

Reserved Judgment**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BENCH AT NAINITAL)****ORIGINAL APPLICATION No. 331 of 2017****Thursday, this the 13th day of September, 2018****Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)**

Smt Sunita Yadav, mother of No 15718012-W, Late Sigmn
Subhash Kumar Yadav, resident of Village : Badupur Majre
Bazirpur, Post Office : Kunda, Distt : Pithoragarh-230204 (U.P).

..... **Applicant**

Learned Counsel for the Applicant - **Shri Om Prakash,**
Advocate

Versus

1. Union of India, Ministry of Defence, South Block
New Delhi.-110011.
2. The Chief of the Army Staff, Sena Bhavan, Rafi Marg
New Delhi-110106
3. 19 Inf Div Sig Regt PIN 917819, C/O 56 APO
4. The Records Signals PIN-908770, C/O 56 APO
5. P.C.D.A. (Pension), Draupadi Ghat, Allahabad.-211014

..... **Respondents.**

Learned Counsel for the - **Shri Rajiv Pandey,**
Respondents **Addl Central Govt Counsel**

ORDER

“Per Hon. Mr. Justice S.V.S.Rathore, Member (J)”

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:

(A) To issue directions/orders to respondent No. 5 to grant Liberalized Family Pension to the applicant in terms of Pension Regulations for the Army and Entitlement Rules for casualty pensionary awards after re-examining the facts related to death of son of applicant while participating in war like operations on line of control on 18.01.2013.

(B) To summon Army HQ to issue prescribed Battle Casualty Certificate duly authenticated by authorized signatory in respect of 15718012-W Late Sigmn Subhash Kumar Yadav died on 18.01.2013.

(C) Any other relief which this Hon'ble Tribunal may deem fit and proper under the circumstances of the case, may be granted in favour of the applicant.

(D) Award the cost of original application in favour of Applicant.

2. The factual matrix of the case borne from the record is that late Signalman Subhash Kumar Yadav, son of the applicant, was enrolled in the Army on 07.12.2009. In the night intervening 17/18.01.2013 while serving with 17 Infantry Brigade Signal Company of 19 Infantry Division Signal Regiment, the son of the applicant along with two more soldiers established a temporary Radio Relay Detachment base as part of operation being conducted on the line of control in the High Altitude Area. They were responsible to ensure smooth communication between the various operational elements of Army in the high altitude area. Due to extreme heavy snowfall and sudden snowstorm, all the three soldiers were trapped inside the Temporary Radio Relay detachment. Attempt to rescue them by personnel of Padam Company Operation Base (COB) was hampered due to snowstorm and two soldiers, including the son of the applicant, could not be rescued and they died trapped in the temporary operational base. The Court of Inquiry conducted to investigate the circumstances under which two fatal one non fatal casualties occurred, opined that their post was covered with heavy snowfall. Death was

caused due to accidental and inadvertent accumulation of generator smoke inside the post resulting in “Respiratory Failure due to Hypoxia”. The Court of Inquiry has further reported that their post was covered by snow due to heavy snowfall and despite best efforts to clear the windows and vent of the temporary base, the heavy snowfall precluded the efforts resulting in inadequate ventilation and asphyxiation. No foul play was observed and also no one was blamed for the deaths. The Court of Inquiry further opined that all soldiers were on bona fide military duty as they were responsible to ensure the continuous functioning of the Radio Communication System. The son of the applicant was declared as ‘Battle Casualty’ by the Commanding Officer 19 Infantry Division Signal Regiment and ‘Battle Casualty Certificate’ was issued by him duly countersigned by Colonel Administration, Headquarters 15 Corps. His case for grant of Battle Casualty Status was submitted by Signal Records to Additional Directorate General of Manpower (Policy and Planning) (MP-5(d) (Cas Sec) on 13.02.2013, but it was downgraded to ‘Physical Casualty’ status vide Signal No 350391 dated 15.03.2013 stating that circumstances under which the death of the son of the applicant occurred was not covered under category ‘D’ and ‘E’ of the Government of India, Ministry of Defence letter dated 31.01.2001. Therefore, instead of granting Liberalised Family Pension commensurate to Battle Casualty status, the applicant was granted Special Family Pension on being declared as Physical Casualty. Aggrieved, the applicant has filed the instant Original Application for grant of Liberalized Family Pension and declare the death of the deceased son of the applicant as Battle Casualty.

3. Heard Shri Om Prakash, Learned Counsel for the applicant, Shri Rajiv Pandey, Learned Counsel for the respondents assisted by Maj Vikas Sharma, OIC Legal Cell and perused the record.

