

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

T.A No.180 of 2010  
(arising out of CS No. 28 of 2006)

Smt. Shakuntala Devi	...	Applicant
Vs		
Union of India and others	...	Respondents

**ORDER**

**06 .05.2010**

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

**Lt Gen N S Brar (Retd), Administrative Member.**

For the Petitioner(s) : Mr. Sultan Singh, Advocate

For the respondent(s) : Ms Geeta Singhwal, Sr.Panel Counsel

**Lt Gen N.S.Brar**

This application has been received on transfer from the Court of Civil Judge (Senior Division), Charkhi Dadri and is taken up under Section 14 of the Armed Forces Tribunal Act 2007.

The husband of the petitioner, Naik Sukhbir Singh, while on casual leave fell from the roof of his house on 14.02.1998 and died the same day due to head injuries. The claim for special family pension of the petitioner was rejected by the Controller of Defence Accounts (Pension) as the death of the petitioner's husband was neither attributable to nor aggravated by military service. The petitioner contends that as her husband was on casual leave, which is treated as duty, it amounts to being attributable and therefore she is entitled to special family pension.

Heard the learned counsels for the parties.

Learned counsel for the petitioner stated that the husband of the petitioner was enrolled in the Army on 31.12.1982 and died on 14.02.1998 due to head injury sustained when he fell from the roof of his house while he was on casual leave. The petitioner is in receipt of ordinary family pension and had received enhanced family pension from 16.02.1998 to 15.02 2005. All other benefits have been paid to the petitioner. However, her claim for special family pension was rejected by the PCDA (P) as the death was neither attributable nor aggravated by military service. Appeal against the order of the PCDA (P) has also not been accepted. He contended that as per Government of India Ministry of Defence letter No 1(i)/81/Pen – C dated 23.11.1983 and Rule 10 of Leave Rules, an army person is considered to be on duty while on leave and any injury or death sustained during such leave is attributable to military service. He further contended that Rule 213 of the Pension Regulations for the Army 1961 lays down that special family pension may be granted if death was attributable to military service. As such the petitioner was entitled to special family pension.

Learned counsel for the respondents stated that the husband of the petitioner was on casual leave when he fell from the roof of his house and died of head injury. This had no connection with military service and claim for special family pension was rightly denied. He further stated that treating an army person on leave as being on duty is for the purpose of his being accountable for his conduct even while on leave. It has no bearing on attributability for death in such cases where there is no connection with military service. For death to be attributable to military service there must

be some causal connection. He further contended that for grant of special family pension the cause of death can be attributable to military service when death happens due to accidents in performance of duty, mishap at sea, sporting events etc. In this case there is no connection with performance of any military duty and therefore the claim for special family pension was rightly denied. He further amplified that duty is defined in Rule 12 of Entitlement Rules to Casualty Pensionary Award to Armed Forces Personnel, 1982 circulated vide Government of India, Ministry of Defence letter No 1(i)/81/ Pen –C dated 22.11.1983. As per this rule, only travelling while on leave through reasonable route while proceeding to home station or returning to duty station can be taken as being duty.

Having regard to the rules for grant of special family pension and the circumstances of the death of the husband of the petitioner, we see no connection of the death of Nk Sukhbir Singh with military service. Consequently, no claim for special family pension can be made out. The petition is dismissed.

There shall be no order as to costs.

**[ Justice N. P. Gupta ]**

**[ Lt Gen N S Brar ( Retd)]**

May 06, 2010  
RS