**IN THE ARMED FORCES TRIBUNAL, CHANDIGARH BENCH**

O. A. No \_\_\_\_\_\_\_\_\_\_\_\_\_\_of 2018

Smt. Kusum Lata Wd/o Late Sh. LN Rajvir Singh (No. 4561244)

…………..Applicant

Vs

Union of India & others ………..Respondents                                     **INDEX**

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(SURESH AHLAWAT)

Advocate

Counsel for the applicant

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For use in Tribunal’s Office:

Date of Filing:

Or

Date of Receipt by Post:

Registration No.: Sd/- For Registrar

|  |  |
| --- | --- |
| **DATES** | **EVENTS** |
| 24.4.1989  & 5.3.2003 | That the husband of applicant namely Late LN Rajvir Singh(No. 4561244)joined Indian Army on 24.4.1989 and he died on 3.3.2003 due to ELECTRICUTION at Jamnagar during active service , AS stated by the respondents |
|  |  |
| 6.3.2003 | That after the death of applicant’s husband, she was granted Ordinary Family Pension instead of special family pension w.e.f. 6.3.2003 onwards @ Rs. 1933/- and she was issued certificate of particulars of next of kin. **(Annexure A-1).** |
| 30.11.2016 | That applicant sent her appeal before the competent authority /respondents to grant the special family pension but same was rejected vide **Annexure A-2** which is under challenged**.** |
| 22.6.2018  &  5.7.2018 | Applicant sent the legal notice through her counsel to the respondents on 22.6.2018. Same was replied by the respondents and rejected her claim to grant the special family pension vide letter dated 5.7.2018 ( Annexure A-5) which is under challenged and new ground was raised by the respondents in its reply that husband of the applicant Sh. Rajvir Singh died on 5.3.2003 due to electrocution at Jamnagar during “Absent Without Leave period”. |
|  | That her husband was on active service duty at the time of his death and his death was related to duties of military service and is attributable to military service than applicant is fully entitled for special family pension.  That as per Sub Section-II Family Pension and Gratuity of the pension regulation of the Army reads as under:-  **“Sub Section –II Family Pension and Gratuity, Special Family Pension”**  **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 service.** |
|  |  |
|  |  |
| 13.11.2018 | Applicant filed number of applications under RTI Act for providing the detailed report, cause of death of her husband i.e Court of inquiry Report or Post Mortem Report but respondents did not provide any information regarding death of her husband.( **Annexure A-6)** |
|  |  |
|  |  |
|  |  |
| ----- | Hence the present Original Application. |

Chandigarh (SURESH AHLAWAT)

Dated : 20-12-2018 Advocate

Counsel for the applicant

**IN THE ARMED FORCES TRIBUNAL, CHANDIGARH BENCH**

**O. A. No…………….of 2018**

Smt. Kusum Lata aged 43 years, Wd/o Late LN Rajvir Singh (No.4561244) PPO No. F/NA/6081/2003 Vill. Kalwan Tehsil Narwana Distt. Jind presently residing H. No. 3192, Sector-11 ,Jind (Haryana).

----------- Applicant

**Versus**

1. Union of India through Defence Secretary

Govt. of India, Ministry of Defence

101-A, South Block, New Delhi-110 011

2. Principle Controller of Defence Accounts (P)

(OIC Grants 3 Sections), Draupadi Ghat, Allahabad (U.P.) 211 014

3. Record Officer

The Mahar Regiment ,Saugor (M.P.)

PIN – 900 127, C/o 56 APO ----------------- Respondents

**Application under section 14 of AFT Act, 2007**

**Details of the Application**

1. **Particulars of the Impugned order against which Application is made:**

That the impugned order /reply dated 30.11.2006 and 5.7.2018 **(Annexure A-3 and Annexure A-5)** are under challenge before this Hon'ble Tribunal, since the respondent authorities illegally and arbitrarily rejected the claim of the applicant for grant of Special Family Pension w.e.f. 6.3.2003 onwards.

1. **Jurisdiction of the Tribunal:**

The Applicant is a permanent resident of District Jind, Haryana and is hence entitled to file an Application before Hon’ble Chandigarh Bench as per Rule 6 of AFT (Procedure) Rules, 2008.

1. **Limitation:**

Being Family Pension matter, no limitation is applicable since it is a continuing and recurring cause of action, as the applicant has been denied her special family pension.

