

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI

T.A.No.46 of 2010

(W.P(C) No.20548/2006 OF THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM)

THURSDAY, THE 19TH DAY OF JANUARY, 2012/29TH POUSHA, 1933

CORAM:

HON'BLE MR. JUSTICE JANARDAN SAHAI, MEMBER (J)
HON'BLE LT. GEN. THOMAS MATHEW, PVSM, AVSM, MEMBER (A)

1. RAMANI C.T., W/o.LATE NB SUB
MOHAN DASAN M,
'MOHANAM', P.O.CHOOLUR
UNIT CAMPUS, KOZHIKODE-01.
2. MS.REMYA M,
D/O.LATE NB SUB MOHAN DASAN M,
'MOHANAM', P.O.CHOOLUR
UNIT CAMPUS, KOZHIKODE-01.

APPLICANTS/PETITIONERS

BY ADV. SRI.GOVINDH K. BHARATHAN (Sr.)

VERSUS

1. THE UNION OF INDIA, REP. BY
THE SECRETARY TO GOVERNMENT,
MINISTRY OF DEFENCE
GOVERNMENT OF INDIA, SASTRI BHAVAN
DR.RAJENDRA PRASAD ROAD,
NEW DELHI-110 001.
2. THE ADJUTANT GENERAL
ADDITIONAL DTE/GEN. PERSONNEL SERVICE,
ADJUTANT GENERAL'S BRANCH,
ARMY HEADQUARTERS
NEW DELHI - 110 011.

RESPONDENTS/RESPONDENTS

3. THE ZILA SAINIK WELFARE OFFICER,
PANCHAMA SCHOOL ROAD,
KOZHIKODE - 673 001.

BY ADV. SRI.K.M.JAMALUDEEN, Sr.P.C.

ORDER

Thomas Mathew, Member (A)

The petitioners are the widow and daughter of Nb Sub Mohan Dasan M, who died due to bullet injury sustained while on operational duty at Jammu & Kashmir. He was shot by the night sentry and his unit had declared that he died while on duty and that his death is attributable to military service. The 1st petitioner is aggrieved by the denial of Liberalised Family Pension and ex-gratia award to her and filed this petition before the Hon'ble High Court of Kerala which has been transferred to this Tribunal.

2. It is averred by the 1st petitioner that her late husband's Commanding Officer (CO) had informed her that "JCO gave his life in the service of Motherland. We are proud of him and his name shall never be forgotten". The certificate issued by the CO clearly states that the death of the JCO is attributable to military service (Exhibit P2). It is submitted that her appeal for Liberalised Family Pension was denied by the respondents stating that the late JCO was shot by a fellow soldier and his death was not related to enemy action or war like operations.

3. The petitioner has also stated that she had applied for employment for her daughter (2nd petitioner) on compassionate grounds which was rejected by the respondents. No formal communication to this effect has been received by her. The petitioner has therefore prayed that the orders passed by the respondents concerning her be quashed and grant her Liberalised Family Pension, ex-gratia award and compassionate employment to her daughter.

4. The respondents have filed a counter affidavit wherein they have not challenged the events leading to the death of the JCO. They have admitted that his death is attributable to military service and accordingly Special Family Pension has already been sanctioned to her as per rules. They have argued that as the petitioner's husband was shot by a fellow soldier, his death does not come under the provisions governing grant of Liberalised Family Pension and ex-gratia award. These are granted to the next of kins of those service personnel who die in international wars, war like situations, in action against terrorists or shot dead by anti social elements/extremists. It has also been submitted by the respondents that the petitioners case for employment

assistance on compassionate grounds was considered by the appointed Board of Officers in four consecutive boards in December 2002, March 2003, June 2003 and December 2004 in accordance with the laid down rules. In the four boards, the name of the daughter of the 1st petitioner did not figure in the relative merit due to limited vacancies vis-a-vis applicants. The same was communicated to the 1st petitioner and the Hon'ble Defence Minister had also conveyed the same by a letter (Ext.R-2 and P-8).

5. We have heard both sides and perused the documents that have been made available including the Court of Inquiry. There is no dispute with regard to the events that lead to the death of the JCO. While the army authorities have agreed that the death of the JCO is attributable to the service, the PCDA(P), the pension sanctioning authority has maintained that the incident does not qualify for the grant of Liberalised Family Pension to the next of kin. Hence, the two issues that need to be resolved are, firstly, as to whether the widow of late Nb Sub Mohan Dasan.M is eligible for the grant of Liberalised Family Pension and secondly, whether her daughter is eligible for

employment under the compassionate appointment scheme of the Government.

