

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****Original Application No. 469 of 2021**Friday, this the 17th day of September, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

No. 15205458K, Manoj Kumar Pandey through his wife Smt Smriti Bala Pandey, S/o Shri Om Prakash Pandey, R/o Vill & PO- Suruhurpur, The- Jalalpur, Police Station- Malipur, District – Ambedkarnagar (U.P.)- 224159, Presently residing at Gauri Vihar, near Scooter India, Sarojininagar, Lucknow (UP)- 226008.

.... Applicant

Ld. Counsel for the: **Shri Vijay Kumar Pandey, Advocate**
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, RK Puram, New Delhi.
2. GOC in C, 15 Corps BB Cantt, Srinagar J&K.
3. Commanding Officer, 21 SATA Regiment (Mountain)- PIN-925721.
4. Battery Commanding Officer, 212 UAV Battery, 21 SATA Regiment, C/o 56 APO.

..... Respondents

Ld. Counsel for the: **Shri Rajiv Narayan Pandey,**
Respondents. **Central Govt Counsel**

ORDER

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

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- (i). *That this Hon’ble Tribunal may kindly be pleased to direct the opposite parties i.e. opp. Party No 3 to recommend the name of husband of the applicant for gallantry award in the interest of justice.*
- (ii). *That this Hon’ble Tribunal may kindly be pleased to award the cost Rs. 1,00,000/- (Rs. One Lac) for financial loss as expenses in filing the instant appeal with the interest @ 18% p.a. in the interest of justice to the applicant against the opposite parties.*
- (iii). *That this Hon’ble Tribunal may be pleased to pass any other order or direction which this Hon’ble Court may deem just and proper be passed in favour of the applicant.*

2. Facts giving rise to this Original Application in brief are that husband of the applicant Ex L/Hav Manoj Kumar Pandey was enrolled in the Indian Army on 05.07.2003. In February 2020, husband of the applicant posted at Balvir Post of J&K near Line of Control. On 22.02.2020 all of sudden Pakistan Army violating the cease fire opened the fire and started heavy Artillery Selling on

Balvir Post, where the husband of the applicant was on duty and a cannon ball hit his Post and roof flew up. In this severe hitting husband of the applicant and one other fellow soldier Sunil Kumar Yadav badly injured. Blood was flowing and hundreds of artillery shells entered in the body of her husband, without caring his injury husband of the applicant prevented the Radar Post from falling into the hands of the enemy country and saved the life of fellow soldier. Name of the husband of the applicant was not recommended for the grant of Gallantry Award. Husband of the applicant preferred representations to the respondents but till date neither the reply has been given nor any appropriate action has been taken by the respondents. Being aggrieved, applicant has preferred this Original Application with the prayer for grant of gallantry award and to decide his representation.

3. Learned counsel for the applicant submitted that husband of the applicant L/Hav Manoj Kumar Pandey was enrolled in Indian Army on 05.07.2003 in 21 SATA and successfully served in various parts of the country with utmost dedication and devotion without any adverse remarks. Husband of the applicant served in sensitive border areas like Kupwara and Leh Ladakh in J&K as part of the anti terrorist operation in 41 Rashtriya Rifles. He discharged his services as Unit Education Instructor at Artillery Centre Hyderabad and also performed the duty of training new

soldiers with utmost dedication and devotion. In February 2020 husband of the applicant was posted at Balvir Post of J&K near Line of Control. He was vigilant in the safety and security of the country but all of sudden Pakistan Army violating the cease fire opened fire and started heavy Artillery Selling . A cannon ball hit his post and roof flew up. In this severe hitting husband of the applicant and one other fellow soldier Sunik Kumar Yadav badly injured. Husband of the applicant was responsible to keep post's radar, weapons, radio sets, government goods and soldiers safe. In this heavy selling of enemy attack, husband of the applicant lost his right eye, small pieces of dust and stone had penetrated the left eye, an 18mm splinter entered the back of head, deep wounds were found all over the body including face, still he performed his duty without caring for his wound. Husband of the applicant, while showing indomitable valor and bravery, first tide his wound with cloths and gave first aid to the badly injured fellow soldier Sunil Kumar lying on the back of a big rock. Thereafter taking a position behind a big stone shouted loudly and said "if you have courage then come forward, not a single one will go back alive, our companies are fully prepared". When there was no movement, husband of the applicant was convinced that the cannon attack on his post has been done from a distance. Husband of the applicant again came to his wounded fellow soldier Sunil Kumar and picked

