

Court No.1 (List B)
Reserved

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

Original Application No. 54 OF 2016

Wednesday, this the 4th day of October 2017

Hon'ble Mr. Justice D.P. Singh, Member (J)
Hon'ble Air Marshal Anil Chopra, Member (A)

1. Smt. Maya Verma, mother of late Signalman Sumit Kumar Verma No. 15701405W, Wife of Ajay Singh Verma, resident of Chand Sarai, Post-Gosainganj, District-Lucknow-226001 (U.P.).
2. Ajay Singh Verma son of late Tulsi Ram father of late Signalman Sumit Kumar Verma No. 15701405W, resident of Chand Sarai, Post-Gosainganj, District-Lucknow-226001 (U.P.).
.....Applicant

Ld. Counsel for the : **Wg Cdr (Retd) A.K. Singh, Advocate**
Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff Integrated Head Quarter Ministry of Defence (Army) New Delhi.
3. The Officer I/C Records, The Records Signals PIN-908770, C/O 56 APO.
4. C.O., 4 Field Sub Group, PIN-918004, C/O 99 APO.
5. Managing Director, Army Group Insurance, Vasant Vihar, Post Box No 14, New Delhi-110057.
6. PCDA (P) Draupadi Ghat, Allahabad-211014.Respondents

Ld. Counsel for the Respondents : **Shri D.K. Pandey, Advocate**

OIC Legal Cell : **Maj Salen Xaxa.**

“Per Air Marshal Anil Chopra, Member (A)”

1. The present O.A. has been filed to this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 by mother and father of the deceased Army personal for grant of ordinary family pension, Army Group Insurance Fund and other consequential benefits on mysterious death of Sumit Kumar Verma who was serving with 4 Field Sub Group in Assam. The applicant has sought the following reliefs:-

- (a) *“Issue/pass an order or direction of the appropriate nature to the respondents, to grant ordinary family pension and other consequential benefits to the applicant No. 1.*
- (b) *Issue/pass an order or direction of the appropriate nature to the respondents, to grant enhanced rate of family pension for the period of 10 years w.e.f. 08.12.2012.*
- (c) *Issue/pass an order or direction of the appropriate nature to the respondents, to release the Army Group Insurance Benefits, (Rs. 20 Lacs) to the applicant No 1.*
- (d) *Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*
- (e) *....”*

2. The undisputed facts of the case are that No 15701405W Sumit Kumar Verma was enrolled in the Army on 05.12.2005. While working with 4 Field Sub Group on 05.11.2012, the deceased Army person proceeded on out pass in unit administration vehicle for the purpose to visit State Bank of India, Mission Charali, Tezpur (Assam) to withdraw money from ATM. He was supposed to be picked up by the same administration vehicle, however he did not show during the return trip of administration vehicle and failed to report back to unit by 1400 hours. A letter was written by the unit (4 Field Sub Group) to the Station Incharge Police Station Salonibari, District-Sonitpur

(Assam) on 09.11.2012 informing the factum of missing of the deceased Sumit Kumar Verma. The next of kin (mother) was informed vide letter dated 09.11.2012.

3. A mutilated unidentified male body was found within the circle of Pokhran police station, District-Jaisalmer (Rajasthan) by a shop keeper of Sabji Mandi Pokhran on 08.12.2012 at 0930 hours. The residence of the deceased was traced through the IMEI number of the mobile phone found near the body. Post mortem was carried at Jaisalmer (Rajasthan). The Medical Officer conducting the post mortem could not ascertain the cause of death as such the viscera was preserved and forwarded to Medical College and Forensic Science Laboratory (FSL) for chemical analysis and cause of death.

4. A police team of Rajasthan police visited resident of Mr Ajit Verma for investigation of an unidentified male body in Pokhran. He proceeded to Pokhran and identified belongings of the dead person to be that of his brother Sumit Kumar Verma. Annexure A-11, annexed along with the O.A. is copy of the First Information Report indicating that Sumit Kumar Verma son of Ajay Kumar Verma died on account of consuming some pesticide.

