

Court No. 1 (E Court)**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 467 of 2021.**

Tuesday, this the 10th day of May, 2022

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Smt Deeksha Verma (W/o No 17009157A Late Sep Vipin Kumar Verma), R/o Khemat Khera, PO-Bhadohi, Tehsil-Bighapur, District-Unnao (U.P.)-209865.

..... Applicant

Ld. Counsel for the: **Shri Shailendra Kumar Singh**, Advocate
Applicant holding brief for Shri Ravi Kumar Yadav, Advocate

Versus

1. Union of India Rep by the Secretary, Govt of India, Ministry of Defence, South Block, New Delhi-110011.
2. The Chief of the Army Staff, Integrated Headquarters of MoD (Army), Post-DHQ, New Delhi-110011.
3. The Officer-in-Charge, EME Records, PIN-900453, C/o 56 APO.
4. PCDA (P) (Army), Draupadi Ghat, Allahabad (UP)-212114.

.....Respondents

Ld. Counsel for the
Respondents.

:Shri DK Pandey, Advocate
Central Govt. Counsel

ORDER

1. Being aggrieved with denial of Liberalised Family Pension, the applicant has filed this Original Application under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs :-

(a) To quash and set aside the respondent No 3 letter No 14644713Y/DP-4/Pen dated 29 Jun 2018 (Annexure A-1 of instant OA and impugned order).

(b) To direct the respondents for declaring death of applicant's husband on 30 Oct 2018 as 'battle casualty' and release all consequential benefits of battle casualty with effect from 31 Oct 2018 alongwith suitable rate of interest as deemed fit by this Hon'ble Tribunal to the applicant and issue a battle casualty certificate to the applicant.

or

If the Hon'ble Tribunal does not find the death of applicant's husband to be a battle casualty, the respondents may then be directed to grant special family pension to the applicant with all consequential benefits with effect from 31 Oct 2018 alongwith suitable rate of interest as deemed fit by this Hon'ble Tribunal to the applicant.

(c) to pass such further order or orders/directions as this Hon'ble Tribunal may deem fit and proper in accordance with law.

2. Brief facts of the case are that husband of the applicant was enrolled in the Army on 04.06.2010. On 30.10.2018 at around 0615 hrs while the applicant's husband was cleaning window screen of an Army vehicle, he was hit by another Army vehicle accidentally and in the said incident he suffered serious internal injuries and was taken to District Hospital, Ramban where he died

at around 0735 hrs on same day. A Court of Inquiry was convened to investigate the circumstances of accidental injury/death and the Court of Inquiry found that the death was attributable to military service in operational area. Initially after his death, since Court of Inquiry and other connected documents related to death were not available, the applicant was granted Ordinary Family Pension vide PPO No 188201901397-3000 dated 23.04.2019 (Annexure CA-2). Other admissible amounts on death were also paid to her. Thereafter, on receipt of requisite documents, since applicant's husband died on bonafide military and his death was declared as attributable to military service, applicant was granted Special Family Pension vide PPO No 188201901397-3001 dated 12.02.2021 (Annexure CA-3) which she is receiving regularly. The applicant is claiming Liberalised Family Pension (which is granted in battle Casualty cases) which was denied by the respondents. It is in the above backdrop that the applicant has come up in this Tribunal for the aforesaid relief.

3. Learned counsel for the applicant submitted that applicant is entitled for Liberalised Family Pension due to the following reasons:-

- (a) Applicant's husband was posted in an operational area of J&K and he was also in receipt of Counter Insurgency Operations Allowance for performing the duties in the said area.

(b) Applicant's husband was detailed by the Army authorities to take part in an operation wherein he was detailed to take a Light Recovery Vehicle (LRV) as part of an ammunition convoy in operational area.

(c) The ammunition convoy in which applicant's husband was then employed was transiting through a counter insurgency operational area, which undoubtedly comes within the ambit of 'active hostilities' as per Para 9 of Army Order 01/2003/MP.

(d) Casualty falls under clause (vii) of the parameter No 2 mentioned under Para 69 of the Army Order 01/2003/MP.

(e) Note of Para 13 of Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008 provides that in case of Battle Casualty, awards of Liberalised Family pension shall be decided by pension sanctioning authority based on casualty report published by the authorities concerned.

4. In support of his contention, learned counsel for the applicant has relied upon Para 4 of Army Order 8/S/1985, order dated 29.09.2016 passed by AFT, Kolkata in O.A. No 54 of 2016, ***Lt Col Sharma Sunil Datta vs Union of India & Ors***, order dated 09.11.2016 passed by this Tribunal in O.A. No. 243 of 2016, ***Raghvendra Singh vs Union of India & Ors***.

5. The petition has been contested by the respondents by filing a counter reply and respondents have pointed out in their reply that the casualty was caused by the applicant's husband in a vehicle accident while on bonafide military duty in counter insurgency operational area. But this casualty cannot be classified as a Battle Casualty. It is further pointed out that death/injury shall not be classified as a Battle Casualty merely because it has taken place in an operational area. The cardinal factor in terms of the policy on the subject for classifying a death as a Battle Casualty is that the casualty should have taken place during enemy action or action by terrorists or while preparing for such action, and also in mine blast, aid to civil authorities during natural calamities or in quelling agitation or riots, or in battle inoculation training exercises, etc. It is also pointed out that though the injury had occurred in an operational area it should be termed as physical casualty and not Battle Casualty. Therefore, authorities treated the casualty of her husband as physical casualty under category 'C' of the Govt of India, Ministry of Defence letter dated 31.1.2001. He pleaded for dismissal of O.A. on the ground that since death of applicant's husband does not fall in the category of Battle Casualty, she is not entitled to Liberalised Family Pension.

