

**RESERVED**  
(Court No 2)

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

**ORIGINAL APPLICATION No. 889 of 2022**

**(with M.A. No. 699 of 2023 and M.A. No. 668 of 2023)**

Monday, this the 15<sup>th</sup> day of January, 2024

**"Hon'ble Mr. Justice Anil Kumar, Member (J)  
Hon'ble Lt Gen Anil Puri, Member (A)"**

1. Shubhamdeep Pandey, son of JC-779318H Nb Sub (late) Shashi Bhushan Pandey, permanent resident of village-Piparpanti, Post Office-Benwalia, District-Bhojpur (Bihar) (presently residing at House No P-46/1, 508 Army Base Workshop, Cheoki, Prayagraj).
2. Amandeep Pandey, son of JC-779318H Nb Sub (late) Shashi Bhushan Pandey, permanent resident of village-Piparpanti, Post Office-Benwalia, District-Bhojpur (Bihar) (presently residing at House No P-46/1, 508 Army Base Workshop, Cheoki, Prayagraj).
3. Prerna Pandey, daughter of JC-779318H Nb Sub (late) Shashi Bhushan Pandey, permanent resident of village-Piparpanti, Post Office-Benwalia, District-Bhojpur (Bihar) (presently residing at House No P-46/1, 508 Army Base Workshop, Cheoki, Prayagraj).

.....Applicants

Ld. Counsel for: **Shri Yashpal Singh**, Advocate  
the Applicant

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi.
2. Director General, Electronics and Mechanical Engineers, Integrated Headquarters of Ministry of Defence (Army), Delhi Cantt-110010.
3. Director, Indian Army Veterans, Adjutant General's Branch, Integrated Headquarters of Ministry of Defence (Army), 104, Cavalry Road, Delhi Cantt-110010.

4. Officer-in-Charge, EME Records, PIN-900453, C/o 56 APO.
5. Joint Controller, Pay and Accounts Office (Other Ranks), EME, Secunderabad-500015.
6. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Prayagraj-211014.
7. Commandant, 508 Army Base Workshop, PIN-900479, C/o 56 APO.
8. Commanding Officer, 604 EME Battalion, PIN-906604, C/o 56 APO.
9. Smt Sadhana Pandey, wife of JC-779318H Nb Sub late Shashi Bhushan Pandey, resident of Village-Talibpur, Post Office-Karmanpur, Police Station-Bairiya, District-Ballia (Uttar Pradesh).

.....Respondents

Ld. Counsel for the Respondents. : **Shri Yogesh Kesarwani**, Advocate  
Central Govt Counsel  
**Ms Raj Priya Srivastava**, Advocate  
Learned counsel for the respondent No 9

### **ORDER**

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

*(i) Issue/pass an order directing the official respondents/competent authority to consider and pay terminal and other consequential service benefits to the applicants as per their entitlement and within a specified time.*

*(ii) Issue/pass an order directing the official respondents not to release any sum of money in favour of the respondent No 9 without prior settlement of claims of the applicants.*

*(iii) Issue/pass an order directing the respondents to consider the candidature of applicant No 1 for appointment on a suitable post on compassionate ground within a specified time.*

*(iv) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.*

*(v) Allowing this application with cost.*

2. Brief facts of the case are that father of the applicants was enrolled in the Army on 13.03.1996. On 04.06.2022, while serving with 508 Army Base Wksp, he met with rail accident and died. As per recommendation of Court of Inquiry (C of I) dated 22.09.2022 his death was declared as attributable to military service (Annexure CA-1). During the course of his service, he was married to Smt Poonam Pandey on 28.06.1997. Applicants were born out of this wedlock. She died on 29.03.2006. After her death, he married to Smt Sadhana Pandey on 09.02.2007 with whom no children were born.

