

Court No.1
RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 347 of 2019

Friday, this the 26th day of March, 2021

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

Smt. Reena Devi,
W/o No. 16013807K Late Rfn Harpal Singh
R/o Village – Gari Kaliya, Post – Baree Chahar,
Tehsil – Khergarh, District – Agra (UP)

..... Applicant

Ld. Counsel for the Applicant : **Shri Veer Raghav Chaubey,**
Advocate

Versus

1. Union of India through Secretary, Ministry of Defence, Government of India, South Block, New Delhi-110011.
2. The Records, Rajputana Rifles, Pin 900106, C/o 56 APO.
3. 43, Rajputana Rifles, BN (RAJ RIF) Pin – 934543, C/o 56 APO.
4. Office of PCDA (Pension), Draupadi Ghat, Allahabad (UP).

..... Respondents

Ld. Counsel for the Respondents : **Dr. Shailendra Sharma Atal,**
Central Govt Counsel.

ORDER

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) This Hon’ble Tribunal may kindly be pleased to declare the case of the applicant as a battle casualty and grant her consequential benefits under the battle casualty.

(ii) Pass any other order or direction which this Hon’ble Tribunal may deem fit and proper under the circumstances of the case.”

2. The factual matrix of the case is that husband of applicant was enrolled in the Army on 15.04.2002. The husband of applicant was posted in 43 RR Bn w.e.f. 21.12.2010. On 13.12.2012 at approx 0950 hours, the applicant while performing patrolling and sentry duty at Patrol Base No. 3 at Khorinar COB on the Anti Infiltration Obstacle System (AIOS) at Line of Control area in adverse weather condition, fell down from the post from a height of approx 30-40 feet and landed on the operational track below and sustained injuries to his head and chest and became unconscious. He was immediately picked up and provided first aid in MI Room. The Commanding Officer met the husband of the applicant in MI Room of 20 JAT and further evacuated to 150 GH by RMO in ambulance. The husband of the applicant reached 150 GH at 1130 hours and admitted in ICU. He was declared dead at 1255 hours by the hospital authorities. In the detailed report forwarded by 43 RR Bn dated 16.12.2012, the death of husband of the applicant has been mentioned as 'Battle Casualty'. The death of husband of the applicant was recommended as 'Battle Casualty' by all commanders in chain but IHQ of MoD (Army) vide their letter No. 12822/AG/MP-5 (D) dated 24.04.2014 intimated that injury sustained by applicant's husband is not covered under Category 'D' & 'E' of Govt. of India, Ministry of Defence letter No. 1(2)/97/D (Pen-C) dated 31.01.2001 but it falls in Category 'C' and therefore, casualty is declared as 'Physical Casualty'. Accordingly, death of the applicant's husband was reclassified as "Physical Casualty" by

competent authority at Integrated Headquarters of Ministry of Defence (Army), AG's Branch (MP-5). All applicable terminal benefits were released in favour of applicant. Special Family Pension has been sanctioned to applicant vide PPO dated 04.09.2013. Thereafter, applicant submitted many representations to the respondents to consider the case as a battle casualty but the same has not been considered by the respondents. Aggrieved, the applicant has filed the instant Original Application for grant of Battle Casualty status, with all consequential benefits.

3. Learned counsel for the applicant submitted that death of husband of applicant was declared as a '**Battle Casualty**' by his unit Commanding Officer and a detailed report dated 16.12.2012 mentioning casualty as 'Battle Casualty' was forwarded to all formation commanders in chain including Army Headquarters which is annexed as Annexure-1 to counter affidavit filed by the respondents.

4. Learned Counsel for the applicant further submitted that since the death of husband of the applicant took place in 'Operation RAKSHAK' at Line of Control in Border area while performing patrolling and sentry duty at Patrol Base No. 3 at Khorinar COB, the death of husband of applicant should be considered as Battle Casualty. The applicant's case is covered by AO 1/2003/MP and accordingly, all benefits of battle casualty status should be granted to the applicant.

5. **Per contra**, Learned Counsel for the respondents submitted that the husband of applicant died on 13.12.2012 while performing patrolling and sentry duty at Patrol Base No. 3 at Khorinar COB on the Anti Infiltration Obstacle System (AIOS) at Line of Control area in adverse weather condition, fell down from the post from a height of approx 30-40 feet and landed on the operational track below and sustained injuries on his head and chest and became unconscious. He was immediately picked up and provided first aid in MI Room and further evacuated to 150 GH by RMO in ambulance. The husband of the applicant reached 150 GH at 1130 hours and was admitted in ICU. He was declared dead at 1255 hours by the hospital authorities. In the detailed report forwarded by 43 RR Bn dated 16.12.2012, the death of husband of the applicant has been mentioned as 'Battle Casualty'. The death of husband of the applicant was recommended as 'Battle Casualty' by all commanders in chain but IHQ of MoD (Army) vide their letter No. 12822/AG/MP-5 (D) dated 24.04.2014 intimated that injury sustained by applicant's husband is not covered under Category 'D' & 'E' of Govt. of India, Ministry of Defence letter No. 1(2)/97/D (Pen-C) dated 31.01.2001 but it falls in Category 'C' and therefore, casualty is declared as 'Physical Casualty'. Accordingly, death of the applicant's husband was reclassified as "Physical Casualty" by competent authority at Integrated Headquarters of Ministry of Defence (Army), AG's Branch (MP-5).

