

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7461 of 2021

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Shanti Devi, Wife of Late Bhubaneshwar Singh, resident of village-
Motichak, P.O.- Kharasin, Karpi, District- Arwal, Bihar, Pin-804419

... .. Petitioner/s

Versus

1. The Union of India through secretary, Ministry of Defence, New Delhi
2. The Army Chief, Central Secretariat, South Block, Integrated Headquarters of MoD (Army) New Delhi-110011
3. The Principal Controller of Defense Accounts (Pension) Allahabad
4. The Officer in Charge, Record Office, EME Records, Sekandarabad, Pin 900453
5. The Senior Record Officer, OIC Records, EME Records, Sekandarabad
6. The Public Information Officer, RTI Cell, EME Records, Pin 900453, C/o 56 APO
7. The Punjab National Bank through its Chief Manager, CPPC, Punjab National Bank, PCDA (P) Campus, Draupadi Ghat, Allahabad
8. The Branch Manager, Punjab National bank, Deokund, Aurangabad

... .. Respondent/s

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Constitution of India---Article 226—Indian Evidence Act---Section 108—Pension Regulations for the Army, 1961 (Part-II)---Para 213—Armed Forces Tribunal Act, 2007---Section 34—specific policy and instructions take precedence over general pension regulations/general instruction—claim of the petitioner for special family pension found untenable—petitioner's case for ex-gratia applicable on date on which her husband was declared missing presumed dead merits positive consideration.

Held: Claim of petitioner for Special Family Pension negated---Claim of petitioner for ex-gratia is directed to be considered by respondent authorities.

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... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Amit Shrivastava, Sr. Advocate
Mr. Kunal Tiwary, Advocate
For the Respondent/s : Dr. Krishna Nandan Singh, Addl. S.G.
Mrs. Kanak Verma, CGC
For the PNB : Mr. Mritunjay Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT
Date : 03-04-2024

Heard Mr. Amit Shrivastava, learned senior counsel
along with Mr. Kunal Tiwary, learned counsel for the petitioner,
Dr. K. N. Singh, learned Additional Solicitor General along with
Mrs. Kanak Verma, learned CGC for the Union of India and Mr.
Mritunjay Kumar, learned counsel for the Bank.

2. The question for consideration before this Court
is with regard to the entitlement of the petitioner for grant of



Special Family Pension and Ex-gratia on account of death of the petitioner's husband attributable to Military Service.

3. The petitioner, wife of late Bhubaneshwar Singh, by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India seeking issuance of a writ in the nature of mandamus commanding the respondent authorities for grant of Special Family Pension and Ex-gratia in favour of the petitioner along with arrears of Special Family Pension with appropriate interest for the extra ordinary delay and lapses on behalf of the authorities on account of the reason that the death of the petitioner's husband was attributable to his Military Service.

4. The facts, necessary for adjudication of the issue are that the petitioner's husband was a Sepoy in the Indian Army and while he was posted at Hissar on 05.07.1989 he went missing from his duty and after investigation, when the petitioner's husband could not be found he was declared deserter w.e.f. 05.07.1989. Subsequently, in the court of enquiry, after a considerable period of four years when the dead body of the petitioner's husband or any information regarding his presence or disappearance could not be found, he was declared missing presumed dead in the year 1992.



5. Learned senior counsel representing the petitioner vigorously argued that as the petitioner was totally dependent upon earning of her husband and was under bona fide expectation that the respondent authorities will start the family pension, for which the petitioner made several correspondences, a letter was sent to Pension Clearance Department PCDA (P) Allahabad from the EME Records (Secundrabad) for finalization of family pension and Death-cum-Retiral Gratuity claim specifically mentioning therein that the deceased died while on service on 05.07.1989. However, the petitioner has been informed that the family pension claim could not be settled for want of certain documents, including the original copy of the F.I.R. lodged in police station regarding missing of petitioner's husband, investigation report of the police authority as well as date of missing of the deceased. The aforementioned information has also been given to EME Records, Secundrabad in response thereto vide Annexure-3 to the writ application, the details of the date of missing of the petitioner's husband along with the photo state copy of SSP, Hissar and report of SHO, Sadar, Hissar were sent to the PCDA (P) Allahabad with specific averments that the Police Station, Sadar, Hissar has refused to entertain the complaint of missing of the petitioner's husband, as the



