

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 444 of 2017**Friday, this the 12th day of February, 2021**“Hon’ble Mr. Justice Umesh Chandra Srivastava (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**Smt Puja Devi, W/o No. 3191917L Late L/Nk Teetu Singh,
R/o Vill- Khad Mohan Nagar, Post Office – Khad,
Distt – Buland Shahar (U.P.)..... **Applicant**Ld. Counsel for the applicant : **Shri KK Misra, Advocate**

Versus

1. Union of India, through its Secretary, Ministry of Defence (Army), New Delhi-11.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), New Delhi.
3. Officer-in-Charge, Records, The JAT Regiment, PIN- 900496, C/O 56 APO.
4. PCDA (Pension), Draupadi Ghat, Allahabad (UP)-211 014.

..... **Respondents**Ld. Counsel for the Respondents : **Mrs Deepti P Bajpai,
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, whereby he has claimed the following reliefs :-

“(i) To direct the respondents to declare the applicants husbands death as Battle Casualty and thereupon grant consequential benefits of that to the applicant as per the policy on the subject. Or alternatively

(ii) To direct the respondents to pay Ex Gratia Lump Sum amount of Rs. 15,00000/- (Rs. Fifteen lacs only) to the applicant, with interest as applicable from the date of death of the applicant's husband.

(iii) Any other relief which the Honble Tribunal may consider appropriate may be granted in favour of the applicant.

(iv) Any other relief as considered proper by the Hon'ble Tribunal be awarded in favour of the applicant.

2. The factual matrix of the case is that the husband of the applicant was enrolled in the Army on 28.10.2000. On completion of Basic Military Training, he was permanently posted to 8 JAT Regiment. After serving at various places along with his unit, during September 2009, the applicant's husband's unit was deployed in Super High Altitude Area, on the line of control in Operation RAKSAK (partially in Operation MEGHDOOT) in Jammu and Kashmir. Since November 2010, the applicant's husband was deployed at a forward winter cut off post i.e. Point 5620 TOP part of 5310 Complex under Operation MEGHDOOT, adjoining sub sector HANEEF. While posted in this area, on 21.03.2011, the applicant's husband developed high grade fever. He was diagnosed to be a case of **“ATYPICAL BURKITT'S LYMPHOMA & SEPSIS WITH DISSEMINATION INTRAVASCULAR COAGULATION AND MULTIORGAN DYSFUNCTION SYNDROME”** and the applicant's husband died at 0300 hrs on 31 March 2011. The death of applicant's husband was treated as attributable to military service and applicant was granted Special Family Pension. Applicant submitted an Appeal to the competent authority for re-consideration for grant of 'Battle Casualty' status but the same was rejected

stating that death of the deceased soldier cannot be classified as 'Battle Casualty' as per the rules in vogue. Aggrieved, the applicant has filed the instant Original Application for grant of Battle Casualty status and payment of Ex-gratia lump sum compensation amounting to Rs. 15 lakh.

3. Learned counsel for the applicant submitted that applicant's husband's unit was deployed in Super High Altitude Area, on the line of control in Operation RAKSHAK (partially in Operation MEGHDOOT) in Jammu and Kashmir. The applicant's husband was initially inducted in High Altitude Area cum line of control, Batalik Sector in September 2009. Thereafter, since November 2010, the applicant's husband was deployed at a forward winter cut off post i.e. Point 5620 TOP part of 5310 Complex under Operation MEGHDOOT, adjoining sub sector HANEEF. While posted in this area, on 21.03.2011, the applicant's husband developed high grade fever and resultantly he was evacuated by helicopter from his post to 153 General Hospital, Leh. After preliminary investigations on 29.03.2011, the applicant's husband was transferred to Army Hospital (RR), Delhi, for further treatment. He was diagnosed to be a case of **"ATYPICAL BURKITT'S LYMPHOMA & SEPSIS WITH DISSEMINATION INTRAVASCULAR COAGULATION AND MULTIORGAN DYSFUNCTION SYNDROME"**. While under treatment at Army Hospital (RR), Delhi, the applicant's husband died at 0300 hrs on 31 March 2011. Death of the applicant's husband was treated as attributable to military service as husband of the

applicant was on active military duty in operational Area at Super High Altitude. On the day he suffered from this disease, he was participating in an operation.