4. Learned counsel for the applicant submitted that in the Initial Death Report of No 15718012W Signal Man Subhash Kumar Yadav, deceased son of the applicant, it is clearly

mentioned that he had died on the line of control while on bonafide military duty due to respiratory failure because of hypoxia during extreme heavy snowfall and sudden blizzard on 18.01.2013 at Padam Post Detachment at District : Kupwara (J&K). In this report type of case has been mentioned as Battle Casualty. Battle Casualty Certificate has been issued by the Commanding Officer duly countersigned by HQ 15 Corps. Signal Records had recommended for grant of Battle Casualty Status to the deceased son of the applicant who had died in an operation conducted on the line of control in Dist Kupwara (J&K). This Battle Casualty Certificate has been issued in accordance with Army Order 1/2003/MP. However IHQ of MoD has downgraded the same to Physical Casualty. Ld Counsel for the applicant submitted that gross injustice has been done to the applicant whose son had died while serving the country during an operation at high altitude line of control in Dist – Kupwara in Jammu and Kashmir during extremely adverse weather conditions. Learned counsel for the applicant prays that the applicant be granted Liberalized Family Pension instead of Special Family Pension with arrears and also declare the death of the deceased soldier as Battle Casualty. He placed reliance on the judgment given by High Court of Delhi in the case of Major Arvind Kumar Suhag vs. Union of India in W.P. (C) 4488/2012 decided on 21.02.2013 wherein the similar case has been decided and the applicant has been given Battle Casualty status and the pension on this count.

5. **Per contra**, Learned Counsel for the respondents submitted that the circumstances leading to casualty in respect of the son of the applicant is not covered under category ‘D’ and ‘E’ to Government of India, Ministry of Defence letter dated 31.01.2001. Hence casualty has been declared as Physical Casualty and Special Family Pension has been sanctioned vide Pension Payment Order No F/20202/2017 dated 01.07.2014. He further submitted that Liberalised Family Pension is being sanctioned to those personnel who have died in war, fighting against Anti National Elements or

in terrorist attack etc, hence his death has been considered as physical casualty by Additional Directorate General of Manpower (Policy & Planning (MP-5 (d), Integrated Headquarters of Ministry of Defence (Army). He further submitted that the action of the Integrated Headquarters of the Ministry of Defence was in conformity with the existing rules.

6. Ld. Counsel for the respondents could not dispute that the son of the applicant died while on bona fide military duty in a high altitude operational area near the line of control in District Kupwara in Jammu and Kashmir and his death was attributable to military service. However, he attempted to clarify that the circumstances leading to casualty of son of the applicant is not covered under category 'D' & 'E' to Government of India, Ministry of Defence letter dated 31.01.2001 for grant of Battle Casualty. It was submitted that the death of son of the applicant, no doubt, is attributable to military service, but it certainly is not a battle casualty as he was not taking part in an action/actual fighting with enemy.

7. For a proper adjudication of the controversy involved in the instant case, we need to address two issues; firstly, did the death of the son of the applicant occur while he was participating 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.

8. 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. xxxx

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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 under:-

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 1/2003Physical/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 1/2003Battle 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.*

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. At this stage, we feel it appropriate to extract the relevant correspondence exchanged in this case. The extract of First Details of death sent by Adjutant 19 Inf Div Sig Regt to all concerned and the extract of Battle Casualty Certificate issued by Commanding Officer, 19 Inf Div Sig Regt countersigned by Col 'A' HQ 15 Corps are reproduced as under :-

(a) **DETAILS OF NO 15718012W SIGMN (TTC) SUBHASH KUMAR YADAV OF 17 INF BDE SIG COPY (19 INF DIV SIG REGT)**

Ser 1 to 15 x x x x x x x x x x x

16. **Type of Cas** - **Battle Cas.**

17. **Brief of Incident** - On the night of 17/18.01.2013, No 15395386Y Nk RC Sethi, No 15718012W Sigm Subhash Kumar Yadav and No 15707865F Sigm Chanchal Kumar has est a temp op base as part of ops being conducted on the line of control and were responsible to ensure smooth comn between the various op parties. Due to extremely hy snow fall and sudden blizzard, these three pers got trapped inside the op base. The rescue attempt by pers of Padam COB were carried out in extremely hy snowfall in the HAA in difficult trn. Despite valiant attempts, No 15395386Y Nk RC Sethi & No 15718012W Sigm Subhash Kumar Yadav could not be rescued. No 15707865F Sigm Chanchal Kumar responded to the first aid and was evac by heptra to 168 MH where the condition of the indl is now stable.

(b) **BATTLE CASUALTY CERTIFICATE**

1. No 15718012W Rank Sigm Subhash Kumar Yadav of Unit 19 Inf Div Sig Regt died due to respiratory failure because of hypoxia during extreme heavy snowfall and sudden blizzard on 18 Jan 13 at Padam Post Det, Dist : Kupwara (J&K), while on bona fide military duty.

