

ARMED FORCES TRIBUNAL REGIONAL BENCH, KOCHI

O.A.NO.161 of 2014

FRIDAY, THE 27TH DAY OF NOVEMBER, 2015/06TH AGRAHAYANA, 1937

CORAM:

HON'BLE MR. JUSTICE S.S.SATHEESACHANDRAN, MEMBER (J)

HON'BLE VICE ADMIRAL M.P.MURALIDHARAN, AVSM & BAR, NM, MEMBER (A)

APPLICANT:

SUARNALATHA.P.,
W/O.PUSHPARAJAN
& M/O.LATE SEPOY/SKT SHIBU RAJ.P.,
NO.14844569Y, DAMDIM,
WEST BENGAL, C/O.99 APO,
SHIBU NIVAS, KOTTACKAKOM,
CHAVARA.P.O., KOLLAM.

BY ADV.SRI.P.RADHAKRISHNAN NAIR.

Versus

RESPONDENTS:

1. UNION OF INDIA, REPRESENTED BY THE
SECRETARY TO GOVT., MINISTRY OF DEFENCE,
NEW DELHI - 110 001.
2. THE CHIEF OF THE ARMY STAFF,
ARMY HEADQUARTERS,
NEW DELHI 110 001.
3. DIRECTOR GENERAL SUP. & TPT,
QUARTARMASER GENERAL BRANCH,
INTEGRATED HEADQUARTERS OF MOD (ARMY),
DHQ P.O., NEW DELHI - 110 001.
4. THE OFFICER COMMANDANT, SENA SEVA CORPS
ABHILAKSH (DAKSHAN), ASC RECORDS (SOUTH),
BANGALORE - 560 007.

BY ADV.SHRI P.J.PHILIP, CENTRAL GOVT. COUNSEL.

O R D E R

VAdm.M.P.Muralidharan, Member (A):

1. The Original Application has been filed by Smt.Suvarnalatha, mother of late Sepoy Shibu Raj, No.14844569Y, for grant of special family pension consequent to the death of her son on 28 January 2008. Late Sepoy Shibu Raj was enrolled in the Army on 04 March 2004. Whilst on leave, in December 2007, he suffered an attack of 'fits' and was initially admitted to a civil hospital and eventually in Military Hospital, Thiruvananthapuram. He was transferred to Naval Hospital INHS Sanjivani under escort for further investigation on 25 January 2008. While admitted in the Naval Hospital, on 28 January 2008 the late Sepoy was found lying in the parking area near the Physiotherapy Department of the hospital, close to the Psychiatry Ward. He had sustained head injury due to fall from height and

was declared dead by the duty Medical Officer at 1815 hours. The applicant, as mother of the late Sepoy was granted ordinary family pension with effect from 29 January 2008 and other benefits.

2. Sri.P.Radhakrishnan Nair, the learned counsel for the applicant submitted that the death of the applicant's son was attributable to head injury sustained as a consequence of fall from height while he was admitted at INHS Sanjivani (Annexure A1). The applicant's son had been transferred from Military Hospital, Thiruvananthapuram to the Naval hospital under escort. The personnel who escorted him were to be replaced by three other guards. While the initial set of guards returned to Thiruvananthapuram, reliefs were not positioned. On 28 January 2008 the applicant had met her son along with her husband and daughter at the hospital. Later that evening they were informed that their son had sustained serious injuries due to a fall and had died.

3. The learned counsel submitted that the applicant's son had been physically and mentally fit at the time of enrollment into the Army. The learned counsel further submitted that the accidental fall of the applicant's son from a height in the hospital is attributable to service as his safety was not ensured whilst in the hospital. Post death of her son, the applicant was sanctioned only family pension (Annexure A2). However since the death of the applicant's son was attributable to service she was eligible for special family pension and had applied for it in January 2009 (Annexure A3). A second appeal was made by her in June 2012 (Annexure A4). The applicant had also preferred an appeal for employment of her daughter, ie, sister of late Sepoy Shibu Raj under compassionate employment assistance scheme in March 2009 (Annexure A5). The applicant had also preferred an appeal to the Hon'ble Defence Minister for special family pension and for employment on compassionate grounds (Annexure A6). However none of her appeals have been acceded to so far.

4. The learned counsel prayed that as the death of the applicant's son was attributable to military service, the applicant be granted special family pension and employment under compassionate employment assistance scheme be given to the applicant's daughter, who is sister of the late Sepoy Shibu Raj.

