

Court No. 1
Reserved Judgment

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

Original Application No. 213 of 2016

Friday, this the 26th day of October, 2018

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

Suresh Singh Chauhan, F/o Flt Lt Rohit Singh Chauhan,
R/o Kisan Sahkari Chini Mills Ltd, Anoop Shahar,
Distt – Bulandshahar (U.P.)

..... Applicant

Ld. Counsel for the – **Shri Shailendra Kumar Singh,**
Applicant **Advocate**

Versus

1. Union of India, through its Secretary, Ministry of Defence, New Delhi.
2. Chief of Air Staff, Air Headquarters, New Delhi.
3. Commanding Officer, 2 TETTRA School, C/o 99 APO.
4. CDA, (Air Force), Subroto Park, New Delhi – 10.

..... Respondents

Ld. Counsel for the – **Shri Kaushik Chatterjee,**
Respondents **Central Govt. Counsel**

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

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

(i) To quash Air HQ letter No HQ/99797/768/Dep/O/DAV/-1(B) dt 19 Aug 15, and letter No Air HQ/23401/204/4/8573/E/PS dt 18 Dec 15, as contained in Annexure A-8 and Annexure A-10 respectively to the O.A.

(ii) to direct the respondents to declare the death of the applicant’s son as attributed to Military Service as he was on duty at the time of accident and death.

(iii) thereafter, grant all benefits of service, ie of physical casualty to the applicant as per his entitlement, from the date of accident with interest.

(iv) Any other relief which Hon’ble Court may think just and proper may be granted in favour of the applicant.

(v) Cost of the case may be allowed.

2. The undisputed factual matrix on record is that the applicant’s son was commissioned in the Air Force on 19.06.2010 as a Pilot Officer. While posted to 119 Helicopter Unit, his son was detailed on temporary duty to undergo MI-17 V5 conversion course at Air Force Station Bagdogra. He was granted accommodation at Hotel Summit at Bagdogra, outside the unit location. On 16.03.2014 at about 1800 hrs applicant’s son went to Siliguri market on a motor cycle. While returning

from market, he met with an accident. He was brought to North Bengal University Medical Hospital where he was declared brought dead. On the basis of report, FIR was lodged. A court of inquiry was held and his death was considered as not attributable to Air Force service by the court of inquiry. The applicant's claim as father of deceased officer for grant of dependent pension was rejected by the respondents vide order dated 19.08.2015 on the ground that his income to claim dependent pension is higher than specified limit and that death of the applicant's son was not attributable to service. Accordingly, his appeal for grant of dependent pension was also rejected by the respondents vide order dated 25.01.2017. Being aggrieved, the applicant preferred the present O.A.

3. The delay in filing of Original application has been condoned vide order dated 24.08.2016.

4. Learned counsel for the applicant submitted that the applicant's son was commissioned in the Air Force on 19.06.2010 as a Pilot Officer. While on temporary duty, since official accommodation was not available in the Officers Mess as such, his son was directed to stay at Hotel Summit, Bagdogra, alongwith other officers who were attending the said course. On 16.03.2014 at about 1800 hrs few officers detailed

for course went to Siliguri market in a hotel transport vehicle and the applicant's son alongwith Flt Lt Rahul Srivastva went to Siliguri market on a friend's motor cycle. While returning from market, he met with an accident and was declared dead. On the basis of report, FIR was lodged. A court of inquiry was held and his death was considered as not attributable to Air Force service due to reason that he was not on any kind of Air Force duty at the time of the accident. The death of the applicant's son was neither declared as a physical casualty nor any financial assistance was granted to the next of the kin of the deceased. He submitted that the applicant's son was on course at temporary duty at Bagdogra at the time of accident and while on temporary duty any person subject to Air Force is treated on duty at all times irrespective whether he is or is not performing actual duty in working hours or after or beyond that. Hence he pleaded that if any occurrence takes place at any time on temporary duty it has to be treated as attributable to Air Force service. In support of his contention, he submitted the judgment of Delhi High Court in the case of ***Jitendra Kumar Vs Chief of Army Staff***, W.P. No 1637 of 2006, decided on 08.08.2006 wherein applicant was granted disability pension while the injury had occurred while on casual leave. He submitted that the respondents have wrongly rejected the claim of the

applicant for grant of dependent pension. He pleaded that the applicant should be granted all service benefits of his deceased son.