5. Apprehension roll was issued by the parent unit of the deceased dated 09.11.2012 to the Superintendent of Police and District Collector, Lucknow. After completion of 30 days of absence a court of inquiry was convened by the 4 Field Sub Group in terms of Para 19 of AO 43/2001/DV and it was found that the deceased was absenting from 05.11.2012 and as such

was declared deserter under the provisions of Section 106 of the Army Act, 1950 and part II order was published on 08.01.2013. In the counter affidavit the respondents have averred that during liaison with State Bank of India, Mission Charali, Tezpur (Assam) it was revealed that the deceased had withdrawn money through various ATMs at Tezpur, Guwahati, Kanpur, Haridwar, Lidaipur and Ahmedabad.

6. Mother of the deceased (Applicant Smt. Maya Verma) applied for ordinary family pension, death benefits and for providing benefit under the Army Group Insurance Fund Scheme to the respondents. Since the applicants did not receive any communication from the respondents with regard to payment of ordinary family pension, death benefits and amount of Army Group Insurance Fund Scheme, the applicants have approached to this Tribunal.

7. Ld. Counsel for the applicant submitted that deceased Sumit Kumar Verma had left his unit on out pass in the Unit Administration Vehicle on 05.11.2012 to withdraw money from State Bank of India, Mission Charali, Tezpur (Assam) and from there he went missing and thereafter his whereabouts could not be known until the male dead body was found within the circle of police station Pokhran, District-Jaisalmer (Rajasthan). He submitted that the deceased Sumit Kumar Verma did not contact his family members. He submitted that the identity of deceased Sumit Kumar Verma was established by IMEI number of the mobile phone found lying near the dead body. The brother of the

deceased Sumit Kumar Verma identified the body to be that of the deceased on the basis of personal belongings found on the body. He submitted that the death had occurred under mysterious circumstances and it is not established that the deceased committed suicide; rather the circumstances point out it to be the case of murder. He further submitted that abduction and subsequent murder of the deceased cannot be ruled out. It is contended that even if, for argument sake, it be held that the deceased Sumit Kumar Verma had committed suicide, Regulation 76 of the Pension Regulations for the Army, 2008 (Part-1) lays down that family of service personnel/pensioner who commits suicide, shall be eligible for pensionary benefits.

8. Ld. Counsel for the applicants also submitted that Regulation 70 of the Pension Regulations for the Army, 2008 provides that parents who are wholly dependent on the service personnel when he was alive may be granted ordinary family pension for life at normal rate with the rider that the earning of the parents should not exceed Rs 2,550/- per month. He submitted that the total income of the applicants i.e. mother and father of the deceased Army personal is less than Rs 2,550/- per month. Applicant No 1 (mother) is a house wife and has no source of income while applicant No 2 (father) is a farmer with a small land holding. Applicants have placed on record vide Annexure A-15 and A-16, a declaration that the applicants were fully dependent on their late son as provided by Regulation 115 (b) of the Pension Regulations (supra). The President of India vide MoD letter dated

21.01.2004 has dispensed with the requirement of an affidavit vide Annexure A-17 and has also dispensed with 'means limit' vide MoD letter dated 21.10.2002 vide Annexure A-10.

9. We have heard learned counsel for the parties and perused the record.

10. Before proceeding further, we feel it necessary to reproduce relevant provisions of the Pension Regulations for the Armed Forces, 2008 as well as Army Order 23/2002/AGI relating to Army Group Insurance Scheme. Regulation 376 of the Regulation for the Army. For convenience sake Regulation 376 (supra) is reproduced as under:-

*“376. **Deserters From The Regular Army.-** A person subject to AA who is declared absent under AA, Section 106 does not thereby ceased to belong to the corps in which he is enrolled though no longer shown on its returns, and can, if subsequently arrested, be tried by court martial for desertion.”*

11. Regulation 63 of Pension Regulations for the Armed Forces, 2008 (Part I) provides as under:-

“63. Where Service personnel dies in the circumstances mentioned in the Category A of the Regulation 82 of these Regulations:

- (i) Either while in service, provided he had been found fit after successful completion of the requisite training and medical examination for commission, or at the time of enrolment in the case of Personnel Below Officer Rank; or*
- (ii) After release/ retirement/ discharge/ invalidment with a pension of any kind under these Regulations,*

The family of the deceased shall be entitled to ordinary family pension under these regulations.”

