

(SEE RULE 102 (1))
ARMED FORCES TRIBUNAL, KOLKATA BENCH
O.A. No. 02 of 2014
THIS 25TH DAY OF JANUARY, 2016

CORAM

HON'BLE JUSTICE N. K. AGARWAL, MEMBER (JUDICIAL)

HON'BLE LT GEN GAUTAM MOORTHY, MEMBER (ADMINISTRATIVE)

APPLICANT(S)

Smt. Renu Kumari
Wife of Late LAC Ravi Shankar Kumar
Village – Painapur, P. O. Bikram (Wazipur)
District – Patna, Bihar – 801 104.

Versus

RESPONDENT(S)

1. **The Union of India**
Through Secretary
Ministry of Defence
Sena Bhawan
New Delhi- 110 105.
2. **The Chief of the Air Staff**
Air Headquarters
Indian Air Force
New Delhi- 110 011.
3. **The Secretary**
Department of Ex-Serviceman Welfare &
Pension,
Ministry of Defence, South Block
New Delhi – 110 011.
4. **Principal Controller of Defence
Accounts(Pensions)**
Allahabad – 211 014.
5. **The Officer-in-Charge**
Air Force Record Office
Subrato Park
New Delhi -110 010.
6. **Air Officer Personnel (AOP)**
Air Force Group Insurance Society
Subrato Park
New Delhi – 110 010.
7. **Air Officer Personnel**
33 SU Air Force
Pin - 937 033
C/O 56 APO.

For the petitioner (s)

Miss Manika Roy, Advocate

For the respondents

Mr. Sudipto Panda, Advocate

O R D E R

PER LT GEN GAUTAM MOORTHY, HON'BLE MEMBER (ADMINISTRATIVE)

1. This is an application under Section 14 of the Armed Forces Tribunal Act, 2007 under which the applicant, widow of Air Force personnel has claimed special family pension in place of ordinary family pension that has been granted to her after the death of her husband in an accident.
2. The case in brief is that the late LAC Ravi Shankar Kumar enrolled in the Indian Air Force on 02.01.2008 and was posted as Ops Asst in 33 SU Air Force (Jodhpur) with effect from 25.01.2009 after completion of his training. The late Air warrior died in a blast which occurred on 22.12.2010 at 19:30 hrs in Billet No.5A of No.2 Airmen Mess. Along with him another Air Warrior, LAC Diwakar Kumar of the same Unit also expired in the same blast.
3. A Court of Inquiry (COI) was held to enquire into the circumstances of the accident and to give its recommendations. The COI recorded the following findings and recommendations, relevant aspects of which are as under :-

FINDINGS OF COURT

Circumstances of the Accident

1. *908177-A Late LAC Ravi Shankar Kumar Ops Asst and 908123-B LAC Diwakar Kumar Ops Asst of 33 SU were trying to break the lock of LAC SK Vidyarthi's cupboard to take out the Blue Book on 27 Dec 10. This Blue Book was asked by LAC SK Vidyarthi telephonically to bring while coming for module course to ETI.*

Cause of Accident

2. *908177-A Late LAC Ravi Shankar Kumar Ops Asst and 908123-B LAC Diwakar Kumar Ops Asst of 33 SU hitting the lock with the help of a projectile of 30mm Cartridge with a dumb bell. At around 1930 hrs on 27 Dec 10 at Billet 5A of No.2 Airmen Mess, while breaking the lock with the projectile of 30mm cartridge, it blasted and resulted with death of 908177-A Late LAC Ravi Shankar Kumar and with 908123-B LAC Diwakar Kumar who succumbed to his injuries on 03 Jan 11 at 2330 hrs.*

Nature of Duty

3. *Both the air warriors were off duty as per duty roaster attached as Exhibit 'Q' (emphasis supplied)*

Cause of death

4. *The death of 908177-A Late LAC Ravi Shankar Kumar Ops Asst was due to blast effect of the projectile of 30mm cartridge as per AFMSF 93 Pt I (Exhibit 'N') and post mortem examination report attached as Exhibit 'K'. He was brought in dead at SMC.*

