

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI

O.A. No.39 of 2018

(Through Video Conference)

Monday, the 28th day of March, 2022

CORAM:

**HON'BLE MR. JUSTICE K.HARILAL, MEMBER (J) &
HON'BLE AIR MARSHAL SRK NAIR, PVSM, AVSM, VM M-in-D, MEMBER (A)**

APPLICANT

Sarojam T
M/o late Cfn Renjith, S No.17014252W
Kollamkonath Veedu, T.C 51/1783
Sathan Nagar, Nemom, Pappanamcode P.O.
Thiruvananthapuram District, Kerala-695 018

(By Adv. V.K.Sathyathan)

Versus

RESPONDENTS

1. Union of India, Represented by its Secretary
Ministry of Defence
South Block, New Delhi-110 011
2. The Chief of the Army Staff
COAS's Secretariat
Integrated Head Quarters of Ministry of Defence (Army)
DHQ P.O., New Delhi – 110 011
3. The OIC Records
EME Records, PIN-900453, C/o 56 APO
4. The Principal Controller of Defence Accounts (Pensions)
Office of the PCDA(P), Draupadi Ghat
Allahabad, U. P – 211 014

(By Adv.Dr.M.Rajendra Kumar, Senior Panel Counsel)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI**O.A.No.39 of 2018****(Through Video Conference)**

**Sarojam T. Applicant
M/o late Cfn Renjith S. No.17014252W**

Versus

Union of India and Ors. Respondents

**For Applicant : Mr.V.K.Sathyanathan, Advocate
For Respondents : Dr.M.Rajendra Kumar, Sr. Panel Counsel**

CORAM:

HON'BLE MR. JUSTICE K. HARILAL, MEMBER (J)

HON'BLE AIR MARSHAL S. R. K. NAIR, MEMBER (A)

**O R D E R
28.03.2022**

The applicant, Sarojam, is the mother of the late Cfn.Renjith S., No.17014252W, who died on 23.03.2015 while in Army service due to an accident. He joined Army on 24.03.2011 and served in Jammu & Kashmir area for about 2 years. When he was posted at Rajasthan, he was asked to join EME Sainik School, Vadodara, for in-service training and he joined the training, as instructed by the authorities. After one month of rigorous training, the trainees were given 4 days leave for relaxation and that term

break was also part of the training. While so, the applicant received a message from the army authorities that his son Renjith died on 23.03.2015 due to head injury and drowning in sea at Diu Fort. Thereafter, his dead body was brought to the native place and cremated with honour given by the state and central governments. While so, the applicant being the most eligible first degree relative of late Renjith, received Annexure A1 certificate showing the particulars of the deceased soldier and from A1, it is amply clear that the army authorities have determined that the death is attributable to military service. The army authorities have apprised her that the eligible pensionary benefits shall be released at the earliest after taking some time for adjudication. While so, the 3rd respondent had sent Annexure A3 letter with a PPO to the SBI, Ganapati Kovil Road, Thiruvananthapuram, granting death-cum-retirement gratuity to the applicant and the bank authorities informed him that no authority was given to pay any kind of pension in the PPO and the authority is given to pay death-cum-retirement gratuity only. Thereafter, the applicant received Annexure A4 letter from the 4th respondent stating that both special family pension and ordinary family pension are rejected. Aggrieved by the denial of both special family pension and ordinary family pension, the applicant had forwarded Annexure A5 representation to the 3rd respondent