12. Regulation 70 of the Regulations provides for grant of ordinary family pension for life at normal rate as admissible under

Regulation 64 (a) in the event the deceased had left behind neither a widow nor child. Regulation 70 (supra) is reproduced as under:

“70. Parents who are wholly dependent on the service personnel when he was alive, provided the deceased had left behind neither a widow nor child may be granted ordinary family pension for life at normal rate as admissible under Regulation 64 (a) of these Regulations subject to the condition that their earning is not more than Rs. 2550/- per month from all sources including pay, pension or self employment.

Note-1 *Mother will receive ordinary family pension first and after death, father will be re-granted family pension. A mother who becomes widow has not re-married remains eligible.*

Income criteria shall be taken into account for both parents when both are alive.”

13. Regulation 76 of Pension Regulations provides as under:

“Family of service personnel/pensioner, who commit suicide, shall be entitled for pensionary benefits as detailed in these Regulations.”

14. Para-10 of the Army Order 23/2002 AGI-Army Group Insurance Scheme provides for nomination in favour of mother and father. Para-41 of said Scheme provides for circumstances when no nomination is made. Para-10, for convenience sake is reproduced as under:-

“Payment of Insurance Claim Where no Nomination is made or it does not Subsist:

If there is no such nomination or the nomination made does not subsist, the amount shall be paid to the beneficiaries in the manner indicated below after approval of AGIF Claims Committee Meeting:-

(a) If there are one or more surviving members of the family viz wife(s)/husband, sons, daughters (including step and legally adopted children), it shall be paid to the widow (s). In case the wife had

predeceased the amount shall be paid to all remaining above mentioned surviving members in equal share.

(b) If there are no such surviving members of a family as at Para 41 (a) above, but there are one or more members viz., mother, father, brothers and sisters, the amount shall be paid to them in the following priority:-

I -Mother

II -Father

*III -Brothers below the age of 18 years
Widowed and unmarried sisters in
Equal share.*

*IV -Brothers and sisters other than
those in Para 41 (b) priority III
above in equal share.*

(c) If there is no surviving family member as indicated in Para 41 (a) and (b) above the amount shall be paid to the person or persons who-so-ever produces a succession certificate from a competent court of law.”

15. So far as the identity of the dead body recovered within the circle of police station Pokhran (supra) is concerned, respondents have placed on record along with counter affidavit (p. 62), letter of District Superintendent of Police, Jaisalmer (Rajasthan) dated 04.03.2014 addressed to Col Administrative Commandant, for Station Commander, Station HQ, Pokhran C/O 56 APO. By means of said letter the District Superintendent of Police had informed that on the basis of mobile number and SIM the identity of the deceased was established to be of Sumit Verma S/O Ajay Singh resident of Chand Sarai, Police Station Gosaiganj, District-Lucknow (UP). Brother of the deceased had identified the dead body on the basis of photographs. The statements of colleagues of the deceased i.e. Rohimuddin and Shreedhar Pandey were

recorded. Thus there is no room of doubt that the dead body recovered within the circle of police station Pokhran (supra) was of Army personal Sumit Kumar Verma posted at 4 Field Sub Group, Tezpur (Assam). Ld. Counsel for the respondents have also not disputed about the factum of death of Sumit Kumar Verma.

16. In this back-drop, the moot question which firstly deserves adjudication at this stage is whether the deceased was a deserter at the time of his death or not?