5. Sri P.J.Philip, learned Central Government Counsel for the respondents submitted that the applicant's son had been granted leave from end November 2007 to end January 2008 for his sister's marriage as well as his own. However, the applicant's son became upset when his marriage was cancelled due to alleged reluctance from the bride's side and he suffered an attack of 'fits'. The learned counsel submitted that the applicant's son was a known case of seizure and was in low medical category BEE (P) with effect from 09 January 2006. Apparently he had not divulged this fact to his parents and they came to know about it only after his hospitalization in military hospital,

Thiruvananthapuram. The applicant's son was transferred to INHS Sanjivani for investigation of his abnormal behaviour on 26 January 2008. He was evaluated by Psychiatrist who did not find any major psychotic disorder or gross disorganized behaviour and based on his clinical evaluation and inputs received from the history of the patients illness it was concluded by the Psychiatrist that the applicant's son was unlikely to behave in an abnormal fashion. Based on the conclusions, the Escorts to the applicant's son were relieved of their duties. On 28 January 2008 the father and sister of the late soldier visited him. Eventhough he displayed unusual emotional behaviour, it was not informed to the Psychiatrist at that stage. As per normal practice, patients in the ward were to be taken for an evening walk at about 1700 hours. Late Sepoy Shibu Raj and another person did not want to go for a walk and hence were left behind in the ward, while the other patients were taken by the medical assistant for a walk. Sometime later the body of the late Sepoy Shibu Raj was

found on the ground behind the Physiotherapy Department which was close to the Psychiatry ward. He had sustained severe head injuries due to the fall and subsequently died from it.

6. At the inquest carried out by the civil Police no foul play was suspected and the death was held as attributable to his suicidal nature. A one man inquiry was conducted by the Headquarters, Southern Naval Command and another one was conducted by the Station Commander, Thiruvananthapuram both of which concluded that the death of Sepoy Shibu Raj (applicant's son) was not attributable to military service. The Adjudication Board also subsequently held that the death of Shibu Raj was not attributable to military service and accordingly ordinary family pension and Death-Cum-Retirement Gratuity were sanctioned to the applicant. The claim of the applicant for grant of special family pension was examined by the competent authority and held that in

accordance with Regulations 213 of Pension Regulations for the Army, the applicant was not entitled for special family pension. The applicant's first appeal against rejection of special family pension was duly examined by Army Headquarters and rejected as the death of her son had occurred in circumstances which were not in any way related to duties of military service (Annexure R2). A second appeal preferred by the applicant in October 2010, was also examined and rejected in December 2014 as the death was considered neither attributable to nor aggravated by service (Annexure R3).

7. The learned counsel further submitted that the applicant had approached ASC Records (South) for employment of the married sister of the deceased soldier or for herself on compassionate grounds. The applicant was advised that compassionate appointment was purely based on vacancies that existed and was over all limited to 5% of the vacancies in Government service (Annexure

R4). The applicant was also advised to submit a request in the prescribed forms but no application was received thereafter. The applicant's request to the Hon'ble Defence Minister on the issue was also examined and responded to. She was informed that rules did not permit employment of her daughter since she was married (Annexure R6). Subsequently about 4 years later in February 2014, the applicant submitted another petition for appointment of her daughter on compassionate grounds. The applicant was once again informed about the existing policy on eligibility for employment assistance (Annexure R5). The learned counsel further submitted that the one man inquiry conducted by the naval authorities as well as the Police inquiry had indicated that no foul play had taken place and the applicant was likely to have committed suicide. The staff of the hospital had taken utmost care and the death of the applicant's son was not due to any medical negligence. Special family pension was applicable only in circumstances specified in Government policy of January

2001, in that it should have been due to causes which are accepted as attributable to or aggravated by military service or due to accidents in the performance of specified duties. In view of the findings of the inquiry reports, the applicant was not eligible for special family pension.

8. Heard rival submissions and perused records.

9. The primary contention of the applicant is for grant of special family pension. Regulation 213 of Pension Regulations for the Army 1961 as modified by Government of India, Ministry of Defence letter No.1(2)/97/D(Pen-C) dated 31 January 2001 governs the grant of special family pension. The said Government letter has been incorporated in the Pension Regulations for the Army revised in 2008, however they came into force after the death of the applicant's son and hence earlier Regulations and Government letter of 2001 would prevail and being relevant are re-produced below:

“213. A special family pension may be granted to the family of an individual if his death was due to or hastened by

(a) a wound, injury or disease which was attributable to military service

OR

b) the aggravation by military service of a wound, injury or disease which existed before or arose during military service. ”

“Government of India, Ministry of Defence letter No. 1 (2) / 97 / I / D (Pen - C) dated 31st January, 2001
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1.2 The provision of the Pension regulations of the three Services and various Service instructions/Government orders which are not affected by the provisions of this letter, will remain unchanged.

