Respondent(s) : Mr. Ram Chander, Sr. PC.

Coram: Justice Prakash Krishna, Judicial Member.

Air Marshal (Retd) Naresh Verma, Administrative Member

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**ORDER
12.02.2014**

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Briefly stated the facts of the petitioner's case, as filed by the petitioner Paramjit Kaur widow of Late Havildar Rup Singh are that her husband was an Infantry soldier posted on the strength of 163 Infantry Battalion (TA) which is located in Counter-Insurgency area in the state of Jammu and Kashmir. On 08.06.2007, the late soldier was to proceed from his unit location to 213 Transit Camp at Jammu to further proceed on leave from the said Transit Camp. The petitioner states that as per policy, soldiers posted in J&K are supposed to proceed to the said Transit Camp under military orders, in a military convoy and the leave commences from the transit camp and not from the place of posting. Soldiers are not even allowed to travel privately and by order are to travel by military convoys.

The late soldier was allotted a military convoy under military protection which was to proceed from Srinagar to the Transit Camp in Jammu comprising military vehicles and military hired civil vehicles. Unfortunately, the bus in which the late Havildar Rup Singh was travelling from Srinagar to Jammu fell in a gorge between Patnitop and Udhampur and the husband of the petitioner lost his life in the said accident. The death was held as attributable to military service by a duly

constituted Court of Inquiry and the petitioner was accordingly awarded Special Family Pension under Category C of para 4.1 read with para 5.1 of Govt of India letter dated 31.01.2001 the operative paragraph of which reads as follows :-

That cases of deaths which are declared attributable due to accidents during performance of duties are entitled to an ex-gratia payment of Rs. 10 lacs as per Govt of India letter dated 22.09.1998 (Annexure A-2) read with Govt of India letter dated 04.06.2010 which takes effect from 01.01.2006(Annexure A-3)

The claim for ex-gratia payment was however rejected by the office of PCDA Allahabad vide their letter No G-4/G-900408/VIII dated 29 Oct 2008 stating that at the time of death ***“deceased personnel was not in the performance of bonafide official duty”***. The issue was clarified in detail by the Sikh Li Records Office to all concerned who pointed out that the late soldier was in a military convoy and proceeding from Srinagar to Jammu Transit Camp from where he was further supposed to proceed on leave and hence the death was absolutely in performance of bonafide military duties and not while on leave. The journey of the late soldier was also an official journey since he was travelling from one place of duty to another under official orders and that too while on field duty.

When the issue was not resolved for the petitioner, it was finally taken up by the Records Office with the Integrated Headquarters of MoD(Army) and also by the petitioner vide multiple correspondence. However, the Army HQ rejected the claim of the petitioner vide their letter No B/38039/04/AG/PS4(Imp 1) dated 03 Jan 2013.

The petitioner has prayed for grant of ex-gratia compensation as mandated by paragraph 2(a) of Govt of India letter No 20(S)/2009/d (Pay/services) dated 04th June 2010 with heavy costs and interest with a further prayer that the rejection letter dated 03.01.2013

(Annexure A-6) may be quashed being illegal and in contravention of the applicable policy, quoting factually incorrect facts and also against the spirit of the policy.

The respondents while corroborating the fact that the husband of the petitioner was granted 28 days Part of Annual Leave and was travelling in J&K SRTC bus on 8th June 2007 which was hired by Army and it was a part of Army convoy from Srinagar to Jammu Tawi Transit Camp have brought out that the grant of Ex-Gratia claim from the Central Govt in respect of No 4467765A Late Hav Rup Singh was processed with the PCDA (P) Allahabad vide Records The SIKH LI letter No 4467765/F/Pen dated 19th September, 2008. The PCDA(P) Allahabad turned it down vide their letter No G-4/G-900408/VIII dated 29th October, 2008, stating that at the time of death **“deceased personnel was not in the performance of bonafide official duty.”**

That Records The SIKH LI approached the Integrated Headquarters of Ministry of Defence vide their letter No 4467765/F/Pen dated 15th November, 2008 for grant of Ex-Gratia and subsequently reminders issued on 12th March, 2009, 13th march 2009, 08th April, 2010 and 25th January, 2011 for issue of direction to PCDA (P) Allahabad for grant of ex-gratia amount to the petitioner.

Integrated Headquarters of Ministry of Defence vide their letter No B/38039/04/AG/PS-4 (Imp-1) dated 03rd January, 2013 intimated that “the individual was en route to proceed on 28 days Part of Annual Leave through Army convoy. It may be appreciated that existing policy instructions on the subject of grant of ex-gratia as per Govt. of India Ministry of Defence letters No. 20 (1)/98/D(Pen/Services) dated 22nd September, 1998 and No. 20(5)/2009/D(Pen/Services) dated 04th June, 2010, “grant of ex-gratia when death occurs due to accidents in the actual performance of bonafide military duties. In

the instant case, the individual is in military service as per Entitlement Rules for the purpose of grant of Special Family pension, which has already been granted to the NOK but cannot be considered actual performance of bonafide military duty for the purpose of grant of ex-gratia under the above mentioned Govt. orders. Hence, the stand of the PCDA (P) on the issue is in conformity with existing instructions on the subject”.

We have heard the learned counsel for the parties and have gone through the records of the case.