17. The record reveals that the deceased Sumit Kumar Verma on 05.11.2012 had proceeded on out pass in Army vehicle to collect money from the bank. He was supposed to return back on the same vehicle but did not show and thereafter he went missing from Tezpur (Assam) where he was posted on active duty and his whereabouts could not be ascertained. It transpired from the record that Sumit Kumar Verma had not gone to his house. An unidentified male body was found within the circle of police station Pokhran, District-Jaisalmer (Rajasthan). From IMEI of the mobile phone the address was ascertained and the relatives of the deceased were contacted who identified the dead body to be of Sumit Kumar Verma from the belongings found on the body. Meanwhile on 05.12.2012 a Court of Inquiry was convened and the deceased Army personal was declared deserter in view of Section 106 of the Army Act, 1950. For convenience sake Section 106 (supra) is reproduced as under:-

“106. Inquiry into absence without leave.—
(1) When any person subject to this Act has been

absent from his duty without due authority for a period of thirty days, a court of inquiry shall, as soon as practicable, be assembled, and such court shall, on oath or affirmation administered in the prescribed manner inquire respecting the absence of the person, and the deficiency, if any, in the property of the Government entrusted to his care, or in any arms, ammunition, equipment, instruments, clothing or necessaries; and if satisfied of the fact of such absence without due authority or other sufficient cause, the court shall declare such absence and the period thereof, and the said deficiency, if any, and the commanding officer of the corps or department to which the person belongs shall enter in the court-martial book of the corps or department a record of the declaration.

(2) If the person declared absent does not afterwards surrender or is not apprehended, he shall, for the purposes of this Act, be deemed to be a deserter.

NOTES

1. *For procedure of courts of inquiry held under this section, see AR.183.*

2. *In the event of a person subject to AA being absent without leave for a period of 30 clear days, a court of inquiry must be assembled at once, unless before such court of inquiry has been assembled it has come to the knowledge of the person's CO that he has been apprehended or has surrendered or that he was involuntarily absent (e.g., in prison). In that case no court of inquiry will be held and the fact of his absence and of the deficiency (if any) of his clothing, etc., must be proved by oral evidence at any subsequent court-martial. As to dispensing with the court of inquiry in the case of a reservist who has failed to attend for training, etc., see Rule 9 of the Indian Reserve Forces Rules, 1925 (Part III).*

3. **In calculating the period of 30 days, the day on which the person became absent and the day on which the court of inquiry assembles must both be excluded.** *If the court of inquiry assembles a day too soon, the record of its declaration is not admissible in evidence, as an entry has not made in the regimental books in accordance with AAs.142(3). The person, however, should be declared illegally absent and charged with absence as from the day on which absence commences.*

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9. As soon as the declaration of illegal absence has been made and recorded the person is struck off the strength of the unit as a deserter, but he does not thereby cease to belong to the corps in which he is enrolled; see Regs Army para.376.”

(Emphasis supplied)

18. Section 106 of the Army Act specifically provides that when any person subject to the Act has absented himself from duty without authority for a period of thirty days, a Court of Inquiry shall, as soon as practicable, be assembled and such court shall, on oath or affirmation administered in the prescribed manner, inquire respecting the absence of the person. Section 106 (2) of the Act provides that a person may be deemed to have deserted the army if he afterwards does not surrender or is not apprehended. In the instant case, as observed above, the deceased had gone to the Bank on 05.11.2012. The court of inquiry was held on 05.12.2012. On 05.11.2012 the applicant was on duty and his absence without leave in any case would commence from 06.11.2012. The period of absence from 06.11.2012, the alleged date of absence from duty and 05.12.2012, the date the court of inquiry was convened and the deceased was declared deserter, comes to 29 days. Note-3 (supra) appended to Section 106 precisely provides that in calculating the period of 30 days, the day on which the person became absent and the day on which the court of inquiry assembles both are to be excluded. If the court of inquiry assembles a day too soon, the record of its declaration shall not be made admissible in evidence, as an entry has not made in the

regimental books in accordance with Section 142 (3) of the Act. The person, however, should be declared illegally absent and charged with absence as from the day on which absence commences. Thus, there has been an infraction of Section 106 of the Army Act, 1950 and the order declaring the deceased Army personal deserter cannot be upheld.

19. The next question which crops up for consideration is whether matters relating to Army Group Insurance Fund are amenable to the Armed Forces Tribunals in view of Section 2 of the Armed Forces Tribunal Act, 2007.