challenging the rejection of the applicant's legitimate right to get special family pension or ordinary family pension. The 3rd respondent, in turn, advised the applicant to file an appeal against the rejection, vide Annexure A7. Thereupon, the applicant submitted Annexure A8 appeal before the competent authority under the rules. The appellate authority, in turn, sent Annexure A9 letter to the applicant requiring certain documents, stating that there was a delay in filing the appeal. Actually, there was no delay in filing the appeal and the applicant had sent Annexure A10 letter along with the documents, as required by the respondents. Surprisingly, the appeal was rejected by the 4th respondent vide Annexure A11 stating that the death was neither attributable to nor aggravated by military service and the same was intimated to her by the Additional Directorate General of Personnel Services. According to the applicant, the 4th respondent has no authority to reject the applicant's claim for special family pension after discarding the findings of the court of enquiry and the 3rd respondent to the effect that the cause of death was attributable to military service. That apart, the 4th respondent went wrong by finding that the death occurred while he was not on duty and further finding that the applicant's income is more than the limit prescribed by the rules for sanctioning family pension. In the above circumstances, the applicant has no remedy other than

approaching this Tribunal invoking the jurisdiction and power u/s 14 of the Armed Forces Tribunals Act.

2. The respondents filed reply statement denying the allegation that the applicant's claim for special family pension was rejected without the required authority under the rules. According to the respondents, the cause of death of the applicant's son Renjith was due to head injury and drowning in sea at Diu Fort during the course in term break. So, the death of the applicant's son was not attributable to military service. On that reasoning, the special family pension was denied to her. Similarly, the income of the applicant was more than the limit prescribed for granting special family pension. However, consequent on the death of Renjith, his account was finalized and granted all other benefits including gratuity, AFPP Fund balance, credit balance and AGI regular insurance. The 4th respondent rejected the claim for special family pension vide Annexure R3, after having careful adjudication of the said claim. Further, the PCDA(P) has found, after adjudication, that the casualty occurred when he went to visit Diu along with his batch mates and the said journey is not covered by the Entitlement Rules 2008 for grant of special family pension and hence, the same was rejected. The late NCO was on 2 days leave (casual leave) (23.03.2015 & 24.03.2015) to visit home at Thiruvananthapuram with

permission to prefix 23.03.2015. He died on 23rd March 2015 while visiting Diu on casual leave. The casualty has not occurred enroute to leave station. It occurred during casual leave and has not occurred during course activity. However, on rejection of the special family pension claim, ordinary family pension was sanctioned to the applicant under Annexure R5. All the representations made by the applicant are suitably replied by the respondents. Though the applicant had preferred first appeal, the same was considered and rejected on the finding that the cause of death was neither attributable to nor aggravated by military service in terms of Entitlement Rules 2008. There is no illegality or impropriety in the aforesaid findings of the appellate authority. Therefore, there is no reason to interfere with the findings of the first appellate authority, invoking the jurisdiction and power of this Tribunal u/s 14 of the Armed Forces Tribunals Act.

3. Heard Shri.V.K.Sathyanathan, the learned counsel appearing for the applicant and Dr.M.Rajendra Kumar, the learned standing counsel appearing for the respondents.

4. The learned counsel appearing for the applicant advanced arguments relying on the findings of the enquiry report and challenging the findings of the 4th respondent and the first appellate authority. The learned counsel

further invited our attention to Regulation 9 and 13(i) of the Entitlement Rules for Casualty Pensionary Awards for Armed Forces Personnel and contended that since the death has occurred during the period of participation in recreation, approved by the service authorities and during the period of training, the death shall be deemed to be occurred while on duty. Similarly, according to him, Regulation 13(i) of the Entitlement Rules, the 4th respondent is not the competent authority to take a decision on the finding of the court of enquiry, but the OIC Records i.e. the Commanding Officer is the competent authority to take a decision upon the findings of the court of enquiry. Since the OIC Records has accepted the findings of the court of enquiry that the death is attributable to military service, the 4th respondent should not have taken a decision contrary to the decision of the OIC Records as the 4th respondent is not the competent authority to take a decision on the findings of the court of enquiry. The applicant was entitled to get special family pension, but the first appellate authority went wrong by relying on the decision of the 4th respondents. instead of the findings of the Commanding Officer, OIC Records. It is also contended that no reliance can be placed on the leave certificate produced along with the enquiry report, in the absence of leave application on which the leave was granted to him.