3. After death of his father, applicant No 1 had submitted petition dated 05.09.2022 not to release benefits in favour of Smt Sadhana Pandey on the ground that she is not taking care of his brother and sister as she has started living with her parents. A prayer was also made for distribution of all dues proportionately among all

beneficiaries. As such, on the basis of aforesaid petition, family pension was divided between Smt Sadhana Pandey and Mr. Amandeep Pandey, eldest son of the deceased soldier @ 50% each vide PPO No 204202203709 dated 18.10.2022 (Annexure CA-2). However, since the deceased soldier had nominated his second wife Smt Sadhana Pandey as his NOK to receive all the death benefits consequent to his death, gratuity amounting to Rs 17,23,776.00, AFPP Fund balance amounting to Rs 3,73,496.00 and credit balance amounting to Rs 6,65,382.00 were paid to her. Later, on receipt of C of I proceedings, case for grant of Special Family Pension has been processed to PCDA (P), Prayagraj and corrigendum PPO is awaited.

4. The record further reveals that Smt Sadhana Pandey has also been paid Rs 7,78,001/- from Army Group Insurance Fund with condition that the amount shall be shared among all beneficiaries. Claim with regard to death benefits under AGIF Scheme is under process (Annexure CA-6). This O.A. has been filed for grant of proportionate share to all recipients and consider applicant No 1 for compassionate appointment for a suitable post.

5. Submission of learned counsel for the applicants is that after death of their father, Smt Sadhana Pandey has

received terminal and other consequential service benefits and proceeded to live with her parents. Further submission of learned counsel for the applicants is that applicants were totally dependent on their father at the time of his death and since they have no source of income for livelihood, respondents should be directed to consider payment of proportionate share to them and also consider compassionate appointment being dependent ward of the deceased soldier.

6. On the other hand, submission of learned counsel for the respondents is that before finalization of accounts in respect of the deceased JCO, applicant No 1 had submitted a petition dated 05.09.2022 alongwith notarized affidavits of other legal heirs for proportionate distribution of all dues/retiral benefits of the deceased soldier among all the legal heirs and for compassionate ground appointment. It was further submitted that no retiral benefits of their father be released in favour of Smt Sadhana Pandey on the ground that she is not taking care of them and she left the house.

7. Learned counsel for the respondents further submitted that death gratuity, AFPP fund balance and credit balance have already been released in favour of Smt Sadhana Pandey being legally wedded wife and NOK of the deceased

soldier but AGIF amount of Rs 7,78,001/- has been released to her subject to condition that it will be paid to all recipients proportionately. However, death benefit under AGIF Scheme is under process and it will be paid to all legal heirs including mother of the deceased soldier.

8. Learned counsel for the respondents further submitted that pension has been divided between Smt Sadhana Pandey and Mr. Amandeep Pandey (eldest son) vide PPO No 204202203709 dated 18.10.2022 and the said PPO was sent to both the recipients vide EME Records letter dated 20.10.2022. Learned counsel for the respondents pleaded for dismissal of O.A. stating that pension has been equally divided between Smt Sadhana Pandey and eligible child and AGIF death benefits will be paid equally to all the legal heirs i.e. mother of the deceased soldier, Smt Sadhana Pandey and all children of the deceased soldier.

9. Heard learned counsel for the parties and perused the record.

10. JC-779318H Nb Sub (late) Shashi Bhushan Pandey while serving with 508 Army Base Wksp died on duty due to rail accident on 04.06.2022. Being in military service, he was married to Smt Poonam Pandey and applicants of this

O.A. were born out of this wedlock. Smt Poonam Pandey died on 29.03.2006 and the deceased soldier was married to Smt Sadhana Pandey on 09.02.2007. No child was born out of this wedlock.

11. While filing counter affidavit, respondents have conceded in Para 8 that payment with regard to death benefit under AGIF is under process and it will be equally paid amongst all the legal heirs i.e. mother of the deceased soldier, eligible children and Mrs Sadhana Pandey.

12. Respondent No 9 Smt Sadhana Pandey has also filed counter affidavit in that it has been stated that after death of Nb Sub Shashi Bhushan Pandey, behavior of applicants changed and they started torturing her to leave the matrimonial house. Further, on account of pressure being made by them for handing over all the terminal benefits to them, she left the house and started living with her parents.