20. Ld. Counsel for respondent No 5 has filed affidavit contesting the claim of the applicants. It is averred in the counter affidavit, filed by respondent No 5 that the Larger Bench of Chandigarh Bench of the Armed Forces Tribunal has decided the jurisdiction for payment of Army Group Insurance Fund benefits to Army Group Insurance member vide order dated 19.02.2014 holding that matters relating to Army Group Insurance Fund be adjudicated upon by the Armed Forces Tribunals against said order Writ Petition No 7576 of 2014 was filed before the High Court of Punjab and Haryana which was disposed of vide order dated 18.05.2015 as non maintainable relegating the petitioners to their respective alternative remedy as available in law. Leave to appeal have been granted by the Armed Forces Tribunal Chandigarh Bench and appeal No 35935 of 2015 is pending before the Hon'ble Apex Court. The appeal has been admitted and notice on the stay application has been issued by Hon'ble

Apex Court. It is averred that the dispute in question is purely a civil dispute and ought to be agitated and adjudicated in a Civil Court having jurisdiction. It is submitted that Rules and Regulations of the Army Group Insurance Fund provide death insurance benefits to the beneficiary/nominee of the deceased when death of the soldier occurs while in service and on active strength of the Army. It is further averred that the death of the deceased as per post mortem report occurred on 06/07 December 2012 when he was on a deserter roll and not a member of Army Group Insurance Scheme. It is argued that Section 2 of the Armed Forces Tribunal Act, 2007 applies to Army personnel who are in service and on active strength of the Army and since the deceased ceased to be a member of the Army Group Insurance Scheme from 05.11.2012 the beneficiary/nominee of the deceased is not entitled for benefits of Army Group Insurance Fund. Ld. Counsel for the respondents relied on decision of the Armed Forces Tribunal, Regional Bench Lucknow in O.A. No. 166 of 2011 ***Sachchida Nand Tiwari vs. Chief of the Army Staff and Others*** to bring home his arguments that matters relating to Army Group Insurance Scheme are beyond the purview of Armed Forces Tribunals.

21. Per contra, it is submitted by Ld. Counsel for the applicant that all persons subject to the Army Act, Air Force Act and Navy Act fall within the jurisdiction of Armed Forces Tribunal and the Armed Forces Tribunal is empowered to deal with the service

matters as defined in Section 2 of the Armed Forces Tribunal Act, which reads as under:-

“2.(1) Applicability of the Act.- (1) *The provisions of this Act shall apply to all persons subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950).*

(2) *This Act shall also apply to retired personnel subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950), including their dependents, heirs and successors, in so far as it relates to their service matters.”*

22. It is submitted that Army Rule 205 envisages deduction to be made from pay, non effective pay and all other emoluments payable to a person subject to the Act. Sub rule (b) of Rule 205 provides deduction to meet compulsory contributions to any provident fund or any other benevolent or other fund approved by the Central Government. Explanation (ii) provides that such deductions shall be in addition to those specified in the Act. For convenience sake Rule 205 of the Army Rules, 1954 is reproduced as under:-

“205. Authorized Deductions.—*The following deductions may be made from the pay, non-effective pay and all other emoluments payable to a person subject to the Act, namely : —*

- (a) *upon the general or special order of the Central Government, any sum required to meet any public claim there may be against him, any regimental debt that may be due from him or any regimental claim;*
- (b) *any sum required to meet compulsory contributions to any provident fund or any benevolent or other fund approved by the Central Government.*

Explanation,—(i) "Public Claim" means any public debt or disallowance including any over-issue; or a deficiency or irregular expenditure of public money or store of which, after due investigation, no explanation satisfactory to the Central Government

is given by the person who is responsible for the same.

(ii) The aforesaid deductions shall be in addition to those specified in the Act.”

26. Ld. Counsel for the applicants submitted that contribution to the AGIF is a compulsory and authorized deduction from emoluments of Army personal, thus it is service matter amenable to jurisdiction of the Armed Forces Tribunal. It is submitted the AGIF Scheme was authorized to be established vide Ministry of Defence, Government of India letter dated 01.01.1976 and the Scheme is being governed by Army Order 23 of 2002. It is submitted that the applicants are entitled to receive the amount of Army Group Insurance Scheme on death of their son since the said Army personal was unmarried at the time of his death.