occurrence is of five years ago and was difficult to be investigated. On receipt of the aforesaid response, the PCDA (P), Allahabad again vide letter dated 28.11.1994 advised the authority to forward the copy of the F.I.R. or if the same is refused by the Police station (Sadar) Hissar, it may be reported before the Kotwali or before the higher authorities for investigation and report on the subject. It was specifically stated that the lodging of the F.I.R. in case of missing is mandatory in audit for adjudicating the claim for grant of family pension by PCDA (P) Allahabad.

6. The petitioner being a widow and an illiterate lady made to run from pillar to post taking the plea of technicalities for redressing the claim of family pension compelled her to approach all the concerned higher authorities with a prayer to settle the family pension and finally the petitioner having seen the insensitiveness of the respondent Army authorities and shifting their responsibilities of lodging the F.I.R. to the petitioner for the occurrence took place at Hissar, approached this Court by filing C.W.J.C. No. 15598 of 2017 with a prayer to intervene in the matter and to direct the respondent authorities to start family pension and the arrears thereof. The petitioner also made a detailed representation



before the Army Chief on 16.04.2018 describing the injustice done to her. Ultimately some mercy has been shown to the petitioner and it was directed to the officers of the EME Records to take extreme compassionate view and to make every effort under the sun to provide authorized pension to the petitioner. It would be worth noting here that immediately after filing of the writ petition, the respondent authorities lodged F.I.R. after a lapse of 29 years. In that premise, the learned senior counsel argued that the petitioner was deprived of her legitimate claim of her family pension for inaction on the part of the respondent authorities, as they refused to lodge F.I.R. for the missing of the petitioner's husband and only on the intervention of this Court, F.I.R. could be lodged in the year 2018.

7. The writ petition finally came to be disposed of vide order dated 15.03.2019 (Annexure-12 to the writ petition) with a direction to PCDA (P) Allahabad to consider the claim of the petitioner and to make the payment of entire retiral benefits, including the pension, family pension with admissible interest within a period of three months.

8. Adverting to the aforesaid facts, learned senior counsel would thus submits that the claim of the family pension of the petitioner was repeatedly refused by the PCDA Allahabad



and EME Record on technical grounds and despite the direction of the Army Headquarter to consider the case of the petitioner with extreme compassionate view vide order dated 19.05.2018, produced as Annexure-11 to the writ petition, the petitioner has not been allowed the Special Family Pension and the Ex-gratia, though the death of the petitioner's husband occurred in a mysterious circumstances, while in duty at Hissar.

9. Aggrieved, the petitioner once again represented before the Commanding Officer-cum-Chief Authority, EME Records, Secundrabad under Right to Information Act, 2005 as to why the payment of Ex-gratia amount and the Special Family Pension have not been accorded to her, the petitioner was informed that as her husband was declared missing presumed dead, thus, not eligible for Special Family Pension.

10. At this juncture, learned senior counsel has taken this Court to the finding of the Court of inquiry (Annexure-16 to the writ application) and submitted that even the Court of inquiry had opined that the allegation of the petitioner regarding some foul play against her husband has never been disproved and, therefore, it was directed to be investigated by a competent investigating agency through proper investigation. However, the respondent authorities never



ever handed over the matter to any investigating agency and in fact did not lodge the F.I.R. in order to close down the matter by declaring the petitioner's husband to be missing presumed dead in the year 1992 by giving a complete go-bye to Section 108 of the Indian Evidence Act. A man is alive or dead, is not proved unless he has not been heard for seven years, though naturally he would have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it. Reliance has also been made on a decision of the Hon'ble Supreme Court in the case of *LIC of India v. Anuradha*, (2004) 10 SCC 131.

