

**COURT NO. 2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

19.

OA 502/2016

Smt. Saroj Devi

..... Applicant

Versus

Union of India & Ors.

..... Respondents

For Applicant

: Mr. A.K.Trivedi, Advocate

For Respondents

: Mr. Prabodh Kumar, Advocate

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA, MEMBER (J)

HON'BLE LT.GEN.PHILIP CAMPOSE, MEMBER (A)

ORDER

23.08.2019

On the last date of hearing, record could not be sent as some of the original documents were not traceable, however, Lt. Col. Abhijit Ghosh, CRO Kumaon Records, Ranikhet is present and states that he has brought the original record today.

2. Arguments heard.

3. Vide separate order, OA stands disposed of.

(JUSTICE SUNITA GUPTA)
MEMBER (J)

(LT.GEN.PHILIP CAMPOSE)
MEMBER (A)

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**HON'BLE MS. JUSTICE SUNITA GUPTA, MEMBER (J)
HON'BLE LT. GEN. PHILIP CAMPOSE, MEMBER (A)**

**ORDER
23.08.2019**

Heard the learned counsels on both sides and perused the pleadings and documents on record.

2. This OA has been filed under Section 14 of the Armed Forces Tribunal (AFT) Act 2007 by the applicant, the widow of an Army Soldier (late Naik Inderjeet Singh of the Kumaon Regiment) who died during the course of an Area Domination Patrol along the Line of Control during Operation Rakshak in J & K on 23.01.2013, who has been granted only Special Family Pension (and not Liberalized Family Pension which is entitled to next of kin of 'Battle Casualties' who die in harness). She has made a prayer for the following:

- (a) To quash impugned order of the respondents (CO 4 KUMAON) vide letter dated 10.02.2016 whereby claim for Liberalised Family Pension was rejected on the premise that the death of the applicant's late husband was a 'Physical Casualty' and not a 'Battle Casualty', and grant Liberalized Family Pension to the applicant w.e.f. 23.01.2013, the date of death of her husband, along with arrears and interest.

(b) To grant ex-gratia lump sum payment to the applicant after treating the death of her husband as a battle casualty in Operation Rakshak (J&K).

3. Heard the learned counsels on both sides and perused the pleadings and documents on record.

4. The facts germane to the case, as averred by the applicant, are that the husband of the applicant was enrolled in the Indian Army on 27.02.1996 and served at various locations in peace and field areas and rose to level of Naik. On 23.01.2013, while he was posted with his battalion (4 KUMAON) in J&K as part of Operation Rakshak (J&K), he was part of an Area Domination Patrol which was launched from Manjit Main to Rangwar Post for domination of the Rangwar Gap in the proximity of the LC from 0100 hours to 0330 hours in extreme climatic conditions. He developed breathlessness and was taken to Rangwar post where he was given first aid. His condition deteriorated and though he was recommended for air evacuation, the same could not be done due to the inclement weather. Consequently, he was taken on foot to Chowkibal post where he was attended to by Regimental Medical Officer of 6/11 Gorkha Rifles, who declared him dead. The battle casualty certificate dated 23.01.2013 was signed by the Commanding Officer, counter signed by Commander 268 Infantry Brigade and Colonel 'A', Headquarter 15 Corps. The 'Certificate showing particulars of Deceased Soldier' No. C3/4189130/SR/NE-2 dated 07.02.2013 issued under signatures of Senior Records Officer, the Kumaon Regiment to the applicant showed the probable cause of death as 'Cardiac Arrest' and prominent occurrences as 'Battle Casualty' and attributable to military

service. However, PPO No. F/20103/2013 indicated that Special Family Pension (and not Liberalized Family Pension) been granted to the applicant. The applicant forwarded a representation to the respondents (ADG PS-4, IHQ of MoD (Army) on 31.12.2015 and a reply dated 10.02.2016 was received informing that her husband's death was being treated as a 'Physical Casualty' (and not a battle casualty) and hence, she was being granted only Special Family Pension.

5. Learned counsel for the applicant submits that the applicant's husband died while undertaking an operational activity, viz Area Domination Patrol in Rangwar gap near line of control (LC) in J&K between 1.00 AM and 3.30 AM, during extreme climatic conditions as part of Operation Rakshak (J&K) which is an ongoing war like operation involving anti-infiltration and counter terrorism activities in J&K under Operation Rakshak (J&K). Further, it is evident from the records that he was on bonafide Govt. duty and was participating in operational activity in a war like situation. It is because of this that the deceased soldier's battalion commander, brigade commander and Corps Headquarters had recommended that his death be treated as a battle casualty. It is also evident that the soldier's death occurred because he could not be evacuated by air and thus could not be provided proper and timely treatment. Hence the Army Headquarters treating the death as a physical casualty and not a battle casualty is contrary to the facts of the case and the policy on the subject.

6. Further, counsel avers that the death of the applicant's husband is covered under circumstances mentioned in category 'D' and 'E' of GoI Notification dated 31.01.2001, according to which the

eligible member of the family shall be entitled to Liberalized Family Pension equal to reckonable emoluments last drawn, both for officers and PBOR. Para 4.1 of said notification is reproduced hereunder as follows:

**“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 categorised as follows :

Category A

Xxxxx

Category B

Xxxxx

Category C

xxxxx

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 minefield laid by the 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.

(h) Action against extremists, anti-social 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.

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(Pens/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 07.06.99.

