

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 369 of 2020**

Tuesday, this the 18th day of January, 2022

**“Hon’ble Mr. Justice Umesh Chandra Srivastava (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Mrs Sheela Thapa, Wife of Shri Govind Singh Thapa, M/o late Rifle Man Vivek thapa, Resident of Village – Kiduwala, Post - Ranjhawala, District- Dehradun through her registered power of attorney holder Mr Sanjeev Lal, S/o Late Captain Chaman Lal, Resident of 60/4 Ansari Marge, Dehradun.

..... **Applicant**

Ld. Counsel for the : **Shri Mukesh Kumar,
Applicant Shri Ujwal Tripathi and
Shri SS Rajawat, Advocates**

Versus

1. Union of India through Secretary, Ministry of Defence, Department of Ex Servicemen Welfare, Govt of India, South Block, Central Secretariat, New Delhi.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), Sena Bhawan, New Delhi.
3. Commanding Officer, 5/1 Gorkha Rifle, C/o 56 APO.
4. Chief Record Officer and Commanding Officer, Records, 14 Gorkha Rifles, Pin- 900295, C/o 56 APO.
5. Maj AAG for Adjutant General Integrated HQ of MoD (Army), Adjutant General’s Branch, Addl Dte Gen of MP/MP-8 (I of R), West Block- III, RK Puram, New Delhi – 110066.

6. PCDA (P), Grant 4 Section, Draupadi Ghat, Allahabad.

..... Respondents

Ld. Counsel for the : **Shri Ashish Kumar Singh,**
Respondents **Central Govt. Counsel**

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby she has claimed the following reliefs :-

“(1) The applicant seeks relief for declaring the death of her son as attributable to military services and killed while performing his duty in action against militants as per the facts of the case mentioned under point no 4 sub points from 4.1 to 4.40 and further as mentioned under the point no 5 and sub points from 1 to xi of point no 5.

(2) The applicant prays for the grant of liberalized family pension and other allied benefits from the date of attaining martyrdom of his son that is 24.08.1998 along with the 12% rate of interest compounding annually.

(3) The applicant prays for court of inquiry conducted by the army to be declared as null and void in terms of the letter issued by the respondent no 9.

(4) The applicant prays other allied service benefits also pertaining to her martyred son in the lime light of the facts and circumstances of the case4 as attributable to military services.

(5) The applicant prays Rs. one crore additional towards the harassment, mental tension, agony for which she suffered for all past 19 years due to illegal act of the all respondents.

(6) That the applicant prays for Ex gratia lump sum compensation also as per the entitlement as extracted from the pension portal CGDA for Rs. 7.5 lacs compensation wef from 24.08.1998 along with the 12% rate of interest compounded annually.

(7) The applicant prays for the award of Paramvir Chakra for her martyred son posthumously.

(8) The applicant also seeks other benefits which this tribunal deems fit favouring the applicant.

2. The factual matrix of the case is that son of the applicant was enrolled in the Army on 27.04.1996. While her son was posted to Kupwara, J&K, applicant received telegram about death of her son on 24.08.1998. Reason of the death was due to gunshot head injury while in an encounter with militants. Applicant represented her case for declaring death of her son as attributable to military service and to grant liberalized family pension which was denied by the respondents. Being, aggrieved, the applicant has filed the instant Original Application for considering the death of her son as attributable to military service and to grant liberalized family benison and other benefits.

3. Learned counsel for the applicant submitted that son of the applicant late Rifleman Vikek Thapa was deployed in

operation Rakshak in district Kupwara, J&K while he died on 24.08.1998 due to gunshot head injury while in an encounter with militants. Dead body of applicant's son was handed over on 27.08.1998 by two Junior Commissioned Officers. The son of the applicant was cremated with full military honours. Respondents issued a letter dated 27.08.1998, addressed to Army Group Insurance Fund, New Delhi with copy to the applicant stating that applicant's son died in District Kupwara, J&K due to gunshot wound on his head while in an encounter with militants. On 28.08.1998, respondents wrote a DO letter to the applicant stating that "I am directed by the Chief of Army Staff to convey the expression of deep sympathy and condolence on behalf of himself and all ranks in army on sad and untimely death of your son Rifleman Late Vivek Thapa on 24.08.1998 in OP Rakshak in District- Kupwara due to Gun would shot on his head". The applicant also received a letter dated 16.10.1998 regarding employment of the dependents of Battle Casualties. The applicant forwarded consent letter dated 23.10.1998 through Zila Sainik Board, Dehra Dun.