6. Ld. Counsel for the respondents agreed with the submission made by Ld. Counsel for the applicant that the husband of applicant died on 13.12.2012 while performing patrolling and sentry duty at Patrol Base No. 3 at Khorinar COB on the Anti Infiltration Obstacle System (AIOS) in adverse weather condition, when he fell down from a height of 30-40 feet and his disability is attributable to military service. He further submitted that since death of husband of applicant has been reclassified from Battle Casualty to Physical Casualty by Integrated Headquarters of Ministry of Defence (Army), AG's Branch (MP-5), applicant is not entitled for Battle Casualty status and pleaded that O.A. may be dismissed.

7. Heard Shri Veer Raghav Chaubey, Learned Counsel for the applicant, Dr. Shailendra Sharma Atal, Learned Counsel for the respondents and perused the record.

8. Before dealing with the rival submissions, it would be appropriate to examine the relevant Rules and Regulations on the subject matter 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

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 of 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.
 - (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.

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;
- (ii) Mishaps at sea while on duty'
- (iii) Electrocution while on duty, etc.
- (iv) 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."

9. In the instant case the husband of applicant, while serving in 43 RR Bn unit, was performing patrolling and sentry duty at Patrol Base No. 3 at Khorinar COB on the Anti Infiltration Obstacle System (AIOS) at Line of Control area in adverse weather condition, fell down from the post from a height of 30-40 feet resulting in head injuries and death which has been considered as attributable to military service. The death of applicant's husband was considered as Battle Casualty by Commanding Officer of the unit. A case was taken up by the unit

for declaring death of husband of the applicant as Battle Casualty but it was rejected by Integrated Headquarters of Ministry of Defence (Army), AG's Branch stating that the applicant's case is not covered under category 'D' and 'E' to Govt. of India, Ministry of Defence letter No. 1(2)/97/D (Pen-C) dated 31.01.2001, hence it cannot be treated as Battle Casualty.

10. The applicant is in receipt of Special Family Pension. She is aggrieved by non grant of battle casualty status as death of her husband has been considered as a Physical Casualty and not as a Battle Casualty. It is not disputed that husband of applicant died while performing patrolling and sentry duty at Patrol Base No. 3 at Khorinar COB on the Anti Infiltration Obstacle System (AIOS) at Line of Control area in "OPERATION RAKSHAK" in adverse weather condition and it is also apparent from the submissions of both the Ld. Counsels that all the commanders in chain of command had strongly recommended his case for consideration as a 'Battle Casualty', but it was rejected by ADG (MP), Integrated Headquarters of MoD (Army).

11. We have gone through the policy letters underlying concept and spirit for declaring death or disability as a battle/physical casualty. The applicant was deployed in "OPERATION RAKSHAK" while performing patrolling and sentry duty at Patrol Base No. 3 at Khorinar COB on the Anti Infiltration Obstacle System (AIOS) at Line of Control area in adverse weather condition, fell down from a height of 30-40 feet resulting in head injuries and death on the same day i.e. 13.12.2012. In our view,

case of husband of applicant is covered by Serial 1 (d) & (g) of Appendix 'A' to AO 1/2003/MP, which reads as under :-

Serial 1 (d)

"Accidental injuries and deaths which occur in action in an operational area."

Serial 1 (g)

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

12. Keeping in view the facts and circumstances of the case and various policies, we converge to the view that applicant is entitled for consideration for award of Battle Casualty status, as such is entitled for grant of War Injury Pension.

13. Accordingly, Original Application succeeds and is allowed. The impugned Order by which the claim for Battle Casualty status of the applicant has been denied is hereby set aside. The respondents are directed to grant Battle Casualty Status and War Injury Pension to the applicant from the date of death of her husband. However, due to law of limitations settled by the Hon'ble Supreme Court in the case of ***Shiv Dass v. Union of India and others*** (2007 (3) SLR 445), the arrear of War Injury Pension will be restricted to three years preceding the date of filing of the instant O.A. The date of filing of this O.A is 27.09.2018. The respondents are further directed to make necessary calculations with regard to deficiency in pension (difference between War Injury Pension and Special Family Pension) so accrued on grant of War Injury Pension (comprising service element and war injury

element) and pay the same to the applicant within a period of four months from the date of receipt of certified copy of this order. In case the respondents fail to give effect to this order within the stipulated period, the amount accrued to the applicant would start earning interest at the rate of 8% from due date till the date of actual payment.

14. No order as to costs.

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

Dated: March, 2021
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