4. Learned counsel for the applicant further submitted that a Statement of Case duly recommended by Commanders in chain of command was forwarded to Army Headquarters for grant of 'Battle Casualty' but applicant's husband's case was considered as Physical Casualty by the competent authority. Subsequently the applicant was sanctioned Special Family Pension. Applicant submitted an Appeal to the competent authority for re-consideration for grant of 'Battle Casualty' status but the same was rejected stating that death of the deceased soldier cannot be classified as 'Battle Casualty' as per the rules in vogue. However, case for grant of Ex-gratia lump sum compensation amounting to Rs. 15 lakh was forwarded by Additional Directorate General Personnel Services, Army Headquarters to PCDA (P) Allahabad but the same has not yet been paid to the applicant. Ld. Counsel for the applicant placing reliance on the following judgments submitted that the applicant's case is squarely covered by these judgments which entitles the applicant for grant of Battle Casualty status and payment of Ex-gratia amount on that count :-

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

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

(c) Armed Forces Tribunal, Regional Bench, Lucknow judgment in O.A. No 117 of 2016, Smt Rekha Nagarkoti, Vs. Union of India & Ors decided on 12.09.2017.

5. **Per contra**, learned Counsel for the respondents submitted that death of husband of the applicant had occurred while on duty in Operational Area at High Altitude in Jammu and Kashmir and his death has been treated as attributable to military service. His case for grant of 'Battle Casualty' status and grant of ex-gratia was submitted to Adjutant General's Branch, Integrated Headquarters of Ministry of Defence (Army), New Delhi duly recommended by Commanders in chain of command but it was considered as 'Physical Casualty' as per the provisions contained in Government of India, Ministry of Defence letter No 1(2)/97/D (Pen-C) dated 31 Jan 2001. He further submitted that in case of death of an Armed Forces Personnel under the circumstances mentioned in category "D" (Death due to acts of violence/ attack by terrorists, anti social elements e.t.c.) and 'E" (Death arising due to enemy action in international war, action during deployment with a peace keeping mission abroad, border skirmishes, during laying or clearance of mines, war like situation, an act of violence/ attack by extremists, anti social elements while on operational duty and death arising as a result of poisoning of water by enemy agents etc), the eligible member of the family shall be entitled to Liberalised Family Pension. He further submitted that Para 5.1 of

Govt. of India letter dated 31.01.2001 specifies that in case of death of an individual under the circumstances mentioned in category "B" (Death or disability due to causes which are accepted as attributable to or aggravated by military service, disease contracted because of continued exposure to a hostile work environment, subject to extreme weather conditions or occupational hazards resulting in death or disability) or category "C" (Death or disability due to accidents in performance of duties), Special Family Pension shall be admissible to the families of such personnel. Further Para 5.1 has been incorporated in Pension Regulations for the Army (Part-1) 2008 at Rule 105 (Extract of Rule 105 of Pension Regulations for the Army (Part-1) 2008. He submitted that claim of the applicant for grant of Ex-gratia was rejected by the competent authority as the cause of death of husband of the applicant is not covered under any of the provisions given in Govt. of India, letter dated 22.09.1998 and 04.06.2010 but was caused due to "Death occurring while on duty in specified high altitude, inaccessible border posts etc, on account of natural disaster/extreme weather conditions". He submitted that the conditions to declare any casualty leading to death or disability have been defined at Para 4 of OA 1/2003/MP and circumstances for classifying casualty as Battle Casualty has been prescribed at Para 1 of Appendix "A" to AO 1/2003/MP. It is seen that the casualty leading to death of applicant's husband is not covered under the circumstances given at Para 1 of Appendix 'A' to AO