4. On 26.10.1998, applicant was issued certificates regarding non receipt of any other pension, no employment certificate and relationship certificate. The applicant received,

Rs. 3,75,000/- vide letter dated 14.11.1998 from the Army Group Insurance Fund. Applicant forwarded income certificate along with other papers pertaining to Special Family Pension. Claim of the applicant for grant of Special Family Pension was rejected vide letter dated 11.01.2000 stating that husband of the applicant was employed in Indian Institute of Petroleum and the applicant is not dependent on her martyred son. Applicant also received a letter dated 21.01.2000 stating that her Special Family Pension claim was rejected as her son committed suicide by shooting himself and had not died due to encounter with the militants, therefore, she is not entitled for ex gratia relief from central Govt. The applicant wrote letters against conversion of martyrdom into suicide. She was informed vide letter dated 30.06.2013 that ***“her son committed suicide on 24.08.1998 while performing guard duty at Vehicle Check Post by himself with AK-58 Rifle under temporary mental aberration caused due to conflicting pressures faced by him which has been opined as not attributable to military services”***. Learned counsel for the applicant submitted that, martyred son of the applicant was bachelor and he was supporting his mother financially from his salary. Applicant wrote letter along with declaration that she was dependent on

her son for pecuniary needs as per Defence Services Regulations for the Army, Part– 1, 2008. She filed clarification vide letter dated 29.07.2017 quoting the provisions for grant of Liberalized Family Pension and for pension to commence from the date of attaining martyrdom of her son and not from 24.08.2012. Applicant is an old lady and her daughter is undergoing cancer treatment in Delhi and she has to remain with her daughter for her treatment, therefore, she is unable to appear before the Tribunal. He prayed that death of the son of applicant be considered as attributable to military service and applicant be granted Liberalized Family Pension.

5. **Per contra**, learned Counsel for the respondents submitted that Riflemen (late) Vivek Thapa had committed suicide by shooting himself with his service weapon AK-58 Rifle while performing duties at the Vehicle check Post on 24.08.1998. A Court of Inquiry was held and it was found that deceased soldier had committed suicide by shooting himself by AK-58 Rifle under a temporary mental aberration caused due to conflicting pressures faced by him as given below:-

- (a) The deceased soldier wanted to rise high in life, and that his parents and friends expected him to attain a higher status in life. Due to his carefree attitude, he

realized that this may not be feasible. These factors led to conflict in the personality of the individual.

(b) He underwent periods of depression due to the conflicting pressures faced by him.

6. Learned counsel for the respondents submitted that as regards occurrence of death in an encounter with terrorist, it is submitted that the case was under primary stage and cause of death was yet to be ascertained at that time. In order to provide AGI death benefits speedily, the case was processed to AGI Directorate citing the case as encounter with militants. Rs, 3,75,000/- was released and paid to the claimant. The actual cause of death was established by a Court of Inquiry which concluded that death occurred due to the soldier shooting himself with his service Rifle which he had taken along for duty and no foul play was suspected.

7. Special Family Pension claim of the applicant was submitted to PCDA (P). Applicant was asked to submit income and dependency certificate. In the Income certificate issued by Tehsildar, Dehradun, it was mentioned that Smt Sheela Thapa has no income but her husband was serving with Indian Institute of Petroleum. The case was submitted to PCDA (P), Allahabad for grant of Special Family Pension but the same

was rejected by PCDA (P), Allahabad stating that father of the deceased soldier is employed in IIP Department, hence mother of the deceased soldier was not dependent on her son. Accordingly, claim of the applicant for considering the death of her son as attributable to military service and for grant of Liberalized Family Pension was rejected. As regards Ex-Gratia, as per Ministry of Defence Department of Ex Serviceman welfare letter No 2 (2)2011/D(Pen/Pol) dated 26 December 2011, the families of the Defence service personnel, who die in performance of their bona fide duties and the Armed Forces personnel who sustained injuries and are disabled or incapacitated on account of causes which are accepted as attributable to or aggravated by military service are eligible for pensionary benefits under the Casualty Pensionary Awards notified vide Ministry of Defence letter No 1 (2)/97/D (Pen.C) dated 31 January 2001 read with letter No 16 (6)/2008(2)/D(Pen/Pol) dated 05 May 2009. Further, in terms of Govt of India Ministry of Defence letter No 20(1)/98/D(Pay/Ser) dated 22 September 1998 read with letter No 20 (5)/2009/D(Pay/Ser) dated 04 Jun 2010 and dated 17 August 2010, families of defence service personnel who die in harness in the performance of their bona fide official duties