5. *The death of 908123-B LAC Diwakar Kumar Ops Asst was due to multiorganal failure due to septicemia consequent upon multiple injuries sustained in the blast. The death certificate and form AFMSF 93 Pt-I are attached.*

6. *It is found that there is no foul play by the beneficiary in the death of 908177-A LAC Ravi Shankar Kumar Ops Asst and 908123-B LAC Diwakar Kumar Ops Asst.*

Responsibility

7. ***The accident was due to lack of knowledge as well as negligence. They were unaware of the fact of striking a projectile and its shock effect. The accident could have been avoided if both the Air Warriors would have acted with due diligence and proper care . 908177-A Late LAC Ravi Shankar Kumar Ops Asst and 908123-B LAC Diwakar Kumar Ops Asst of 33 SU were responsible for the accident that happened on 27 Dec 10. As both the Air warriors are not there to defend themselves hence not blameworthy for the accident. (Emphasis supplied)***

Injuries

8. *The description of the injuries is as follows :-*

(a) *908177-A Late LAC Ravi Shankar Kumar Ops Asst of 33 SU had the following injuries, left half of the face blown off, both hands blown off, multiple puncture wounds over the chest, laceration over right thigh. He died on the spot due to these fatal injuries.*

(b) *908123-B LAC Diwakar Kumar Ops Asst of 33 SU had extensive lacerations over both thighs with open fracture femur, laceration and deformity on both hands, laceration over left forearm.*

9. xxxxxxxxxxxxxx

10. xxxxxxxxxxxxxx

11. xxxxxxxxxxxxxx

Attributability

12. ***The death of 908177-A Late LAC Ravi Shankar Kumar Ops Asst and 908123-B LAC Diwakar Kumar Ops Asst of 33 SU is not attributable to Air Force Service. (Emphasis added)***

RECOMMENDATIONS

As the death of 908177-A Late LAC Ravi Shankar Kumar Ops Asst and 908123-B LAC Diwakar Kumar Ops Asst of 33 SU was due to lack of knowledge, (Emphasis added) no murder or suicidal aspect involved, the Court recommends the following :

(a) *The terminal benefits may be settled as per the provisions of Pension Regulations.*

(b) *The Court strongly recommends sensitizing JITT/Module trainees about the handling of arms and ammunition including Air Armament and it may be included in the syllabus.*

(c) *As both the individuals involved in the accident have expired and nobody else was found to be involved/responsible for this accident; the loss attached as Exhibit 'Z' may be write off charge."*

Sd/ xxxxxxxx
(AK Pathak)
WO
Member
12 May 11

Sd/ xxxxxxxx
(S Bhattacharya)
Fg Offr
Member
12 May 11

Sd/ xxxxxxxxxxxx
(K Bose)
Sqn Ldr
Presiding Officer
12 May 11

4. The same was concurred by the Station Commander and approved by the SOA HQ SWAC.

5. It also transpired after the death of the Airman, that he had got married earlier on 11.08.2010 but had not submitted any document validating his marriage. Thereafter, on an application filed by Smt. Renu Kumari under section 372 of the Indian Succession Act before the Court of Additional District & Sessions Judge VIth , Danapur, Patna, the learned Judge allowed the application and passed the order on 15.03.2012 which is reproduced as under :

“ Under the circumstances mentioned above, this succession petition is allowed and the applicant is entitled to get all debts which have been mentioned of this petition and which have been left by her husband Late Ravi Shankar Kumar. This petition is accordingly allowed and office is directed to accordingly issue a succession certificate in favour of applicant Renu Kumari wife of Late Ravi Shankar Kac-908177. Case allowed with all prayer.

Sd/ Satya Prakash,
Addl. District Judge, Danapur.”