5. Per contra, the learned standing counsel contended that the death occurred when he was on leave at a place other than the leave station. Therefore, the death cannot be treated as one occurred while on duty. The death has no proximity with duty as contemplated under Regulation 9. So also, the pleasure trip programme to Diu was not approved or organized by the service authorities. Since the death has not occurred while on duty, the same is neither attributable to nor aggravated by military service.

6. In view of the arguments at the bar, the questions that emerge for consideration are as follows :-

- (1) Whether there is any illegality or impropriety in the denial of special family pension to the applicant by the 4th respondent on the ground that the death was neither attributable to nor aggravated by the military service ?
- (2) Whether the applicant is entitled to get ordinary family pension if special family pension is not allowed ?

7. The aforesaid questions in controversy arise out of the report of the court of enquiry and the decisions thereon taken by the Commanding Officer, OIC Records and the 4th respondent. According to the findings of the court of enquiry, Renjith along with 16 other course mates went to Diu during the course in term break period, for a pleasure trip and while they

were visiting Diu Fort, he was found missing and subsequently, his dead body was found out from the sea and confirmed his death. His death was due to head injury and drowning in sea during the course in term break and the cause of death is attributable to military service as the death as occurred while on duty.

8. According to the respondents, the death has occurred while he was not on duty as he was on leave. Going by Annexure A4 letter issued by the 4th respondent to OIC Records and Annexure A11 order passed by the appellate authority, we find that they discarded the findings of the Commanding Officer, OIC Records and rejected the claim for special family pension on a finding that the death has occurred during the casual leave and has not occurred during the course activity.

9. In view of the aforesaid pleas, the following points are to be determined to answer the questions referred above :-

- (1) Whether the 4th respondent was the competent authority to take a decision regarding the attributability of the death to military service, contrary to the findings of the OIC Records, on the basis of the findings of the court of enquiry ?
- (2) Whether the death has occurred during the course of duty.
To put it differently, whether the death has occurred during

the period of participation in recreation organized or approved by the course authorities, as contemplated under Rule 9(c) of the Entitlement Rules for Casualty Pensionary Awards for Armed Forces Personnel ?

10. Firstly, let us examine the rule position. Regulation 9 of the Entitlement Rules for Casualty Pensionary Awards for Armed Forces Personnel reads thus:

"9. Duty

For the purpose of these Rules, a pension subject to the disciplinary code of the Armed Forces shall be treated on 'duty':

- (a) When performing an official task or a task failure to do which would constitute an offence, triable under the disciplinary code applicable to him.***
- (b) When moving from one place of duty to another place of duty irrespective of the mode of movement.***
- (c) During the period of participation in recreation and other unit/sports activities organized or approved by service authorities and during the period of travelling in relation thereto.***
- (d) 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"***

In the instant case, the 4th respondent rejected the claim for special family pension on a finding that the cause of death was not attributable to military service as the death has occurred when he went to visit Diu Fort along with his course mates during the period of casual leave and not occurred while on duty. In order to support the said findings, the respondents have produced the enquiry report, which contains a leave certificate issued to the deceased Renjith by the service authority. It shows that he was on casual leave on 23.03.2015 and 24.03.2015 as the leave station is shown as Nemam village in Trivandrum District with permission to prefix 22.03.2015. But it is admitted that instead of travelling to Trivandrum, he along with 15 other course mates went to Diu for enjoying the term break during the course. It is needless to say that very short duration of leave would show that the leave was actually intended for participating in the pleasure trip to Diu during the course in term break and not to go to Trivandrum. According to the last note appended to Rule 9 of the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel 2008, leave/casual leave shall not be treated as duty except in situations mentioned under Rule 9. We have meticulously analysed the admitted facts as to the cause of death in view of Regulation 9(c). The ingredients which constitute Regulation 9(c) are as follows :-

- (1) The death shall be occurred during the period of participation in recreation.
- (2) The recreation should have been organized or approved by the service authorities.