his up and decided that first of all he has to pass information for the security of post so that our soldiers can maintain their control over it. He was left with no such equipment through which he could inform the Battalion Headquarters. Medical Inspection Room of 19 Garhwal was about a thousand feet from the Radar Post. There was about eight feet of frozen snow, snow falling and a fierce bombardment of cannon balls, he had to make his way as quickly as possible. The information was to be sent to the unit Headquarters, fierce decided not to let the honour of his unit "Namak, Nam aur Nishan" be tarnished and showing indomitable courage and vaaloar, he carried fellow wounded soldiers Sunjil Yadav on his shoulder and walked fast. From there, the unit Headquarters was located at an altitude of about one thousand feet and there was a direct climbing of about ninety degree.

4. Learned counsel for the applicant further submitted that in such a crucial situation, husband of the applicant did not lose courage and kept on moving forward, without getting tired and without stopping from the cannon balls raining from the enemy country Pakistan. Husband of the applicant climbed a thousand feet of straight and snowy area and reached the unit Headquarters of 19 Garhwal and gave full information. A lot of blood was shed from the body of the husband of the applicant due to seriously injured. 19 Garhwal demanded Helicopter, but due to heavy

shelling by enemy, Helicopter could not come. Looking the seriousness of the matter, L/Hav Manoj Kumar Pandey was taken to Medical Inspection Room and after giving first aid treatment, he was transported by stretcher to Srinagar Base Hospital. Doctors tried their best but right eye of husband of the applicant was lost forever. A stone eye was put in its place. Water keeps falling from the eyes and husband of the applicant has become a victim of high blood pressure. He was put in the category of war disabled and war casualty soldier E3(P) A2(P) and P2-T24). With indomitable valor and courage, the husband of the applicant, while facing the attack of the enemy, saved the country's sensitive information related to equipment from falling into the hands of the enemy country, and the life of his fellow soldier while he himself was badly injured. As husband of the applicant was not nominated for the gallantry award, his sacrifice, dedication indomitable courage and valor were not recognized which he deserves. Learned counsel for the applicant prayed that a direction be issued to the respondents to recommend the name of husband of the applicant for gallantry award.

5. Per Contra, learned counsel for the respondents raised preliminary objection on maintainability of the case. He submitted that relief sought by the applicant does not come in the ambit of Section 3 (o) as well as Section 14 and 15 of the Armed Forces

Tribunal Act 2007. Learned counsel for the respondents submitted that relief sought by the applicant is not tenable in the eyes of law. Therefore, Original Application lacks substance and merits and is liable to be rejected.

6. We have heard learned counsel for the parties and perused the documents available on record.

7. The question before us to decide is whether this Original Application is maintainable in this Tribunal or not.?

8. To decide the controversy, perusal of Section 3 (o) of Armed Forces Tribunal Act 2007 is necessary which is reproduced as under:-

Service matters, in relation to the persons subject to the Army Act, 1950 (46 of 1950), the Navy Act 1950 (62 of 1957) and the Air Force Act, 1950 (45 of 1950), means 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, reservation, 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:

(i) orders issued under section 18 of the Army Act, 1950 (46 of 1950), sub-section (1) of section 15 of the Navy Act, 1957 (62 of 1957) and section 18 of the Air Force Act, 1950 (45 of 1950); and

(ii) transfers and postings including the change of place or unit on posting whether individually or as a part of unit, formation or ship 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).

(iii) leave of any kind;

(iv) Summary Court Martial except where the punishment is of dismissal or imprisonment for more than three months;

Relief prayed by the applicant does not come within the ambit of Section 14 and 15 of the Armed Forces Tribunal Act, 2007. Section 14 and 15 of the act are reproduced as under:-

14. Jurisdiction, powers and authority in service matters:- —

(1) Save as otherwise expressly provided in this Act, the Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority, exercisable immediately before that day by all courts (except the Supreme Court or a High Court exercising jurisdiction under article 226 and 227 of the Constitution) in relation to all service matters.

