

**Reserved  
Court No. 1**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW**

**Original Application No. 489 of 2017**

Friday, this the 5<sup>th</sup> day of April, 2019

**Hon'ble Mr. Justice SVS Rathore, Member (J)  
Hon'ble Air Marshal BBP Sinha, Member (A)**

Smt Monika Tiwari (W/0 Late No. 15142750-F L/Nk (Late) Sunil; Kumar (GNR/GD), resident of House No. 592A/343, Shubhani Kheda, Near Santoshi Mata Mandir, Telibagh, Post Kharika, district Lucknow (UP)-226002.

.....Applicant

Ld. Counsel for the applicant: **Shri Shailendra Kumar Singh,  
Advocate.**

Versus

1. Union of India, through Secretary, Ministry of Defence, (Army) South Block.
2. Chief of Army Staff, Integrated Headquarters of Ministry of Defence (Army). South Block-III, New Delhi, 110011
3. Addl Dte Gen of Arty (Arty-10), General Staff Branch, Integrated HQ of Mod (Army), DHQ PO, PIN : 908703, New Delhi-110001.
4. OIC Records, Artillery Records, PIN 908802, C/o 56 APO.
5. CO, 49 RR (Sikh Light Infantry), PIN 934549, C/o 56 APO.
6. PCDA (Pension) (Army), Draupadi Ghat, Allahabad (UP)-211014.

.....Respondents

Counsel for the Respondents : **Shri Rajiv Pandey,  
Addl Central Government Counsel.**

**ORDER.****Delivered by Hon'ble Mr Justice SVS Rathore, (Member-J)**

1. The applicant, who is widow of No. 15142750-F L/Nk (Late) Sunil; Kumar (GNR/GD) has approached this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

*“(A) To quash or set aside the Respondent letter dated 08 Dec 2016 (Annexure A-1 & impugned order) and letter dated PCDA (P) dated 13 Dec 2011 (Annexure A-6(B)).*

*(B) To issue suitable directions/instructions to Respondents to classify the death of the applicant's husband as BATTLE CASULTY instead PHYSICAL CASULTY in terms of Govt of India letter dated 31 Jan 2001.*

*(C) To issue suitable directions/instructions to Respondents to release LIBERALIZED FAMILY PENSION in favour of the applicant with effect from 05.-01.2011 (date of death of applicant's husband) and to pay the arrears accrued thereof after necessary adjustment from the amount already paid by way of SPECIAL FAMILY PENSION along with suitable rate of interest as deemed fit and proper by this Hon'ble Tribunal.*

*(D) To issue suitable directions/instructions to respondents to grant Ex-Gratia Lumpsum compensation in favour of the applicant along with suitable rate of interest as deemed fit and proper by this Hon'ble Tribunal.*

*(E) Any other relief as considered proper by the Hon'ble Tribunal be awarded in favour of the applicant.”*

2. Brief facts of the case are that the husband of the applicant was enrolled in the Army on 29.04.2000. While being posted on the strength of Commanding Officer, 49 RR (Sikh Light Infantry), at about 21.00 hours he was admitted in Military Hospital, Rajouri as a case of chest pain. He was given some injection which reacted. Said incident was intimated by the husband of the applicant to her on mobile on the same day. During that night, the husband of the

applicant was kept in Military Hospital, Rajouri and the next day he was shifted to Command Hospital, Udhampur. On 27.12.2010 the applicant received a call from the Command Hospital, Udhampur that her husband is serious and she should reach there as early as possible. (the date 27.12.2010 appears to be wrongly typed in the OA). The applicant also received a telegram to that effect. The husband of the applicant remained in a state of comma and was kept on ventilator. He breathed his last on 05.01.2011 at 00.05 hours.

3. The claim of the applicant is that since her husband died while he was posted in Operational Area, as such, she is entitled to receive battle casualty pension. In support of his arguments, learned counsel for the applicant cited at Bar the following cases:

- (i) OA No. 20 of 2011, ***Tmt Hellan Sagayamony vs The Commanding Officer & ors*** decided by Armed Forces Tribunal, Chennai Bench on 05.09.2011; and
- (ii) Civil Appeal No. 4853 of 2016 (arising out of SLP (C) No. 27545 of 2911) ***Santosh Devi vs. Union of India & ors*** decided by Hon'ble Apex Court on 06.05.2016.