According to Cambridge Advanced Learners Dictionary IV Edition, the word "recreation" means enjoyment. If that be so, a pleasure trip scheduled during the course in term break to visit Diu Fort would fall under the expression "recreation" employed in Regulation 9(c). The next point to be considered is whether the pleasure trip to Diu Fort was organized or approved by service authorities ? There is no material available on record to show as to who had organized the pleasure trip to Diu. It can either be the trainees themselves or the service authorities. Then the point is was it approved by the service authorities even if it was organized by the trainees themselves. Admittedly, the pleasure trip to Diu Fort was conducted during the course in term break. The duration of the course was from 23rd March 2015 to 15th April 2015. Needless to say, in the military, inservice trainings are being conducted with strict discipline. No trainee would be allowed to go out of the training camp without the permission of the service authorities. If that be so, we are of the view that it is impossible to think that such a pleasure trip for 3 days was organized in the course during

term break without the approval of the service authorities. So, it can be reasonably presumed that the pleasure trip to Diu was organized and conducted by the trainees themselves with the approval of the service authorities. Thus, the nature and manner in which they conducted the pleasure trip, during which the mishap occurred, would satisfy the ingredient of Regulation 9(c). Even if he was on leave, that leave would fall under the situation specified under Rule 9(c) and it would stand exempted from leave by the last note appended to Rule 9. Therefore, we conclude that the death of Renjith shall be deemed to have occurred while he was on duty.

11. The next point to be considered is whether the 4th respondent is the competent authority to take a decision on the attributability of death to military service. Immediately after the death of Renjith, the Army Authorities constituted a court of enquiry consisting of three members to investigate into the circumstances under which Renjith was found dead at 2000 hrs at Diu Fort. They have examined four witnesses to find out the cause of death. Those witnesses were course mates who accompanied Renjith, at the time of the accident. After examining the evidence collected by them, they filed Annexure R-1 report with a finding that "the death of the individual is attributable to military service". The Commanding Officer

OIC Records accepted the said finding and sent Annexure A-1 certificate to the applicant stating that the death is attributable to military service. But, the 4th respondent PCDA (P) reversed the said finding and found that the death is not attributable to military service. According to Regulation 105(a) of the Pension Regulations for the Army 2008, the question whether the death is attributable to or aggravated by military service shall be determined under the Entitlement Rules for Casualty Pensionary Awards for the Armed Forces Personnel 2008, contained in Appendix IV to the said Regulations. Rules 12 and 13 of the said Rules specify the competent authorities to take decision on attributability and aggravation. According to Rule 13(i), the decision regarding the attributability/aggravation in respect of death due to injury cases, for grant of special family pension shall be taken by the OIC Records in case of PBOR. It follows that the 4th respondent is not the competent authority and 3rd respondent is the competent authority to take a decision on attributability to military service in the case of death due to injury. In the instant case, the OIC Records accepted the findings of the enquiry report that the cause of death is attributable to military service. Since the 4th respondent is not the competent authority to take a decision on the attributability of death and 3rd respondent is the competent authority for the same, the findings of the

3rd respondent (OIC Records) are final and interference with that decision by the 4th respondent is illegal and improper. Therefore, we conclude that the finding of the 4th respondent that the cause of death is not attributable to military service is illegal and invalid. We further find that the cause of death of Renjith, the son of the applicant is attributable to military service. Consequently, we find that the applicant is entitled to get special family pension.

12. In view of the findings on question No.1, question No.2 has become infructuous and there is no need to answer the said question.

13. In the result, respondents 3 & 4 are directed to issue a corrigendum PPO granting special family pension to the applicant, with arrears from the date of death of the applicant's son Renjith and pay the arrears accordingly within a period of 4 months from the date of receipt of a copy of this order. In case of failure, the unpaid amount shall carry interest at 9% per annum.

14. This OA would stand allowed.

15. No order as to costs.

Sd/-
**JUSTICE K. HARILAL
MEMBER (J)**

Sd/-
**AIR MARSHAL S. R. K. NAIR
MEMBER (A)**

adr/

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