

**Court No. 1**

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

**Original Application No 146 of 2020**

Thursday, this the 30<sup>th</sup> day of September, 2021

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

Smt Suman Lata, M/O Late No 15491434L Ex Rect Babal Kumar, W/o Sri Birham Pal Singh, R/o Vill – Pilala, PO- Aurangabad, Distt- Bulandshahar (U.P.).

..... Applicant

Ld. Counsel for the Applicant: **Shri KK Misra, Advocate**

Versus

1. Union of India through its Secretary, Ministry of Defence, New Delhi.
2. The Chief of Army Staff, South Block, New Delhi.
3. Officer in Charge, Armoured Corps, Records, Ahmed Nagar.
4. PCDA (P), Draupadighat, Allahabad, (U.P.)

..... Respondents

Ld. Counsel for the Respondents : **Shri Shyam Singh,**  
**Central Govt Counsel.**

**ORDER**

**“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

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) To declare the applicant’s son death as Battle Casualty and grant liberalized pension to the applicant as per her entitlement w.e.f. the date of her son’s death, ie 01 Dec 2003.
- (ii) Thereafter, direct the respondents to pay the arrear of defference of pension with interest along with other benefits of battle casualty as applicable.
- (iii) Any other relief which Hon’ble Court may think just and proper may be granted in favour of the applicant.
- (iv) Cost of the case may be allowed.”

2. The facts of the case, in brief, are that son of the applicant No 15491434L Ex Rect Babal Kumar was enrolled in the Army on 21.07.2003. He joined his training at Armoured Corps Regimental Centre, Ahmednagar. After completing about 6 months training at Armoured Corps Regimental

Centre, Ahmednager, at about 0700 hrs on 01.12.2003, while carrying out Battle Physical Efficiency Test (in short BPET), the applicant son fell down unconscious. He was admitted in Military Hospital and was declared dead. Death of applicant's son was declared as attributable to military service and respondents declared it a case of physical casualty. After death of the son of the applicant, applicant was granted special family pension. Applicant represented her case for grant of liberalized family pension but the same was not replied by the respondents. Being aggrieved with the denied for grant of Liberalized Family Pension, the instant Original Application has been filed.

3. Learned Counsel for the applicant submitted that on 01.12.2003 at about 0700 hrs son of the applicant was participating in BPET conducted by the unit. BPET is a part of practice of war. Soldiers are made to prepare for war by undergoing a practice of war like situation which is very rigorous, tough and strenuous. Son of the applicant died while practicing for war like situation. Respondents considered the death of applicant's son as attributable to military service. Under the circumstances the applicant's son died, it ought to have been treated as Battle Casualty and applicant should have been granted Liberalized Family Pension. Respondents

ignoring this aspect denied her legitimate entitlement of Liberalized Pension and granted Special Family Pension. Applicant represented her case vide letter No 11.06.2011, 17.09.2015 and even dated 20.08.2018 for grant of Liberalized Family Pension but no reply was given by the respondents. Son of the applicant died while participating in BPET, therefore applicant is entitled to Liberalized Family Pension instead of Special Family Pension. Her contention is that death of the son of applicant during BPET was declared "physical casualty" which is illegal, unjust, improper and not sustainable in the eyes of law. Being aggrieved, applicant has filed instant Original Application for grant of Liberalized Family Pension.

4. Further contention of learned counsel for the applicant is that the respondents have not considered the circumstances under which son of the applicant died and straightway granted Special Family Pension. Learned counsel for the applicant submitted that action on the part of the respondents is illegal, unjust, improper and affecting the livelihood of the applicant which is violative of fundamental rights as guaranteed by Article 14, 16 & 21 of the Constitution of India. He placed reliance on the case of Armed Forces Tribunal, Regional Bench, Chandigarh judgment in O.A. No. 24 of 2014, titled

***Lakhbir Singh Vs. Union of India***, decided on 24.07.2017 and submitted that the applicant's case is squarely covered by this judgment which entitles the applicant for grant of Battle Casualty status and War Injury Pension. Learned Counsel for the applicant further submitted that applicant was on bonafide military duty while he died and his death was also considered as attributable to military service, as such, his injury is to be considered as Battle Casualty, and, accordingly, Liberalized Family Pension be granted to her.

5. Per contra, learned Counsel for the respondents submitted that on 01.12.2003, son of the applicant died due to "HYPERTROPHIC CARDIOMYOPATHY" while running 5 km BPET. A Court of Inquiry was held and death of the son of applicant was regarded as "Attributable to Military Service". Son of the applicant had rendered only 4 months and 11 days of service in the army till his death. Applicant was granted Special Family Pension ie Rs 2550/- per month with effect from 02.12.2003 which was revised from time to time. The case of the applicant is not covered under the rules for grant of Liberalized Family Pension, hence she was granted Special Family Pension. Learned counsel for the respondents submitted that instant original application is misconceived and devoid of merit as such liable to be dismissed.