under various circumstances are eligible for an ex gratia lump sum compensation. In the instant case, death of the son of applicant was not considered as attributable to military service. Therefore, the provision of letter No 2 (2)/2011/D(Pen/Pol) dated 26 December 2011 is not applicable to the applicant in the instant case for grant of Ex gratia benefits. He further submitted that in case of death of an Armed Forces Personnel under the circumstances mentioned in category "D" (Death due to acts of violence/ attack by terrorists, anti social elements e.t.c.) and "E" (Death arising due to enemy action in international war, action during deployment with a peace keeping mission abroad, border skirmishes, during laying or clearance of mines, war like situation, an act of violence/ attack by extremists, anti social elements while on operational duty and death arising as a result of poisoning of water by enemy agents etc), the eligible member of the family shall be entitled to Liberalised Family Pension. He further submitted that Para 5.1 of Govt. of India letter dated 31.01.2001 specifies that in case of death of an individual under the circumstances mentioned in category "B" (Death or disability due to causes which are accepted as attributable to or aggravated by military service, disease

contracted because of continued exposure to a hostile work environment, subject to extreme weather conditions or occupational hazards resulting in death or disability) or category "C" (Death or disability due to accidents in performance of duties), Special Family Pension shall be admissible to the families of such personnel. Further Para 5.1 has been incorporated in Pension Regulations for the Army (Part-1) 2008 at Rule 105 (Extract of Rule 105 of Pension Regulations for the Army (Part-1) 2008. Learned counsel for the respondents has placed reliance on judgment passed by Hon'ble Armed Forces Tribunal Chandigarh Regional Bench in ***O.A. No 1546 of 2012, Suresh Nath vs. Union of India and Others*** decided on 17.01.2014 in the similar matter and submitted that present O.A. has no force, hence liable to be dismissed.

8. Heard learned Counsel for the parties and perused the documents available on record.

9. Before dealing with the rival submissions, it would be appropriate to examine the relevant Rules and Regulations on the subject matter. For grant of Battle Causality status unit

concerned has to take following action as per SAO 8/S/85 as amended by AO 1/2003/MP which were not taken i.e.:

- (i) Initial Report within 24 hours.
- (ii) Detailed report within 72 hours.
- (iii) Completion of injury report initiated by Military Hospital.
- (iv) Publication of Part II Order declaring battle casualty and
- (v) Submission of case to higher authorities for grant of ex- gratia.

10. In the instant case no such action was taken by the unit and even no Statement of Case for belated sanction or for reporting and declaring of Battle Causality was taken and Battle Causality Certificate was not issued to the applicant by the Commanding Officer under the provisions of Para 4 of OA 1/2003/MP. It is evident that death of son of the applicant was not due to actual fighting with enemy terrorist. In this case no Part II Order was published to declare the case as Battle Causality. As the son of the applicant died due to suicide, his

death was appropriately considered as not attributable to military service.

11. We consider it appropriate, before proceeding to adjudicate the claim of the applicant, to place the chronology and context of various rule position on record which are reproduced as under :-

(a) **Army Order 1/2003/MP**

Physical/Battle Casualties

Para 1 to 3. x x x x x x x x x

4. **Battle Casualties:** *Battle Casualties are those casualties sustained in action against enemy forces or whilst repelling enemy air attacks. Casualties of this type consist of the following categories:-*

- (a) *Killed in action*
- (b) *Died or wounds or injuries (other than self-inflicted)*
- (c) *Wounded or injured (other than self-inflicted)*
- (d) *Missing*

5. *Circumstances for classification of Physical/ Battle Casualties are listed in Appendix 'A'*

Appendix A to AO 1/2003/MP

Battle Casualties

1. *The circumstances for classifying personnel as battle casualties are as under:-*

- (a) *Casualties due to encounter with troops or armed personnel or border police of a foreign country or during operations while in service with peace keeping missions abroad under government orders.*
- (b) *Air raid casualties sustained as a direct or indirect result of enemy air action*
- (c) *Casualties during action against armed hostiles and in aid to civil authorities to maintain internal security and maintenance of essential services.*

(d) *Accidental injuries and deaths which occur in action in an operational area.*

(e) *Accidental injuries which are not sustained in action and not in proximity to the enemy but have been caused by fixed apparatus (e.g. land mines, booby traps, barbed wire or any other obstacle) laid as defence against the enemy, as distinct from those employed for training purposes, and if the personnel killed, wounded or injured were on duty and are not to blame, will be classified as battle casualties, notwithstanding the place of occurrence or agency laying those, viz. own troops or enemy, provided the casualties occur within the period laid down by the government.*

