

Court No.1
RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 264 of 2018

Friday, this the 29th day of January, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Smt. Vinita Singh,
W/o Late Nb Sub (Gnr) Lalta Singh, Service No. JC/27892K
Unit 1900 F.D. Regt
R/o Village – Bhaghi Khera
P.S. – Gurbaxganj, District – Rae Bareli (UP)

..... Applicant

Ld. Counsel for the Applicant: **Shri S.K. Singh**, Advocate

Versus

1. Union of India through Army Chief Sena Bhawan, New Delhi.
2. Additional Director General Personal Service/AG's Branch IHQ of Min of Defence (Army), C/o 56 APO PIN-900256.
3. Commanding Officer 1900 Fd. Regt. Arty Records (NE-2) PIN 908802 C/o 99 APO.
4. Chief of office PCDA (Pension), Draupadi Ghat, Allahabad (UP).

..... Respondents

Ld. Counsel for the Respondents : **Dr. Shailendra Sharma Atal**,
Central Govt Counsel.

ORDER

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

“i. Issue order or direction to quash order dated 14 March 2017 passed by opposite party as contained in annexure No. 1 with the O.A. and further Hon'ble Court may please to direct opposite party to provide benefit of battle casualty to the applicant whose husband died due to battle casualty

during service period at super high altitude area Sikkim on 30 May 2013 due to failure of left middle cerebra artery territory malignant infract.

ii. issue order or direction to the opposite party to provide full salary along with all facilities of battle casualty which has been happen during posting at high altitude operation FALCON to the applicant J.C.O. provide all the admissible consequential benefits of service to the family of J.C.O. Lalta Singh.

iii. To issue order or direction to the opposite party to provide financial help for education to the dependent of applicant by the authorities concern in interest of justice as admissible in accordance with law.

iv. Issue order or direction to the opposite party to provide companionate appointment to the daughter in army of the/civil services.

v. Award the cost of the petition.”

2. The factual matrix of the case is that husband of applicant was enrolled in the Army on 27.02.1994. The husband of applicant was deployed in extremely rugged Super High Altitude Area (Operation FALCON) performing the duty of JCO-In-Charge of a Troop of field guns, which was looking after the actual Line of Control in North Sikkim. On 26.05.2013, around 1230 hrs, suddenly husband of applicant suffered **Cerebro Vascular Accident (CVA) with Life Middle Cerebral Artery Territory Malignant Infarct**. The husband of applicant was immediately evacuated to 327 Field Hospital, Chungthang and was given immediate medical treatment. From 327 Field Hospital, husband of applicant was evacuated by helicopter to 158 Base Hospital, Bengdubi and thereafter, he was sent to Command Hospital, Kolkata. The husband of applicant died on 30.05.2013 due to **“Cerebro Vascular Accident (CVA) with Left Middle Cerebral Artery Territory Malignant Infarct.”** Medical authority at Command Hospital, Kolkata classified the cause of death as

attributable to military service for the reason '**Stroke occurred due to extreme cold in HAA**'. Thereafter, unit of husband of applicant i.e. 1900 Field Regiment has submitted a detailed battle casualty report as per AO 1/2003/MP to Integrated Headquarters of Ministry of Defence (Army), AG's Branch (MP-5 & 6) with a copy to Artillery Records and the death of husband of applicant was classified as "Battle Casualty". Artillery Records vide Signal dated 10.06.2013 approached competent authority at Integrated Headquarters of Ministry of Defence (Army), AG's Branch (MP-5 & 6) to issue direction on classification of the casualty in respect of the deceased JCO. Integrated Headquarters of Ministry of Defence (Army), AG's Branch (MP-5 & 6) has examined the case and observed that "**the circumstances leading to the casualty is not covered under Category 'D' and 'E' to Govt. of India, Ministry of Defence letter No. 1/(2)97/D (Pen-C) dated 31.01.2001 and advised to make necessary amendment in the detailed report**". Accordingly, death of the applicant's husband was reclassified as "Physical Casualty" by competent authority at Integrated Headquarters of Ministry of Defence (Army), AG's Branch (MP-5 & 6) vide their Signal dated 16.08.2013. All applicable terminal benefits were released in favour of applicant. Special Family Pension has been sanctioned to applicant vide PPO dated 06.02.2014. Thereafter, applicant applied for employment on compassionate grounds which was turned down by the Army Headquarters as the case of applicant could not come within the merit. Aggrieved, the applicant has filed the instant Original Application for grant of Battle Casualty status, with all consequential benefits.