6. It is evident that the 1st petitioner's husband was shot dead by one of his subordinates who was the night sentry. The incident occurred on the night of 16/9/1999 during 'Operation Rakshak' (Operation Viay) in Jammu & Kashmir while the JCO was performing his military duty in a field area. The Court of Inquiry has carried out an indepth investigation into the incident which occurred within an army area where all the sentries are armed with rifles or carbines. It is clear from various statements that the sentry fired three rounds at Nb Sub. Mohan Dasan deliberately and a fourth one after a short gap. The sentry had also abused the JCO before he opened fire in the presence of another witness. There was no question regarding the identity of the JCO as he had given the correct password and was recognised by the sentries. The night sentry had evidently opened fire in anger fully well knowing that he was firing at a superior from his own unit. The inquiry had found him blame worthy of this act of violence. We have no doubt that the incident is a classic case of an "Army personnel killed/wounded

by own troops running amok in operational area” as given in Appendix A to AO/01/2003 which reads as follows:-

CIRCUMSTANCES FOR CLASSIFYING CASUALTIES

AS BATTLE OR PHYSICAL

(Appendix A to AO/01/2003)

Battle Casualties

1. The circumstances for classifying personnel as battle casualties are as under:-

(a)

to

(q)

(r) Army personnel killed/wounded by own troops running amok in operational area.

(s)

6. Oxford dictionary defines 'run amok' as “to suddenly become very angry or excited and start behaving violently, especially in public place”. The Chambers 20th Century Dictionary defines the word as “madly in murderous frenzy” and has further explained that 'amok' is derived from Malay word 'amog' which means intoxicated or excited to madness. The late

husband of the 1st petitioner was shot dead by a night sentry in a fit of anger while on duty in an operational area in Jammu & Kashmir. We are, therefore, of the considered view that the incident is a case of a soldier running amok and killing his colleague and is covered under the provision of AO/1/2003 to be classified as a "Battle Casualty".

7. As per Ministry of Defence letter No.1(2)/97/1/D(Pen-C) dated 31/1/2001 regarding "Implementation of Government Decisions on the recommendations of the Fifth Central Pay Commission" which is applicable for personnel who are in service as on 1/1/1996; it is clear that the JCO's death comes under category 'E' making the next of kin eligible for Liberalised Family Pension.

8. The Ministry of Defence vide letter No.1(2)/97/D(Pen-C) dated 7/2/2001 has further clarified that in cases of "injuries", attributability is to be decided by the authority next to the Commanding Officer, not lower than a Brigade/Sub Area Commander or equivalent. In the instant case, it has been admitted by the respondents in their counter affidavit that the

Brigade Commander of 2(1) Armoured Brigade had considered the death of the JCO as attributable to military service in field. It is, therefore, abundantly clear that the death of Nb Sub Mohan Dasan.M occurred in operational area as a result of shots fired deliberately by a subordinate and the death is attributable to military service and is to be classified as a "Battle Casualty".

9. The second issue concerns employment assistance on compassionate grounds to the daughter of the late JCO. It has been clarified that the second petitioner had been considered on four occasions by Boards of Officers for an appointment, however due to the relatively lower merit vis-a-vis other applicants and the limited vacancy, the same could not be granted. This aspect has been explained in detail in the letter of Hon'ble Minister of Defence – D.O.No.14/MP/VIP/05/D(O-II)/1033-OL/RM dated 30/4/2005, produced as Exhibit P8. We have no reason to doubt the averments of the respondents in this issue. Hence we find no illegality or irregularity in the denial of compassionate employment to the 2nd petitioner.

10. In the result, the Transferred Application is disposed of

in the following manner:-

(a) There will be a direction to the respondents to declare the death of late Nb Sub Mohan Dasan.M as a Battle Casualty and the next of kin eligible for Liberalised Family Pension and authorised Ex-gratia payment from the Central and State Government.

(b) The arrears of Liberalised Family Pension will be calculated from the date of death of the JCO and necessary amendment/corrigendum to PPO issued within three months of receipt of these orders.

(c) The prayer concerning grant of employment assistance on compassionate grounds is dismissed.

11. Issue free copies. No cost.

Sd/-
LT.GEN.THOMAS MATHEW
MEMBER (A)

Sd/-
JUSTICE JANARDAN SAHAI
MEMBER (J)

mds/

(True copy)

Private Secretary