

RESERVED
Court No. 2

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

ORIGINAL APPLICATION No. 355 of 2015

Tuesday, this the 27th day of February, 2018

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

Smt Rama Devi wife of late No 15373700 F Ex Signalman Ram Khiladi resident of 2/161, Avas Vikas Colony, Kasganj, Etah (U.P.).

.....Applicant

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

Verses

1. Union of India, through its Secretary, Min of Defence, New Delhi.
2. Chief of Army Staff, Army Headquarters, New Delhi.
3. Officer in Charge, Signal Records, Jabalpur.
4. P.C.D.A (Pension) Allahabad.

.....Respondents

Ld. Counsel for the : **Shri B.P.Singh, Advocate**
Respondents **Addl. C.G.S.C**

Assisted by : Maj Rajshri Nigam, OIC Legal Cell.

ORDER**“Per Hon’ble Air Marshal BBP Sinha, Member (A)”**

1. Present O.A has been preferred under section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs.

“1. To direct the respondents to declare the applicant’s husband injuries as battle casualty.

2. To grant Liberalized pension of battle casualty to the applicant as per her entitlement from the date the applicant’s husband was invalidated out of service alongwith its arrears.”

2. The facts in nutshell are that the husband of the applicant namely Late Signalman Ram Khiladi was enrolled in the Army (Corps of Signal) on 31.01.1991 and was invalidated out form service on 05.04.2001 under Army Rule 13 (3) Item (III) (iii) by a duly constituted Invaliding Medical Board for disability “FRACTURE DV8, DV11 WITH TRAUMATIC PARAPLEGIA, COMPOUND COMMINUTED FRACTURE UNDER 1/3 BIBIA FIBULA (r) AND BLUNT INJURY ABODOMEN (r) after having rendered 10 years, 02 months and 05 days service in the Army. He was in receipt of 100% disability pension with attendant allowance. However, he succumbed to his injuries on 02.06.2015 i.e. after more than 14 years of service from the date he was invalidated out from service. The disability was suffered by the husband of the applicant in an accident that occurred on 25.08.1995 while returning from 17 Mountain Division Ordinance Unit (Gangtok) in a Truck 1

Ton. Thereafter, a court of inquiry was convened by Headquarters 17 Mountain Division, Gangtok to ascertain the circumstances under which the alleged vehicle of 164 Mountain Brigade Signal company met with an accident on 25.08.1995 near 8 Mile JNM at about 1700 hours wherein it was opined that the injury sustained by the personnel was on a bonafide duty and was attributable to military service. The Invalidating Medical Board was held on 08.03.2001 at Military Hospital Karkee wherein his disability was opined as attributable to military service with degree of disablement @100% for life with constant Attendance Allowance.

3. We have heard learned counsel for the parties and have also gone through the material facts on record.

4. The main brunt of the arguments advanced on behalf of the applicant is that the case of the husband of the Applicant be treated as battle casualty and she be granted Liberalised family pension as the injury sustained by late Ram Khiladi occurred while participating in a division level exercise named "CHEETA".

5. Learned counsel for the respondents substantially contends that as per PCDA (P) Allahabad Circular No. 440 dated 26.08.2010 which postulates that in the case where an individual is in receipt of disability pension dies within a period of seven years from the date of

discharge/release/retirement due to cause other than accident/injury may be considered to have died of the disease but since the applicant died after more than 14 years of his being invalidated out from service, the Applicant is not entitled for Special Family Pension and she would only be entitled to Ordinary Family pension which the applicant is already getting.

6. During the course of arguments, learned counsel for the petitioner drew our attention to the Government of India, Ministry of Defence letter dated 31.01.2001 and argued that the case of the petitioner for war injury pension is covered under Category E (i) of Para 4.1 of the said letter as the disability has been caused in an operational area during an exercise.

7. Paras 4.1,4.2,10 & 12 are as under :-

*PART II-PENSIONARY BENEFITS ON DEATH/DISABILITY IN
ATTRIBUTABLE/AGGRAVATED CASES*

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) Electrocutation 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.

Following circumstances have been added in Category D vide Government of India, Ministry of Defence, Department of Ex-serviceman Welfare letter No.2(1)/2011-D (Pen/Policy), dated Feb 2011:-

" Death or disability arising as a result of

(i) Unintentional killing by own troops during the course of duty in An operational area.

(ii) Electrocutation/attack by wild animals and snake bite/drowning During course of action in counter insurgency/war.

(iii) Accidental death/injury sustained due to natural calamities such as flood avalanches, landslides, cyclone, fire and lightening or drowning in river while performing operational duties/movement in action against enemy forces and armed hostilities in operation area to include deployment on international border of line of control. "

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.*
- i) *Operations specially notified by the Govt. from time to time.*

**Following circumstance has been added in Category E vide
Government of India, Ministry of Defence, Department of
Ex-serviceman Welfare letter No.2(1)/2011-D
(Pen/Policy), dated Feb 2011:-**

"(i) Death or disability arising as a result of poisoning of water by enemy agents while deployed in operational area in active hostilities."

