

e-Court**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION No. 420 of 2020**Wednesday, this the 19th day of January, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)Smt Kashmira Devi w/o No 6472977F Late Sep Paras Nath
Ram, R/o Village & Post-Jeevpur, Tehsil-Zamania, District-
Ghazipur, Pin-232340.

..... Applicant

Ld. Counsel for the : **Shri Ashok Kumar**, Advocate.
Applicant

Versus

1. Union of India through Secretary, Ministry of
Defence, South Block, Delhi-110011.
2. Officer Incharge, Record Office, Sena Seva Corps
(Pashu Parivahan), ASC Records (AT), PIN-900493,
C/o 56 APO.
3. Principal Controller of Defence Accounts (Pension),
Draupadi Ghat, Allahabad (U.P.).

.....Respondents

Ld. Counsel for the
Respondents**Shri RC Shukla**,
Central Govt Counsel

ORDER (Oral)

1. By means of this Original Application filed under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has prayed the following reliefs:-

(i) This Hon'ble Court may graciously be pleased to direct the respondents to grant the liberalized family pension along with arrears from the date of its entitlement on 23.09.1992 in accordance with law, in the interest of justice to the applicant.

(ii) This Hon'ble Court may further be pleased to pass such other and/or further order as deem fit, proper and necessary in the circumstances of this case.

(iii) Award costs to the applicant.

2. The factual matrix of the case is that No 6472977F Late Sep Paras Nath Ram (husband of the applicant) was enrolled in the Army on 25.11.1983. While serving with 879 AT ASC Battalion he met with an accident on 22.09.1992. In the said accident vehicle No. 79D-34297E Lorry 6.5 Ton LPT rolled down to nallah resulting in death of 12 persons (including applicant's husband). A Court of Inquiry was convened on 23.09.1993 which gave its finding that death of 12 persons was attributable to military service in Field Area on bonafide military duty as the team of which applicant's husband was also a member was a part of Logistic Support proceeding to participate in a military exercise. Consequent to death of the individual, applicant was granted Ordinary Family Pension vide PPO No F/NA/2996/93 dated 23.07.1993. Later, vide PPO No

F/311/2004 dated 25.05.2004 and corrigendum PPO No F/NA/2864/2004 dated 25.05.2004 her Ordinary Family Pension was converted to Special Family Pension w.e.f. 23.09.1992 which she is receiving regularly. On 06.01.2020 applicant approached the Commanding Officer, 879 AT ASC Battalion to provide death related documents in respect of her late husband and also prayed for liberalized family pension. Her request was turned down vide PCDA (P), Allahabad letter dated 05.10.2020 in view of policy letter dated 24.02.1972 and 31.01.2001 and it was conveyed to the applicant on 10.11.2020. The applicant has made several correspondences with unit and PCDA (P) Allahabad but every time she was conveyed that Liberalized Family Pension is not applicable in her case. This O.A. has been filed for grant of Liberalized Family Pension.

3. Learned counsel for the applicant pleaded that applicant's husband while posted in Arunachal Pradesh actively participated in 'Exercise Hoshiyar'. The troops of 'B' Company of 879 AT Bn ASC were moving to Lahu Basti to take part in operational duties on 22.09.1992 in 5 Mtn Div area under the orders of HQ 4 Corps and in the said movement the vehicle in which troops were moving met with an accident (fell down in nallah) resulting in death of 12 soldiers including applicant's husband. His further

submission is that the Court of Inquiry held in the matter opined death of all soldiers as attributable to military service in Counter Insurgency Area. His submission is that case of the applicant is covered under para 4.1 (E) (F) (ii) of policy letter dated 31.01.2001 and death of her husband being a battle casualty she is entitled to Liberalized Family Pension.

4. Per contra, Learned Counsel for the respondents submitted that death of the husband of the applicant was due to MT accident and not in action/actual fighting with enemy and hence it is not covered under Category 'D' or 'E' of Para 4.1 of Govt. of India, Ministry of Defence letter dated 31.01.2001 instead it falls under Category C (i) of the said letter for grant of Special Family Pension. He also submitted that Battle Casualty Part II Order in this regard was not notified by the Records. He further submitted that the action of the PCDA (P) Allahabad is in conformity with the existing rules and that it was carried out in the best interest of state without any malafide intention towards the applicant.