5. **Per Contra**, learned counsel for the respondents submitted that the son of the applicant was detailed for conversion course and was on temporary duty. He was staying in Room No 105, Hotel Summit, Upper Bagdogra, Siliguri City with Flt Lt Rahul Srivastava due to non availability of accommodation at any Officer's Mess. He submitted that son of the applicant had gone to Siliguri Town for private shopping and meeting with his friends from the Hotel, hence his travel was strictly for personal purpose and not related to duty. He submitted that deceased Flt Lt RS Chauhan had beer at Hotel Sharda restaurant and Bar, this was one of the reasons of the accident. While returning, he met with a motor vehicle accident with a car and died due to multiple injuries. A court of inquiry was held, since the officer was not on Air Force duty, hence his death was not accepted by the court of inquiry as attributable to air force service as per para 12 of Guide to Medical Officers (Military Pension), 2002, Chapter IV, Entitlement Rules. He submitted that since the deceased claim arising out of motor accident in civil area, for such cases jurisdiction lies with Motor Accident Claims Tribunal of Siliguri only. He argued that

ordinary family pension (ordinary dependent pension) is admissible to the parents of the bachelor deceased officer subject to certain income criteria and the fact of total dependency on the armed forces personnel when he was alive. He further submitted that at the time of death of officer, his father/applicant was gainfully, employed as a Chief Chemist of Kisan Sehkari Chini Mills Ltd, Morna, Muzaffarnagar and thus did not meet the income threshold. As per Pension Regulation for Air Force 1961, award of special family pension (SFP) shall be made only in cases where the cause of death is attributable to or aggravated by service. SFP does not have an income bar for parents. SFP is not a bounty for gainfully employed relatives of deceased service personnel. It is linked to attributability of death to Air Force service. The pension sanctioning authority has not agreed to grant of dependent pension to next of kin of the deceased officer stating that the income of the father of the deceased officer is more than Rs 3500/- + DA per month and also that the death of the officer is not attributable to service. Hence as per the existing policy the applicant is not entitled to dependent pension. He pleaded that the O.A. be dismissed.

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

7. In the instant case we do not see any reason to overrule the findings of the court of inquiry that the applicant's son met with an accident when he was not on Air Force duty. Hence we do not agree with contention of learned counsel for the applicant that the death of the deceased Air Force Officer should be treated as attributable to Air Force service because when he met the accident, he was not performing any assigned duty. The issue of attributability is always linked to causal connection with Air Force duty and has nothing to do with temporary or permanent duty. In the instant case, we do not find any causal connection of the deceased officer's decision to go to Siliguri town to Bagdogra and come back on a motor cycle with any Air Force duty. This trip was purely for personal reasons, hence the death during the return journey cannot be considered as attributable to Air Force service. In order to decide whether a person was performing an official duty, one of the criteria is whether commission or non commission of such act would have made applicant liable for disciplinary action. When we tested the facts of this case on the touch stone of aforementioned ground then the only conclusion that can be reached is that deceased was not performing any authorized duty. If he had not gone for shopping or dinner to Siliguri on

motor cycle, the said omission would not have rendered him liable to any disciplinary action.

8. To consider as to what acts are covered by the term 'duty' we may like to make reference to Entitlement Rules Appendix II of Clause 12 which defines the word duty. For convenience sake, Clause 12 is reproduced as under:

“DUTY: 12. A person subject to the disciplinary code of the Armed Forces is on “duty”:- (a) When performing an official task or a task, failure to do which would constitute an offence triable under the disciplinary code applicable to him.

(b) When moving from one place of duty to another place of duty irrespective of the mode of movement.

(c) During the period of participation in recreation and other unit activities organised or permitted by Service Authorities and during the period of travelling in a body or singly by a prescribed or organised route.

9. On the issue of causal connection and attributability to Air Force service, learned counsel for the respondents has invited our attention to the pronouncement of the Full Bench of Hon'ble Delhi High Court in the case of ***Ex Nk Dilbag Singh vs Union of India & Ors***, Writ Petition No. (C) 6959 of 2004, delivered on 22.08.2008 and connected matters is of prime relevancy in the facts and circumstances of the present case. In said case their Lordships in para-24 observed, to quote:-

“24. To sum up our analysis, the foremost feature, consistently highlighted by the Hon'ble Apex Court, is that it requires to be established that the injury or fatality suffered by the concerned military personnel bears a

causal connection with military service. Secondly, if this obligation exists so far as discharge from the Armed Forces on the opinion of a Medical Board the obligation and responsibility a fortiori exists so far as injuries and fatalities suffered during casual leave are concerned. Thirdly, as a natural corollary it is irrelevant whether the concerned personnel was on casual or annual leave at the time or at the place when and where the incident transpired. This is so because it is the causal connection which alone is relevant.

10. In the case of ***Union of India & Others v Ex Naik Vijay Kumar*** (Civil Appeal No 6583 of 2015 arising out of CAD No 13923 of 2014 decided on 26.08.2015, their Lordship of Hon'ble Apex Court, in para-19, have observed thus:-

“19. In the light of above discussion, it is clear that the injury suffered by the respondent has no casual connection with the military service. The tribunal failed to appreciate that the accident resulting in injury to the respondent was not even remotely connected to his military duty and it falls in the domain of an entirely private act and therefore the impugned orders cannot be sustained.”

11. In view of the above, the deceased officer was not on bonafide air force duty at the time of his accident and the Original Application is liable to be dismissed.

12. Accordingly, Original Application No. 213 of 2016 is dismissed.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice S.V.S. Rathore)
Member (J)

Dated : October 2018
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