

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

T.A No. 60 of 2009
(arising out of CWP No. 3606 of 1990)

Mrs. M.K.Ghuman	...	Applicant
Vs		
Union of India and others	...	Respondents

ORDER

13.05.2010

Coram : Justice N. P. Gupta, Judicial Member.

Lt Gen A S Bahia (Retd), Administrative Member.

For the Petitioner(s) : None

For the respondent(s) : Ms Renu Bala Sharma, CGC

This is a transferred matter, being Civil Writ Petition filed before the High Court of Punjab and Haryana, way back in the year 1990.

The petitioner prays for a direction for quashing the orders, Annexure P-2 and P-5 denying special family pension and prays for grant of special family pension.

The factual averments are that the petitioner's late husband, at the relevant time, was posted at Delhi on official assignment. The deceased was attached to 197 Bomb Disposal Group Delhi Cantt. He was regularly attending his duties. The distance between the office and the place where the deceased was given accommodation, is said to be 4 kms., which used to be covered by him on his scooter. On the fateful day, being 27.01.1986, when the deceased was returning from his office on his scooter, at about 6.40 PM, he met with an accident, ultimately resulting into his death on 05.02.1986 while in Army

Hospital, Delhi Cantt. The Court of Inquiry was subsequently held and the verdict given was that the death was attributable to military service in peace area. The report has been annexed as Annexure P-1. However, notwithstanding of this, vide Exhibit P-2 dated 16.06.1987, respondent no.1 informed that the accident of the petitioner should be regarded as neither attributed to or aggravated by military service and, thus, family pension and gratuity was denied. The statutory appeal also came to be rejected vide Annexure P-5 dated 12.10.1989. Then, representations were made which also met the same fate. The petitioner has relied upon Instruction No.15 making a ground for family pension and is reproduced at page 6 of the Writ Petition.

Though the writ petition was filed way back in the year 1990 and as we find from the record of the High Court, still no reply has been filed either before the High Court or before this Tribunal.

Learned counsel for the respondents appearing before us vehemently contested the claim of the petitioner and submitted that at the time of accident the deceased was on the road on his private scooter when he met with an accident, which cannot be said to be attributable to or aggravated by service within the meaning of instruction no.15 relied upon by the petitioner, and therefore, the claim of the petitioner has rightly been rejected.

We have given our thoughtful consideration to the submissions made and are of the view that when it is not in dispute that the deceased met with an accident, while returning from duty, to his residence, and en route unfortunately met with an accident, by no stretch of imagination can it be said that the death was caused by an accident not attributable to the service within the meaning of instruction no.15.

Thus, we are constrained to set aside the impugned orders, Annexures P-2 and P-5.

Accordingly, this petition is allowed and the petitioner is held entitled to Special Family Pension and other consequential benefits flowing from the death of the deceased, having occurred, being attributable to Military service.

Since the petitioner has been contesting the matter right from the time of accident continuously, and is still deprived of the benefits over all these 24 years, she is also to be compensated adequately by way of interest on the amount of Special Family Pension, which becomes due to her, at the rate of 6 per cent per annum from the date the respective amount became payable to her. The respondents are directed to make calculations of the amount and pay them to the petitioner within a period of 3 months from the date of receipt of certified copy of this order.

[Justice N. P. Gupta]

[Lt Gen A S Bahia (Retd)]

May 13, 2010
RS