6. Thereafter, the succession certificate dated 01.09.2012 in Tc. No. 1/2011 was issued in Smt. Renu Kumari's favour. Subsequently, after due investigation and a decision in Succession Case No. 155 of 2011 the Air Force authorities too after ascertaining that Smt. Renu Kumari was indeed the legally wedded wife of the late LAC Ravi Shankar Kumar, took necessary steps for formally getting their marriage recognised and ordered the payment of ordinary family pension in addition to Death-cum-Retirement Gratuity.

7. Later, after receipt of ordinary family pension, Smt. Renu Kumari made an appeal for special family pension. The Air Force authorities rejected her claim for special family pension on the grounds that the death was not considered as *“attributable or aggravated by military service and the circumstances were in no way related to his duties in Air Force service”*.

8. The counsel for the applicant vide her written argument and oral submissions stated that the death was caused by way of a blast that took place in the camp/billet and the applicant's husband died in harness. She argued that the authorities were duty bound to give adequate protection, safety and provide security measures to service personnel within the billet. But since the authorities failed to do so, the blast took place and the applicant's husband unfortunately lost his life. She also averred the fact that the applicant was in the billet and was on duty for all purposes and intent. She also stated that the Court of Inquiry is merely a fact finding body and it has not given any proper reason to come to such conclusion. She maintained that the authorities mechanically accepted the opinion of the Court of Inquiry and denied the applicant's legitimate dues of special family pension as the accidental death was not invited by her husband and there was no negligence on his part.

9. Also, while arguing the case counsel for the applicant relied on the judgment dated 19th October, 2006 delivered by the Delhi High Court in the case of **Jitendra Kumar vs. Chief of Army Staff and Ors.** In the said judgment it has been held that attributability/aggravation shall be conceded if causal connection between death/disablement and military service is certified by appropriate medical authority. Further in paragraph 12 of the said judgment the learned Judge has specified what is the meaning of 'duty'. Relevant extracts of para 12 of the judgement are reproduced as under :-

“(a) xxxxxxxxxxxxxxxxxxxxxxxx
 (b) xxxxxxxxxxxxxxxxxxxxxxxx
 (c) xxxxxxxxxxxxxxxxxxxxxxxx
 (d) xxxxxxxxxxxxxxxxxxxxxxxx
 (e) xxxxxxxxxxxxxxxxxxxxxxxx
 (f) *An accident which occurs when a man is not strictly on duty as defined may also be attributable to service, provided that it involved risk which was definitely enhanced in kind or degree by the nature, conditions, obligations or incidents of his service and that the same was not a risk common to human existence in modern conditions in India.*(Emphasis added) *Thus for instance, where a person is killed or injured by another party by reason of belonging to the Armed Forces, he shall be deemed 'on duty' at the relevant time. This benefit will be given more liberally to the claimant in cases occurring on active service as defined in the Army/Navy/Air Force Act.*”

“ In respect of accidents or injuries, the following rules shall be observed :

(a) *Injuries sustained when the man is “on duty” as defined shall be deemed to have resulted from military service, but in cases of injuries due to serious negligence/misconduct the question of reducing the disability pension will be considered.*

(b) In cases of self-inflicted injuries whilst on duty, attributability shall not be conceded unless it is established that service factors were responsible for such action; in cases where attributability is conceded, the question of grant of disability pension at full or at reduced rate will be considered.

With reference to above provisions, the respondents contended that causal connection between disablement and military service is an essential prerequisite, which has to be definite and directly connected with military service. Clause 12 of Appendix II relates to a person, subject to disciplinary code of armed forces, who unless is on duty and suffers an injury covered under any of the clauses 12 and 13 specifically and on their strict construction, would not be entitled to claim disability pension.