1. **Facts of the case:**

The following is a statement of facts of the case:

1. That the husband of applicant namely joined Indian Army on 24-4-1989 and served at different places and in different climatic conditions. On 8th March-2003 applicant received a letter without stated any reason from office of the respondents that yours husband Sh. Rajvir Singh has been expired on 5.3.2003 .After some time respondents told to the applicant due to “**ELECTROCUTION**” at Jamnagar (Gujrat) . Copy of letter dated 8.3.2003 **Annexure A-1** and certificate showing particulars of deceased soldier is annexed here with as **ANNEXURE A-2.**

**(ii) That** it is pertinent to mention here that after the death of her husband i.e. on 5.3.2003 ordinary pension was granted to the applicant, than after some time, applicant represented to the respondents to grant the special family pension instead of ordinary pension because her husband was on active service duty at the time of his death and his death was related to duties of military service and is attributable to military service but the respondents rejected her claim to grant the special family pension then applicant filed the appeal before the respondents but respondents also rejected her appeal to grant the special family pension on the ground that his death in such circumstances is not in any related to duties of military service and is not attributable to military service. A copy of rejection order dated 30.11.2006 passed by the appellant authority is attached herewith as **Annexure A-3 .**

**iii) That** Applicant repeatedly represented to the respondents to grant the special family pension but all is vain. lastly applicant decided to knock the door of justice and sent the legal notice dated 22.6.2018 **t**hrough her counsel and the same was replied vide impugned order dated 5.7.2018 which is under challenged before this Hon'ble Tribunal. Copy of Legal Notice dated 22.6.2018 and in this reply dated 5.7.2018 are attached here with as **Annexure A-4 and Annexure A-5.**

**iv) That**  new ground was raised by the respondents in its reply that husband of the applicant Sh. Rajvir Singh died on 5.3.2003 due to electrocution at Jamnagar during “Absent Without Leave period”. Therefore , his death in such circumstances was not in any way related to duties of military service . Infact, husband of applicant was on active service and not absent without leave rather he was on active military duty at that time, so, it is wrong to say that the death of husband of the applicant happened during absent period. The respondents /authority wrongly and illegally shown him absent from duty to deny the benefits to his legal heirs.

1. **That** the applicant was /is not satisfied from the cause of her husband’s death according to the information provided by the respondents and without supply any documentary evidence regarding her husband’s death i.e Court of inquiry Report or Post Mortem Report because applicant was residing in the village of her husband, at the time of death of her husband .Then she filed number of applications under RTI Act for providing the detailed report, cause of death of her husband but respondents did not provide any information regarding death of her husband. A copy of application dated 13.11.2018 under RTI Act is attached herewith as **Annexure A-6.**
2. **That** after the death of applicant’s husband , she was granted Ordinary Family Pension w.e.f. 6.3.2003 onwards @ 1933/-p.m. instead of special family pension .

(vii) **That** in number of cases Hon'ble High Court as well as Hon'ble Supreme Court of India has held that death in active military duty is attributable to Military Service as the forces are always kept on high alert as well as being a discipline force high standard of discipline is maintainable all the times .

1. (viii) **That** further it is pertinent to mention here that in number of cases of the Court of law , held that once relief has been given to the similarly situated petitioners then the present petitioner is also entitled for the same.
2. The matter has been hanging fire since then and this attempt before the respondents was in vain and thus, applicant is before this Ld. Tribunal.

Hence the present Original Application.

1. **Grounds of Appeal with Legal provisions:**

That the following grounds emerge from the above mentioned situation:-

(i) That the Applicant is entitled for the Special Family Pension, since the death of the applicant’s husband is attributable and aggravated to Military Service.

(ii) That the husband of the applicant was thoroughly examined at the time of recruitment and he was fully fit in all the respects. That the husband of the applicant died due to alleged ELECTTICUTION.

(iii) That the death of the applicant’s husband is attributable and aggravated to Military Service, so the applicant is entitled for special family pension as per Regulation 213 of Army Pension Regulation, 1961, the content of regulation 213 are reproduced as under:-

**“Sub Section- II Family Pension and Gratuity, Family Pension”**

**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**

1. **The aggravation by military service of a wound, injury or disease which existed before or arose during military service.**
2. That the action of the respondents is illegal, un-lawful and against the principal of natural justice for denying the Special Family Pension to the applicant.
3. That the impugned order are non-speaking and contrary to the statutory provisions of the Army Act. The impugned order are liable to be set-aside.

