

E-Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 878 of 2022**

Tuesday, this the 1st day of November, 2022

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

Smt Puja Devi, W/o No 3207897 Late L/Nk Tikku Singh, R/o Village -
Khad Mohan Nagar, PO – Khad, Distt- Bulanshahar (U.P.).

..... Applicant

Ld. Counsel for the applicant : **Shri KK Misra, Advocate**

Versus

1. Union of India and others through its Secretary, Ministry of Defence, New Delhi.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), New Delhi.
3. Officer in Charge, Records, The JAT Regt, Bareilly.
4. PCDA (P), Allahabad.

..... Respondents

Ld. Counsel for the Respondents : **Dr. Shailendra Sharma Atal,
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 he has claimed the following reliefs :-

“(i) To direct the respondents to declare the death of the applicant’s husband as Battle Causality and thereafter grant Liberalized pension to the applicant from the date of death i.e. 31.03.2011.

“(ii) Thereafter, to direct the respondents to pay liberalized pension to the applicant from the date of the death of her husband and other benefits as applicable as per the policy on the subject with arrears and interest as applicable.

“(iii) Any other relief which the Hon’ble Tribunal may think just and proper may be granted to the applicant.

“(iv) Cost of the case may be awarded in favour of the applicant.

2. The factual matrix of the case are that husband of the applicant was enrolled in the Army on 28.10.2000. In the year 2009, he was posted in High Altitude Area on the line of Control in Operation RKSHAK in Jammu and Kashmir. On 21.03.2011, husband of the applicant developed high fever. He was treated in Army Hospital, (RR) Delhi Cantt and he died on 31.03.2011. Death of the husband of the applicant was considered as

attributable to military service and applicant was granted Special Family Pension. The applicant filed O.A. No 444 of 2017 with the prayer to declare the death of her husband as Battle Casualty and thereafter grant consequential benefits to the applicant. Second prayer of the applicant was to grant Ex Gratia Lump Sum Amount of Rs. 15,00,000/-. After hearing learned counsel of both the parties, O.A. was partly allowed. Prayer of the applicant for grant of Ex Gratia Lump sum compensation was allowed and prayer for considering death of the husband of the applicant as Battle Casualty was rejected vide order 12.02.2021. Now the applicant has filed second O.A. for same relief which has already been decided.

3. This is second Original Application filed by the applicant for grant of Battle Casualty status and thereafter grant Liberalised family pension.

4. In the instant O.A., applicant has submitted that her prayer for considering the death of her husband as Battle Casualty was not considered in first Original Application, hence she has filed this Original Application.

5. Applicant cannot file second application on the same cause of action on which the first application was filed, hence it is barred by res judicata. Prayer of considering the death of husband of the applicant as a

case of Battle Casualty was considered in terms of policy issued by the Government, but death of the husband of applicant was not covered under category of Battle Casualty, hence her prayer to grant Battle Casualty status was rejected. After rejection of prayer made in first application, if aggrieved, applicant should have filed appeal against the order but in any case it cannot become a fresh cause of action for filing second Original Application. Second Original Application being barred by Res judicata is liable to be dismissed.

6. Section 11 of the Civil Procedure Code speaks about res judicata and it reads as under-

“11. Res jidicata. - No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I.- The expression “former suit” shall denote a suit which has been decided prior to a suit in question whether or not it was instituted prior thereto.

Explanation II.- For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.- The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.-- Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.-- Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.

Explanation VI.- Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating .

Explanation VII.- The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII.- An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.”

7. On reading of the above section, it is clear that if the matter in issue in a suit was directly and substantially in issue in another suit between the same parties or their representatives or between the parties claiming through them and was finally decided by a court competent to decide the issue, no court shall decide the issue being barred by Res judicata.

8. Applicant in the instant O.A. has stated that in her first O.A., she made prayer for considering death of her husband as Battle Casualty and this O.A. has been filed after rejecting the prayer of the applicant. The cause of action in the first Original Application is the same in the present Original Application. Thus applicant's contention that a new cause of action has accrued is absolutely incorrect. The subject matter and cause of action in both applications being the same and the order passed in first Original Application being final as no appeal was filed against it, the order has attained finality with the result second Original Application cannot be tried being barred by Res judicata.

9. In view of the above, Original Application deserves to be dismissed being barred by Res judicata and is therefore, dismissed as such.

10. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 01 November, 2022
Ukt/-