At the very outset, we may notice that the principle of strict construction or limited construction on a plain reading of the provisions can hardly be applied to such provisions. These provisions have to be construed liberally and upon proper analysis of the legislative intent behind these provisions and particularly the fact that these are welfare provisions. In the case of Madan Singh Shekhawat (supra), the Supreme Court in unambiguous terms has held that rule of liberal construction should apply to these two provisions rather than strict construction. Strict construction of these provisions is bound to defeat the intent of Regulation 173 and giving unreasonable restricted meaning to the clauses of this Appendix II, would hurt the very object of these provisions. Clauses 5, 6, 9 and more particularly 10 and 19 to 22 reasonably exhibit and demonstrate the legislative intent to enlarge the scope of these rules tilted towards grant of relief, rather than rejection of claim.”(Emphasis added)

10. On the aspect of whether there was a causal connection between the death of the applicant on duty, paragraphs 15, 16, 17, 18 and 19 of the said judgment(supra) quoted as under are relevant.

“15. The expression ‘causal’ appearing in clause 8 of Appendix II to Regulation 173 on which heavy reliance was placed by the respondents, is capable of varied meanings. ‘Causal’ has been defined in Cambridge International Dictionary of English as ‘No causal relationship has been established between violence on television and violent behavior (=Violent behavior has not been shown to be a result of watching violent television programmes). BLACK’S LAW DICTIONARY explained this expression ‘Causal’ as “1. OF, relating to, or involving causation a causal link exists between the defendant’s action and the plaintiff’s injury. 2. Arising from a cause a causal symptom. Cf. CAUSATIVE”

16. According to the respondents, ‘Causal’ is to be given again a strict interpretation so as to establish a restricted and direct nexus between the act causing injury to the person belonging to the force and his military service. Once this relationship is not satisfied on strict construction, then the claim of disability has to be declined. According to Law Lexicon, the Encyclopaedic Law Dictionary by P Ramanatha Aiyer, 1997 Edition, ‘Causa’ means ‘Remote cause; A cause operating indirectly by the intervention of the other causes.’ Further, Law Lexicon The Encyclopaedic Law Dictionary by P Ramanatha Aiyer, 1997 Edition states ‘Causal Relation’ as under :

“Causal relation means that the plaintiff should prove that the breach of duty by the defendant was the legal cause of the damage complained of by him. Link in the chain of causation, relation between cause and the effect/result.

17. The BLACK’S LAW DICTIONARY also give meaning to the word ‘Causal’ as ‘Occurring without regularity; Occasional.

18. Casual could also be said to be accidental or fortuitous. Anything which can be expected or foreseen, may not be casual.

19. The expression ‘Causal’ may not be equitable strictly to the expression ‘Casual’ but it may include in its ambit the expression ‘casual’. A person proceeding on casual leave may meet with an accident, which is not foreseen by him, and suffers an injury. Such injury would be attributable to military service as that person is on duty in terms of Rule 10 of the Leave Rules for Army, which deals with the matter relating to casual leave.”(Emphasis added)

11. Further in para 20 of this judgement (supra) too, the Hon’ble Judge has defined what duty is . Para 20 is reproduced as under :-

“ 20. The duty itself is an expression of wide ‘connotation’ and would be incapable of being defined strictly, particularly when a member of the armed force is on leave, duly sanctioned by the authorities. While a person is on leave whether casual, annual or sick, it is not expected of him to perform or discharge his regular military duties as if he was present in a unit. He is expected to live a normal life, which a member of the force is expected to live while on duty. The acts and deeds which are relatable and are part of the normal living of a member of the Force, during which he suffer an injury or death, would normally be attributable to the military service. Unless such an act or deed was entirely beyond the scope of normal behavior or member of the Force and had no nexus or even a casual nexus between the act and military force, in such circumstances, the injury suffered may not be attributable to the service. For e.g., a person on casual leave may suffer an injury while going to or coming from his leave station to his unit, by public or private transport, while performing his normal functions while on leave like dropping his children to school, going to the market to buy items of day-to-day needs, going to booking office for booking his train ticket for his travel and while doing so being hit by a vehicle on the road, would be attributable to the military service. While on the other hand, if he is performing the acts or deeds which have no relation to his military service and attempts to do acts for his personal gain or benefit of others like participating in some business, doing agricultural activities, wheat thresher and other agricultural appliances, the same may not be attributable to or aggravated by military service as has also been held by this Court in recent judgments of this Court of even date in the cases of Ex. AC Somveer Rana v. Union of India and Ors. WP© No. 2418/2004 and Ex.Hav(AEC) Bhup Singh v. Union of India and Ors. WP© No. 2325/2002”.(Emphasis added)

