

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

FRIDAY, THE 10TH DAY OF JULY 2015/19TH ASHADHA, 1937

WP (AFT) .No. 1 of 2014 (Z)

(AGAINST THE ORDER/JUDGMENT IN TA 138/2010 of ARMED FORCES
TRIBUNAL, REGIONAL BENCH, KOCHI DATED 19-02-2014)

PETITIONER(S) :

EDWARD N.
S/O. NAZARETH
RESIDING AT PARANKIMANVILA VADAKKATHIL KOTTAPPURAM
MULAVANA P.O., KOLLAM, KERALA - 619 503.

BY ADVS.SRI.JOHNSON GOMEZ
SRI.S.BIJU (KIZHAKKANELA)

RESPONDENT(S) :

1. UNION OF INDIA
REPRESENTED BY ITS SECRETARY, MINISTRY OF DEFENCE
GOVERNMENT OF INDIA, 101, SOUTH BLOCK
NEW DELHI.

2. THE COMMANDING OFFICER
BENGAL ENGINEERING GROUP AND CENTRE
ROORKEE - 247667, UTTARANCHAL.

3. THE RECORD OFFICER,
RECORDS OFFICE, ABHILEKH BENGAL ABHIYANTA SAMOOTH
BENGAL ENGINEER GROUP AND CENTRE, ROORKEE - 247667
UTTARANCHAL.

4. NANDA JOSH ALIAS NANDA DEVI
RESIDINT AT HOUSE NO. 25, MILAP NAGAR P.O, MILAP NAGAR
ROORKEE, UTTARANCHAL - 247667.

5. BABY JOSH ALIAS KUMARI
NEELAM WAWAT ALIAS KUMARINEELAM, D/O. MATWAR SINGH
RESIDING AT HOUSE NO. 25, MILAP NAGAR P.O.
NILAP NAGAR, ROORKEEE, UTTARANCHAL - 247667.

6. VIPIN JOSH ALIAS BRIJANDER SINGH RAWAT ALIAS ,
VIPIN KUMAR, S/O. MATWAR SINGH
RESIDING AT HOUSE NO. 25, MILAP NAGAR P.O.
NILAP NAGAR, ROORKEEE, UTTARANCHAL - 247667.

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7. MARY EDWARD,
W/O. EDWARD, RESIDING AT PARANKIMAVILA VADAKKATHIL
MULAVANA P.O., KOLLAM DISTRICT, KERALA STATE - 691803.

8. THE ADDITIONAL DIRECTOR
ARMY GROUP INSURANCE FUND, ADJUNCT GENERAL;S BRANCH
INTEGRATED HQ OF MOD (ARMY), RAO TUAL RAM MARG
POST BAG NO. 14, P.O. VASANT VIHAR
NEW DELHI - 110 057.

R1-R3 & 8 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R1,R2,R3 & 8 BY ADV. SRI.P.PARAMESWARAN NAIR,ASG OF INDIA
R8 BY ADV. SMT.ELIZABETH MATHAI IDICULLA
R8 BY ADV. SRI.MOHAN IDICULLA ABRAHAM
R8 BY ADV. SRI.MARTIN D.ALUMKARA
R8 BY ADV. SRI.RACHEL JOSEPH
R8 BY ADV. SMT.R.REMA MENON
R8 BY ADV. SMT.R.RAJASREE (CHUTTIMATTATHIL)

THIS WP (ARMED FORCES TRIBUNAL - Art.226) HAVING BEEN FINALLY
HEARD ON 10-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT-P1-TRUE COPY OF THE T.A 138/2010 ON THE FILE OF THE ARMED FORCES TRIBUNAL, ERNAKULAM BENCH

EXHIBIT-P2-TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE RESPONDENTS 4 TO 6 ALONG WITH EXHIBITS

EXHIBIT-P3-TRUE COPY OF THE I.A 304/2009 IN W.P(C) 36863/2008 FOR IMPEACHING ADDITIONAL 8TH RESPONDENT.

EXHIBIT-P4-TRUE COPY OF THE DIRECTION PETITION FILED BY THE PETITIONER

EXHIBIT-P5-TRUE COPY OF THE REPLY AFFIDAVIT FILED BY THE PETITIONER.

EXHIBIT-P6-TRUE COPY OF THE AFFIDAVIT FILED BY THE PETITIONER BEFORE THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI.

