

**Notes of the  
Registry**

**Orders of the Tribunal**

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

**OA- 24 of 2021**

Smt M Roshni Devi

.....Applicant

By legal practitioner for applicant  
Mr. A.R. Tahbildar

Versus

UOI & Ors

.....Respondents

By legal practitioner for the respondents  
Nb Sub Surya Kumar Sharma on behalf  
of OIC Legal Cell

**PRESENT**

**HON'BLE AIR MSHL BALAKRISHNAN SURESH,  
MEMBER (ADMIN)**

**13.06.2024**

1 The Judgment pronounced in the open Court today sitting singly as authorised by Hon'ble Mr. Justice K. Harilal, Member (J), Armed Forces Tribunal, Regional Bench, Kochi is prepared on separate sheets and placed on records.

2 OA is dismissed as indicated in the order with no order as to costs.

**(Air Mshl Balakrishnan Suresh)  
MEMBER (A)**

Mc

**ARMED FORCES TRIBUNAL  
REGIONAL BENCH, GUWAHATI**

**OA -24/2021**

Smt M Roshni Devi widow of  
NO.10246065N Sep (Late)  
M Arun Kumar Singh  
Vill – Khunyai Leikal  
PO- Kakching  
Dist -Kakching, Manipur.

... Applicant

By legal practitioners for Applicant  
**A.R.Tahbildar**

- Versus -

1.The Union of India  
Represented by the Secretary  
Ministry of Defence  
Sena Bhawan, New Delhi-11

2.Records the Assam Regiment  
PIN -900332  
C/O 99 APO

3.Additional Directorate General,  
Personnel Services, PS-4(d)  
Adjutant General's Branch  
IHQ of MoD (Army)DHQ, PO New Delhi.

4.The Principal Controller of Defence  
Accounts (Pension), Allahabad, Uttar Pradesh

... Respondents

By legal practitioner for Respondents  
**P.J.Barman**

**CORUM:****HON'BLE MR. JUSTICE K. HARILAL, MEMBER (J)****HON'BLE AIR MSHL BALAKRISHNAN SURESH, MEMBER (A)****ORDER****13.06.2024****(K.Harilal, J)**

1. This Original Application has been filed challenging Annexure-E order dated 14.07.2021 whereby the applicant's claim for special family pension has been rejected by the statutory authorities on the ground that the death of her husband was not attributable to military service. The applicant has prayed for an order directing the respondents to grant special family pension to her after setting aside Annexure-E order dated 14.07.2021, passed by the second respondent.

2. The applicant, M.Roshni Devi is the widow of deceased Sepoy M.Arun Kumar Singh, No.10246065N, who was enrolled in the Indian Army on 01.12.2000. Her husband died in a motor accident while on casual leave on 24<sup>th</sup> June, 2011. While in service, he was granted 30 days part of annual leave from 06.06.2011 to 05.07.2011. During the leave period, on 24.06.2011, he went to procure grocery items from CSD Canteen at Leimakhong, which is the nearest CSD Canteen. Unfortunately, while

returning back from CSD Canteen to home, on the same day he died in a road traffic accident. Subsequently, a Court of Inquiry was held to find out the circumstances leading to his death. After completion of the proceedings, the Court of Inquiry arrived at a finding that her husband's death was not attributable to military service as the death has no causal connection with military service vide Annexure-A series. On the death of her husband, the applicant was granted family pension vide Annexure-B. She was under the impression that Army authorities have granted correct pension as per law. But, later when she attended a Pension Adalat at Rangapahar on 28.05.2019, after enquiry it was clarified that special family pension ought to have been granted to her and instead of that, she was granted family pension at normal rate only. On coming to know about the discrepancy in granting family pension, she has obtained copies of the related documents invoking, the provisions under the Right to Information Act. On receipt of the Court of Inquiry proceedings, she submitted Annexure-C application to the second respondent to review her case and do the needful to grant special family pension to her. Since she did not receive any communication from the second respondent, she again submitted Annexure-D application online requesting to grant special family pension to her. In response to Annexures C and D, the second respondent has sent Annexure-E letter to her stating that she was not entitled to get special family pension as the death of her

husband was not attributable to military service as per Court of Inquiry proceedings and as per the opinion of the Station Commander, Leimakhong also, the cause of death has no causal connection with military service. As per Rule 12(f) of the Entitlement Rules for Casualty Pensionary Awards, 1982, an accident which occurs when an Armed Forces person is not strictly on duty as defined by the Army Act, 1950 may also be attributable to service, on certain conditions. But, the authorities, without considering the aforesaid Rule, arbitrarily declared that the death is not attributable to military services, as it lacks causal connection with service. According to the applicant, her husband was on authorized leave granted by the Army authorities at the time of his death in the accident. It was an accident while returning home from CSD Canteen at Leimakhong. Therefore, his journey as well as death has causal connection with military service and as such, the authorities ought to have considered the death to be attributable to military service. But, the authorities, without considering the relevant rules, have arbitrarily opined the applicant's husband's death as not attributable to military service. In the above circumstances, she was left with no remedy other than approaching this Tribunal.