11. Learned senior counsel further contended that the rejection of the claim of the petitioner for Special Family Pension in view of Para 213 of the Pension Regulations For the Army, 1961 (Part-II) is wholly misconceived and not sustainable in view of the admitted fact that the husband of the petitioner went missing all of a sudden from his duty and in spite of several orders and directions neither F.I.R. was lodged nor the matter of missing was handed over to any investigating agency in order to get the exact status of the missing or the death of the petitioner's husband, though in the Court of Inquiry, the contention of the petitioner regarding foul play with her



husband has not been denied. In the aforesaid premise, if the claim of the petitioner for Special Family pension is being rejected in the light of Para.213 of Pension Regulations For the Army, 1961, then the respondents must satisfy the Court that death of the husband of the petitioner was not due to wound, injury or disease attributable to military service, which fact could have only been ascertained when the matter would have been investigated by the competent agency, but due to the lapses, evidently on the part of the authorities it could not be done and now the authorities cannot be allowed to take benefit of their own lapses. In this connection, reliance has been made on a decision of the Hon'ble Supreme Court in the case of ***State of Bihar & Ors. v. Kalyanpur Cement Ltd., (2010) 3 SCC 274.***

12. It is also submitted that in the case of ***Charanjit Kaur (Smt) v. Union of India, (1994) 2 SCC 1*** the Hon'ble Supreme Court directed the Indian Army to pay Special Family Pension to the widow of a deceased, whose death was occurred under mysterious circumstances while in service and also found her entitled to a compensation of Rs.6,00,000/-, apart from other allowances.

13. While concluding his submission, he also drew the attention of this Court to an order passed by the Armed



Forces Tribunal, Regional bench, Chennai (O.A. No. 47 of 2013) that in exactly identical facts where the husband of the applicant was missing presumed to be dead, the Tribunal has held that applicant is entitled for Special Family Pension from the date of missing of her husband on presumption of his death.

14. Refuting the contention, as noted hereinabove, Dr. K. N. Singh, learned senior counsel representing the Union of India, primarily submitted that consequent to establishment of Armed Forces Tribunal, in terms of Armed Forces Tribunal Act, 2007 for redressing the grievance relating to service matter of all the three Armed forces, the present matter is required to be transferred to the concerned Armed Forces Tribunal to redress the grievance in terms of Section 34 of the Armed Forces Tribunal Act, 2007. Learned senior counsel further argued that apart from the efficacious remedy, the writ petition is further barred by the principles of Res judicata/Constructive Res-judicata inasmuch as earlier, the petitioner had approached this Court for grant of Family Pension, which has already been accorded to her and thus the plea of Special Family Pension/Ex-gratia, as was available to the petitioner in the previous litigation, now cannot be raised in the present writ petition, which is admittedly between the same party and once the matter



has already been adjudicated, the same cannot be raised subsequently.

15. Further in response to the submissions based upon finding of the Court of Inquiry indicating about some foul play against her husband is concerned, he submitted that the recommendation of the opinion of the Court of Inquiry was placed before the 57 Mechanized Brigadier where the same has been denied and lastly the matter was placed before the Major General, GOC, who vide his letter dated 15.02.1992 categorically stated that there is no evidence to show that Bhubaneshwar Singh had been missing due to any foul play by any one, but his missing/presumption of death could not be ruled out and directed this case be further investigated by appropriate civil investigating agencies with a view to establish the final status of the individual.

16. Adverting to the aforesaid facts, learned senior counsel reiterated his submission that no foul play was found in the missing of the petitioner's husband.

