

RESERVED
Court No. 2

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

ORIGINAL APPLICATION No. 48 of 2016

Monday, this the 05th day of March, 2018

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

Smt. Pinky Devi, W/O No. 13985104X Late Sep/Drv
Raj Kumar Singh, R/o Seema City, Near Shahid Path,
Raibareilly Road, Lucknow

.....**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, Integrated Headquarters of the Ministry of Defence (Army), Sena Bhavan, DHQ PO, New Delhi - 110011.
3. Director General, Medical Service, (Army) New Delhi.
4. CDA (P) Allahabad.

.....**Respondents**

Ld. Counsel for the : **Shri Virendra Singh, Advocate**
Respondents Addl. CGSC

Assisted by : Maj Piyush Thakran, OIC Legal Cell.

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

1. Present O.A has come to be filed under section 14 of the Armed Forces Tribunal Act, 2007 for the relief of grant of Liberalized pension as per entitlement alongwith arrears attended with the relief of declaring the death of the Applicant’s husband as a battle casualty.
2. The facts draped in brevity are that late Raj Kumar Singh, husband of the applicant, was enrolled in the Indian Army on 22.10.1992 and fell prey to natural calamity (Flash flood) on 04.08.2002 while on bonafide duty at 405 Field Hospital. The causative factor of death was opined to be attributable to military service due to head injury with multiple injuries and drowning as mentioned in the certificate of attributability dated 21.10.2002. The applicant being the legally wedded wife, was granted family pension alongwith Ex-gratia payment. By means of letter dated 02.03.2005, the Army Medical Corps processed the case for grant of liberalized family pension but the case for liberalized pension was nodded in disapproval by the PCDA (P) Allahabad on the premise that the death of Ex sepoy was an accident on account of Flash flood and was not covered by GOI, MoD letter dated 31.01.2001, no case was made out for grant of liberalized pension. The case of the respondent is that as per original GoI MoD letter No.

31.01.2001 the case of drowning at international border was not covered as battle casualty. However now natural calamities on international border including drowning have been included in category 'D' in terms of MoD letter dated 03.02.2011. However, since para 2 of the said Govt letter states that cases which have been already settled prior to the date of issue of this letter would not be reopened and hence the claim for grant of Liberalized Family pension of the applicant can't be reconsidered. Aggrieved by denial of LFP, the applicant has knocked the door of this Tribunal for the reliefs prayed for above.

3. We have heard learned counsel for the applicant as also learned counsel for the respondents. We have also perused the material facts on record.

4. 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 D of Para 4.1 of the said letter as the disability has been caused in an operational area.

5. 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) 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.

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) Electrocution/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 war 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)”.

6. Learned counsel for the petitioner reiterated that since the disability was caused to the applicant in a Flash Flood close to international border his case is now covered under category “D” as per amendment of original Govt letter dt 31.01.2001 vide Govt letter dated 03.02.2011. It is also worth noting that the Regiment had recommended it as battle

casualty & for LFP to applicant but the same was turned down by PCDA (P) Allahabad. Now permitting the same type of casualty as a Battle Casualty from 2011 & barring old cases of similar nature from being considered as Battle Casualty will be gross injustice to the applicant.

7. We have given our thoughtful consideration to this argument of barring all settled cases from being provided the benefit of amended Govt letter of 2011 and we feel that the same is not acceptable.

8. As stated supra, the husband of the Applicant died due to flash flood while performing duty near line of control adjacent to China 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 was attributable to military service. It is also admitted in the counter affidavit that based on the finding of CoI into the death of applicant's husband the case was taken up with the PCDA (P) Allahabad, for treating the casualty as "BATTLE CASUALTY" and grant of liberalized family pension in terms of the Government of India, Ministry of Defence letter dated 31.01.2001 and para (d) of Annexure A of the Army order 1/2003, vide letter dated 02.03.2005.

9. It is a case in which liberalised pension was denied merely on the ground that the husband of the Applicant died

in flash flood and the Govt letter dated 03.02.2011 which now authorises such deaths on International Border/ LC (Line of Control) as "BATTLE CASUALTY" was not available at that time and additionally as it postulated that old cases already settled would not be reopened. The Applicant was on bonafide military duty. The area in which the husband of the Applicant was performing duty was a notified operational area. It may also be noted that originally MoD letter dated 31.01.2001 was made the basis for denial of Liberalized family pension (LFP) and subsequently the Govt letter dated 03.02.2011 has been made the basis for denial of LFP on the ground that it postulated that old cases already settled would not be reopened. In our view, this situation of whether a new benefit by Govt of India will include similar class from past is no more res integra. The Hon'ble Apex Court vide its judgment **D.S. Nakara vs. Union of India & Others** has also clarified that similar categories have to be given the same benefits. Thus what is battle casualty in 2011 will also be a battle casualty for previous cases as per relief given in 2011 by ibid Govt letter. The effective date of relief will be as per 2011 letter. Relevant portion of Hon'ble Apex Court Judgment is as follows:-

"Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It is attracted where equals are treated differently without any reasonable basis. The principle underlying the guarantee is that all persons similarly circumstanced

shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same. Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation. The classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question. In other words, there ought to be causal connection between the basis of classification and the object of the statute. The doctrine of classification and the rational principle correlated to the object sought to be achieved. A discriminatory action is liable to be struck down unless it can be shown by the Government that the departure was not arbitrary but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory. In the instant case, looking to the goals for the attainment of which pension is paid and the welfare State proposed to be set up in the light of the Directive Principles of State Policy and Preamble to the Constitution it indisputable that pensioners for payment of pension from a class. When the State considered it necessary to liberalise the pension scheme in order to augment social security in old age to government servants it could not grant the benefits of liberalisation only to those who retired subsequent to the specified date and deny the same to those who had retired prior to that date. The division which classified the pensioners into two classes on the basis of the specified date was devoid of any rational principle and was both arbitrary and unprincipled being unrelated to the object sought to be achieved by grant of liberalised pension and the guarantee of equal treatment contained in Art. 14 was violated inasmuch as the pension rules which were statutory in character meted out differential and discriminatory treatment to equals in the matter of computation of pension from the dates specified in the impugned memoranda."

10. From the perusal of the Government of India, Ministry of Defence Letter dated 31.01.2001 and amendment vide GOI letter of Feb 2011 and the above mentioned Hon Apex Court judgment, we are of the considered opinion that the case of the Applicant's husband is a fit case to be treated as a battle casualty.

11. As a result of foregoing discussion, the O.A is allowed and the applicant is held entitled to Liberalised family pension notionally from the date of death of her husband which is equivalent to reckonable emoluments last drawn as defined in para 3.1 of the Government of India Ministry of Defence letter dated 31.01.2001. However, the arrears of liberalised family pension are restricted to three years prior to filing of the O.A. The date of filing of the present O.A is 21.12.2015. 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)
Member (A)

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

Dated : March, 05 ,2018

MH/-