3. The respondents filed an Affidavit-in-Opposition, resisting the applicant's claim for special family pension on various grounds. According to

the respondents, the cause of death of her husband has no causal connection with military service as he was not on duty at the time of the motor accident in which he died. The applicant's husband, Ex-Sepoy M.Arun Kumar Singh was on 30 days' annual leave with effect from 6<sup>th</sup> June, 2011 to 5<sup>th</sup> July, 2011 and during his leave period he died due to a motor traffic accident while travelling from Leimakhong to his home town (Rackshing) on 24<sup>th</sup> June, 2011. A Court of Inquiry was held to find out the cause of death, and the Court of Inquiry after completion of the proceedings arrived at a finding that the cause of death has no causal connection with military service. As per Rule 9 of the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008 (Annexure-4), certain circumstances are provided under Clauses (a) to (e) to treat the death of an Armed Forces person, while in service, as one which occurred while on duty. But, the death of the applicant's husband will not fall under any of the said specific circumstances. Therefore, the death of the applicant's husband, which occurred while on casual leave, when returning from CSD Canteen to home, cannot be treated as death occurred while on duty. Besides, the aforesaid cause of death does not fall under Category 'B' or 'C' of the Ministry of Defence letter dated 31<sup>st</sup> January, 2001 for grant of special family pension. At the time of vehicular accident, he was not performing journey from home to duty station or vice versa. The applicant has already been

given family pension with all documents connected to her husband's death vide Annexures 6 and 11. But, she has not exhausted the statutory remedies, before filing this Original Application after long delay. After considering the entire materials on record, the adjudicating authority on the basis of the findings of the Court of Inquiry and other connected facts held that the applicant was not entitled to get special family pension as her husband was on annual leave and was not performing any military duty at the time of his death. The averments in the O.A. are baseless, misleading and untenable. No right of the applicant has been infringed by the respondents and there was no legal infirmity in the denial of special family pension by the respondents. Hence, the present application is devoid of any merit and the same is liable to be dismissed with costs.

4. Heard Mr.A.R.Tahbildar, learned counsel appearing for the applicant and Mr.P.J.Barman, learned Central Government Standing Counsel.

5. The learned counsel appearing for the applicant advanced arguments in support of the pleadings raised in the Original Application. The sum and substance of the arguments is that the motor accident in which the applicant's husband died should have been considered as an accident while he was on duty, even though he was on annual leave. But the respondents denied special family pension to her on the reasoning that her husband was

not on duty when the accident occurred. Thus, the respondents miserably failed to consider the definition of 'duty' under Rule 12(f) of the Entitlement Rules for Casualty Pensionary Awards, 1982 (hereinafter referred to as "Entitlement Rules, 1982"). In order to fortify his arguments, the learned counsel for the applicant has produced the decision of the High Court of Punjab and Haryana in **Union of India and Ors. v. Khushbash Singh [(2010(2) SCT 805 (P & H)]** and the Order of the Armed Forces Tribunal, Regional Bench, Chandigarh in O.A.No.1049 of 2020.

6. *Per contra*, the learned Central Government Standing Counsel appearing for the respondents invited our attention to the definition of 'duty' under Rule 9 of the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008 ("Entitlement Rules, 2008", for short) and Government of India, Ministry of Defence letter No.1(2)/97/D(Pen-C) dated 31<sup>st</sup> January, 2001 and contended that the respondents have interpreted the definition of 'duty' in its correct perspective. According to him, there was no material on record to prove that the applicant's husband died in a road traffic accident when he was returning from CSD Canteen at Leimakhong with grocery items. Even if the death had so occurred, that journey would not fall under the definition of 'duty' under Rule 9 of the Entitlement Rules, 2008 and the Notes appended to Rule 9. According to the learned Central Government Standing Counsel, the decisions cited by the learned counsel for the



applicant are not applicable to the facts and circumstances of the instant case and Rule 12 of the Entitlement Rules, 1982 on which the decisions were rendered has been superseded by the Entitlement Rules, 2008. Therefore, there is no scope for any interference by this Tribunal.