17. Mr. Singh, learned senior counsel then took this Court to para 213 of the Pension Regulations for the Army, 1961 (Part-I) and submitted that it deals with Special Family Pension and in no uncertain terms stipulates that 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 military service. Referring to the aforesaid requirement for Special Family pension, he submits that the husband of the petitioner was missing presumed dead and is not fulfilling the above conditions for grant of Special Family Pension, hence the petitioner is not entitled for the same.

18. He next submitted that the petitioner is also not entitled for grant of Ex-gratia lump sum compensation, as the same is only applicable to the family of the Armed Forces Personnel, who died due to accident in course of performance of duties attributable to acts or violence by terrorists, anti-social element etc. death occurring during enemy action in international war or border skirmishes; action against militants terrorists, extremists etc., death occurring while on duty in the specified high altitude inaccessible border posts etc. on account of natural disasters extreme weather conditions and death occurring during enemy action in war and during evacuation of Indian Nationals from a war prone zone in foreign country. For the aforesaid contention, he referred Ministry of Defence letter



no. 20(1)/98/D (Pay/Service) dated 22.09.1998, as amended vide letter no. 20(5)/2009/D (Pay/Service) dated 04.06.2010 and letter no. 20(2)/2016/D (Pay/Service) dated 02.11.2016.

19. Referring to the facts of the present case, learned senior counsel next submitted that the reliance of the petitioner in the case of **Smt. Charanjit Kaur** (Supra) is not applicable, as in the said case the husband of Charanjeet Kaur (Smt) was found burnt in the field area and since the death of her husband took place in a mysterious circumstances, the Hon'ble Supreme Court had passed the judgment stating that the responsibility of his death is prima facie traceable to the act of criminal omissions and commissions on the part of the authorities concerned. However, in the instant case, there is no such mysterious action or no act of criminal omissions and commissions on the part of the respondent authorities, since the husband of the petitioner was serving in a peaceful area and was absent from the place of his duty, his case cannot be said to be identical to the case of **Smt. Charanjit Kaur** (Supra). All the more, the husband of the petitioner was declared missing presumed dead, his death cannot be compared to be identical to the said case, hence she was rightly granted ordinary family pension, which has already been paid to her in compliance of



the order of the Hon'ble Court, as referred hereinabove.

20. Learned Senior Counsel further buttressed his submission based upon the decision in the case of **Renu Devi Vs. Union of India & Ors., (2020) 14 SCC 600**, to counter the contention of the petitioner.

21. This Court has carefully heard the rival contention of the learned senior counsel appearing on behalf of the parties and also anxiously perused the materials available on record.

22. So far the issue of alternative, efficacious remedy is concerned, time without number the Apex Court as well as this Court has held that alternative remedy cannot be operated as an absolute bar to entertain a writ petition so as to amount to denudation the power of the High Court under Article 226/227 of the Constitution of India, which power can always be exercised in the facts and circumstances of the case, notwithstanding that some alternative remedy is available to the person aggrieved, which he/she has not exhausted.

23. It is also trite that once the pleading are complete in respect of the merit of the case and the issue of maintainability has not been decided at the preliminary stage, it would be proper to adjudicate the matter, in stead of relegating it



to an alternative remedy, if the facts warrants. Such issue has been discussed by the Apex Court in the case of ***Smt. Kanak & Anr. Vs. U.P. Avas Evam Vikas Parishad & Ors., (2003) 7 SCC 693.***

24. Now coming to the issue of the writ petition being barred by Res-judicata/Constructive Res-judicata, it is well settled that for invoking the plea of Res-judicata on the general principles of law all that is necessary is to establish that the same matter between the same party had been previously decided by the court of competent jurisdiction, whereas the Constructive Res-judicata applies that the matter might and ought to have been raised in a suit, but has not been raised cannot be taken up in a subsequent suit, if it fulfills conditions prescribed under Section 11 of the Act.