4. During course of arguments, learned counsel for the respondents has drawn our attention towards Para-2 of the counter affidavit wherein the facts of the present case have been averred thus:-

*“That applicant’s husband was enrolled in the Regiment of Artillery on 29 Apr 2000 for a contractual period of 17 years in colour and two (02) years in reserve liability. After completion of successful military training, he was posted on 165 Field Regiment with effect from 17 Apr 2001 and further proceeded to ERE Posting to 49 Rashtriya Rifles (SIKH LIGHT INANTRY) in CI/CT Ops OP RAKSHAK’WITH EFFECT FROM 30 Mar 2010. On 25 Dec 2010 he was admitted to 150 General Hospital due to complaint having chest pain and Cardial Murmer (INV) disease. The applicant’s husband was placed on DIL on 25 Dec 2010 at about 2145 hrs and after checkups, he had been evacuated by air*

*to Command Hospital (Northern Command), Udhampur finding the Diagnosis as Anaphalactic Shock mods 10 9.9, Pneumonia (Rt upper Lobe) & (Lt upper Lobe) with Septicemia, Hypoxic Ischemic Encephalopathy and Rheumatic Heart Disease. On 05 Jan 2011 at about 0005 hrs the applicant's husband died due to Cardio Respiratory Arrest. Thereafter, the death of the applicant's husband was treated as Physical Casualty and occurrence to this effect was published by 49 RR Bn vide Part II Order No. 0/0033/001/2011 dated 23 Jan 2011.*

5. On the strength of averments made in Para-2 of the counter affidavit, it has been argued that since the husband of the applicant was posted in a notified operational area, therefore, his death in view of Category (E) sub-clause (j) of the Policy is to be considered as 'battle casualty'.

6. On behalf of the respondents, it has been argued that it is not that each and every death in operational area is to be considered as 'battle casualty' and only such fatality can be considered as 'battle casualty' where death is the result of notified operation and not simply because of posting in the operation area.

7. We have heard learned counsel for the parties and have carefully gone into the relevant Government Order and the Policy.

8. We feel it appropriate to reproduce the Army Order 1 of 2003 issued in pursuance to Government of India, Ministry of Defence Policy Letter dated 31.01.2001 as under:

**Army Order 1/2003**

**Physical/Battle Casualties**

*Para 1 to 3.                                    x x x                                    x x x                                    x x x*

*4. Battle Casualties: Battle Casualties are those casualties sustained in action against enemy forces or whilst repelling enemy air attacks. Casualties of this type consist of the following categories:-*

*(a) Killed in action*

- (b) *Died or wounds or injuries (other than self-inflicted)*
- (c) *Wounded or injured (other than self-inflicted)*
- (d) *Missing*

5. *Circumstances for classification of Physical/Battle Casualties are listed in Appendix 'A'*

**Appendix A to AO 1/2003**

**Battle Casualties**

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

- (a) *Casualties due to encounter with troops or armed personnel or border police of a foreign country or during operations while in service with peace keeping missions abroad under government orders.*
- (b) *Air raid casualties sustained as a direct or indirect result of enemy air action*
- (c) *Casualties during action against armed hostiles and in aid to civil authorities to maintain internal security and maintenance of essential services.*
- (d) *Accidental injuries and deaths which occur in action in an operational area.*
- (e) *Accidental injuries which are not sustained in action and not in proximity to the enemy but have been caused by fixed apparatus (e.g. land mines, booby traps, barbed wire or any other obstacle) laid as defence against the enemy, as distinct from those employed for training purposes, and if the personnel killed, wounded or injured were on duty and are not to blame, will be classified as battle casualties, notwithstanding the place of occurrence or agency laying those, viz. own troops or enemy, provided the casualties occur within the period laid down by the government.*
- (f) *Casualties during peace time as result of fighting in war like operations, or border skirmishes with a neighbouring country.*
- (g) *Casualties occurring while operating on the International Border or Line of Control due to natural calamities and illness caused by climatic conditions.*
- (h) *Casualties occurring in aid to civil authorities while performing relief operations during natural calamities like flood relief and earthquake.*
- (i) *Casualties occurring while carrying out battle inoculation/training or operationally oriented training in preparation for actual operations due to gunshot wound/explosion of live ammunition/explosives/mines or by drowning/electrocution.*