We find that the whole case hinges on one line quoted in the rejection letter by the Army specifying the circumstances of death. The relevant sentence as quoted in the rejection letter by the Army HQ, excerpted from Army HQ letter No B/38039/04/AG/PS4(Imp) dated 03 Jan 2013(**Annexure A-6**) reads as under :-

“when death occurs due to accidents in the actual performance of bonafide military duties”.

In juxtaposition the wording of the actual policy letter of Govt of India, Ministry of Defence dated 04th June 2010 (**Annexure A-3**) are as under :-

“Death occurring due to accidents in course of duties”.

Hence as can be seen from the above, the Army HQ has incorrectly added the word “ACTUAL” in the rejection letter while quoting the policy, whereas the term ‘actual’ does not even exist in the main body of the policy letter. The said line quoted by the Army HQ only exists in an annexure to the main policy letter and not in the main policy itself but that too is qualified by the statement that actual performance of bonafide duties shall mean that a causal connection should be established between the occurrence of death and government

service. Deaths in accidents while travelling in vehicles in field areas as well as during official journeys are specifically included.

In fact, the late soldier was proceeding from duty station Srinagar in a military convoy to another military station/unit, that is, the 213 Transit Camp in Jammu from where he was to further proceed on leave. The husband of the petitioner died while travelling in a military convoy in counter insurgency area from one military station to another military station, that too in uniform and on official duty under compulsory military orders, which was clearly an accident in the course of performance of duties. The death definitely has a causal connection with government service since the late soldier was travelling from one place of duty to another place that too in counter insurgency area and in a military convoy. The assertion can be buttressed by the answer to the simple question whether the individual would have died in these circumstances had he not been in military service? The Army HQ thus, in the rejection letter has also wrongly stated that the late soldier was on his way from his duty station to leave station which is totally incorrect as is brought out by Annexure A-4.

Another aspect of the issue is that similar terminology of "Death of disability due to accidents in the performance of duties" is used in the policy letter for grant of Special Family Pension as per Category C of para 4.1 read with Para 5.1 of Govt of India letter dated 31.01.2001 (**Annexure A-1**). We have also noted that the Petitioner has been granted Special Family Pension by treating her husband's death as a death in performance of duties. Policy letter for grant of Special Family Pension as per category C of Para 4.1 read with Para 5.1 of Govt of India letter No 1(2)/97/I/D(Pen-C) dated 31 January 2001 also contains the terminology of "**Death or disability due to accidents in the performance of duties**". However the same interpretation is being refused when it comes to ex-

gratia which is governed by a pari-materia policy letter, thereby implying that his death occurred in the course of performance of duties for the purposes of Special Family Pension but the same death is not considered occurring in the course of performance of duties for the purposes of ex-gratia payment.

In fact, if hypothetically the late soldier had died while proceeding from Jammu Transit Camp to his home town, even then the death was supposed to be treated on duty as per Rule 12 (d) of the Entitlement Rules, 1982, is reproduced as under :-

“12.(d) When proceeding from his leave station or returning to duty from his leave station, provided entitled to travel at public expenses i.e. on railway warrants, on concessional voucher, on cash TA (irrespective of whether railway warrant/cash TA is admitted for the whole journey or for a portion only), in government transport or when road mileage is paid/payable for the journey”.

In view of above the Army HQ wrongly held that the late soldier was not to be treated on duty, while travelling from Srinagar to leave station.

While the policy letter mandating that the soldiers posted in J&K area while proceeding on leave are supposed to proceed to the said transit camp under military orders in a military convoy and the leave commences from the transit camp and not from the place of posting has not been placed as record. We may refer the statement to this effect in para 3 of Sikh Li Records letter No 4467765/8/Pen dated 25th January, 2011 (**Annexure A-4**). The relevant extract is as follows :-

“ Integrated HQ of MoD(Army) vide their letter at Para 1(a) directed this office to process Ex-Gratia lump sum compensation in r/o above indl. Accordingly, claim for grant of Central Govt Ex-Gratia relief to Smt. Paramjit Kaur (Widow) was processed to

PCDA (P) Allahabad vide this office letter No 4467765/F/Pen dated 19 Sep 2008. The PCDA (P) Allahabad turned it down vide their letter No G-4/G-900408/VII dated 29 Oct 2008 (photocopy attached) stating that at the time of death, "deceased personnel was not in the performance of bonafied official duty. Here, it is pertinent to mention that leave in r/o Army personnel deployed in Srinagar Valley starts from Jammu Transit Camp and not from Unit/Srinagar Transit Camp. Hence, at the time of accident/death the indl was not on leave as his leave was supposed to start from 213 Transit Camp (Jammu). At the time of accident the indl was on duty and travelling in an organized Army Convoy from unit lo/Srinagar Transit Camp to Jammu Transit Camp.

As on one side the petitioner has been granted Special Family Pension by treating her husband's death as a death in performance of duties, logic demands the same interpretation be applied for consideration of grant of ex-gratia payment which is governed by a para-materia policy letter.

The petition is allowed. The rejection letter dated 3/1/2013 is quashed. The respondents shall release the amount payable as ex-gratia within three months with 6% interest per annum from 3/1/2013 till the date of actual payment.

(Justice Prakash Krishna)

(Air Marshal (Retd) Naresh Verma)

12.02.2014

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