27. The question whether claims and disputes related to Army Group Insurance fund benefits are subject to jurisdiction of Armed Forces Tribunal Act, 2007 and consequently could the Tribunals decide such matters came up for consideration before the Larger Bench of Armed Forces Tribunal, Regional Bench Chandigarh at Chandimandir in O.A. No. 09 of 2011 ***Meena Devi vs Union of India & Ors*** and several other O.As. The Larger Bench held thus:

“At the outset, we may note that the object of setting up the Armed Forces Tribunal under the Act of 2007, as stated in its preamble, is to provide a forum for settlement of disputes of all service matters of defence personnel covered by the respective Army, Navy and Air Force Acts. It would be against the spirit of the Act and setting up of the Tribunal if service personnel or their dependents were to litigate before the Armed Forces Tribunal for some service benefits and before a Civil Court for AGI benefits. We also find that it is obligatory that every Army personnel has to be a member of the AGIF for which compulsory contribution is recovered from his

emoluments. It is not an option for any individual to join or decline to join the Scheme. Then a perusal of Section 3(o) of the Armed Forces Tribunal Act, 2007, which defines „service matters“, reads as under:-

Section 3(o) : “service matters”, in relation to the persons subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950), mean all matters relating to the conditions of their service and shall include-

(i) Remuneration (including allowances), pension and other retirement benefits;

(ii) Tenure, including commission, appointment, enrolment, probation, confirmation, seniority, training, promotion, reversion, premature retirement, superannuation, termination of service and penal deductions;

(iii) Summary disposal and trials where the punishment of dismissal is awarded;

(iv) Any other matter, whatsoever,

But shall not include matters relating to

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In our view, this Section encompasses matters related to AGIF under, other retirement benefits” [(i) above] and under „any other matter, whatsoever“ [(iv) above].

We also find force in the argument of the petitioners that deduction of contribution for AGIF under Army Rule 205(b) have been taken as authorized deductions from service personnel for the purpose which consequently must be taken as a service matter and cannot be excluded.

A similar view was taken by the Hon^{ble} Kerala High Court in the case of **A. Shihabudeen vs MD Army Group Insurance Fund and others** (supra), which was decided subsequent to the reference for constituting a full bench.

In view of the above discussion we are of the view that matters related to AGIF in respect of its beneficiaries are within the jurisdiction of the Armed Forces Tribunal Act, 2007 and can be adjudicated by the Tribunal.

Having arrived at the above conclusion we make it clear that this shall not be a precedent or analogy with respect to any other welfare scheme, organization or association like AWWA, AWHO, Welfare Funds etc run by the three

Defence Services for the benefit of their personnel. We also make it clear that the membership, subscription and benefits of the AGIF shall be governed by the Rules, Policies and Bye Laws framed therein and shall not be linked with any similar policies or benefits like disability pension, ex gratia, broad banding etc as part of the other service benefits extended by the Government.

The reference is answered accordingly.”

(Emphasis Supplied)

28. The Division Bench Delhi High Court in Writ Petition (C) 3850 of 2010 has considered extensively the Memorandum of Association and Scope of the main objects of the Army Group Insurance Rules and in paras 15, 16 and 17 observed, to quote:-

“15. Examining the memorandum of association and rules of the society and highlighting the deep pervasive control of the Government over the society as also its funds and highlighting the public importance of the affairs of the society i.e. education, it was held that the society would be an authority' contemplated by Article 12 of the Constitution of India. Para 9 of the decision highlights the 6 parameters on which the issue has to be tested.

16. As noted by us hereinabove, AGIF was established with the approval of the Ministry of Defence, Government of India. The main object of AGIF is to cater to the socio-economic needs of the Army Personnel and their families by providing insurance cover. Every Army Personnel has to compulsorily become a member of the AGIF and subscription to the Fund is deducted from the pay and allowances of the Army Personnel. There is no discretion or a choice with the Army Personnel. AGIF is subject to governmental control in the matter of revision of rates of subscription to the Fund inasmuch as rates of subscription to the Fund cannot be revised without prior approval from the Government. (See: Chapter II of the Bye-Laws of AGIF).

