

**IN THE ARMED FORCES TRIBUNAL
REGIONAL BENCH, GUWAHATI**

O.A. NO. 27 OF 2014

P R E S E N T

**HON'BLE MR.JUSTICE N.K.AGARWAL, MEMBER (J)
HON'BLE LT GEN (RETD) GAUTAM MOORTHY, MEMBER (A)**

Smt. Mamata Sharma
Widow of No.13998134 H
Late Sep Pradip Sharma
C/O- Eastern Timber,
RGB Road (Zoo Tiniali),
P.O. Silpukhuri
Dist.- Kamrup (M), Assam
Pin-781024

... **Applicant**

Ms. Rita Devi,
Mr.A.R.Tahbilder,
Legal practitioner for Applicant

-Versus-

1. The Union of India,
Represented by the Secretary,
Ministry of Defence, Sena Bhawan, New Delhi
- .
2. Senior Accounts Officer, Principal Controller of Defence
Accounts (Pensions), Allahabad.
3. The Chief Records Officer, Records, Army Medical Corps,
Lucknow Pin- 900450, C/o- 56 APO.
4. Commanding Officer, Military Hospital,
Shillong, C/o-99 APO.

... **Respondents.**

**Mr.N.Deka, CGSC
Legal practitioner for Respondents**

Date of Hearing :- 16.09.2015

Judgment & Order : **18.09.2015**

JUDGMENT & ORDER

(N.K.Agarwal,J)

This application has been preferred by the applicant seeking grant of special family Pension and Ex gratia on the death of her husband No. No.13998134 H Late Sep Pradip Sharma due to motor cycle accident.

2. We have heard Ms. Rita Devi, learned counsel appearing for the applicant and Mr. N.Deka, learned CGSC appearing for the respondents.

3. Facts, shorn of details, are that the husband of the applicant was enrolled as a cook in the Army Medical Corps on 23.02.1998. On 27.02.2011 while serving in Military Hospital, Shillong, Meghalaya, husband of the applicant met with a road accident and succumbed to the injuries caused in the said accident. The competent respondent authority investigated into the matter by holding a court of inquiry. In the inquiry the death of the deceased Sepoy has been held as "Attributable to military service". Accordingly, the applicant's (widow of the deceased Sepoy) claim for grant of Special Family Pension has been carefully considered by the competent authority who in turn held that the death of the deceased Sepoy should be recorded "Attributable to Military Service" for the purpose of grant of Special Family Pension to the applicant w.e.f. 26.02.2011 as admissible under the Rules and vide order dated 13.08.2011, the competent authority i.e. Sena Chikitsa Abhilekh , Army Medical Corps Records Pin 900450 C/O. 56 APO (Annexure-A to the application) directed the Office of the PCDA(P), Cts 4 Section, Allahabad for issuance of Pension Payment Order (PPO) at the earliest. It also appears that the applicant's claim for grant of ex gratia amount of Rs.5.00 lakhs was not considered.

4. However, vide letter dated 18.10.2011, (Annexure R/4 to the affidavit in

opposition) the office of the PCDA(P),Allahabad to the Record Officer, Army Medical Corps Pin 900450 C/o 56 APO returned the applicant's claim with the following observations :

1. As per Court of inquiry, the above named individual was not a trained driver . He was at beginning stage.
2. Permission letter for having Motor Cycle in Govt. accommodation was not found attached with the claim.
3. Helmet was not interlocked. It is a lapse on his part.
4. Ordinary Family Pension is being granted to avoid financial hardships to the Next of Kin of the deceased.

5. It appears from the records that though the letter dated 18.10.2011 (Annexure –R/4 to the affidavit in opposition) has been sent by the PCDA(P) Allahabad to the Record Officer, Army Medical Corps but the competent authority has not redirected PCDA(P),Allahabad for issuance of PPO for grant of Special Family Pension in terms of its order dated 13.08.2011 (Annexure–A to the application) and, therefore, till date the applicant is being paid only Ordinary Family Pension as the PCDA (P),Allahabad on its own without being any appropriate authority had issued the PPO in favour of the applicant for grant of Ordinary Family Pension.