3. Heard Shri S.K. Singh, Learned Counsel for the applicant, Dr. Shailendra Sharma Atal, Learned Counsel for the respondents and perused the record.

4. Learned counsel for the applicant submitted that death of husband of applicant was declared as a '**Battle Casualty**' by his unit 1900 Field Regiment. Battle Casualty Certificate dated 06.08.2013, signed by Commanding Officer of unit is reproduced below :-

BATTLE CASUALTY CERTIFICATE

1. JC-278972k Late Naib Subedar (Gunner) Lalta Singh of 1900 Field Regiment was deployed in operation FALCON at Border Management posture Battery located at Super High Altitude Area (SHAA) at North Sikkim. The Junior Commissioned Officer suddenly suffered **LEFT MIDDLE CEREBRAL ARTERY TERRITORY MALIGNANT INFARCT** due to extreme climatic / environmental conditions on 26 May 2013 at 1230 hrs and was immediately evacuated. The Junior Commissioned Officer died at 1155 hrs on 30 May 2013. The Junior Commissioned Officer was on bonafide military duty.

2. The Junior Commissioned Officer has been declared a **Battle Casualty** as per Army Order 01/2003/MP.

Station : C/o 56 APO

Date : 06 Aug 2013

Sd/- x x x x x x
Binesh Kumar Panda
Col
Comdg Offr
1900 Field Regiment

5. Learned Counsel for the applicant further submitted that since the death of applicant took place in 'Operation FALCON' at Line of Control in Border area of North Sikkim when unit was deployed in Supper High Altitude Area, the death of husband of applicant should be considered as Battle Casualty. The applicant's case is covered with AO 1/2003/MP and accordingly, all benefits of battle casualty status should be granted to the applicant.

6. **Per contra**, Learned Counsel for the respondents submitted that the husband of applicant died on 30.05.2013 due to "Cerebro Vascular Accident (CVA) with Left Middle Cerebral Artery Territory Malignant Infarct". Medical authority at Command Hospital, Kolkata classified the cause of death as attributable to military service for the reason '**Stroke occurred due to extreme cold in HAA**'. Thereafter, unit of the JCO has submitted a detailed battle casualty report as per AO 1/2003/MP to Integrated Headquarters of Ministry of Defence (Army), AG's Branch (MP-5 & 6) with a copy to Artillery Records and the death of JCO was

classified as "Battle Casualty". Artillery Records vide Signal dated 10.06.2013 approached competent authority at Integrated Headquarters of Ministry of Defence (Army), AG's Branch (MP-5 & 6) to issue direction on classification of the casualty in respect of the deceased JCO. Integrated Headquarters of Ministry of Defence (Army), AG's Branch (MP-5 & 6) has examined the case and observed that "***the circumstances leading to the casualty is not covered under Category 'D' and 'E' to Govt. of India, Ministry of Defence letter No. 1/(2)97/D (Pen-C) dated 31.01.2001 and advised to make necessary amendment in the detailed report***". Accordingly, death of the applicant's husband was reclassified as "Physical Casualty" by competent authority at Integrated Headquarters of Ministry of Defence (Army), AG's Branch (MP-5 & 6) vide their Signal dated 16.08.2013.