6. Heard learned Counsel for the parties and perused the documents available on record.

7. Before dealing with the rival submissions, it would be appropriate to examine the relevant Rules and Regulations on the subject matter. For grant of Battle Causality status unit concerned has to take following action as per SAO 8/S/85 as amended by AO 1/2003/MP which were not taken i.e.:

(i) Initial Report within 24 hours.

(ii) Detailed report within 72 hours.

(iii) Completion of injury report initiated by Military Hospital.

(iv) Publication of Part II Order declaring battle casualty and

(v) Submission of case to higher authorities for grant of ex- gratia.

8. In the instant case no any such action was taken by the unit and even no statement of case for belated sanction for reporting and declaring of Battle Causality was taken and Battle Causality Certificate was not issued to the applicant by the Commanding Officer under the provisions of Para 4 of OA 1/2003/MP. It is evident that death of the son of applicant was

not due to actual fighting with enemy terrorist. In this case no Part II Order was published to declare the case as Battle Causality. As the applicant died at the time of participating in BPET while on bona fide military duty, the injury was appropriately considered as attributable to military service and applicant was granted status of physical casualty.

9. We consider it appropriate, before proceeding to adjudicate the claim of the applicant, to place the chronology and context of various rule position on record 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 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/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.*

*(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) 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/electronution.*

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

*(m) 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.*

*(n) 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.*

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

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

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

*(r) 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.*

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

*(t) 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.*



- (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.*

XX

XX

XX

11. A full reading of the Army Orders and Government of India letter dated 31.01.2001 relating to Battle Casualties and classification of casualties for pensionary purposes shows that in all circumstances there is a direct and immediate relationship

with the enemy or actions related to the enemy. In other words there should be a direct and casual connection between the duties being performed and the cause of accident or death. These Army Orders and letters cannot be read in isolation and need to be read in their full context.

12. Here we may refer to a few judgments which clarify the scope and interpretation of statutes. As said by Lord Davey: “Every clause of a statute should be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject matter. To ascertain the meaning of a clause in a statute the court must look at the whole statute, at what precedes and at when succeeds and not merely at the clause itself. As stated by **Sinha, CJI**, “The court must ascertain the intention of the Legislature by directing its attention not merely to the clauses to be construed but to the entire statute, it must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs. It is also apt to take note of few decisions of the Apex Court with regard to interpretation of Statutes.

13. In ***CIT vs Mcdowell & Co Ltd (2009) 10 SCC 755 (Para 20)***, it has been held that when particular words pertaining to a class or genus are followed by general words, the general words are construed as limited to things of the same kind as those specified.

14. The Apex Court in ***Union of India and others vs. Brig PS Gill, (2012) 4 SCC 463*** had an occasion to interpret Sections 30 and 31 of the Armed Forces Tribunal Act 2007. The question which was up before the court was as to whether against a decision by the Armed Forces Tribunal, an appeal can be filed as a matter of right under Section 30 of the said Act which is subject to the provision of Section 31. The Court examined the scope of Sections 30 to 31 and while doing so it had held that ‘it is one of the settled canons of interpretation of statutes that every clause of the statute should be construed with respect to the context and the other clauses of the Act, so far as possible to make a consistent enactment of the whole statute or series relating the subject’. Reference to the decisions of this Court in ***M Pentiah v. Muddala Veeramallapa, AIR 1961 SC 1107*** and ***Gammon India Ltd v. Union of India (1974), SCC 596***, should in this regard suffice. In *Gammon India Ltd*, this Court observed “19....*Every clause of a statute is to be construed with*

*reference to the context and other provisions of the Act to make a consistent and harmonious meaning of the statute relating to the subject matter. The interpretation of the words will be by looking that the context, the collocation of the words and the object of the words relating to the matters.”*

15. We may also gainfully extract the following passage from V. ***Tulasamma V. Sesha Reddy (1977) 3 SCC 99*** wherein this Court observed “69... *It is an elementary rule of construction that no provisions of a statute should be construed in isolation but it should be construed with reference to the context and in the light of other provisions of the statute so as, as far as possible, to make a consistent enactment of the whole statute”.*

16. In ***Raheja Universal Ltd Vs NRC Ltd (2012) 4 SCC 148***, it has been held that statute should be construed in its entirety any section or sub section should not be construed and read in isolation.

17. Having considered the facts and circumstances of the death of the son of the applicant, the rules and policy governing such death and the above principles of interpretation, we are of the view that the applicant did not qualify for being declared as a Battle Casualty and for grant of

Liberalized Family Pension. Death of the son of applicant was appropriately held to be attributable to military service and she was granted the appropriate benefits as per rules.

18. In view of the above, the Original Application is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

19. No order as to costs.

20. Pending applications, if any, are disposed off.

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

Dated: 30 September , 2021  
Ukt/-