(j) *Army personnel killed/wounded unintentionally by own troops during course of duty in an operational area.*

(k) *Casualties due to vehicle accidents while performing bonafide military duties in war/border skirmishes with neighbouring countries including action on line of control and in counter insurgency operations.*

(l) *Casualties occurring as a result of IED/bomb blasts by saboteurs/ANEs in trains/buses/ships/aircrafts during mobilization or deployment in war/war like operations.*

(m) *Casualties occurring due to electrocution/snake bite/drowning during course of action in counter insurgency/war.*

(n) *Accidental death/injuries sustained during the course of move of arms/explosives/ammunition for supply of own forces engaged in active hostilities.*

(o) *Death due to poisoning of water by enemy agents resulting in death/physical disabilities of own troops deployed in operational area in active hostilities.*

(p) *Accidental deaths/injuries sustained due to natural calamities such as floods, avalanches, cyclones, fire and lightening or drowning in river while performing operational duties/movements in action against enemy forces and armed hostilities in operational area to include deployment on international border or line of control.*

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

(r) *Army personnel killed/wounded due to spread of terror during leave/in transit because of their being army personnel.*

(s) *Army personnel killed/wounded due to spread of terror during leave in transit because of their being army personnel.*

**Physical Casualties.**

2. *Deaths caused due to natural causes/illness/accident/ suicide/murder due to family disputes in operational and non-operational areas will be treated as physical casualties.*

**Miscellaneous Aspects**

(a) *Saboteurs, even of own country, will be treated as enemy for the purpose of classifying their actions as enemy action and encounters against them as encounters against the enemy.*

(b) *Report regarding personnel wounded or injured in action will specify the nature of the wound or injury*

*and will also state whether the personnel remained on duty.*

(c) *Reports on personnel missing in action will indicate, if possible, their likely fate, eg, 'believed killed', 'believed prisoner of war', of 'believed drowned' etc.*

(d) *Any casualty occurring deployment/ mobilization of troops for taking part in war or war like operation, will be treated as battle casualty.*

(b) **Govt of India, Ministry of Defence letter No. 1(2)/97/D/Pen-C dated 31.01.2001.**

1. to 3. xxx xxx xxx

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

**Category A**

*Death or disability due to natural causes neither attributable to nor aggravated by military service as determined by the competent medical authorities. Examples would be ailments of nature of constitutional diseases as assessed by medical authorities chronic ailments like heart and renal diseases, prolonged illness, accidents while not on duty.*

**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 a hostile work environment, 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 :-*

- (i) *Accidents while travelling on duty in Government Vehicles or public/private transport;*
- (ii) *Accidents during air journeys;*
- (iii) *Mishaps at sea while on duty'*
- (iv) *Electrocution while on duty, etc.*
- (v) *Accidents during participation in organized sports events/adventure activities/expeditions/training.*

**Category D**

*Death or disability due to acts of violence/attack by terrorists, anti-social elements, etc. whether on duty other than operational duty or even when not on duty. Bomb blasts in public places or transport, indiscriminate shooting incidents in public, etc. would be covered under this category, besides death/disability occurring while employed in the aid of civil power in dealing with natural calamities.*