7. Ld. Counsel for the respondents agreed with the submission made by Ld. Counsel for the applicant that the husband of applicant has died on 30.05.2013 while he was deployed in extremely rugged Super High Altitude Area (Operation FALCON), performing the duty in actual Line of Control and his disability is attributable to military service. He further submitted that since death of husband of applicant has been reclassified from Battle Casualty to Physical Casualty by Integrated Headquarters of Ministry of Defence (Army), AG's Branch (MP-5 & 6), applicant is not entitled for Battle Casualty status and pleaded that O.A. may be dismissed.

8. Before dealing with the rival submissions, it would be appropriate to examine the relevant Rules and Regulations on the subject matter which are reproduced as under :-

(a) **Army Order 1/2003/MP**

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 of 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/MP

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) Casualties occurring while carrying out battle inoculations/training or operationally oriented training in preparation for actual operations due to gunshot wound/explosion of live ammunition/ explosives/mines or by drowning/electrocution.
 - (k) Army personnel killed/wounded unintentionally by own troops during course of duty in an operational area.
 - (l) 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.

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;
- (ii) Mishaps at sea while on duty'
- (iii) Electrocution while on duty, etc.
- (iv) 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. Detach/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.

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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. In the instant case the husband of applicant, while serving in 1900 Field Regiment unit, was deployed in Super High Altitude Area in 'Operation FALCON' in Line of Control area of North Sikkim and his death has been considered as attributable to military service. The death of JCO was considered as Battle Casualty by Commanding Officer of the unit. A case was taken up by the unit for declaring death of husband of the applicant as Battle Casualty but it was rejected by Integrated Headquarters of Ministry of Defence (Army), AG's Branch stating that the applicant's case is not covered under category 'D' and 'E' to

Govt. of India, Ministry of Defence letter No. 1(2)/97/D (Pen-C) dated 31.01.2001, hence it cannot be treated as Battle Casualty.

10. The applicant is in receipt of Special Family Pension. She is aggrieved by non grant of battle casualty status as death of her husband has been considered as a Physical Casualty and not as a Battle Casualty. It is not disputed that husband of applicant died while serving in the unit deployed in Super High Altitude Area in 'Operation FALCON' in Line of Control area of North Sikkim and it is also apparent from the submissions of both the Ld. Counsels that all the commanders in chain of command had strongly recommended his case for consideration as a 'Battle Casualty', but it was rejected by ADG (MP), Integrated Headquarters of MoD (Army).

11. We have gone through the policy letters underlying concept and spirit for declaring death or disability as a battle/physical casualty. The applicant was deployed in Super High Altitude Area in 'Operation FALCON' in Line of Control area of North Sikkim and died on 30.05.2013. In our view, case of husband of applicant is covered by Serial 1 (g) of Appendix 'A' to AO 1/2003/MP, which reads as under :-

Serial 1 (g)

"Casualties occurring while operating on the International Border or Line of Control due to natural calamities and illness caused by climatic conditions."

12. Keeping in view the facts and circumstances of the case and various policies, we converge to the view that applicant is entitled for consideration for award of Battle Casualty status, as such is entitled for grant of War Injury Pension.

13. Accordingly, Original Application succeeds and is allowed. The impugned Order by which the claim for Battle Casualty status of the applicant has been denied is hereby set aside. The respondents are directed to grant Battle Casualty Status and War Injury Pension to the applicant from the date of death of her husband. However, due to law of limitations settled by the Hon'ble

Supreme Court in the case of ***Shiv Dass v. Union of India and others*** (2007 (3) SLR 445), the arrear of War Injury Pension will be restricted to three years preceding the date of filing of the instant O.A. The date of filing of this O.A is 05.10.2017. The respondents are further directed to make necessary calculations with regard to deficiency in pension (difference between War Injury Pension and Special Family Pension) so accrued on grant of War Injury Pension and pay the same to the applicant within a period of four months from the date of receipt of certified copy of this order. In case the respondents fail to give effect to this order within the stipulated period, the amount accrued to the applicant would start earning interest at the rate of 8% from due date till the date of actual payment.

14. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: January, 2021
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