25. Admittedly, in the earlier round of litigation, the petitioner had filed the writ petition seeking intervention of the Hon'ble Court under Article 226 of the Constitution of India for grant of admissible family pension, which was being not accorded to the petitioner on the plea of technicalities of non-institution of the F.I.R. and thus the learned Court having found a glaring case of laches on the part of authorities has been pleased to direct for payment of retiral benefits including the



pension/family pension in accordance with law. However, the claim of the petitioner for Special pension/Ex-gratia lump sum amount has not been considered, which in the opinion of this Court gives a separate cause of action, all the more, when the claim of the petitioner for grant of Special Family Pension/Ex-gratia lump sum amount has been rejected during the pendency of the present petition vide order dated 15.10.2019 and the same has put to challenge by filing an interlocutory application, bearing I.A. No. 1 of 2022. Thus, in such circumstances, this Court does not find that the present writ petition is anyway barred by principles of Res-judicata/ Constructive Res-judicata.

26. Now coming to the issue of entitlement of the Special Family pension, the families of the defence personnel are concerned, it would be apposite to quote the extract of para 213 of the Pension Regulations for the Army, 1961 (Part-I), which reads as follows:

“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 military service.”

27. It would be also desirable to extract the provisions of AO No.1/2003/MP and GoI, MoD letter No. 12(16)/86/D (Pen/Sers) dated 03.06.1998. While the AO gives the detailed procedures to be adopted in the case of missing personnel by the Units, the letter dated 03.06.1998 deals specifically with the release of DCRG, leave encashment and Family Pension in respect of Armed Forces Personnel who are missing and reads as under:-

*“No. 12 (16)/86/D (Pen/Sers
Government of India/Bharat Sarkar
Ministry of Defence/Raksha Mantralaya
New Delhi, Dated 3rd June, 1998*

To

*The Chief of the Army Staff
The Chief of the Naval Staff
The Chief of the Air Staff*

*Subject RELEASE OF DCRG, LEAVE ENCASHMENT
AND FAMILY PENSION IN RESPECT OF
ARMED FORCES PERSONNEL WHO ARE
MISSING*

Sir,

A number of cases have been referred to this Ministry for grant of terminal and other pensionary benefits to the families of service personnel who have suddenly disappeared while operational and non-operational service and whose whereabouts are not known. At present all such cases are considered on



merits. In the normal course unless a period of 7 years has elapsed from the date of disappearance of the employee, he cannot be deemed to be dead and therefore the retirement benefits cannot be paid to the family. This principle is based on Section 108 of the Indian Evidence Act which provides that when the question is whether the man is alive or dead and it is proved that he had not been heard of for 7 years by those who would naturally have heard of him had he been alive, the burden of proving that he is alive is shifted to the person who affirms it. This has resulted in great hardship and distress to the families who have to wait for 7 years before any terminal benefits could be paid to them.

2. The President is therefore pleased to decide that when a member of the Indian Armed Forces is declared missing while in service the family will be paid the following benefits subject to adjustment of outstanding dues in respect of the missing personnel, if any:-

(a) Immediately after the date of declaration of disappearance

The amount of salary due, leave encashment due and DSOP/AFPP Fund amount subject to nomination made by the missing personnel.

(b) After the lapse of one year from the date of declaration of disappearance/presumption of death

Family pension/DCRG etc. as admissible in normal conditions.

3. The above benefits may be sanctioned after observing following formalities:-



(i) The family must lodge a report with the concerned police station and obtain a report that the employee has not been traced after all efforts had been made by the police.

(ii) The claimant will be required to furnish an indemnity bond with two solvent sureties to the effect that all payments thus made will be recovered from the amount due to the person if he/she reappears and makes any claims.

4. The family can apply to the concerned authority for grant of family pension and DCR Gratuity after one year from the date of declaration of disappearance of the service personnel in accordance with the procedure for sanction of family pension and DCR Gratuity. In case the disbursement of DCR Gratuity is not effected within 3 months of the date of application, the interest shall be paid at the rates applicable and responsibility for the delay fixed.