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 Defence letter No. 1(1)99/D (Pen/Ser) dated 7.6.99.

(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 Defence letter No 1 (6)/98/D (Pen/Ser) dated 03 Feb 98 as amended/modified vide Ministry of Defence letter No. 1 (1)/99/D (Pen/Ser) dated 07.06.99. xxx xxx xxx

10. War Injury Pension on Invalidment :-

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.

1. Liberalised Disability Pension in respect of Armed Forces Personnel sustaining disability under the circumstances mentioned in Category 'D' of Para 4.1 above :-

Armed Forces Personnel sustaining disability under the circumstances mentioned in category „D“ of Para 4.1 above shall be entitled to same pensionary benefits as admissible to war injury cases on invalidment/retirement/discharge including lump sum compensation in lieu of disability as mentioned in Paras 10 and 11. However, on invalidment they shall be entitled to disability element instead of war injury element in addition to service element. The service element will be equal to retiring /service pension to which he/she would have been entitled on the basis of his/her pay on the date of invalidment but counting

service upto that date on which he would have retired in that rank in the normal course including weightage as admissible. Provisions of Para 6 of Ministry of Defence letter Nop.1(6)/98/D(Pen/Services) dated 3.2.98 shall apply for calculating retiring/service pension. There shall be no condition of minimum qualifying service for earning this element. This disability element would be admissible as laid down in Para 7.1 (II)(a).. For lower percentage of disablement, this amount shall be proportionately reduced. However, in no case aggregate of service element and disability element shall be less than 80% of reckonable emolument last drawn.

Note :-

Armed Forces personnel sustaining disability under the circumstances mentioned in Category "D" of Para 4.1 above shall not be treated as War Disabled. Hence they will not be entitled to any special concession/dispensation otherwise available to ward disabled. " 40. Learned counsel for the petitioner reiterated that since the disability was caused to the petitioner in an operational area, his case is covered under category "E (i)".

8. Learned counsel for the petitioner reiterated that since the disability was caused to the petitioner in an operational area during an exercise, his case is covered under category "E (i)".

9. We have given our thoughtful consideration to this argument and we feel that the same is not acceptable because in Category E (i) deaths or disabilities arising due to "operations specially notified by the Government from time to time" are covered and in this case the respondents are denying conduct of exercise in the absence of records.

10. As sated supra, in the instant case, immediately after the accident while returning from operation Cheeta, a court of

inquiry was held. The finding of the court of inquiry being relevant is quoted below.

" FINDING OF THE COURT "

1. Veh BA No 89C 53447E tk 1 Ton of 164 Mtn Bde Sig Coy driven by No. 15370045F signm Nempal Singh was detailed for carrying dry cleaned ECC clothing, from Gangtok to Kupup on 25 Aug 95. The Co-dvr was No 14241685Y L/NK ram Pravesh Noniyan.
2. There were two Ors travelling in the body of the same veh (witness No 3 & 4).
3. The veh was road worthy on 25 Aug 95 and a road worthiness certificate was properly issued by the MTO (Exhibit 'A'). The brakes of the veh were checked and found to be serviceable even after the accident (As per Tech Insp Report IAF EME E03).
4. The veh left unit lines around 1015 h on 25 Aug 95 and halted at 4 mile for collecting repaired eqpt of the coy.
5. The veh reached 13 mile JNM axes at around 1230h. The veh could not proceed further, as the road was blocked due to recovery of a 3 TON accidented veh.
6. The sparrow, IC-39550Y Maj Nutan Prabhat 164 Mtn Bde, who was also going to Kupup same day, waited till 1600h for the road to open. Then around 1630H he ordered the 1 TON veh and his jeep to return back to Gangtok as it was not possible to reach Kupup that day.
7. He instructed dvr's of both 1 Ton and Jeep, not to overspeed and proceed slowly. The 1 Ton was told to lead and Jeep to follow. The Jeep was following the 1 TON at a distance of 200M.
8. The 1 Ton was travelling at a speed of about 20 KM/h, and driven in second gear when it reached 8 mile loc (witness No. 1). While coming down a very steep slope the veh went out of control resulting into an accident.
9. The accident site has been inspected by the court and the following have been observed :-
 - (a) The slope of the road is very steep and any veh coming down has to be driven very slow in 1st gear.
 - (b) Any veh driven 2nd or higher gear on the down slope is bound to pick up more speed.
 - (c) On sudden braking, to reduce the speed of the veh, the veh is bound to skid due to the downward momentum of the veh.
 - (d) If the road is wet and slippery, the speed has to be further checked and it becomes more essential that the veh be driven in 1st gear.

10. The road condition was wet and slippery)Witness No 1,3,4 and 5).

11. The dvr failed to slow down and shift into 1st gear, before going down the steep slope and continued driving at the speed of approx 20 KM/h, which is too high for any veh under the circumstances.

12. The veh picked up more speed going down the slope. The Co-dvr warned the dvr about the increasing speed (Witness No. 2).