6. Feeling aggrieved for non-payment of Special Family Pension as well as non- grant of Ex gratia amount, the applicant submitted a representation dated 22.7.2014 (Annexure-F to the application)to the Chief Record Officer, Records AMC Pin(Army) 900m 450 C/O 56 APO , Respondent No.3 for grant of special family pension and ex gratia lump sum compensation. Since no action has been taken by the respondent authorities, the instant application has been preferred by the applicant for redressal of her grievances.

7. The question, therefore, arises for determination by this Tribunal as to whether PCDA(P) Allahabad was authorized to issue PPO for grant of Ordinary Family Pension in place of Special Family Pension as directed by the competent authority; whether the objections raised by the PCDA(P), Allahabad in its letter dated 18.10.2011 (Annexure R-4) were without authority and uncalled for, and whether the competent authority had also erred in not granting ex gratia amount.

8. Admittedly, on the basis of the Court of Inquiry the competent authority in its discretion has held the accident, as "attributable to military service" and the applicant is entitled to Special Family Pension in terms of Regulations 82 (c), 84 and 105 of Pension Regulations for the Army Part- I (2008), which read as follows :

PENSION REGULATIONS

82. For determining the pensionary benefits on death or disability which is attributable to or aggravated by Military service under different circumstance, the cases shall be broadly categorized as follows :-

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 or training.

Explanation:

Invalidment case falling under Category B and Category C due to disease contracted or injury sustained or cause of death if accepted by medical authority and/or competent authority attributable to or aggravated by Military service the individual may be granted disability pension or special family pension as the case may be.

SERIOUS NEGLIGENCE OR MISCONDUCT

84. If the disability of service personnel is wholly or partly due

to his serious negligence or misconduct, the amount of disability pension or gratuity otherwise admissible may be reduced at the discretion of the competent authority. Provided the reduced pension shall not be less than the invalid pension admissible as if the individual has been invalided from service not due to service factor.

105. (a) Special Family Pension may be granted to the family of service personnel if his death occurred in circumstances mentioned in category B and Category C of the Regulation 82 of these regulations due to or hastened by :

- (i) A wound, injury or disease which was attributable to military service or
 - (ii) was due to aggravation by military service of a wound, injury or disease which existed before or arose during military service and in case of death after death after retirement /discharge. Provided that the service personnel had retired /discharged otherwise than voluntarily/at own request on compassionate ground before completion of terms of engagement.
- (b) The question whether death is attributed to or aggravated by military service shall be determined under the Entitlement Rule for causality Pensionary Awards, 1982 contained in Appendix -IV) to these regulations.

It also appears that inadvertently, the competent authority failed to direct the PCDA(P), Allahabad for payment of ex gratia which in the case of the applicant is Rs.5.00 lakhs in terms of Regulation 141 (a)(i) which reads as under :

RATE OF EX-GRATIA LUMP SUM COMPENSATION

141. (a) Ex-gratia lump-sum compensation is payable at the following rate to the families of service personnel who die in harness in the performance of official duties:-

- (i) Death occurring due to accidents in the course of performance of duties
Rs. 5 lakhs
- (ii) Death occurring in the course of performance of duties attributable to acts of violence by terrorists, anti-social elements, etc.
Rs. 5 lakhs
- (iii) Death occurring during (a) border skirmishes; and (b) action against militants, terrorists, extremists etc.
Rs. 7.5 lakhs
- (iv) Death occurring during enemy action in international war or such war like engagements which are specifically notified by Ministry of Defence.
Rs. 10 lakhs

Pension Regulations for the Army, Part-I (2008)

(b) The admissibility of an entitlement to the ex-gratia lump-sum compensation in the circumstances specified in these Regulations may be decided in each individual case by the Principal Controller of Defence Accounts (Pensions)

(c) The Ex-gratia compensation admissible in terms of clause (a) above shall be reduced by the compensation, if any, received by the next of kin of service personnel killed in train accidents while travelling on duty.