(f) *Casualties during peace time as result of fighting in war like operations, or border skirmishes with a neighbouring country.*

(g) *Casualties occurring while operating on the International Border or Line of Control due to natural calamities and illness caused by climatic conditions.*

(h) *Casualties occurring in aid to civil authorities while performing relief operations during natural calamities like flood relief and earthquake.*

(j) *Casualties occurring while carrying out battle inoculations/training or operationally oriented training in preparation for actual operations due to gunshot wound/explosion of live ammunition/ explosives/mines or by drowning/electrocution.*

(k) *Casualties occurring while carrying out battle inoculation/training or operationally oriented training in preparation for actual operations due to gunshot wound/explosion of live ammunition/Explosives/Mines or by drowning/electronution.*

(l) *Army personnel killed/wounded unintentionally by own troops during course of duty in an operational area.*

(m) *Casualties due to vehicle accidents while performing bonafide military duties in war/border skirmishes with neighbouring countries including action on line of control and in counter insurgency operations.*

(n) *Casualties occurring as a result of IED/bomb blasts by saboteurs/ANEs in*

trains/buses/ships/aircrafts during mobilization or deployment in war/war like operations.

(o) Casualties occurring due to electrocution/snake bite/drowning during course of action in counter insurgency/war.

(p) Accidental death/injuries sustained during the course of move of arms/explosives/ammunition for supply of own forces engaged in active hostilities.

(q) Death due to poisoning of water by enemy agents resulting in death/physical disabilities of own troops deployed in operational area in active hostilities.

(r) Accidental deaths/injuries sustained due to natural calamities such as floods, avalanches, cyclones, fire and lightening or drowning in river while performing operational duties/movements in action against enemy forces and armed hostilities in operational area to include deployment on international border or line of control.

(s) Army personnel killed/wounded by own troops running amok in an operational area.

(t) Army personnel killed/wounded due to spread of terror during leave/in transit because of their being army personnel.

Physical Casualties.

2. Deaths caused due to natural causes/illness/accident/suicide/murder due to family disputes in operational and non-operational areas will be treated as physical casualties.

Miscellaneous Aspects

(a) Saboteurs, even of own country, will be treated as enemy for the purpose of classifying their actions as enemy action and encounters against them as encounters against the enemy.

(b) Report regarding personnel wounded or injured in action will specify the nature of the wound or injury and will also state whether the personnel remained on duty.

(c) Reports on personnel missing in action will indicate, if possible, their likely fate, eg, 'believed killed'. 'believed prisoner of war', of 'believed drowned' etc.

- (iii) Mishaps at sea while on duty'
- (iv) Electrocution while on duty, etc.
- (v) Accidents during participation in organized sports events/ adventure activities/ expeditions/ training.

Category D

Death or disability due to acts of violence/attack by terrorists, anti-social elements, etc. whether on duty other than operational duty or even when not on duty. Bomb blasts in public places or transport, indiscriminate shooting incidents in public, etc. would be covered under this category, besides death/disability occurring while employed in the aid of civil power in dealing with natural calamities.

Category E

Death or disability arising as a result of:-

- a) *Enemy action in international war.*
- b) *Action during deployment with a peace keeping mission abroad.*
- c) *Border skirmishes.*
- d) *During laying or clearance of mines including enemy mines as also minesweeping operations.*
- e) *On account of accidental explosions of mines while laying operationally oriented mine-field or lifting or negotiating mine-field laid by enemy or own forces in operational areas near international borders or the line of control.*
- f) *War like situations, including cases which are 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) *Kidnapping by extremists while on operational duty.*
- (g) *An act of violence/attack by extremists, anti-social elements etc while on operational duty.*

(h) *Action against extremists, antisocial elements, etc. Detach/disability while employed in the aid of civil power in quelling agitation, riots or revolt by demonstrators will be covered under this category.*

(j) *Operations specially notified by the Govt. from time to time.*

4.2 *Cases covered under category 'A' would be dealt with in accordance with the provisions contained in the Ministry of Defence letter No. 1(6)/98/D(Pen/Services) dated 3.2.98 and cases under category 'B' to 'E' will be dealt with under the provisions of this letter.*

Notes:-

(i) *The illustrations given in each category are not exhaustive. Cases not covered under these categories will be dealt with as per Entitlement Rules to casualty pensionary awards in vogue.*

