

(2019) 11 AFT CK 0001
In the Armed Forces Tribunal
Case No : Original Application No. 1080 Of 2017

Kavita	Vs	APPELLANT
Union Of India And Others		RESPONDENT

Date of Decision : 19-11-2019

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14
Pension Regulations For The Army, 2008 — Regulation 105(a)

Citation : (2019) 11 AFT CK 0001

Hon'ble Judges : Sunita Gupta, J;B.B.P. Sinha, Member (A)

Bench : Division Bench

Advocate : V.S. Kadian, Shyam Narayan

Final Decision : Dismissed

Judgement

1. The instant O.A has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 seeking the following reliefs:

(a) Quash and set aside the impugned letter No. B/38046A/94/2014/AG/PS-4 (2nd Appeal) dated 14.05.2015; and/or

(b) Direct the respondents to treat the death of the husband of the applicant as attributable to military service as he was died due to

hanging under mysterious circumstances;

(c) Direct the respondents to grant Special Family Pension to the applicant with due arrears with effect from the date following next date of

death of her husband with interest @12% per annum; and/or

(d) Direct the respondents to grant ex-gratia lumpsum compensation to the applicant @ Rs.10 lakhs with interest @ 12% per annum from

the date of death of her husband.

2. The facts of the case, in brief, are that the husband of the applicant (late Spr Rakesh Kumar) was enrolled in the Indian Army on 19.04.2002. On 01.09.2008, while on posting to 268 Engineers Regiment, died allegedly due to asphyxia by hanging under mysterious circumstances. A Court of Inquiry (Col) was ordered on 03.09.2008 to investigate the circumstances under which the husband of the applicant was found dead by hanging from the ceiling fan in his quarter. The Col, in its findings, has opined it to be a case of 'suicide by hanging at his home' on 03.09.2008 in his quarter number 3457 Sector E, Chandimandir. The COI has also observed that there was no causal connection between his death and military service, hence, the death of the individual was held to be not attributable to military service. The applicant, being the legal heir of the deceased soldier, was granted ordinary family pension. The applicant, as legal wife, had applied for special family pension. On rejection of her request for grant of special family pension, she preferred a first appeal, which was rejected by the Appellate Committee on First Appeals (ACFA). Against the said rejection, the applicant filed a second appeal before the Second Appellate Committee on Pension (SACP). The SACP, after taking into account the Col report, rejected the second appeal. Hence the present O A

3. The learned counsel for the applicant contended that the husband of the applicant died due to asphyxia by hanging under mysterious circumstances while performing duty as Sahayak of Sub T.G. Desai, who was officiating Company Senior JCO at that time. According to the learned counsel, since the death of the applicant's husband was caused while he was posted in 268 Engineers Regiment, his death should be attributable to military service.

He also pointed out that the applicant apprehends the death of her husband as suspicious as she had good marital life with her husband. The applicant therefore, entitled to special family pension from the date of her husband's death.

4. Per contra, the learned counsel for the respondents submitted that the husband of the applicant committed suicide by hanging on 01.09.2008 in

Government Married Accommodation Quarter No. 245, Sector 'E' Chandimandir Cantt while serving with 769 Engineer Bridging Regiment (PMS)

and the cause of death as per the post mortem report was 'asphyxia due to hanging'. The CoI considered his death as suicide and hence opined it as

not attributable to military service in terms of Para 4(a) (Category A) of the

Government of India, Ministry of Defence (Army) letter dated

31.01.2001. Further, in terms of Para 216 of the Pension Regulations for the Army 1961 (1961 Regulations, in short) and Para 11.1 of the Government

of India (MoD) letter dated 12.11.2008, the applicant is the first eligible heir for grant of family pension and other terminal benefits. Accordingly,

ordinary family pension was granted to her by the PCDA (P), Allahabad vide PPO dated 23.09.2009. However, according to the respondents, the

applicant is not entitled to special family pension because the death of the husband of the applicant is not attributable to military service. Additionally,

the post mortem report clearly states that the cause of death was 'asphyxia due to hanging' and the CoI also had concluded that the applicant's

husband had committed suicide by hanging himself at his house. He concluded that the applicant is not entitled to special family pension and pleaded

for the O.A to be dismissed.

5. We have heard the learned counsel for the parties and perused the material placed on record.

6. On the aforesaid pleadings, the following questions emerge for our consideration:

(i) Whether the death of the applicant's husband was attributable to or aggravated by military service?

(ii) Whether the applicant is eligible for special family pension upon the death of her husband on 01.09.2008?

7. On 03.09.2008, the Station Commander, Station HQ Chandimandir ordered a Col to inquire into the circumstances under which the applicant's

husband was found dead by hanging from his ceiling fan in his Quarter No. 3457 Sector E, Chandimandir. The CoI proceedings further show that

there was no causal connection between his death and military service as it is a case of suicide by hanging. It is also clear from the post mortem

report that the cause of death was asphyxia by hanging. Additionally, we have noted that the applicant, while making a statement in CoI, has not

mentioned about any suspected foul play or any other possible cause of death. Hence changing her stand in this O.A after about nine years and

claiming the death to be otherwise cannot be accepted at face value.

8. So far as the issue of special family pension is concerned, Rule 213 of the 1961 Regulations is specific, which reads as under:

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.

Going by the aforesaid provision, read with Paragraphs 4.1 and 5 of the GoI (MOD) letter dated 31.01.2001, the applicant will not be entitled to special

family pension since the cause of death of her husband was considered not attributable to military service.

9. Further, in accordance with Regulation 105(a) of the Pension Regulations for the Army, 2008 (Part I) (2008 Regulations, for brevity), special family

pension is granted to the NoK of the deceased soldier in the circumstances when the death is attributable to or aggravated by military service.

Otherwise, the NoK is entitled to ordinary family pension. For easy reference, we reproduce Regulation 105(a) of the 2008 Regulations. It reads:

105. (a) 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 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 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.

(b) The question whether death is attributed to or aggravated by military service shall be determined under the Entitlement Rule for Casualty

Pensionary Awards, 1982 contained in Appendix-IV to these Regulations.

10. A bare reading of the aforesaid provision makes it clear that the special family pension is granted only to the family of service personnel whose

death has been opined as attributable to or aggravated by military service.

11. In *Union of India and others v. Ex Nk Vijay Kumar* (C.A No. 6583 of 2015 decided on 26.08.2015), the Honible Supreme Court held that there

should be a causal connection between the duty being performed and the injury

sustained. Special family pension is only entitled to NoK/Family of persons who died while performing bona fide military duty. Since the husband of the applicant was not performing any bona fide military duty, his NoK/family is not entitled to special family pension.

12. Furthermore, we also observe that the applicant being the legal heir of the deceased was granted ordinary family pension along with other terminal benefits. Since we have already concluded that there is no causal connection between the death of the applicant's husband and military duty, the applicant is not eligible for special family pension and is entitled for the grant of ordinary family pension only, which she is already receiving from the pension authorities.

13. Resultantly, the instant O.A is devoid of merit and deserves to be dismissed.

14. No order as to costs.

Pronounced in open Court on this the 19th day of November 2019.