

ARMED FORCES TRIBUNAL REGIONAL BENCH, KOCHI
O.A.NO.42 OF 2011
FRIDAY, THE 25TH DAY OF JANUARY 2013/5TH MAGHA, 1934
CORAM:

HON'BLE MR. JUSTICE SHRIKANT TRIPATHI, MEMBER (J)
HON'BLE LT.GE.THOMAS MATHEW, PVSM, AVSM, MEMBER (A)

APPLICANT:

GEETHAMMA.D., AGED 41 YEARS
W/O.LATE NB SUB VIJAYAN (JC 753843) OF
EME RECORDS, INDIAN ARMY, KRISHNA KRIPA,
PERINGALA.,P.O.KAYAMKULAM, ALLEPPEY DISTRICT,
KERALA – 690 559.

BY ADV.SRI.T.R.JAGADEESH.

VERSUS

RESPONDENTS:

1. THE UNION OF INDIA,
REPRESENTED BY ITS SECRETARY,
MINISTRY OF DEFENCE ,
SOUTH BLOCK, NEW DELHI.
2. THE CHIEF OF ARMY STAFF,
INTEGRATED HQRS. (ARMY),
SOUTH BLOCK, NEW DELHI.
3. THE OIC RECORDS,
EME RRECORDS, SECUNDERABAD – 21.
4. THE PRINCIPAL CONTROLLER OF DEFENCE
ACCOUNTS (PENSIONS),
OFFICE OF THE PCDA (P),
DRAUPADI GHAT,
ALLAHABAD,U.P – 211 014.

BY ADV.SRI.P.J.PHILIP, CENTRAL GOVT. COUNSEL

O R D E R

Shrikant Tripathi, Member (J):

1. Heard Mr.T.R.Jagadeesh for the applicant and Mr.P.J.Philip for the respondents and perused the record.

2. The applicant being the widow of late Nb Subedar Vijayan.P. has filed the instant Original Application for special family pension in lieu of family pension already granted.

3. The relevant facts are that the applicant's husband late Nb Sub Vijayan was enrolled in the Army, Corps of EME on 10th May 1980 and in due course had reached the rank of Naib Subedar. He had come to his native place on 15 days casual leave from 22nd March 2003 to 5th April 2003. He met with an accident at his native place and due to that expired on 26th March 2003. The applicant has already been sanctioned family pension vide PPO No. F/NA/5944/04 dated 08.10.2004 (Annexure R1). But her claim for the

special family pension was denied on the ground that the death of late Naib Subedar Vijayan was neither attributable to nor aggravated by the military service.

4. Mr.T.R.Jagadeesh appearing for the applicant submitted that in T.A.No.85 of 2009 special family pension was granted by this Tribunal in a similar circumstance, therefore, the benefit of the said judgment may be extended to the applicant also.

5. Mr.P.J.Philip appearing for the respondents, on the other hand, submitted that the special family pension could be granted to the applicant only if the death of the deceased was attributable to or aggravated by the military service.

5. The counsel for the applicant, in reply, submitted that a Court of Inquiry was held to find out the causes of the death, which found that the death of the deceased was attributable to the military service, therefore, according to the Court of Inquiry special family pension was payable to the applicant.

6. The sole question that arises for our consideration is whether the death of the deceased was attributable to or aggravated by the military service? If the answer is in affirmative, the claim for special family pension has substance, otherwise it is to be dismissed.

7. No doubt, the Court of Inquiry had held that the death of the deceased was attributable to the military service but we are failing to understand as to how the Court of Inquiry arrived at that conclusion especially when the deceased had come to his native place on casual leave and met with an accident while going to attend a marriage. The purpose for which the deceased had been going was purely a private purpose and had no nexus with the duties assigned to him as an armed forces personnel. It is well settled that when a person sustains either an injury, or he dies, in an accident while on leave at his native place, the death or injury cannot be said to be attributable to or aggravated by the military service.

8. In **Union of India v. Jujhar Singh (AIR 2011 SC 2598)** the Apex Court had occasion to consider a similar question and held that if a person sustains an injury or disability during annual leave at his native place, it has no connection with the military service and accordingly the Apex Court held that it was neither attributable to nor aggravated by the military service. In our view, the case of Jujhar Singh is fully applicable to the facts of the instant case.

9. In view of the aforesaid, we are of the view that the claim for the special family pension was rightly denied by the PCDA (P), Allahabad.

10. The Original Application has no merit and is accordingly dismissed.

11. There will be no order as to costs.

12. Issue free copy of the order to both side.

Sd/-

sd/-

LT.GEN.THOMAS MATHEW	JUSTICE SHRIKANT TRIPATHI
MEMBER (A) (true copy)	MEMBER (J)