13. In Para 19 of the counter affidavit, respondent No 9 has submitted that there is no objection if the entitled terminal dues are paid to the applicants. It is also submitted in Para 20 of counter affidavit of respondent No 9 that she has no objection to consider the applicant for employment on compassionate grounds.

14. As per rule on the subject, since the deceased JCO had nominated his second wife Smt Sadhana Pandey as his NOK to receive all the death benefits consequent to his death, death gratuity, AFPP fund balance and credit balance were paid to Smt Sadhana Pandey. Additionally, Smt Sadhana Pandey has also been paid Rs 7,78,001/- on account of maturity benefits from AGIF with clear instructions that it will be shared proportionately among all the legal heirs. The records shows that PPO No. 204202203709 dated 18.10.2022 has already been issued for division of 50% pension to Smt Sadhana Pandey and Amandeep Pandey (eldest son) and the said PPO has been sent to both the beneficiaries.

15. In the case in hand, we find that pension has already been equally divided between legal heirs but there are two issues which are still to be decided i.e. (i) division of death benefits of AGIF and (ii) consideration of compassionate appointment. For issue No (i), we find that claim for payment of death benefits under AGIF is under process and it should be paid equally amongst all legal heirs i.e. mother of the deceased soldier, applicants and Smt Sadhana Pandey.

16. For issue No (ii), as per policy a son/daughter of deceased soldier, who died in harness, is eligible for compassionate appointment. It is an admitted fact on record that Amandeep Pandey born in the year 2000 is the eldest son of the deceased soldier and he deserves to be considered for compassionate appointment.

17. In this regard, question of law falling for consideration in this case is whether the applicant who is son of the deceased soldier is entitled to seek compassionate appointment on the basis of 'dying in harness scheme'.

18. Law with regard to employment on compassionate ground for dependent of a deceased employee (in this case serving soldier dying in harness) is well settled by the Hon'ble Supreme Court in the case of **Sushma Gosain & Ors vs Union of India & Ors**, reported in (1989) 4 SCC 468. Para 9 of the aforesaid judgment being relevant is reproduced as under:-

*"9. We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant".*

19. In yet another case reported in (1994) 4 SCC 138-140 titled **Umesh Kumar Nagpal vs State of Haryana**, their Lordships of the Hon'ble Apex Court has held as under:-

*"The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependent of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the Change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned".*

20. In view of the fact that applicant's father died in harness, we are of the view that the applicant Mr. Amandeep Pandey is entitled for consideration for the

compassionate appointment. The respondents are directed to consider his application for the suitable post within a period of four months from the date of receipt of application for employment under quota for dying in harness scheme.

21. The respondents are further directed to consider division of death benefits under AGIF proportionately amongst all legal heirs within a period of four months from today. Default will invite interest @ 8% p.a.

22. The O.A. is **partly allowed**, accordingly.

23. No order as to cost.

24. M.A. Nos. 668 of 2023 and 699 of 2023 are disposed of.

**(Lt Gen Anil Puri)**  
**Member (A)**  
Dated:15.01.2024  
*rathore*

**(Justice Anil Kumar)**  
**Member (J)**

RESERVED

(Court No 2)

Form No. 4

**{See rule 11(1)}**  
**ORDER SHEET**

ARMED FORCES TRIBUNAL, REGIONAL BENCH,

LUCKNOW

ORIGINAL APPLICATION NO 889 OF 2022

Subhamdeep Pandey

Applicant

By Legal Practitioner for the Applicant

Versus

Union of India &amp; Ors

Respondents

By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>15.01.2024</u></p> <p><u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u></p> <p><u>Hon'ble Lt Gen Anil Puri, Member (A)</u></p> <p>Judgment pronounced.</p> <p>O. A. No. <b>889</b> of 2022 is partly allowed.</p> <p>For orders, see our judgment and order passed on separate sheets.</p> <p>(Lt Gen Anil Puri) Member (A) <i>rathore</i></p> <p>(Justice Anil Kumar) Member (J)</p>