(ii) *The question whether a death/disability is attributable to or aggravated by military service will be determined as per provisions of the Pension Regulations for the Armed Forces and the Entitlement Rules in vogue as amended from time to time*

(iii) *In case of death while in service which is not accepted as attributable to or aggravated by Military Service or death after retirement/ discharge/invalidment, Ordinary Family Pension shall be admissible as specified in Min of Def letter No. 1 (6)/98/D(Pen/Ser) dated 03 Feb 98 as modified vide Ministry of Defense letter No.1(I)99/D(Pen/Ser) dated 7.7.99.*

(iv) *Where an Armed Forces personnel is invalided out of service due to non-attributable/non-aggravated causes, Invalid pension/gratuity shall be paid in terms of Para 9 of Ministry of Defense letter No 1 (6)/98/D (Pen/Ser) dated 03 Feb 98 as amended/modified vide Ministry of Defense letter No. 1 (I)/99/D(Pen/Ser) dated 07.06.99.*

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13. Besides the death having occurred in an operational area, it should also be shown to have occurred due to enemy action. The dictionary defines action as: Expenditure of energy, deed,

operation, gesture, battle, lawsuit. 'In action' would mean while engaged in battle. Mere presence in an operational area would not qualify as being in action with/ against the enemy. We understand that the entire state of Manipur and Nagaland and parts of adjoining states are notified under Operation Hifazzat, Parts of Sikkim, Assam, and J&K are similarly notified as operational areas. A full reading of the Army Orders and Government of India letter dated 31.01.2001 relating to Battle Casualties and classification of casualties for pensionary purposes shows that in all circumstances there is a direct and immediate relationship with the enemy or actions related to the enemy. In other words there should be a direct or casual connection between the duties being performed and the cause of death resulting from action with/ against an enemy. These Army Orders and letters cannot be read in isolation and need to be read in their full context.

14. Here we may refer to a few judgments which clarify the scope and interpretation of statutes. As said by Lord Davey: "Every clause of a statute should be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject matter. To

ascertain the meaning of a clause in a statute the court must look at the whole statute, at what precedes and at when succeeds and not merely at the clause itself. As stated by **Sinha, CJI**, “The court must ascertain the intention of the Legislature by directing its attention not merely to the clauses to be construed but to the entire statute, it must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs. It is also apt to take note of few decisions of the Apex Court with regard to interpretation of Statutes.

15. The Apex Court in ***Union of India and others vs. Brig PS Gill, (2012) 4 SCC 463*** had an occasion to interpret Sections 30 and 31 of the Armed Forces Tribunal Act 2007. The question which was up before the court was whether against a decision by the Armed Forces Tribunal, an appeal can be filed as a matter of right under Section 30 of the said Act which is subject to the provision of Section 31. The Court examined the scope of Sections 30 to 31 and while doing so it had held that ‘it is one of the settled canons of interpretation of statutes that every clause of the statute should be construed with respect to the context and the other clauses of the Act, so far as possible to make a consistent enactment of

the whole statute or series relating the subject”. Reference to the decisions of this Court in ***M Pentiah v. Muddala Veeramallapa, AIR 1961 SC 1107*** and ***Gammon India Ltd v. Union of India (1974), SCC 596***, should in this regard suffice. In *Gammon India Ltd*, this Court observed “19....*Every clause of a statute is to be construed with reference to the context and other provisions of the Act to make a consistent and harmonious meaning of the statute relating to the subject matter. The interpretation of the words will be by looking that the context, the collocation of the words and the object of the words relating to the matters.*”

16. We may also gainfully extract the following passage from ***V. Tulasamma V. Sesha Reddy (1977) 3 SCC 99*** wherein this Court observed “69... *It is an elementary rule of construction that no provisions of a statute should be construed in isolation but it should be construed with reference to the context and in the light of other provisions of the statute so as, as far as possible, to make a consistent enactment of the whole statute*”.

17. In ***Raheja Universal Ltd Vs NRC Ltd (2012) 4 SCC 148***, it has been held that statute should be construed in its

entirely any section or sub section should not be construed and read in isolation.

18. Having considered the facts and circumstances of the death of son of the applicant, the rules and policy governing such accidents and the above principles of interpretation, we are of the view that the applicant did not qualify for Liberalized Family Pension. The death of applicant's son cannot be considered as attributable to military service nor was it a result of action with or against the enemy and therefore, applicant cannot be granted Liberalized Family Pension as the death has been held to be a suicide case.

19. In view of the above, the Original Application is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

20. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 18 January, 2022
Ukt/-