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**PART II - PENSIONARY BENEFITS ON DEATH/
DISABILITY IN ATTRIBUTABLE /AGGRAVATED
CASES**

4.1 For determining the pensionary benefits for death or disability under different circumstances due to attributable/aggravated causes, the cases will be broadly categorised as follows: -

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“Category B

Death or disability due to causes which are accepted as attributable to or aggravated by military service as determined by the competent medical authorities. Disease contracted because of continued exposure to hostile work environments subject to extreme weather conditions or occupational hazards resulting in death or disability would be examples.

Category C

Death or disability due to accidents in the performance of duties such as:

.....”
.....

PART III -FAMILY PENSIONARY BENEFITS IN ATTRIBUTABLE/AGGRAVATED CASES

5. Special Family Pension(SFP)

5.1 In case of death of an Armed Forces Personnel under the circumstances mentioned in category "B" or "C" of Para 4 above, Special Family Pension shall continue to be admissible to the families of such personnel under the same conditions as in force hitherto fore. There shall be no condition of minimum service on the date of death for grant of Special Family Pension.”

10. Regulation 213 of the Pension Regulations enables grant of special family pension to the family of an individual if his death was due to or hastened by a wound, injury or disease which was attributable to military service. Regulation 173 which lays down the primary condition for grant of disability pension specifies that the question whether disability is attributable to or aggravated by military service shall be determined by the Entitlement Rules For Casualty Pensionary Awards. The Government letter of January 2001 has further categorised and amplified circumstances of death or disability which could be made attributable to/aggravated by service. Rules 6 and 8 of Entitlement Rules for Casualty Pensionary Awards 1982 being relevant are re-produced below:

"6. Disablement of death shall be accepted as due to military service provided it is certified by appropriate medical authority that:

(a) the disablement is due to a wound, injury or disease which

(i) is attributable to military service, or

(ii) existed before or arose during military service and has been and remains aggravated

thereby. This will also include the precipitating/hastening of the onset of a disability.

(b) the death was due to or hastened by

(i) a wound, injury or disease which was attributable to military service; or

(ii) the aggravation by military service of a wound, injury or disease which existed before or arose during military service.

"8. Attributability/aggravation shall be conceded if casual connection between death/disablement and military service is certified by appropriate medical authority."

11. In the instant case, it is not disputed that the applicant's son died as a result of severe head injury sustained in a fall from a significant height, while he was admitted in the Psychiatry ward of Naval Hospital INHS Sanjivani. It is also not disputed that the applicant's son was left unattended/was without any escorts prior to his fall from the building. The issue that arises is whether the fall,

which caused the injury resulting in death, was attributable to service. If so, the applicant would be eligible for special family pension.

12. The applicant's son was admitted to Naval hospital INHS Sanjivani on 25 January 2008 under escort as a transfer case from Military Hospital, Thiruvananthapuram for psychiatric evaluation of abnormal behaviour. He was a known case of seizure disorder and had been admitted in Military Hospital on 23 January 2008 with a history of seizure relapse. His behaviour while admitted in Military Hospital, Thiruvananthauram resulted in his being transferred to INHS Sanjivani for psychiatric evaluation. While he was brought and initially kept under escort at Sanjivani, based on clinical evaluation, the Specialist in psychiatry treating him concluded that the chance of the patient behaving in abnormal fashion so as to cause a threat to his life and that of others was negligible. The escorts were removed and

the applicant's son was unescorted from the afternoon of 28 January 2008. The one man inquiry convened to investigate circumstances leading to the death of the applicant's son, established that his death was due to fall from a height, but opined that the fall and the subsequent injuries sustained were self inflicted and cannot be attributed to service. Similar was the finding of the Court of Inquiry ordered by the Station Commander, Thiruvananthapuram.