5. Ld. Counsel for the respondents agreed with the submission made by learned counsel for the applicant that the applicant's husband died while moving to participate in an exercise in Arunachal Pradesh and his death is

attributable to military service but his submission is that the circumstances leading to casualty of late Sep Paras Nath Ram was not covered under category 'D' & 'E' to Government of India, Ministry of Defence letter dated 31.01.2001 for grant of Liberalized Family Pension. The death of late Sep Paras Nath Ram is attributable to military service but it is certainly not a battle casualty as he was not taking part in an action/actual fighting with enemy. Keeping in view the above mentioned facts, circumstances and relevant rule position, the present petition does not have any substance in the eye of natural justice, hence the same deserves to be dismissed in the interest of justice.

6. We have heard Shri Ashok Kumar, learned counsel for the applicant and Shri RC Shukla, learned counsel for the respondents and perused the material placed on record.

7. It is not disputed that applicant's husband died in a vehicle accident while moving in the exercise location (Counter Insurgency Area of Arunachal Pradesh). It is also not disputed that applicant is in receipt of Special Family Pension w.e.f. the date of death of her husband. Vide para 4 (12) of the O.A. applicant has made a reference to para 6 of the Pension Regulations for the Army, 1961 and pleaded that in view of sub para f (i) and (ii) of aforesaid regulation applicant is entitled to Liberalized Family Pension. We have

gone through the aforesaid para and we find that Liberalized Family Pension is applicable when an Army person dies due to following conditions:-

(i) Extremist acts exploding mines etc, while on way to an operational area.

(ii) Battle Inoculation Training Exercise or demonstration with live ammunition.

8. For adjudication of the controversy involved in the instant case, we need to address two issues; firstly, is the death of the husband of the applicant occurred while moving to participate in an active operation and it should be declared as a case of Battle Casualty and secondly, if found to be a case of Battle Casualty, can the benefit of Liberalised Family Pension and ex-gratia be granted to the applicant. The provisions of Govt. of India, Ministry of Defence letter dated 31.01.2001 and Army Order 01/2003, relevant in this case, are excerpted herein below :-

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

1. to 3. xxx xxxxx
xxxx

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. 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."

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) 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.

(m) 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.

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

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

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

(q) 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.

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

(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.

9. The fatal accident met by the deceased soldier alongwith 11 other personnel of 879 AT ASC Battalion on 22.09.1992 when the team was a part of Logistic Support proceeding to participate in an exercise. The said motor vehicle accident is not covered under the category 'D' and 'E' as prescribed vide para 6 of the Govt of India, Min of Def letter dated 31.01.2001 to make her eligible for grant of Liberalized Family Pension. As such, keeping in view the above instructions, the applicant is not eligible for grant of Liberalized Family Pension.

10. It is also made clear that since the accident in which applicant's husband died is covered under the category 'C' of para 4.1 of the Govt of India, Min of Def letter dated 31.01.2001, therefore she is entitled to Special Family

Pension which is already being received by her. Death of the husband of the applicant was due to MT accident and not in any action or actual fighting with enemy and hence it is not covered under Category 'D' or 'E' of Para 4.1 of Govt of India letter dated 31.01.2001. Instead it falls in category 'C' (i) of the said letter for grant of Special Family Pension. It is also noticed that the Record Office has not notified battle casualty Part II Order being not a case of battle casualty. Since the death of the husband of the applicant falls under Category 'C' (i) of para 4 of ibid Govt letter, only Special Family Pension is admissible to her and not the Liberalized Family Pension which the applicant is claiming.

11. In view of the above, O.A. deserves to be dismissed, hence **dismissed**.

12. No order as to costs.

13. Miscellaneous application(s), pending if any, shall stand disposed of.

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

Dated: 19.01.2022
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