5. In the case of officers, the respective Branch/Dte at Service HQrs and in the case of JCOs/OR and equivalent in Navy and Air Force, their respective Records Offices will process such cases with CDA (P)/PAO/CDA(P)/CDA (Navy)/CDA (Air Force).

6. The provisions of this letter take effect from 29th August, 1986.

7. This issues with the concurrence of the Finance Division of this Ministry vide their U.O No. 802-Pen of 1988.

Yours faithfully,

Sd/- xx xx



(Y. K. TALWAR)
DESK OFFICER”

28. This Court first take up the matters for Special Family Pension, which could not be granted unless the facts demonstrate that the Armed personnel died on account of wound, injury or disease which was attributable to military service or the aggravation by military service of a wound, injury or disease, which existed before or arose during military service.

29. Coming to the facts of the present case based upon the Court of Inquiry, it appears that Cfn/Rec Mech. Bhubaneshwar Singh of LRW HQ 57 Mech was asked to keep guarding outside the resident of Major Anand at night as a security measures, during the period of the leave of Major. The petitioner's husband was selected for this task, as he was earlier worked as a Sahayak to Major Anand. It has come during the course of enquiry that the Sepoy Bhubaneshwar Singh was a simple, quiet, willing worker and popular in his sub-unit and he never complained of any problem. On 05.07.1989, at about 6.00 hours it was discovered that Sepoy Bhubaneshwar Singh was absent from place of his duty. Accordingly, apprehension roll was issued and his NOK (Next of Kin) was intimated on 22.07.1989 by HQ 57 Mech Bde. All the belongings of Sepoy Bhubaneshwar Singh was found intact and he did not take



anything with him as his locker and private property was duly locked in his private box. He did not leave behind him any note or letter stating the reasons for leaving the place. No loss of any property of Major Anand was found.

30. In the aforesaid premise, a Staff Court of Inquiry was conducted and certain anomalies were found in the statement of the personnel, who were acquainted with him and present there. Verification has also been done from the civil police, but his trace could not be found out and thus the allegation of the petitioner about some foul play against her husband find supported and, therefore, it was recommended that the case should be handed over to a competent investigating agency for investigation. The matter was placed before the higher authority and the plea of deserter has been disapproved and hence recommendation has been made by the Brigadier that the Sepoy Bhubaneshwar Singh be declared missing, presumed dead vide order dated 28.12.1991. Subsequent thereto, the matter was placed for the opinion of Major General (GOC), who also endorsed the recommendation by opining that his missing/ presumption of death cannot be ruled out. However, he further opined that there is no evidence to show that Sepoy had been missing from any foul play by anyone. But evidently, in the



opinion of the Court the said finding was not based upon any cogent and convincing materials.

31. In the aforesaid discussions and the opinion of the Brigadier as well as Major General (GOC) it has been made clear that the Sepoy Bhubaneshwar Singh has been declared missing presumed dead. However, that order has not been put to challenge by the petitioner, except the contention that the respondent authorities in a hot haste manner by giving a go-bye to Section 108 of the Indian Evidence Act, 1872 has declared petitioner's husband missing presumed dead within four years from the date of his missing. The contention of the petitioner finds no force for the simple reason that Government of India in the Ministry of Defence has issued letter dated 23.03.1992 (Annexure- R/10 to the counter affidavit) addressed to all the Chief(s) of Army Staff, Naval Staff and Air Staff in respect of DCRG, leave encashment and family pension to the armed forces personnel, who are missing, with a prescription that in the normal course unless a period of seven years has elapsed on the date of disappearance of the personnel, he cannot be declared to be dead and thus resulted in great hardship and distress to the families, who have to wait for seven years before any terminal benefit could be paid to them.



32. Considering such hardship and distress His Excellency, the President of India is pleased to resolve that when a member of the Indian Armed Forces is declared missing while in service, the family will be paid immediately after the date of declaration of disappearance. Clause 4 of the said letter speaks that the family can apply to the concerned authority for grant of family pension and DCR Gratuity after one year from the date of declaration of disappearance of the service personnel in accordance with the procedure for sanction of family pension and DCR Gratuity. Clause 6 of the said letter made the provisions of this letter effective with effect from 29.08.1986.