**Category E**

*Death or disability arising as a result of:-*

- a) *Enemy action in international war.*
- b) *Action during deployment with a peace keeping mission abroad.*
- c) *Border skirmishes.*
- d) *During laying or clearance of mines including enemy mines as also minesweeping operations.*
- e) *On account of accidental explosions of mines while laying operationally oriented mine-field or lifting or negotiating mine-field laid by enemy or own forces in operational areas near international borders or the line of control.*
- f) *War like situations, including cases which are attributable to/aggravated by :-*
  - (i) *Extremist acts, exploding mines etc., while on way to an operational area*
  - (ii) *Battle inoculation training exercises or demonstration with live ammunition.*
  - (iii) *Kidnapping by extremists while on operational duty.*
- (g) *An act of violence/attack by extremists, anti-social elements etc while on operational duty.*
- (h) *Action against extremists, antisocial elements, etc. Death/disability while employed in the aid of civil power in quelling agitation, riots or revolt by demonstrators will be covered under this category.*
- (j) ***Operations specially notified by the Govt. from time to time.***

4.2 Cases covered under category 'A' would be dealt with in accordance with the provisions contained in the Ministry of Defence letter No. 1(6)/98/D(Pen/Services) dated 3.2.98 and cases under category 'B' to 'E' will be dealt with under the provisions of this letter.



**Notes:-**

(i) *The illustrations given in each category are not exhaustive. Cases not covered under these categories will be dealt with as per Entitlement Rules to casualty pensionary awards in vogue.*

(ii) *The question whether a death/disability is attributable to or aggravated by military service will be determined as per provisions of the Pension Regulations for the Armed Forces and the Entitlement Rules in vogue as amended from time to time*

(iii) *In case of death while in service which is not accepted as attributable to or aggravated by Military Service or death after retirement/discharge/invalidment, Ordinary Family Pension shall be admissible as specified in Min of Def letter No. 1 (6)/98/D(Pen/Ser) dated 03 Feb 98 as modified vide Ministry of Defense letter No.1(I)99/D(Pen/Ser) dated 7.7.99.*

(iv) *Where an Armed Forces personnel is invalided out of service due to non-attributable/non-aggravated causes, Invalid pension/gratuity shall be paid in terms of Para 9 of Ministry of Defense letter No 1 (6)/98/D (Pen/Ser) dated 03 Feb 98 as amended/modified vide Ministry of Defense letter No. 1 (I)/99/D(Pen/Ser) dated 07.06.99.*

XX

XX

XX

*10.1. Where an Armed Forces Personnel is invalided out of service on account of disabilities sustained under circumstances mentioned in Category "E" of Para 4.1 above, he/she shall be entitled to War Injury Pension consisting of Service element and War Injury element."*

9. The entire thrust of arguments of learned counsel for the applicant is regarding sub-clause (j) of Category (E) of the Policy Letter dated 31.01.2001 which deals with operations specifically notified by the Government from time to time. Category (E) deals with death or disability arising as a result of reasons as mentioned in sub-clause (a) to sub-clause (j) of said Policy. According to the 'Maxwell on The Interpretation of Statutes (12<sup>th</sup> Edition Page 36), all words of the statute have to be considered for reaching to a correct

interpretation of the statute. Relevant portion from Maxwell is reproduced as under:-

*“A construction which would leave without effect any part of the language of a statute will normally be rejected.”*

10. Thus while interpreting statutory provision every word as well as punctuation should be read and no line should be made redundant. Hon'ble Supreme Court from time to time has repeatedly reiterated interpretative jurisprudence and observed that while considering statutory provision, the provision should be considered by section by section, word by word, line by line and phrase by phrase along with punctuation in reference to context for which it has been used. All words of the statute have to be considered for reaching to a correct interpretation of the statute. It is well settled that while interpreting statutory provision, every word as well as punctuation should be read and no line should be made redundant.

11. In the case in hand, the intention of the legislature is abundantly clear and no word can be ignored being superfluous. If the argument advanced by the learned counsel for the applicant is to be considered, then it would mean that the opening part of Category (E) is not to be considered and its interpretation should be made ignoring the definition of 'battle casualty'. Such manner of interpretation would definitely lead to incorrect interpretation of the statute i.e. Army Order 1 of 2003. The opening part of Category (E) of Army Order 1 of 2003 shows that battle casualties are such casualties arising in the circumstances as mentioned in Category (E) (supra).