7. In view of the rival submissions at the Bar, the broad question that arises for consideration in this Original Application is given below:

Had there been any illegality, irregularity or arbitrariness in the denial of special family pension to the applicant on the reasoning that the death of her husband was not attributable to military service, as he was not on duty?

8. It is the case of the applicant that her husband was on annual leave from 06.06.2011 to 05.07.2011 and on 24.06.2011, when he was returning from CSD Canteen at Leimakhong with grocery items, he died in a road traffic accident.

9. The point to be considered to answer the aforesaid question is whether the applicant's husband was on 'duty' as defined under Rule 9 of the Entitlement Rules, 2008 and the Notes appended to Rule 9.

10. The applicant has mainly relied on Rule 12(f) of the Entitlement Rules, 1982. But, we find that the aforesaid rule under the Entitlement Rules, 1982,

is not applicable to the instant case as the Entitlement Rules, 1982 as amended from time to time has been superceded by Rule 1(a) of the Entitlement Rules, 2008. Since the accident and consequential death of the applicant's husband was on 24.06.2011, the Entitlement Rules, 2008 is applicable to him.

11. Indisputably, unless the death of the applicant's husband has occurred while he was on duty as envisaged under Rule 9 of the Entitlement Rules, 2008, the applicant will not be entitled to get special family pension. We have meticulously gone through the definition of 'duty' envisaged under Rule 9 of the Entitlement Rules, 2008. Going by Rule 9(d), we find that a person shall be treated on 'duty' when proceeding on leave/valid out pass from his duty station to his leave station or returning to duty from his leave station on leave/valid out pass. As per Note 1 to Rule 9(d), an Armed Forces person while travelling between his place of duty to leave station and vice versa is to be treated on duty irrespective of whether he has availed railway warrant/concession vouchers/cash TA etc. or not for the journey. This would also include journey performed from leave station to duty station in case the individual returns early. This death will not fall under any of the circumstances specified under Rule 9 or the Notes appended to Rule 9. Therefore, we are of the opinion that even if the applicant's husband died in a road traffic accident while returning from CSD Canteen to his home with

grocery items, while he was on leave, that journey will not fall under the definition of 'duty' under Rule 9 or the Notes appended to Rule 9 of the Entitlement Rules, 2008.

12. More importantly, a Court of Inquiry was held to find out the cause of death of the applicant's husband and the Court of Inquiry, after completion of the proceedings, found that his death has no causal connection with military service. We have meticulously gone through Annexure-2 Court of Inquiry proceedings, and we do not find any reason to interfere with the aforesaid finding of the Court of Inquiry. The respondents are justified in relying on the findings of the Court of Inquiry.

13. The learned counsel for the applicant has cited the decision of the High Court of Punjab and Haryana in **Khushbash Singh's case (supra)** and the Order dated 05.01.2023 in O.A.No.1049 of 2020 of the Armed Forces Tribunal, Regional Bench, Chandigarh. But, we find that the facts involved in **Khushbash Singh's case (supra)** are different and distinct and the proposition laid down in the aforesaid decision is under Rule 12 of the Entitlement Rules, 1982, which stands superseded by the Entitlement Rules, 2008. In the Order dated 5<sup>th</sup> January, 2023 in O.A.No.1049 of 2020, the Regional Bench, Chandigarh relied on the decision of **Madan Singh Shekhawat v. Union of India [(1999) 6 SCC 459]** which was rendered under Rule 12 of the Entitlement Rules, 1982. Therefore, we find that the

said order cited by the learned counsel for the applicant also cannot be relied on in the instant case as the applicant's case would fall under Rule 9 of the Entitlement Rules, 2008. So, the aforesaid decision and the order cited by the learned counsel appearing for the applicant can never be made applicable to the instant case, for which Rule 9 of the Entitlement Rules, 2008 is applicable.

14. In the above analysis, we find that the applicant is not entitled to get special family pension, and there has been no illegality, irregularity or arbitrariness in the denial of special family pension to her.

15. This Original Application is devoid of merits and is dismissed accordingly.

16. No order as to costs.

(AIR MARSHAL BALAKRISHNAN SURESH)  
MEMBER (A)

( JUSTICE K. HARILAL)  
MEMBER (J)

Sha/Mc