33. In the light of the clear stipulation contained in the letter, this Court does not find any error in the action of the respondent authorities in declaring the husband of the petitioner missing declared dead within four years of his disappearance.

34. Now coming to the submission of the petitioner that para. 213 of the Pension Regulations for the Army, 1961 (Part-I) that it cannot be interpreted to the disadvantage of the petitioner because despite of specific order to get the matter adequately investigated by an investigating agency, the same has not been done and in such a situation, missing of an Army personnel cannot be said to be inferior to that of a person, who



has suffered an injury or wound attributable to military force.

35. This Court after carefully going through the relevant regulations as well as letters, which deal with large number of contingencies and circumstances under which different acts of pension is payable has come to the position that there is a specific policy decision issued by the Government of India with respect to missing persons, specially contained in letter dated 3.6.1988. Para. 2 (b) of the said letter clearly states that after the lapse of one year from the date of declaration of disappearance/presumption of death, family pension will be paid as admissible in normal conditions. True it is that despite the declaration of disappearance presumed dead even if it is deemed to be attributable to military service, this does not automatically entitle the petitioner to Special Family Pension under Para. 213 of the Pension Regulations for the Army, 1961. Specific policy for such category of personnel exist separately where a specific policy has been formulated by the Government to deal with a case in relation to presumed to be dead or missing person obviously this would take the precedence for the pension rule framed to cover a large number of contingencies.

36. The case of the petitioner declaring her husband missing presumed dead is some what different and distinct



category from those whose death is factually confirmed, immaterial as to whatever the case of death may be. In order to avoid the financial hardship to the next of kin, the Government has issued a specific policy laying down the procedure and time frame to declare missing persons as “missing presumed dead” and the payment of terminal benefits to the next of kin of such personnel.

37. It is trite that specific policy and instructions taking precedence over the general pension regulations/general instruction covering a large number of contingencies, thus this Court finds that the claim of the petitioner for special family pension is not tenable.

38. Now coming to the question of entitlement of ex-gratia on account of death of the petitioner’s husband attributable to military service, it would be worth noting the relevant provisions dealing with the circumstances attracting payment of Ex-gratia lump sum compensation:

“Annexure-R-12 (Colly)

*No. 20 (1)/98/D (Pay/Services),
Bharat Sarkar/Government of India,
Raksha Mantralaya/Ministry of Defence,
New Delhi-110011,
22nd September 1998*

To

The Chief of the Army Staff, New Delhi



The Chief of the Naval Staff, New Delhi
The Chief of the Air Staff, New Delhi

Sub: Special Benefits in cases of Death and Disability in Service - Payment of Ex Gratia lump sum compensation to families of the Defence Service Personnel who die in harness - Recommendations of the Fifth Central Pay Commission.

Sir.

I am directed to refer to Government of India, Ministry of Personnel, Public Grievances & Pension, Department of Pension & Pensioners’ Welfare O.M.No.45/55/97-P&PW (C) dated 11-9-98 and state that the President is pleased to decide that the families of Defence Service Personnel who die in harness in the performance of their bonafide official duties shall be paid the following ex gratia lump sum compensation: -

(a)	<i>Death occurring due to accidents in the course of performance of duties</i>	<i>Rs.5.00 Lakhs</i>
(b)	<i>Death occurring in the course of performance of duties attributable to acts of violence by terrorists, anti-social elements, etc.</i>	<i>Rs.7.5 lakhs*</i>
(c)	<i>Death occurring during (i) enemy action in international war or border skirmishers; and (ii) action against militants, terrorists, extremists, etc.</i>	<i>Rs.10.00 lakhs*</i>