6. Heard Shri Shailendra Kumar Singh, Advocate holding brief for Shri Ravi Kumar Yadav, learned counsel for the applicant and Shri DK Pandey, learned counsel for the respondents.

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 mine sweeping 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 Defence 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 Defence letter No 1 (6)/98/D (Pen/Ser) dated 03 Feb 98 as amended/modified vide Ministry of Defence 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. The Learned Counsel for the applicant has tried to persuade us that since the applicant’s husband died while performing military duty in counter insurgency operational area, therefore, it is covered by para 69 of Army Order 01/2003/MP. We have perused para 69 of the aforesaid Army Order which is reproduced below for convenience sake:-

“69. Cause and Nature of Injury- The classification of wounded battle casualty will be guided by the parameters of cause/circumstances and the severity of injury sustained. Only when both these parameters are met, the casualty would be classified as a Battle Casualty.

(a) Parameter No 1- The cause or the circumstances under which the injury has occurred. These are:-

(i) Gun Shot Wound/Splinter injuries sustained in action against enemy/militants. Or

(ii) Gun Shot Wound/Splinter injuries sustained accidentally/due to firing by own troops while carrying out operations against enemy/militants. Or

(iii) Mine Blast/IED blast injuries sustained in explosion of mines/IEDs caused by enemy/militants. Mines to include those planted by own troops against enemy. Or

(iv) Injuries sustained due to accidents because of natural/environmental reasons like avalanche, crevasse, landslides, flash floods etc, while in action against enemy/militants. Or

(v) Injuries sustained during enemy air raids, NBC warfare and hand-to-hand fights which are

other than gunshot/splinter injuries must also be included.

(b) Parameter No 2- The injury should at least be of grievous nature. The following will be governing factors:-

- (i) Emasculation.*
- (ii) Permanent privation of the sight of either eye.*
- (iii) Permanent privation of hearing of either ear.*
- (iv) Permanent privation of any member or joint.*
- (v) Destruction or permanent impairing of the power of any member of joint.*
- (vi) Permanent disfiguration of the head or face.*
- (vii) Fracture or dislocation of a bone or tooth.*
- (viii) Any hurt, which endangers life or which causes the sufferer to be, during the space of 20 days, in severe bodily pain or unable to follow his ordinary pursuits.”*

10. We find that there are two parameters which stipulate the causes/circumstances and the severity of injury/death respectively for determining the classification in Battle Casualty cases. The death in respect of applicant's husband does not fall under parameter 1 but under parameter 2 as the injury was so grievous that the soldier died due to injury sustained in the vehicular accident, but the fact remains that the death would be classified a battle casualty only when both these parameters are met. In the instant case only one parameter is met, therefore, the casualty would not be a Battle Casualty. In addition to this, we find that as per SOP in the Army such types of casualties are published in Part-II Orders, but in the instant case no Part-II Order is on record to indicate that the accidental death was classified as a Battle Casualty, after due process. Additionally, we find that the injury or death should be sustained while in action in an operational area to treat the same as Battle Casualty. In the instant case death of

applicant's husband did not occur in an action, to consider it as Battle Casualty, but it occurred due to vehicle accident in an operational area which seems to fall under category 'C' of notification dated 31.01.2001.

11. We have also perused notification dated 31.1.2001 which indicates that applicant's husband died due to an injury inflicted upon him in a vehicle accident in counter insurgency operational area, which cannot be treated as falling under the category of a war casualty. In fact for a injury/death to be treated as a Battle Casualty, the conditions stipulated in category 'E' of notification dated 31.01.2001 must be met.

12. This condition under category 'E' clearly require that the death/disability sustained should arise as a result of enemy action, action in peace keeping mission, in skirmishes, during laying or clearing mines, war like situations, extremist acts, battle inoculation exercises and action by terrorists etc.

13. The case of the applicant does not fall under any conditions mentioned above. No doubt the husband of the applicant was in a counter insurgency operational area, but the deceased soldier was not a victim of any of the situations mentioned in any sub-clause of Category 'E'. Neither does he fall in the category case of Operations Specially Notified by the Govt from time to time (i.e. sub-clause (j), meaning thereby that when certain operations are to be undertaken e.g. clearing of extremists/terrorists from a

particular area, then that particular area is notified and a special operation is launched and if any one falls victim in such a notified operation then such death or injury could be attributable to that operation. In the instant case we do not find such notification which would entitle the deceased soldier's accident in operational area to be a Battle Casualty. The applicant's husband's case falls under Category 'C', which clearly stipulates that accident while travelling on duty in govt vehicle or public/private transport will be considered as attributable to military service (but this does not mean it is to be considered as a Battle Casualty also).

14. In para 5.7 of O.A. applicant has stated that according to Para 4 of old Army Order 8/S/1985 (which defines Battle Casualty status) death in respect of applicant's husband is to be treated as Battle Casualty. We have perused the aforesaid para which says that 'accidental injuries and deaths occurring in action in an operational area will be treated as Battle Casualties'. In regard to this it may be submitted that here action means an action against enemy/militant and not otherwise. It was further submitted that in view of pronouncement of **Lt Col Sharma Sunil Datta** (supra) parameters 1 and 2 of Para 69 of Army Order 01/2003 are not mandatory. We have perused the aforesaid judgment and we find that applicability of parameters 1 and 2 have not been overruled.

15. While making prayer in O.A., learned counsel for the applicant has mentioned that if the Hon'ble Tribunal does not find