13. The dvr then applied brakes suddenly to reduce the speed or the veh. Due to this sudden braking the wheels got locked but the veh continued to move due to its momentum (The prominent skid marks of the tyres were witnessed by the court at the accident site).

14. The dvr lost control of the veh and the veh went skidding for approx 15 M, then hit a big boulder on the left edge or the road and toppled down and came to rest on a lower road approx 25 M below.

15. The veh went toppling down causing injuries to the dvr, co-dvr and persons sitting in the veh as follows :-

(a) No 15378045H - Contusion chest
Sigmn Nempal Singh

(b) No 14241685Y - Multiple Lacerated
wound
L/NK RP Noniyan face & Rt Leg
(Opted)

(c) No 15373370F - Traumatic Paraplegia
Sgmn Ram Khilari Multiple facial
laceration
Blunt injury
abdomen
Fracture Tibia (Rt)

(d) No 4270789L - Fracture Base of
skull
Sep Ram Raj Sunde with head injury.

16. All these persons were carried by Maj Nutan Prabhat to 178 MH where treatment is being given.

17. The approx cost of damage to the veh is Rs. 10767.50/- (Rupees ten thousand seven hundred sixty seven and paise fifty only). (As per Appx 'A' to AO 37/76 given by 853 Fd Wksp Coy)"

11. As stated supra, the husband of the Applicant suffered disability to the extent of 100% for life due to an accident on a mountain road which was primarily caused by human error of driver i.e. he was over speeding in a turn and the same was opined to be attributable to and aggravated by Military service. It is worthy of notice that during court of inquiry, it was clearly held that the injury sustained by the personnel was on a bonafide duty and is attributable to military service. Thus this accident & the disability caused to the now deceased soldier prima facie does not come in the category of battle causality as defined by Govt letter No. 1(2)/97/I/D(Pen-C) dt 31.01.2001 & as amended vide Govt letter in Feb 2011.

12. The next issue is the claim of petitioner that her husband was participating in a Division level exercise "CHEETA" and has suffered injury in an operational area and has died after invalidation primarily because of these injuries suffered during exercise "CHEETA" hence she is entitled to liberalised family pension. We have carefully considered this plea of petitioner. After careful scrutiny of Govt policy on this matter vide Govt letter dt 31.01.2001 & the subsequent amendment of 2011, we do not find that all injuries in an exercise or operational area automatically become Battle casualties, the gist of these Govt orders are that there has to be a battle like situation or operational action or involvement

of enemy forces or certain unusual risk etc to call a causality as battle causality. This has to be done at the time of causality by the concerned formation through a CoI. In this case we find that the CoI into the accident has neither recommended it as Battle casualty nor mentioned about the existence of any Div Level exercise call "CHEETA". We find that the counter by respondents is non committed on exercise "CHEETA" or battle casualty. On the other hand during perusal of original documents of the deceased soldier we were surprised to find that at the time of initial admission after injury in 1995, it is clearly mentioned by the doctor that the injury was suffered while participating in exercise "CHEETA". Further scrutiny of the original document indicates that queries by record office on exercise "CHEETA" or its notification by Govt have met with repeated responses from concerned division that there are no records no indicate that exercise "CHEETA" took place at that time. Thus the respondents have neither confirmed the existence of the exercise nor it being a Govt notified exercise in the absence of records.

13. We have also tried to understand the spirit of PCDA(P) circular 440 dt 26.08.2010. The circular is basically stating that SFP will be given to a widow if her husband dies of disability for which he is drawing disability pension within 07 years of Invalidation. Normally a soldier who is paraplegic

(bed ridden due to no control on organs and spine) with 100% disability will not last beyond 07 Yrs of invalidation however in this case probably because of extensive involvement & care by wife & family the soldier survived for 14 years in a paraplegic state with 100% disability, there by tragically the lady has now got deprived of (SFP) Special Family Pension due to 07 years bar on post invalidment death by PCDA (P) Allahabad.

14. Thus on one hand there is clear evidence of soldier getting injured in exercise "CHEETA" but no official records are available to ascertain the existence or notification of this exercise which is essential for consideration of battle casualty and on the other hand the lady has missed (SFP) Special Family Pension because of 07 years bar by PCDA (P) vide their circular No. 440.

15. Considering all issues, we are of the considered view that the ends of justice will be met if the applicant is granted Special Family Pension after the death of her husband.

16. As a result of foregoing discussion, we are of the view that the applicant is entitled to Special Family Pension which is equivalent to 60% of reckonable emoluments last drawn by her deceased husband. However, the Applicant shall be entitled to arrears of Special Family pension three years prior to filing of the O.A. The date of filing of the present O.A is 31.10.2015. The arrears shall be payable within four months

from the date of production of a certified copy of this order.
In case of default, the applicant shall be entitled to interest at
the rate of 9% per annum.

(Air Marshal BBP Sinha) (Justice S.V.S. Rathore)
Member (A) Member (J)

Dated: February, 27 , 2018

MH/-