2. I certify that above indl is a battle cas as per Army Order 01/2003/MP.

10. Thus, it is apparent that the son of applicant was a part of operation being conducted on the line of control and a duty was entrusted upon him to ensure smooth communication between the various operational parties. Radio Relay is a line of sight equipment and functions best when it is at the highest possible hill or mountain terrain. Thus, professional compulsions demand establishment of Radio Relay Equipment post at highest available point to ensure better communication. Due to extreme heavy snowfall and sudden blizzard, the applicant got trapped inside the temporary operational base at high altitude near line of control and died on 18.01.2013 due to respiratory failure because of hypoxia. Thus, it is a situation where a detachment of three Army personnel was deployed at a high altitude post near the line of control for carrying out an operational duty, and they encountered such heavy snowfall that they could not keep the windows and vents of their temporary base clear of snow despite best efforts and as a result, two of them (including the applicant's son) have died. In this given situation, we are of the considered opinion that there is no room of doubt that the injuries are classifiable as falling under category E (j) i.e. ***“Operations specially notified by the Government from time to time.”*** and Ser 1 (d) & (g) to Appendix ‘A’ to AO 1/2003 ***“Accidental injuries and deaths which occur in action in an operational area.”*** and ***“Casualties occurring while operating on the International Border or Line of Control due to natural calamities and illness caused by climatic conditions.”***

11. The applicant is in receipt of Special Family Pension and is aggrieved by non grant of Liberalised Family Pension commensurate to Battle Casualty status. It is also not disputed that the son of the applicant died while taking part in the operation conducted on the line of control and it is also apparent from the submissions of Ld. Counsels for the parties that his Commanding Officer had recommended his case which was countersigned by his immediate superior Headquarters for consideration as a ‘Battle Casualty’, but it was rejected by Integrated Headquarters of

Ministry of Defence. Ld. Counsel for the respondents after going through the judgments cited above has also conceded that the case of the son of the applicant is covered by these judgments as it is of similar nature.

12. We have also gone through the policy letters underlying concept and spirit for declaring death or disability as a Battle/Physical Casualty. The son of the applicant was involved in an operation on the line of control in District Kupwara in Jammu and Kashmir in an High Altitude Area and was on bonafide military duty when he died.

13. In our view the case of the applicant's son is covered by Clause 4.1 Category E (j) of Govt. of India, Ministry of Defence letter dated 31.01.2001 and Serial 1 (g) of Appendix 'A' to AO 1/2003, which reads as under :-

**Clause 4.1 Category E (j) of Govt. of India,
Ministry of Defence letter dated 31.01.2001**

“(j) Operations specially notified by the Government from time to time”.

**Serial 1 (d) & (g) of Appendix 'A' to AO
1/2003**

“(d) Accidental injuries and deaths which occur in action in an operational area.

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

14. The co-ordinate Benches of the Armed Forces Tribunal, Chandigarh Bench and Lucknow Bench, while considering similar issue involved in the present case and after taking into consideration the relevant rules and policy on the subject, have granted benefit of Battle Casualty status and the pension to the applicants:-

(a) Armed Forces Tribunal, Regional Bench, Chandigarh judgment in O.A. No. 305 of 2014, Kameshwar Gautam Vs. Union of India & Ors decided on 15.12.2015.

(b) Armed Forces Tribunal, Regional Bench, Lucknow judgments in O.A. No. 174 of 2014, Balbir Singh Vs. Union of India decided on 31.05.2016

(c) O.A. No. 215 of 2013 Smt Pooja Devi vs. union of India & Others decided on 31.08.2016 .

15. The case of the applicant falls within the four corners of said decisions. Thus, keeping in view the facts and circumstances of the case, various policies, judgements of Armed Forces Tribunal, Chandigarh and Armed Forces Tribunal, Lucknow (supra), we converge to the view that the son of the applicant should be considered as a Battle Casualty, as such the applicant is entitled for grant of Liberalised Family Pension commensurate to Battle Casualty status of her late son with all consequential benefits.

16. Accordingly Original Application No 331 of 2017 succeeds and is allowed. The order dated 15.03.2013 (Annexure No CA-4 to the Counter Affidavit) denying Battle Casualty status to the deceased soldier is set aside. The applicant shall be entitled to Liberalised Family Pension of her son from the date of his death including all consequential benefits. The respondents are further directed to make necessary calculations with regard to deficiency in pension so accrued on grant of Liberalised Family Pension and pay the same to the applicant within a period of four months from the date of receipt of a certified copy of this order. The respondents shall continue to pay Liberalised Family Pension to the applicant. In case the respondents fail to give effect to this order within the time stipulated above, the applicant would start earning interest on the amount accrued at the rate of 9% from due date till the date of actual payment.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice S.V.S. Rathore)
Member (J)

Dated: 13th September, 2018
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