17. It may be true that the share capital of the fund is not provided by the Government but it

needs to be highlighted that the State controls the fund through the Army Officers and prescribes through Army Orders the terms of the fund and the deduction is compulsory under Army Rule 205 (b). The fund is established by the Government pursuant to an executive policy decision of the Government. The Government has complete control to regulate and manage the fund. It is a compulsory fund to which every member of the Armed Force has to subscribe to. There is no doubt of the fund being an authority' within the meaning of the said expression under Article 12 of the Constitution of India and thus the fund would be a State' and hence amenable to the writ jurisdiction of a High Court.”

29. In O.A. No. 100 of 2012 **Ex Nk Nabaghana Behera vs Union of India**, the Regional Bench of the Armed Forces Tribunal Kolkata while considering similar matter has held as under:

“The averments of the counter affidavit filed on behalf of the respondent No 8 have strongly been disputed by the applicant in his rejoinder. It is contended inter-alia therein that the corpus of the fund flows right from Sepoy to the Chief of Army Staff by means of compulsory deductions from their respective salaries in terms of Rule 205 (b) of the Army Rules 1954 and the benefits are extended to the members under the provisions; schemes and modalities contained in AO 27/1981 and AO 23/2002/AGI. Furthermore, the Board of Governors, i.e. the Apex Body of the AGIF is chaired by the Chief of Army Staff while the members of the Board of Governors of the Army Governors (GOC-in-C) discharge their responsibilities in their respective geographical jurisdiction. No direction/order of the AGIF is enforceable without the approval of the Board of Governors. Therefore, the respondent No 8 is a State within the meaning of Article 1.2 of the Constitution of India. In such view of the matter, the instant O.A. is maintainable before the Tribunal.”

30. It would be seen that the Army Group Insurance for Army personnel was introduced under the Authority of Government of India, Ministry of Defence with the aim to cater for the socio economic needs of the Army personnel and their families further improvements have been made by enhancing insurance cover and benefits while in service and in retirement. It is compulsory,

contributory and self sustaining Group Insurance which is totally departmental and is run by Army Headquarters. Every Army personnel has no discretion or choice but to become a member of the Fund. Deduction towards the subscription is compulsory under Rule 205 (b) of the Army Rules. All matters relating to Army Group Insurance Fund of its beneficiaries are, thus, within the jurisdiction of the Armed Forces Tribunal Act, 2007 and can be adjudicated upon by the Tribunal.

31. The respondents could not dispute that the unidentified male body found within circle of Police Station Pokhran, District-Jaisalmer (Rajasthan) was that of Sumit Kumar Verma the Army personnel. In the final report submitted by the police of police station Pokharan, District-Jaisalmer (Rajasthan) (Annexure A-11) name of the deceased is mentioned as Sumit Verma son of Ajay Singh, resident of Chand Sarai, post Gosainganj, district Lucknow. The identity and address of the deceased Army personnel was verified by the police of police station Pokharan, District-Jaisalmer (Rajasthan) through the IMEI number of mobile phone found near the dead body. There is no room of doubt that the unidentified male body referred to above was that of Sumit Kumar Verma, the missing Army personnel of 4 Field Sub Group (Tezpur Assam). The order of declaring the deceased Army personnel as deserter, for reasons discussed hereinbefore, is untenable inasmuch as it has been passed in contravention to the provisions of Section 106 of the Army Act, 1950 and has to be set aside and consequently the next of kin (appellants) are entitled to ordinary family pension

and lump sum amount of Army Group Insurance Scheme considering the death of the deceased occurred while in service. We further hold that the Armed Forces Tribunals have jurisdiction to adjudicate upon matters arising out of Army Group Insurance Scheme.

32. For reasons discussed hereinabove the O.A. deserves to be allowed. It is accordingly **allowed**. The applicants shall be paid ordinary family pension from the date of accrument along with arrears and lump sum amount of Army Group Insurance Fund in accordance with rules within four months from the date of presentation of a certified copy of this order failing which the appellants shall be entitled to 9 per cent interest per annum on the amount accrued till date of actual payment.

No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

(Justice D.P. Singh)
Member (J)

4th October 2017

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