13. However the ward reports for the period written by Medical Assistants on completion of their duty, placed as Exhibit No.6 to OMI, indicate a different picture and being relevant is re-produced below:

Report of 25 January:

“ Night Report

Patient transferred from MH Tvm as a case of psy (inv) and generalized seizures (old). Patient admitted at 2312 hrs and warded by 2330 hrs with 03 escorts. At the time of arrival

patient was not fully conscious and shows signs of a post epilepsy shock ie, body was in a extended posture, mouth and eyes were open and head was little tilt to one side.”

Report of 26 January:

“ Day Report

Patient appears drowsy. Behaviour is partially co-operative. Well oriented to time, place and person in recreational activities, had food in time, slept for 2 hours after lunch. Personal hygiene is not up to standard. General condition is satisfactory.”

“ Night Report

Patient looks drowsy and tired. Behaviour is partially co-operative. Sometimes he is not following vocal commands. Had food a little and slept well in the night time.”

Report of 27 January:

“ Day Report

Patient looks worried and tense and behaviour is co-operative, not interested in recreational activity and not mixing with other patients, most of the time complaining severe head ache. Had food in time. Patient did not go for evening walk.”

“ Night Report

Patient look worried and tense. Had complaints of sleepless in the night and asking for sedative injections. Now patient is co-operative. But still he is not mixing with other patients”

Report of 28 January:

“ Day Report

Patient appears calm and quiet. Behaviour is co-operative. Around 1700 hours I mustered all the patients for evening walk. All patients went for evening walk except Shibu Raj and Bharathi, then I went to ortho ward for round, when I come back from orthoward the guard of Balmat Singh informed that patient is lying on the ground near staff scooter parking I immediately went but he was not there, then I went to MI room. He was being attend by DMO. I also started helping. Subsequently informed MO 1/c psy.wd.”

14. It is also observed from the reports that on all the days under consideration, there were eleven patients in Psychiatric ward. However special reports/remarks were being written by the duty medical assistants only on the applicant's son and one other patient. Therefore, in our

view, he was one of the two who was not yet stable. If there were others who were not stable, they were under escort as the daily state from 25 to 28 January and day remarks of 28 January indicates presence of escorts. The day report of 28 January, as evident from remarks, was written after fall of the applicant's son which makes the remarks indicating normalcy in patient inconsistent as compared to other reports.

15. Statement of Witness No.7, father of the late Sepoy Shibu Raj, in the one man inquiry is also relevant. Questions and answers 100 and 101 are re-produced below:

“Q100. What was the interaction with Dr Pisharody. Narrate in brief.

Ans. Dr Pisharody had not been able to observe Sep Shibu Raj in detail over the past 02 days due to holidays. He assured us that within a few days he would make him completely alright and sent him home after treatment. He told us not to worry and we could go back home peacefully.

Q101. Did Dr Pisharody indicate to you at any time that Sep Shibu Raj was suffering from some major emotional disorder or psychiatric illness?

Ans. No sir, he did not at any time tell me that Sep Shibu Raj was suffering from any such major illness. On the contrary, he told us that he was having some minor tension which he would be able to treat and make him completely alright within a few days. He assured us and told us to go back home peacefully. "

16. Statements made by the treating Psychiatrist to the father of the late Sep Shibu Raj indicate that detailed observation of the patient could not be done for two days being holidays. However, the same Psychiatrist as Witness No.1 in the OMI stated that the risk of the patient behaving abnormally so as to cause threat to his own life and to the life of others was negligible and therefore escorts were relieved on third day (Question and Answer No.13 of OMI).

17. The patient was transferred from Military

Hospital, Thiruvananthapuram to the Naval Hospital at Kochi as it had better facilities to treat the abnormal behaviour of applicant's son and more so as the patient was found leaving the premises of Military Hospital without due reason or approval. He was admitted only in the evening of 25 January and died on the evening of 28 January. Lack of indepth observation during the intervening two days being holidays, as admitted by the treating Psychiatrist, indicates limited observation. As observed earlier, the reports of the Ward Medical Assistants indicated that the patient was still not stable. The views of Specialist in Medicine and Cardiology, Surg Cdr Anil Kumar Vatwani, who appeared as Witness No.10 in the OMI being relevant in this regard is re-produced below:

“Q129. It is understood by this OMI that accidental fall from these floors is not possible and presumably this fall was perhaps intentional. What are the medical conditions that would cause a person to behave in such a fashion.

Ans. Patients with pre-existing impulsive behaviour, psychotic states, severe depression or schizophrenia may take unexpected actions which can lead to such an event. Any intoxication can also produce such unexpected actions.