6. **Details of Remedies exhausted:**

That the applicant has already given representations/legal notice and exhausted first appeal but the respondents has illegally and unlawfully denied the Special Family pension to the applicant. Now, no other statutory/speedy remedy under statute/rules is available to the applicant except to approach to this Hon,ble Tribunal by way of filing present application.

1. **Matter not previously filed or pending with any other Court/Bench of Tribunal:**

That the Applicant has not filed /pending any such or similar application on the same cause of action either in this Hon ble Tribunal or in any other court of law.

1. **Relief(s) sought:**

In view of the facts mentioned in Para 4 above, the applicant prays for the following relief(s) with costs:

1. To set aside the impugned order dated 30 Nov,2006 **( Annexure A-3 )** passed by appellant authority and reply of the legal notice dated 5.7.2018 **(Annexure A-5)** being illegal, void and unconstitutional.
2. Directions to respondents to accept the death of the applicant’s husband as attributable and aggravated to Military Service.
3. Directions to the respondents to release the Special Family Pension instead of ordinary pension to the applicant w.e.f. 6.3.2003 onwards with interest at market rate.
4. Any other directions which this Hon’ble Tribunal deems fit in the present circumstances.
5. Summons the records of the case
6. Exempt the applicant from filing the certified/true copies of all annexures .
7. **Interim Order, if any prayed for:** NONE
8. Para 10 is applicable only if the application is being sent by Registered Post.
9. **Particulars of Bank DD/IPO filed as application fee:**

Rs.250/- enclosed vide IPO Nos. as follows:-

|  |  |  |  |
| --- | --- | --- | --- |
| **S. No.** | **IPO No.** | **Date of Issue** | **Amount** |
|  | 9AG127591 to 9AG 127595 | 18.12.2018 | 50x5 |
|  |  |  |  |
| **Total** | | | **250-00** |

1. **List of enclosures:** Annexure A-1 to A-6.

Chandigarh Signature of Applicant:

Dated :- 20.12.2018

Through Counsel

(SURESH AHLAWAT)

Advocate

**Verification**

I, Smt. Smt. Kusum Lata Wd/o Late LN Rajvir Singh (No.4561244) PPO No. F/NA/6081/2003 Vill. Kalwan Tehsil Narwana Distt. Jind presently Residing H. No. 3192, Sector-11 ,Jind (Haryana). do hereby verify that the contents of paragraphs 4, 10, 11 and 12 of this Application are true to my personal knowledge and belief and that the contents of paragraph 1 to 3, and paragraph 5 to 9 are believed to be true on legal advice by my counsel and that I have not suppressed any material fact.

Date: 20 .12.2018 Signature of the Applicant

Chandigarh:-

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­­­­**IN THE ARMED FORCES TRIBUNAL, CHANDIGARH BENCH**

**O.A. No \_\_\_\_\_\_\_\_\_\_\_\_\_\_of 2018**

Smt. Kusum Lata …………..Applicant

Vs

Union of India & others ………..Respondents

Affidavit of Smt. Kusum Lata aged 43 years Wd/o Late LN Rajvir Singh (No.4561244) PPO No. F/NA/6081/2003 Vill. Kalwan Tehsil Narwana Distt. Jind presently Residing H. No. 3192, Sector-11 ,Jind (Haryana).

I, the above named deponent do here by solemnly affirm and declare as under:

1. That the applicant is filing the present original application before this Hon’ble Tribunal which is likely to be accepted on the grounds taken therein.

2. That the statement of facts made in the original application in Para No. 1 to12 have been read over and understood by the deponent in her own language, which are correct to my knowledge and belief. The documents attached with the application are true/photo copies, which are supplied by the applicant to the counsel.

3. That the deponent has not filed any such application or writ petition or suit regarding the matter in respect of which the present application is made before any court or any other statutory authority or this Hon’ble Tribunal earlier.

CHANDIGARH

DATED: .12.2018

**VERIFICATION:**

Verified that the contents of Para 1 to 3 of my above affidavit are true and correct to the best of my knowledge. No part of it is false and nothing material has been concealed there from.

CHANDIGARH

DATED: 20 .12.2018