

COURT NO 1
RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No 446 of 2017

Friday, this the 10th day of Aug, 2018

“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal B.B.P. Sinha, Member (A)”

Smt. Meera Devi, W/O No. 2980422Y Late Sep Muneshwar Singh, R/o Village Durgupur, Post-Ugarpur Sultan Patti, Tehsil & District-Farrukhabad (UP).

...Applicant

Counsel for the applicant: **Shri Bachchan Singh**, Advocate

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, Delhi-110011.
2. Officer Incharge, Record Office, Rajput Regimental Centre, Fatehgarh (UP), PIN-900427, C/o 56 APO.
3. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (UP).

.... Respondents

Ld. Counsel for the Respondents : **Shri Amit Jaiswal**,
Central Government Counsel

ORDER**“Per Hon’ble Air Marshal BBP Sinha, Member (A)”**

1. By means of the present O.A. the applicant has approached this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 for grant of liberalized family pension along with arrears in respect of her late husband Ex Sepoy Muneshwar Singh (Army No 2980422Y).

2. Brief facts as would appear from the pleadings on record are that the husband of applicant was enrolled as Sepoy in the Indian Army (Rajput Regiment) on 13.01.1981 and after due training he was posted to 17 RAJPUT. During June 1993 the Battalion was deployed in General Area of Gohad, District Bhind (M.P.) to participate in ‘Exercise Brahma Seersha’, a Formation Level Exercise in which on 26.06.1993 at about 0620 hrs an Indian Air Force Aircraft simulating low level attack as an enemy Aircraft crashed down killing four jawans on the spot including husband of the applicant. Thereafter special family pension was granted by the respondents vide PPO No F/212/94 dated 11.05.1994 to Smt Meera Devi W/O the deceased soldier. First and second appeals preferred by the wife of deceased soldier for grant of liberalised family pension were rejected vide order dated 03.05.2009 and 05.02.2013 respectively.

3. Contention of Ld. Counsel for the applicant is that the exercise, in which husband of the applicant participated, was similar to as that of an actual war in which low flying fighter aircraft is like a flying bomb, as such the decision taken by the

respondents in denying liberalised family pension to the applicant is totally illegal, arbitrary and against provisions of para 6 (d) of Pension Regulations. The applicant is therefore entitled to liberalized family pension and other monetary benefits from the respondents.

4. Per contra Ld. Counsel for the respondents emphasized that the husband of the applicant died while participating in Corps Level Exercise due to crashing of Indian Air Force Fighter Aircraft MIG-21. Death of the husband of the applicant was categorized as physical casualty and attributable to military service by the PCDA (P), Allahabad, as such the applicant was granted special family pension. A court of inquiry was held which concluded that the unit was taking part in 'Exercise Brahma Seersha' as part of Formation Level Collective Training in General Area of Gohad, Bhind (MP). The death of husband of the applicant was termed as attributable to military service. The appeal preferred by the applicant was rejected on the ground that casualties occurring in battle inoculation/training exercise with live ammunition were classified as physical casualty attributable to military service. It is submitted that liberalized family pension is granted to family of the deceased soldier who die in battle inoculation/training exercise or demonstration with live ammunition. Ld. Counsel for the respondents drew attention to Govt of India, Min of Def letter No 1(2)/97/I/D (Pen-C) dated 31.01.2001 to submit that liberalized family pension is permissible in cases of battle inoculation training exercise or demonstration with live ammunition. He

emphatically submitted that the unfortunate death of the husband of the applicant occurred in training exercise without use of live ammunition. Thus in view of the Govt of India, Min of Def letter dated 31.01.2001 (supra) the applicant is not entitled to receive liberalized family pension.

5. We have heard Ld. Counsel for the parties and perused the material placed on record.

6. Relevant portion of Govt of India, Min of Def letter dated 31.01.2001 is reproduced as under:-

“Category ‘E’

Death or disability arising as a result of:-

- (a) *Enemy action in international war.*
- (b) *Absent during deployment with a peace keeping mission abroad.*
- (c) *Border skirmishes.*
- (d) *During laying or clearance of mines including enemy mines as also minesweeping operation.*
- (e) *On account of accidental explosions of mines while laying operationally oriented mine-field or lifting or negotiating minefield laid by enemy or own forces in operational areas near international borders or the line of control.*
- (f) *War like situations, including cases which area attributable to/aggravated by:-*
 - (i) *extremist acts, exploding mines etc. while on way to an operational area.*
 - (ii) *battle inoculation training exercises or demonstration with live ammunition.*
 - (iii) *x x x x x*
- (g) *x x x*
- (h) *x x x x*
- (j) *x x x x*

7. Admittedly, the deceased soldier died while participating in Corps Level Exercise in General Area of Gohad, Bhind (MP). The undisputed facts about the circumstances of death are as follows:-

(a) The applicant died while participating in a Corps Level Exercise.

(b) In this exercise the fighter aircraft of Indian Air Force, a MIG-21 was carrying out a low level attack acting as an enemy aircraft and in this attack the aircraft crashed over the deceased soldier killing him instantly.

8. In light of the above facts of crash the core issue to be decided is as to whether a fighter aircraft of Indian Air Force acting as enemy aircraft during a Corps Level Exercise is to be treated as live ammunition or not. We have given our anxious consideration to this issue and we are of the following opinion:-

(a) A fighter aircraft flying low in attack profile at a speed of 800 to 900 kms per hour full of 2000 to 3000 litres of Aviation Fuel is for all practical purposes a live bomb even though it may not be carrying actual bomb or ammunition during the flight.

(b) Any normal human being will run away if a fighter aircraft in low level attack made approaches him or her. However a soldier in a Corps Level Exercise has to hold his ground and practice actions against the low level fighter aircraft as expected in actual war.

(c) Thus during this Corps Level Exercise which is basically a practice for war, if the low flying fighter aircraft in

attack profile crashes and kills a soldier during attack profile, the fighter aircraft has to be deemed as a live ammunition and the death squarely fits the definition of Battle Inoculation Exercise casualty in category 'E' sub para (ii) as per Govt of India, Min of Def letter dated 31.01.2001.

9. In view of the above, we quash the decision of the respondents (impugned order dated 03.05.2009 and 05.02.2013) denying liberalized family pension to the wife of the deceased soldier. The casualty is to be declared as a 'Battle Inoculation Training Exercise Casualty' as per para 'E' and sub para (ii) of Govt of India, Min of Def letter dated 31.01.2001.

10. In view of our observations made herein above and the settled position of law on grant of liberalized family pension the O.A. is **allowed** and the respondents are directed to grant liberalized family pension to the applicant w.e.f. 01.01.1996 as per Govt of India, Min of Def letter dated 31.01.2001. The respondents are directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. In case the respondents fail to give effect to this order within the stipulated time, they will have to pay interest @ 9% on the amount accrued from due date till the date of actual payment.

No order as to cost.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated : 10 August 2018
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