1/2003/MP. However, the death of the deceased is covered under the circumstances prescribed at Para 2 of Appendix 'A' to AO 1/2003/MP for classification of casualty as physical casualty. It specifies that death caused due to non natural cause/ illness/ accident/ suicide/ murder due to family disputes in operational and non operational area will be treated as physical casualties. AG's Branch, Integrated Headquarters of Ministry of Defence (Army) is the authority for classification/declaration of 'Battle Casualty'. He further submitted that initially the husband of the applicant was recommended as 'Battle Casualty', but it was found that as per rule in vogue, death of the deceased soldier cannot be classified as 'Battle Casualty' and it has been correctly classified as a 'Physical Casualty' attributable to military service.

6. Learned counsel for the respondents also submitted that the judgments relied upon by the applicant in the instant case, as per their facts and circumstances given in the judgments are not similar to that of the present case and the case of the applicant is not covered by these judgments.

7. Heard Shri KK Mishra, Learned Counsel for the applicant, Mrs Deepti P Bajpai, 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 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.*

(i) *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.*

(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*

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. Death/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 the applicant was deployed in Counter Insurgency Operations (OP RAKSHAK) at High Altitude Area in Jammu and Kashmir and his death was declared as attributable to military service in terms of Para 4.1, Category E (j) to Govt. Of India, Ministry of Defence letter No. 1(2)/97/D(Pen-C) dated 31.01.2001 which stipulates that death or disability arising as a result of operations specially notified by the Govt. from time to time shall be considered as attributable to military service. In this policy letter it is clearly mentioned in para 2 of heading **Physical Casualty** that **"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”, hence death of the applicant’s husband was classified as Physical Casualty.

10. Keeping in view the facts and circumstances of the case, various policies and judgements in similar cases, we converge to the view that the case of husband of the applicant does not fall in the category of ‘Battle Casualty’ being a Physical Casualty as regarded by Additional Directorate General Personnel Services, AG’s Branch, Integrated HQ of MoD (Army), New Delhi.

11. The case of the applicant has rightly been considered for grant of Ex-gratia lump sum compensation by the competent authority i.e. Additional Directorate General Personnel Services, AG’s Branch, Integrated HQ of MoD (Army), New Delhi vide their letter dated 23.10.2015 addressed to PCDA (P) Allahabad for grant of Ex-gratia amount of Rs. 15 Lakh to the applicant but PCDA (P) Allahabad has not paid Ex-gratia amount to the applicant without any plausible reason. Para 2 & 3 of letter dated 23.10.2015 reads as under :-

“2. The Appellate Committee on First Appeal (ACFA) has carefully considered the appeal submitted by Smt Pooja Devi wife of No. 31949171 LNk Late Teetu Singh in the light of relevant rules and adm/Medical provisions and accepted the appeal and decided that the death of the above named indl should be regarded as attributable to mil services for the purpose of grant of Ex-Gratia lump sum compensation of Rs 15 Lakh as the death falls under para 3, cat 2(d) of Govt of India letter No 20(5)/2009/D (Pay/Services) dated 04 Jun 2010.

3. Two ink signed copies of Sanction Letter are enclosed.”

12. Accordingly Original Application 444 of 2017 succeeds and is partly allowed. The impugned order passed by the respondents

rejecting the claim of the applicant for grant of Ex-gratia lump sum compensation is hereby set aside. The respondents are directed to grant amount of Ex-gratia lump sum compensation amounting to Rs. 15,00,000/- (Rupees fifteen lakh only) in terms of para 3 (d) to Govt of India letter dated 04.06.2010 to the applicant. The respondents are directed to give effect to this order within four months from the date of receipt of a copy of this order. 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 8% from due date till the date of actual payment.

13. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: February, 2021
Ukt/SB