12. In another judgment placed before us in the case of **Yadvinder Singh Virk v. Union of India & Ors** in Civil Writ Petition No. 6066 of 2007 (2009 SCC Online P & H) before Hon’ble Mr. Justice Ajai Lamba, the Hon’ble Judge quoted an earlier judgment in the case of Ex Naik Kishan Singh v. Union of India, 2008 (3) SLR 327.

“ No doubt, when the petitioner met with an accident, he was on annual leave, but the accident was beyond control of the petitioner who was not performing any act he ought not to have done. In view of the settled law by the Apex Court, a person on casual/annual leave is deemed to be on duty and there must be apparent nexus between normal living of person subject to military law while on leave and injuries suffered by him. A person on annual leave is subject to Army Act and can be recalled at any time as leave is at discretion of authorities . This was so held by a Division Bench of Delhi High Court in Ex-Sepoy Hayat Mohammed’s case (supra). In that case, the petitioner was on leave at his home town. While he was in his house, a huge steel beam and a cemented stone fell on the petitioner from the roof of the house, which was being repaired. This resulted in total paralysis of three fingers of his right hand and amputation of left hand. The petitioner was treated and was placed in permanent low medical category ‘EEE’. He was discharged from military service and rejected disability pension. His writ petition was allowed and the respondents were directed to consider and grant disability pension to the petitioner. With advantage, we may also refer to the authority reported as Madan Singh Shekhawat v. Union of India, 1999(66) A.I.R.(SC) 3378 : (1999(4) SLR 744 (SC)) where the Hon’ble Supreme Court held that any army personnel is deemed to be on duty when he is on any type of authorized leave during travelling to or from home or while on casual leave.”(Emphasis added)

13. Further in the same judgment the learned Judge stated : ***“The petitioner sustained injury/disability during his service engagement although being on annual leave, and the disability would be deemed to be attributable to and aggravated by military service. In this view of the matter, we hold that the petitioner will be deemed to have been invalidated out of service and is entitled to disability pension as is admissible to defence personnel who are invalidated out of service”.***

Reference may also be made to a Division Bench of Delhi High Court in *Ex. Sepoy Hayat Mohammed v. Union of India*, 2008(1) SCT 425, wherein reference has been made to catena of judgments and various aspects of the matter have been considered. Para-2 of the judgment reads as under :-

2. *The case of the petitioner is that irrespective of the fact that petitioner was on leave, he would continue to be subjected to military law and the injury of the petitioner in view of Section 2(2) of the Army Act should not be viewed myopically a ‘not on military duty at that point of time’ but viewed in a broader spectrum of ‘being in military service’.*”(Emphasis added)

14. In another judgment of the Supreme Court in the case of *Lance Dafedar Joginder Singh v. Union of India* 1995 SCC (Lands) 1149, it was held that a person on casual leave would be a person on duty.

15. The Hon’ble Judge finally ruled :-

“The law, as laid down on the issue, makes it clear that a person on annual leave is subject to Army Act and can be recalled at any time, as the leave is at the discretion of the authority. In case, a person during annual leave meets with an accident or suffers injury and suffers disability, for reasons beyond his control and not on account of any objectionable conduct of the person, he would be entitled to disability petition”.