Q130. In normal course how would you rule out the possibility of existence of the above mentioned conditions in a patient.

Ans. Past history of any intoxication or past history of such attempt can give us an indication to expect such an event. Detail interview with the patient and his relatives would give us pointer towards the thought process of the patient's mental state as also tell if he has an obsessive disorder. Also observation in hospital or ward could give us an indication about his behaviour.

Q131. In normal course is it possible that a patient would exhibit harmful behaviour to self without any overt features or sign/symptoms of the conditions mentioned by you?

Ans. Impulsive behaviour of any individual or

patient is impossible to predict specially if any stress and other social conditions of the individual are not known. Patient with prior illness will have added stress and may behave irrationally despite earlier normal behaviour.

Q132. It has been brought to the notice of OMI that Sep Shibu Raj was an old case of Seizures disorder in low medical category BEE(P). In your experience are such cases prone or known to indulge in such a kind of self harmful behaviour.

Ans. Patients with simple Seizures disorder are unlikely to have any added possibility of such abnormal behaviour as compared to general population."

18. As seen from the views of the Medical Specialist, patients with severe depression may take unexpected actions and those with prior illness like the applicant's son may behave irrationally despite earlier normal behaviour and it is only observation in a hospital or ward that could give clear insight of the patient's mental state. Even though the Medical Specialist also added that patients with

simple seizures are unlikely to have any added possibility of abnormal behaviour as compared to the general population, in case of the applicant's son who was an old case of seizure disorder, no previous medical details were available. Therefore logically a longer period of observation was called for before the removal of escorts. As brought out earlier, there were some contradictions in the assessment of the state of mental health of the applicant's son. We also observe that the inconsistencies pointed out by us were not analysed either by the OMI or by the COI. While the competence of the treating Psychiatrist is not an issue before us, with respect, we cannot completely agree with his assessment of leaving the applicant's son unattended so early, in view of the contradictions/inconsistencies observed earlier. As held by the Hon'ble Apex Court in **Veerpal Singh vs. Secretary, Ministry of Defence, (2013) 8 SCC 83**, although the courts are extremely loath to interfere with the opinion of the experts, there is nothing like exclusion of judicial

review of the decision taken on the basis of such opinion. We are therefore of the view that some attributability for the fall of the applicant's son which resulted in his death should rest with the hospital authorities.

19. Rule 6 of the Entitlement Rules clearly specifies that disablement or death shall be accepted as due to military service if the death was due to or hastened by a wound, injury or disease which was attributable to military service. In the instant case, it is immaterial as to whether the patient intentionally jumped or had accidentally fallen, being left unattended, when not in normal state of mind resulting in the unfortunate incident. Therefore we are of the view that the injuries sustained by the applicant's son which resulted in his death, are attributable to military service and hence the applicant is eligible for special family pension.

20. As regards the applicant's claim for employment

of her daughter under compassionate appointment scheme, since she was already married at the time of the death of applicant's son, she cannot claim to be dependent on him. The Rules provide for employment to a family member on the death of a member of Armed Forces, only if he/she was wholly dependent on him at the time of his death in harness or retirement on medical grounds. The rules also provide that in view of the limited vacancies allocated under the scheme, any appointment would depend on immediate and dire needs of the family and is not guaranteed as a right. Therefore, in our view, there is no merit in the claim of the applicant for employment of her daughter under the compassionate appointment scheme.

21. In view of the above, the Original Application is partly allowed and the applicant is held eligible for special family pension from the date of sanction of family pension. The respondents are directed to sanction and pay special

family pension along with arrears due to the applicant within a period of four months from the date of receipt of a copy of this order, failing which the unpaid amount will carry a simple interest of 8% per annum.

22. There will be no order as to costs.

23. Issue free copy to the parties.

SD/-
VICE ADMIRAL M.P. MURALIDHARAN,
MEMBER (A)

SD/-
JUSTICE S.S.SATHEESACHANDRAN
MEMBER (J)

24. After pronouncement of the order, learned counsel for the respondents requested for leave to appeal to the Supreme Court. In our opinion, no question of law of general public importance is involved in the matter. Hence leave requested for is refused.

SD/-
VICE ADMIRAL M.P. MURALIDHARAN,
MEMBER (A)

SD/-
JUSTICE S.S.SATHEESACHANDRAN
MEMBER (J)

an.

(TRUE COPY)

Prl.Pvt.Secretary