**Amended vide GOI MOD letter No. 20 (1)/98/D (Pay/Services) dated 03-08-1999.*



2. *The graded structure of ex gratia lump sum compensation takes into account the hardships and risks involved in certain assignments, the intensity and magnitude of the tragedy and deprivation that families of government servants experience on the demise of the breadwinner in different circumstances, the expectations of the employer from the employees to function in extreme circumstances, etc. The compensation is intended to provide an additional insurance and security to employees who are required to function under trying circumstances and are exposed to different kinds of risks in the performance of their duties.*

3. *Powers were delegated in the Ministry of Finance O.M.No.19 (18)-EV (A)/66 dated February 26, 1966 to the appointing authorities to sanction awards under the relevant Extraordinary Pension Rules in those cases in which the proposed pension or gratuity is held to be clearly admissible under the rules. However, any awards proposed to be granted on ex-gratia basis were to continue to be referred to the Ministry of Finance as usual. In partial modification of these orders, in so far as they relate to ex gratia awards, the admissibility of and entitlement to the ex gratia lump sum compensation in the circumstances specified in these orders may be decided in each individual case by the *PCDA (P) Allahabad. (*Amended vide GOI MOD letter No. 20 (1)/98/D (Pay/Services) dated 12-04-1999).*

4. *The conditions and guidelines to be observed governing the payment of ex gratia lump sum compensation in terms of these orders are indicated in*



the annexure.

5. The orders shall apply to all cases of death in harness occurring in or after August 1, 1997. In so far as cases of death, which occurred prior to August 1, 1997, are concerned, these shall be regulated and finalized in terms of the orders and instructions in force prior to the issue of these orders.

6. These orders supersede earlier orders issued on the subject vide Ministry of Defence letter No B/39902/XXII/AG/PS-4 (d)/2069/D (Pay/services) dated October 8, 1996 and amendment issued vide letter of even number dated June 4, 1997.

7. These orders are issued with the concurrence of Defence (Finance) vide their U.O.No.1869/Addl.FA (D)/98 dated 11-9-1998.

Yours faithfully,

Sd/-XXXXX

(B.BRAHMA)

Director (AG) ”

39. Admittedly the husband of the petitioner found missing while he was on duty when his husband was selected to guard outside the residence of Major Anand, as a security measure during the period of his leave. The Court of Enquiry suggested his disappearance in a mysterious circumstances warranting an investigation by a specialized investigating agency, but unfortunately despite recommendation, the same has never been done. Such mis-happenings always in the opinion of this Court be presumed to be an accident in course of duty,



unless the contrary is proved or even if subsequently the missing person be declared as missing presumed dead. Any instance of missing/disappearance from the duty of an Army personnel, if done in mysterious circumstances and after a proper Court of Enquiry desertion is not proved, in that circumstances, such instances may be said to be an accident in course of duties.

40. The fact of the case in hand does not leave any place of ambiguity or suspicion that late husband of the petitioner found missing from the place of duty and the statement of the witnesses and the circumstances emerge in course of Court of Enquiry, there is no doubt that the very disappearance of the petitioner's husband was under a mysterious circumstances. Irrespective of the fact that the case of the petitioner is governed by the policy formulated by the Government of India for general family pension, in the opinion of this Court the facts in totality warrants a positive consideration of the petitioner's case for ex-gratia in terms of the regulations/laws, which was applicable on the date on which he was declared missing presumed dead.

41. In view thereof, the present writ petition, so far the claim of the petitioner for Special Family Pension is concerned, the same stands negatived. However, so far the claim



of the petitioner for ex-gratia is concerned, the same is directed to be considered by the respondent authorities, who is/are competent in this behalf, preferably within a period of three months from the date of receipt/production of a copy of this order.

42. Accordingly, the present writ petition is hereby partly allowed. There shall be no order as to cost.

(Harish Kumar, J)

uday/-

AFR/NAFR	AFR
CAV DATE	01.02.2024
Uploading Date	04.04.2024
Transmission Date	NA