16. **From a plain reading of the judgments (supra) it is apparent that the Hon’ble Judges extended the concept of duty to cover bona fide activities undertaken by a military person even while on any kind of leave at his hometown.**

17. Besides the above judgments, the counsel for the applicant drew our attention two important provisions contained in Appendix II - Entitlement for Casualty Pensionary Awards, 1982 promulgated vide Ministry of Defence letter No.1(1)/81/Pen-C, dated 22.11.1983, as amended vide Corrigendum No.1(1)/81/Pen-C dated 21.08.1984. These are reproduced as under :-

Onus of Proof

9. *The claimant shall not be called upon to prove the conditions of entitlements. He/she will receive the benefit of any reasonable doubt. This benefit will be given more liberally to the claimants in field/afloat service cases.*

Duty

12

Note 2

(f) *An accident which occurs when a man is not strictly ‘on duty’ as defined may also be attributable to service, provided it involved risk which was definitely enhanced in kind*

or degree by the nature, conditions, obligations or incidents of his service and that the same was not a risk common to human existence in modern conditions in India. Thus for instance, where a person is killed or injured by another party by reason of belonging to the Armed Forces, he shall be deemed 'on duty' at the relevant time. This benefit will be given more liberally to the claimant in cases occurring on active service as defined in the Army/Navy/Air Force Act."

18. In their reply the respondents have clearly stated that since the competent authority has considered the cause of death of an individual as not attributable to the Air Force service based on the findings of the COI, the applicant's claim for special family pension was rejected by the Adjudicating Authority and she was granted ordinary family pension at the rate of Rs.3,500/- per month with effect from 28.12.2010 vide P.P.O. No.08/14/B/F/0837/12 and in addition, an amount of Rs.80,616/- on account of DCRG was also sanctioned to the applicant vide the said P.P.O. The respondents further quoted the Pension Regulations and stated that the provisions of special family pension is stipulated in paragraph 189 of the Pension Regulations of the Air Force, 1961 which is reproduced as under :-

"189. 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 Air Force service,

Or

(b) the aggravation by Air Force service of a wound, injury or disease which existed before or arose during Air Force service."

Hence, in keeping with the Regulations, the claim for special family pension was rejected.

19. Thus the issue of whether an Armed Forces person while living in the barracks and being "off duty" as per the duty roster is still to be considered on duty or not is a moot point for our consideration.

20. It is well understood that a military person cannot be on guard duty or any other such duty 24x7 and that he would need periods of rest and relaxation. **So to simply ascribe him not being on duty as per the duty roster, as to not being on duty at all, is to undermine the very concept of duty that Armed Forces Personnel perform round the clock in the various stations that they are posted to across the country and abroad.**

21. The main issue before us is to ascertain whether the applicant's husband was to be considered on duty at the time of the accident and whether such an accident could be attributable to Military service.

22. From the perusal of the findings and recommendations of the COI and statements given by various witnesses including that of the Late LAC Diwakar Kumar who was fatally injured in the blast on 27 Dec 10 but died on 07Jan 11 and besides drawing inferences from the judgments quoted above, it is apparent that the colleague of late LAC Diwakar Kumar and late LAC Ravi Shankar Kumar, LAC SK Vidyarthi proceeded on a course at Electronic Training Institute (ETI), Bengaluru and had left his 'Blue Book' behind. He had contacted LAC Diwakar Kumar a few days earlier and asked him to break his lock of his cupboard and take out his book and send it to him and also put a new lock there. The Late LAC Diwakar Kumar was also proceeding to ETI, Bengaluru for a course. He decided to break open the lock of LAC Vidyarthi's cupboard and carry his Blue Book with him to Bengaluru to hand it over to LAC Vidyarthi. So he attempted to break the lock with 30mm live but rusted projectile which was lying under his bed and used its pointed edge on to the lock and hit the opposite end with a dumbbell. From the recorded statement of LAC Diwakar Kumar on 28 Dec at 1100 hrs, it appears that he thought this live projectile, although rusted was an *"iron bar like a 'keel' which was 5 to 6 inches long"*. He stated that this projectile was under his bed for about one and a half years. He said that in this activity the late Ravi Shankar Kumar was holding and pulling the chain while he, LAC Diwakar was hitting the lock (pages 27-29 of the COI).