(2) Subject to the other provisions of this Act, a person aggrieved by an order pertaining to any service matter may make an application to the Tribunal in such form and accompanied by such documents or other evidence and on payment of such fee as may be prescribed.

(3) On receipt of an application relating to service matters, the Tribunal shall, if satisfied after due inquiry, as it may deem necessary, that it is fit for adjudication by it, admit such application; but where the Tribunal is not so satisfied, it may dismiss the application after recording its reasons in writing.

(4) For the purpose of adjudicating an application, the Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of section 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decisions;

(g) dismissing an application for default or deciding it ex parte;

(h) setting aside any order of dismissal of any application for default or any order passed by it ex parte; and

(i) any other matter which may be prescribed by the Central Government.

(5) The Tribunal shall decide both questions of law and facts that may be raised before it.

Section 15 in the Armed Forces Tribunal Act, 2007

15. Jurisdiction, powers and authority in matters of appeal against court-martial. —

(1) Save as otherwise expressly provided in this Act, the Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable under this Act in relation to appeal against any order, decision, finding or sentence passed by a court-martial or any matter connected therewith or incidental thereto.

(2) Any person aggrieved by an order, decision, finding or sentence passed by a court-martial may prefer an appeal in such form, manner and within such time as may be prescribed.

(3) The Tribunal shall have power to grant bail to any person accused of an offence and in military custody, with or without any conditions which it considers necessary:

Provided that no accused person shall be so released if there appears reasonable ground for believing that he has

been guilty of an offence punishable with death or imprisonment for life.

(4) The Tribunal shall allow an appeal against conviction by a court-martial where—

(a) the finding of the court-martial is legally not sustainable due to any reason whatsoever; or

(b) the finding involves wrong decision on a question of law; or

(c) there was a material irregularity in the course of the trial resulting in miscarriage of justice, but, in any other case, may dismiss the appeal where the Tribunal considers that no miscarriage of justice is likely to be caused or has actually resulted to the appellant:

Provided that no order dismissing the appeal by the Tribunal shall be passed unless such order is made after recording reasons there for in writing.

(5) The Tribunal may allow an appeal against conviction, and pass appropriate order thereon.

(6) Notwithstanding anything contained in the foregoing provisions of this section, the Tribunal shall have the power to—

(a) substitute for the findings of the court-martial, a finding of guilty for any other offence for which the offender could have been lawfully found guilty by the court-martial and pass a sentence afresh for the offence specified or involved in such findings under the provisions of the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957) or the Air Force Act, 1950 (45 of 1950), as the case may be; or

(b) if sentence is found to be excessive, illegal or unjust, the Tribunal may—

(i) remit the whole or any part of the sentence, with or without conditions;

(ii) mitigate the punishment awarded;

(iii) commute such punishment to any lesser punishment or punishments mentioned in the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950), as the case may be;

(c) enhance the sentence awarded by a court-martial: Provided that no such sentence shall be enhanced unless the appellant has been given an opportunity of being heard.

(d) release the appellant, if sentenced to imprisonment, on parole with or without conditions;

(e) suspend a sentence of imprisonment;

(f) pass any other order as it may think appropriate.

(7) Notwithstanding any other provisions in this Act, for the purposes of this section, the Tribunal shall be deemed to be a criminal court for the purposes of sections 175, 178, 179, 180, 193, 195, 196 or 228 of the Indian Penal Code (45 of 1860) and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

9. On perusal of above, it transpires that prayer of the applicant to grant gallantry award is not maintainable in this Tribunal in view of the provisions contained in the Act 2007. More over it is prerogative of the authority concerned to send the name of any soldier for award of any honour/medal.

10. Accordingly, in the facts and circumstances, as discussed hereinabove, we are of the considered view that the subject matter of the dispute, canvassed by the applicant before us, does not fall within the definition of 'service matters' as contemplated under Section 3(o) and Section 14 and 15 of Armed Forces Tribunal Act, 2007, therefore, this Tribunal lacks jurisdiction to deal with the matter.

11. The application is, therefore, dismissed with liberty to the applicant to take recourse to such remedy as may be permissible under law with regard to the issue in question.

12. With the aforesaid, OA stands **disposed of**.

13. No order as to cost.

14. Pending applications, if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 17 September, 2021

Ukt/-