

**COURT No.3, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

RA 45/2016 in OA 647/2015

Union of India **Applicant**
Vs.
Naik Satyendra Kumar **Non applicant**

For applicant/respondents : Mr. S.P. Sharma Advocate.
For Non-applicant/ Respondents : Ms. Archana Ramesh Advocate.

CORAM:

HON'BLE MR. JUSTICE S.S. SATHEESACHANDRAN, MEMBER
HON'BLE AIR MARSHAL J.N.BURMA, MEMBER

O R D E R
12.08.2016

Justice S.S. Satheesachandran, Member(J)

1. The respondents in the OA have moved the above application for review of the Order dated 09.03.2016 by which the claim of lump-sum compensation for ex-gratia payment for disability suffered by the applicant was upheld by this Tribunal. There is error apparent or mistake in the order passed by the Tribunal is the case of the respondents to seek for review of that Order.

2. Invoking the jurisdiction of this Tribunal for grant of rounding off benefits on the percentage of disability element of his disability and also for ex-gratia payment for the disability suffered the applicant filed the above O.A. Pending adjudication of the OA rounding off benefits claimed was allowed and, accordingly, PPO was issued . What survived for consideration was only his claim for ex-gratia payment of compensation for his disability. Tribunal stating that the applicant is entitled to ex-gratia payment of compensation in terms of para 3 of

the Government of India letter dated 26.12.2011(Annexure-A-10 in the OA) expressed the view that he has to be granted such compensation as entitled to. In forming such a view the Tribunal took into account that the disability suffered by the applicant was attributable to military service, and, further, the learned counsel for the respondents was not able to controvert the entitlement of the applicant to have ex-gratia compensation as under para 3 of the Government letter referred to.

3. In the counter to the OA the respondents have specifically disputed the claim for ex-gratia payment of the applicant and the non applicability of para 3 of the Government letter in his case, but it was brushed aside by the Tribunal stating that the counsel for the respondents 'could not controvert the claim canvassed by the applicant', according to the respondents. There was no decision on the disputed question with reference to para 3 of the Government letter adjudging the claim of the applicant for ex-gratia payment, and the view expressed solely on the premise that the counsel for the respondents could not controvert the claim of the applicant to uphold his claim is an error apparent or mistake in the Order calling for review, is the case presented for annulling the order and re-hearing of the case to have a decision over the claim of ex-gratia payment of the applicant on merits.

4. We have heard Mr. S.P. Sharma learned Central Government Counsel appearing for the respondents in the OA and also Ms.

Archana Ramesh learned counsel appearing for the applicant in the OA.

5. Previous to Government to letter No.2(2)/2011/(Pen)/Pol), (Ministry of Defence), dated 26.12.2011 ex-gratia lump-sum compensation was provided only to the families of the Defence Service Personnel who died in performance of their duties. By virtue of the above Government letter the benefits of ex-gratia lump-sum compensation was extended to Defence Service Personnel "who are disabled, incapacitated in the performance of their bonafide duties under various circumstances and are boarded out from service on account of disability/war injury attributable or aggravated by military service." Para 3 of the Government letter that spells out over and above boarding out from service on account of disability war injury attributable to or aggravated by military service to claim the benefit of ex-gratia payment of compensation it should be further shown that the defence service personnel was disabled, incapacitated in the performance of his 'bonafide official duties under various circumstances'. When that be so, it is apparent that the view taken by this Tribunal that the applicant in the OA is entitled to ex-gratia payment of lump-sum compensation for the reason that his disability suffered was attributable to military service is not correct. Furthermore, the disputed question involved in the OA over the entitlement of the applicant to claim ex-gratia compensation challenged by the respondents called for adjudication, and, it cannot be decided taking a view that his entitlement to the claim was not controverted by the counsel for the respondents.

6. We are satisfied that there is an error apparent on the face of the order over the view expressed by the Tribunal in respect of para 3 of the Government letter involved, and as such in the interests of justice call for review of the order disposing the OA .

Allowing the review petition, we set aside the order dated 09.03.2016 disposing the OA and direct for restoring the OA on the file of the Tribunal. Post the OA for rehearing on 07.10.2016. Parties are directed to suffer their costs.

(S.S. SATHEESACHANDRAN)
MEMBER

(J.N.BURMA)
MEMBER

12.8.2016/brh