(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"

Also Para 6.1 covers the conditions for grant of Liberalized Family Pension, reproduced as hereunder:-

“ Liberalized Family Pension

6.1 In case of death of an Armed Forces Personnel under the circumstances mentioned in category “D” & “E” of Para 4.1 above, the eligible member of the family shall be entitled to Liberalized Family Pension equal to reckonable emoluments last drawn as defined in Para 3.1 above, both for officers and PBOR. Liberalised Family Pension at this rate shall be admissible to the widow in the case of officers and to the nominated heir in the case of PBOR until death or disqualification”

7. Counsel has relied on judgment of the Delhi High Court in the case of Manju Tiwari Vs. Union of India & Ors. (reported in SLJ 2006 (1)-232) wherein it was held that as it was not in dispute that the death of the petitioner's husband was on account of his participation in an operation in a war like situation as enumerated in clause (f) of Category E of the Instructions and the said operation was notified in terms of clause (i) in the said category, thus, from a bare reading of the said instructions, which are binding on the respondents, the Court had no hesitation in coming to the conclusion that the death of the petitioner's husband was covered under Category E of the Instructions and she is entitled to liberalized family pension. Counsel avers that the ratio of law laid down is fully applicable in the present case and thus the applicant is entitled to Liberalized Family Pension as well as ex-gratia lump sum compensation as applicable to those who die in harness while participating in such war like operations.

8. Learned counsel for the respondents, while admitting the facts related to the circumstances of death of the applicant's husband while participating in an operational patrol and conceding that the Commanding Officer and Brigade Commander had recommended that the death be treated as a Battle Casualty, have contended that, in view of Army HQ (MP 5 & 6) Signal of 28.02.2013 which stated that "the circumstances leading to casualty in respect of (no.) 4189130 H Nk Inderjeet Singh is not covered under Category 'D' and 'E' or MoD letter of January 31, year 2001, and such type casualty being entitled to Battle casualty status in Op Meghdoot only, hence casualty hereby declared as physical casualty", the Commanding Officer, on 30.08.2013 had declared that the death of the applicant was a physical casualty in terms of Army Order 16/2005/MP. Thus, the applicant is entitled only to Special Family Pension, which is being paid to her.

Consideration

9. We have given careful consideration to the arguments before us and find that the primary issue in this case is whether a soldier's death in harness due to a cardiac arrest during his participation in an operationally notified area (Op Rakshak (J&K)) should be considered as a 'physical casualty' as assessed by Respondent No. 3 (ADG MP (Pers-4)/IHQ of MoD(Army)) or as a battle casualty, as claimed by the applicant.

10. Para 1 of AO/1/2003 sets out the criteria for classifying a casualty as a battle casualty. Para 1(f) is reproduced as under:-

**"Appendix 'A' to AO/I/2003
(Refers to Para 5)
CIRCUMSTANCES FOR CLASSIFYING CASUALTIES AS
BATTLE OR PHYSICAL**

Basic Casualties

(a) to (e) xxxxxx

(f) *Casualties during peace time as a 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."*

11. We have taken note of the fact that the applicant's husband died due to cardiac arrest during his participation in an operational activity undertaken close to the Line of Control in J&K in war like condition during extreme climatic conditions as part of a notified Army operation (Op Rakshak) consequent to which it was recommended as a 'battle casualty' by his Commanding Officer and endorsed by the Brigade Commander and Corps Headquarters. Battle Casualty Certificate dated 23.01.2013 is reproduced hereunder as follows:-

"BATTLE CASUALTY CERTIFICATE

1. No. 4189130H Nk Indarjeet Singh of 4 KUMAON who was part of Area Domination Patrol consisting of 01 JCO and 10 OR was launched from Manjit Main (GR 890555) to Rangwar Post (GR 895554) for domination of Rangwar Gap in the Proximity of LC and along the AIOS in extreme climatic condition on 23 Jan 13 from 0100 hrs to 0330 hrs. At around 230235 hrs No. 4189130H Nk Indarjeet complained of breathlessness. He was immediately taken to Rangwar Post where he was given First Aid, in the meanwhile RMO was staged fwd to Rangwar Post and

RMO found that the condition of the indl was very critical and needed imdt evacuation. Due to the inclement weather, air evacuation could not be done and the indl was evacuated to Chowkibal on foot. The party with Nk Indarjeet Singh reached at Chowkibal MI room at 231255 hrs where he was attended by RMO 6/11 GR Capt Ashok Ashirwad Jadhav and declared him dead.

2. I certify that No. 4189130H Nk Indarjeet Singh was on bonafide mil duty and the death of the individual be treated as Battle Casualty in terms of Army Order 1/2003/MP.

Sd/-

(Gautam Rajrishi)

Colonel

Commanding Officer

Case File No, A/4189130/CF

Station C/o 56 APO

Dated 23 Jan 2013

COUNTERSIGNED BY CDR, 268 INF BDE

Sd/-

Brig

Cdr

HQ 268 Inf Bde"

12. We also take note of the fact that the deceased soldier could not be provided proper medical care due to terrain, climate and resource constraints in the forward area due to which he had died by the time he could have access to medical attention. Thus, we are of the view that the death of the applicant's husband meets the criteria for being declared as battle casualty and the applicant is entitled to Liberalized Family Pension w.e.f. the date of death of her husband.

13. In the result, the applicant is granted Liberalized Family Pension w.e.f. 23.01.2013. Respondents to issue fresh PPO and pay arrears accordingly within four months of the date of

issue of this order. Respondents to also pay ex-gratia lump sum amount as was applicable on 23.01.2013 to battle casualties who die in harness. Aforesaid actions to be completed within four months, otherwise, it will attract interest @ 8% per annum.

14. No order as to costs.

[JUSTICE SUNITA GUPTA]
MEMBER (J)

[LT GEN PHILIP CAMPOSE]
MEMBER (A)

/sm/