9. The competent authority before granting Special Family Pension in favour of the applicant has considered the finding and opinion of the Court of Inquiry (Annexure-R/2 to the affidavit in opposition) wherein it has been mentioned that the deceased husband of the applicant was very much on duty on 27.02.2011 and his death be attributable to military service; the cause of the accident is highly circumstantial and was unavoidable: no one can be blamed for the incident; the next of kin of the deceased should get all pensionary and pecuniary benefits and ex gratia grant expeditiously as per existing rules and also that the deceased Sepoy Pradip Sharma was a skillful driver who used to drive his motorcycle regularly for going and coming from place of work. The only shortfall mentioned in the Court of Inquiry is that the loss of life could have been avoided had the Motor Cyclist interlocked his helmet, which appears to be hypothetical as even an interlocked helmet could be unlocked with the impact of the accident.

10. Besides the above, it has not been proved that the deceased Sepoy was guilty of serious negligence in any manner for the said accident and on consideration of all the documents including the inquiry report, the competent authority exercised its discretion under Regulation 84 of the Pension Regulations for the Army, Part –I(2008) in favour of the applicant and passed the order on 13.8.2011 (Annexure-A) directing the PCDA(P) Allahabad for issuance of PPO in favour of the applicant for grant of Special Family Pension, in which no fault can be found, inasmuch as after considering the entire facts, the competent authority has

passed the order dated 13.08.2011 and, therefore, there was no occasion for the PCDA(P),Allahabad even for making any suggestion for reconsideration of the order by the competent authority and certainly PCDA(P), Allahabad has exceeded its authority in not preparing the PPO in terms of the order passed by the competent authority for payment of Special Family Pension in favour of the applicant, rather prepared the PPO on its own volition for payment of Ordinary Family Pension.

11. Once the accident has been held to be Attributable to Military Service, in action/non payment of Ex Gratia in terms of Regulation 141 a(i) of the Pension Regulations for the Army Part-I(2008), is also a matter of concern for the respondents. **If this is the manner in which the Army Personnel are treated, it can be said that it is extremely unfortunate. The Army personnel are bravely defending the country even at the cost of their lives and we feel that they should be treated in a better and more humane manner by the governmental authorities , particularly in respect of their emoluments ,pension and other benefits. (As observed by the Hon'ble Supreme Court in the case of Nand Lal Vs. state of Uttarkahand and anr reported in (2010) 4 SCC 562).**

12. In view of the above, we are of the considered opinion that the PCDA(P),Allahabad was not authorised to issue PPO for grant of Ordinary Family Pension in place of Special Family Pension as directed by the competent authority; while passing such order the PCDA(P),Allahabad had exceeded his authority and such action taken by it *per se* illegal and no sustainable in law. At the same time non -payment of Ex gratia by the competent authority is also unsustainable. It was granted for the purpose of grant of immediate relief to the person concerned.

The observations made by the PCDA (P), Allahabad in the letter No.G4/09/II/85/VIII/4 906711 dated 18.10.2001 Annexure –R-4, overreaching the order of the competent authority are also untenable.

13. In view of the foregoing reasons, the application has to be allowed. It is accordingly allowed. The impugned letter No.G4/09/II/85/VIII/4 -906711 dated 18.10.2011 issued by the office of the PCDA (P), Allahabad (Annexure –R-4), is hereby set aside and quashed. The applicant is entitled to Special Family Pension with effect from 26 Feb 2011 in terms of letter dated 13.08.2011 (Annexure-A). The respondents are, therefore, directed to issue fresh PPO in favour of the applicant for grant of Special Family Pension instead of Ordinary Family Pension w.e.f. 26 Feb 2011 and pay the arrear amount of pension to the applicant after adjustment of Ordinary Family Pension already paid to her within a period of 3(three) months from the date of receipt of a certified copy of this order. The respondents are also directed to pay the applicant ex gratia lump sum compensation of Rs.5.00 lakhs within a period of 3 (three) months as directed above. The Respondents are further directed to pay the aforesaid amount of arrear pension as well as ex gratia along with interest @9% per annum from 26 Feb 2011 till its actual payment.

14. With the aforesaid observations and directions, the Original Application stands allowed. However, in the facts and circumstances of the case, there will be no order as to costs.

MEMBER (A)

MEMBER(J)

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