23. It is manifestly clear to us that both the individuals were performing a task that was entrusted to them by their buddy who had forgotten to take his "Blue Book" with him while proceeding on a course to Bengaluru. The question that comes to our mind is whether the deaths due to injuries sustained in this blast were due to serious negligence/misconduct on the part of the deceased Air Warriors. In the Armed Forces helping out or assisting a colleague in distress is a sine qua non of military ethos, training and brotherhood. Military personnel, be they from the Army, Navy or Air Force are expected to assist their contemporaries even going to the extent of laying down their lives for their brothers in arms. It is an undisputed fact proven by study of various battles and military actions that where members of an unit have stood by each other and fought

valiantly together, such actions and battles have resulted in victory. In the instant case, the two Air Warriors were only trying to assist their buddy who was already undergoing a course without his mandatory Blue Book as they felt that they were **under a military obligation to do so**.

24. As can be seen from the decisions cited (supra) that **there is a clear and causal link** that existed between the act and its tragic consequences. The act was performed for their buddy who had proceeded to ETI, Bengaluru on course and, thus, a clear nexus is established between the obligation to their colleague and their expected behavior in such a situation. In hindsight one can be wise after the event and say that they should have reported to their senior that they were breaking the lock of a cupboard in order to alleviate the problem faced by their colleague in far away Bengaluru. However spontaneity in coming to the aid of a colleague is the hallmark of expected military behavior and such cooperation and helpful attitude is the bedrock of military ethos. **Therefore, to state that their act of helping out a colleague is not duty is to disabuse the very concept of duty**. Thus the behavior of the applicant's husband in the circumstances that existed at that point in time is the normal expected standard of behavior from a disciplined member of the Armed Forces conforming to its ethos.

25. It is also a moot question to ask how a unexploded live 30 mm projectile lay under a bed of an airman in a barrack in a secure military area for over a year and a half. It is apparent that no seniors have visited the barrack nor was any inspection of the barrack carried out. Had this been done, this offending piece would certainly have been discovered and identified and a Court of Inquiry ordered as to how a live unexploded round was found in the living quarters of the airmen. This would have also led to some one being held responsible for this. This highlights the fact that the Air Force authorities were negligent in not carrying out proper and regular barrack/billet inspection.

26. Another important aspect that was highlighted in the COI and which comes to our mind is the non-sensitizing Air Force personnel in handling of arms and ammunitions including air armaments. A live projectile is not a common use item that every person is supposed to recognize or identify. It is the nose portion of a round used to fire at enemy aircraft and contains explosive material. That the applicant's husband with three years service did not know what it was, was not his fault as he was not trained by the IAF to

recognize it. From the recommendations of the COI it can be inferred that there was no training whatsoever imparted to the applicant's husband in recognition and identification of various armaments and projectiles being used by the Air Force. This is a serious matter and it was the lack of this knowledge has led to their tragic and unnecessary deaths and not negligence as was also noted in the findings of the COI. The fact that LAC Diwakar Kumar had not recognized the sharp and pointed piece of metal 5 to 6" long under his bed for over a year as a live projectile can be ascribed to his ignorance and if he had recognized the piece for what it was, he would have almost certainly reported it to his superior authorities and most certainly would have not used it to hammer a lock. **Therefore, this is essentially a case of ignorance and not negligence.**

DECISIONS

27. In view of the foregoing discussions, findings and judgments quoted (supra) it is apparent that there was a definite causal connection and nexus between the death sustained by the applicant's husband and military service and, therefore, his death must be considered attributable to military service. Hence the applicant is entitled to special family pension with all arrears with 12% simple interest from the date of death.

28. The respondents are to ensure that the process of granting special family pension along with the interest as stated above shall be completed by them within a period of ninety days from the date of receipt of this order.

29. In view of the above, the application is allowed and is disposed of accordingly without any order as to costs.

(LT GEN GAUTAM MOORTHY)
(MEMBER (ADMINISTRATIVE)

(JUSTICE N. K. AGARWAL)
MEMBER (JUDICIAL)