12. The opening part of the Army Order (supra) defines battle casualty. Intention of the Army Order was to grant battle casualty status to only those persons who had sustained casualty in action against enemy action or while repelling enemy attack. Said clause of the Army Order also makes the intention of aforesaid Army Order absolutely clear. Apart from it, when we come to Category (E) on which learned counsel for the applicant has placed reliance, the opening line of Category (E) "Death or disability arising as a result of" when read in conjunction with sub-clause (j) would make the intention of this Army Order absolutely clear. A harmonious construction of these lines when read together would be that death or injury must be as a result of operational activities with enemy and it cannot be stretched to such an extent that every casualty in operational area shall be considered as battle casualty. The aforesaid Army Order has used the words "operation" and not the words "operational area". It makes the intention of the Army Order abundantly clear that the intention was to give battle casualty status only to those Army personnel who sustained death or injury as a result of operation specially notified by the Government from time to time.

13. Now the question arises whether a person who was simply posted in operational area and sustained death on account of some illness would also be entitled to battle casualty status. Admittedly, in this case the husband of the applicant was posted in an operational area, but the illness suffered by the husband of the applicant, by any stretch of imagination, cannot be presumed to be result of operation

especially notified by the Government from time to time. Learned counsel for the applicant has tried to justify that some injection was given to the applicant's husband during treatment which adversely reacted and was the cause of his death, but there is no evidence in support thereof. This argument of learned counsel for the applicant even if for the argument sake is accepted, even then it cannot be said that such reaction of the injection was the result of any operational engagement with enemy in an operational area specified by the Government. At the most, it may be only a case of wrong treatment or may be result of negligent treatment, but by no stretch of imagination, would bring the case of the applicant's husband within the ambit of battle casualty.

14. In the case of Tmt Hellan Sagayamony (*supra*) on which learned counsel for the applicant has placed reliance, the facts were entirely different. The facts of that case may be mentioned as under:

15. The applicant in said case was posted in a High Altitude Area and heavy snow fall area. As a result of cold injury, he sustained 'High Altitude Cerebral Oedma' due to which he died. In this factual background, the applicant in said case was granted battle casualty status. Thus, the facts of said case were entirely different from the facts of the case in hand.

16. In the present case, the husband of the applicant was suffering from Pneumonia and Rheumatic Heart Disease. Thus, virtually he died due to Cardio Respiratory Arrest. Rheumatic heart disease is a

condition in which the heart valves are permanently damaged due to rheumatic fever. The disease results from an abnormal autoimmune response to a Group-A streptococcal infection in a genetically susceptible host. Acute rheumatic fever, the precursor to rheumatic heart disease, can affect different organs and lead to irreversible valve damage and heart failure. Group-A streptococcus infections of the throat cause strep throat or, less commonly, scarlet fever. Group-A streptococcus infections of the skin or other parts of the body rarely trigger rheumatic fever.

17. Thus, posting in High Altitude Area or cold conditions are not cause of such a disease.

18. Learned counsel for the applicant has also placed reliance on the pronouncement of Hon'ble Apex Court in the case of *Santosh Devi* (supra). In that case, lump sum compensation was granted. The question before Hon'ble the Apex Court in the said case was entirely different, i.e. whether the family of a Territorial Army personnel who was disembodied from service and during his disembodiment died at home due to heart attack, would be entitled to family pension. The Transferred Application in that case was dismissed by the Chandigarh Regional Bench of Armed Forces Tribunal and in the appeal, the Hon'ble Apex Court had only granted lump sum ex gratia amount of Rs. 10,00,000/- (Rupees ten Lacs) to appellant Santosh Devi. The Hon'ble Apex Court had passed said order in the interest of justice and in exercise of powers under Article 142 of the Constitution of

India. This Tribunal is not vested with any such power under Article 142 of the Constitution. Therefore, the claim of the applicant is to be decided only as per the Army Order dealing with battle casualty.

19. In view of our observations made in the foregoing paragraphs, we are of the considered opinion that the applicant has not been able to make out a case for grant of Battle Casualty Pension and the petition being devoid of merits deserves to be dismissed.

20. It is accordingly **dismissed**.

No order as to cost.

**(Air Marshal BBP Sinha)**  
**Member (A)**

**(Justice SVS Rathore)**  
**Member (J)**

Dated: April 5, 2019

anb