EXHIBIT-P7-TRUE COPY OF THE ORDER DATED 26/11/2010 IN T.A 138/2010 PASSED BY THE ARMED FORCES TRIBUNAL.

EXHIBIT-P8-TRUE COPY OF THE JUDGMENT DATED 09/07/2013 IN OP(AFT) 2003/2014 PASSED BY THIS HONOURABLE COURT.

EXHIBIT-P9-TRUE COPY OF THE ORDER DATED 19/02/2014 IN T.A 138/2010 PASSED BY THE ARMED FORCES TRIBUNAL.

EXHIBIT-P10-TRUE COPY OF THE JUDGMENT DATED 24/06/2014 IN O.P (AFT) 12/2014 PASSED BY THIS HONOURABLE COURT.

EXT. P11 TRUE COPY OF THE LETTER NO..NE LEGAL/CC 78/94/R DATED 6TH OCTOBER 2014 ADDRESSED TO THE STATE BANK OF INDIA BEG AND STATE BANK OF INDIA, KERALAPURAM BRANCH.

RESPONDENT(S) ' EXHIBITS

EXHIBIT R8(A) TRUE PHOTOCOPY OF THE LETTER DATED 15.12.1975 ISSUED BY THE MINISTRY OF DEFENCE.

EXHIBIT R8(B) TRUE PHOTOCOPY OF THE REGISTRATION CERTIFICATE OF THE 8TH RESPONDENT SOCIETY.

EXHIBIT R8(C) TRUE PHOTOCOPY OF AO 23/2002/AGI-ARMY GROUP INSURANCE FUND

EXT.R8(D) TRUE PHOTOCOPY OF THE JUDGMENT OF THE HONOURABLE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH IN CWP.18374/2005 DATED 18.04.2006

EXT.R8(E) TRUE PHOTOCOPY OF THE JUDGMENT OF THE HONOURABLE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH IN CWP.NO.6815/2006 DATED 10.12.2010

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EXT.R8(F) TRUE PHOTOCOPY OF THE JUDGMENT OF THE HONOURABLE JUDICATURE
AT ALLAHABAD IN CWP No. 53196/2009 DATED 21.10.2009

EXT.R8(G) TRUE PHOTOCOPY OF THE ORDER OF THE HONOURABLE HIGH COURT
OF DELHI IN W.P.(C) 2139/2010, DATED 10.01.2011.

EXT.R8(H) TRUE PHOTOCOPY OF the ORDER OF THE HONOURABLE HIGH COURT OF
PUNJAB AND HARYANA AT CHANDIGARH IN CWP no.17977/2010 DATED
18.05.2012.

/TRUE COPY/

P.S. TO JUDGE.

**P.R. RAMACHANDRA MENON
&
ANU SIVARAMAN, JJ.**

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W.P.(AFT)NO.1 OF 2014
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Dated this the 10th July, 2015

J U D G M E N T

P.R. Ramachandra Menon, J:

This writ petition has been filed challenging Ext.P9 order passed the Armed Forces Tribunal, Regional Bench, Kochi in T.A.No.138 of 2010, by virtue of which the claim in relation to the terminal benefits in respect of the service rendered by the deceased son of the petitioner , was not entertained.

2. The writ petition was admitted by this Court on 10.07.2014 and subsequently, when the matter came up for consideration on 12.12.2014, disbursement of terminal benefits pursuant to Ext. P9 order passed by the Armed Forces Tribunal was stayed until further orders.

3. Today, when the matter is taken up for consideration, the learned Counsel for the petitioner submits that by virtue of law declared by the Supreme Court as per the decision in ***Union of India & others vs. Shri Kant Sharma and others***

[(2015)3 SCJ 689], the remedy of the petitioner lies before the Apex Court and that the petitioner is taking earnest efforts to pursue the matter accordingly. Breathing time is sought for so as to enable the petitioner to pursue such steps.

After hearing the learned Counsel for the petitioner as well as the learned Asst. Solicitor General, this Court finds it fit and proper to grant one month's time to the petitioner in this regard. The writ petition is dismissed without prejudice to the rights and liberties of the petitioner to pursue the matter in accordance with law. Interim order passed by this Court on 12.12.2014 will continue for a period of one month.

**P.R. RAMACHANDRA MENON,
JUDGE.**

**ANU SIVARAMAN,
JUDGE.**