

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT  
NEW DELHI**

TA No.303/2009  
[W.P.(C) 548/09 of Delhi High Court]

Hemlata Sharma

.....Petitioner

Versus

Union of India & Others

.....Respondents

For petitioner: Sh.D.K. Sharma, Advocate

For respondents: Capt Alifa Akbar

**CORAM:**

**HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON  
HON'BLE LT. GEN. M.L. NAIDU, MEMBER**

**ORDER  
03.12.2009**

1. Petitioner by this writ petition has prayed that letter dated 01.12.2005 by which she was informed that the death of her husband has been reclassified as physical casualty by Army Headquarters, letter dated 31.10.2006 by which she was informed that PCDA(P) Allahabad has rejected her case for grant of liberalized family pension and letter dated 03.04.2008 by which her request for grant of liberalized family pension and ex-gratia

award was rejected, be quashed and consequently, she may be granted liberalized family pension, ex-gratia relief with all consequential benefits.

2. Brief facts relevant for disposal of present petition are that husband of petitioner was enrolled in the Indian Army on 08.03.1985 and with passage of time promoted to Hav. (SKT) and was posted to 1862 Light Regiment. On 23.01.2005 the husband of petitioner died when he was deployed in "Operation Rakshak (J&K)" and was performing his official duties at Line of Control in highly active field area under extreme cold climatic conditions. Vide signal dated 23.01.2005 the death of husband of petitioner was declared as battle casualty by the unit of husband of petitioner i.e. respondent no.6 and the commanding officer, 1862 Light Regiment issued battle causality certificate which reproduced as under:-

**Battle Casualty Certificate**

It is certified that No.1438717X Hav (SKT) Shiv Kumar Sharma of 1862 Light Regiment while on active service in Line of Control died while performing military duty on 23 Jan 05 is attributable to military service and be treated as Battle Casualty as per AO 1/2003/MP.

Sd/-  
Neeraj Arora  
Lt. Col.  
Commanding Officer  
1862 Lt. Regt.



Station C/o 56 APO  
Date 23 Jan 2005

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Likewise is the Certificate of Attributability of fatal case was raised by the commanding officer 1862 Light Regiment wherein the commanding officer has remarked that *"the death is attributable to the service factors due to severe climatic conditions prevailing in the high altitude area and extreme stress created due to proximity of enemy in high active field area"*. The said certificate is also placed on record by the petitioner as Annexure P-2 and in that the item no.11 reads as under:-

11.Do you consider the death is attributable to or aggravated by service factors  
(Give reasons)

Yes.Due to severe climatic conditions prevailing in the HAA and extreme stress created due to proximity of en in highly active Fd area.

This was further confirmed by Approving Authority with the signature of HS Gulerla, Maj Gen DDMS HQ, Northern Command vide order dated 06.09.2005. On this basis the petitioner was entitled to benefit of liberalized family pension but this was not acceded and petitioner was granted special family pension. Hence, petitioner approached the Hon'ble Delhi High Court by

filing present writ petition which after formation of Armed Forces Tribunal has been transfer to this Tribunal for disposal.

3. No reply was filed by the respondents. However, we directed Capt. Alifa Akbar appearing for respondents to find out the reasons and she has placed on record a communication received by her dated 02.06.2008 wherein it has been informed that the cause of death was not covered under the provisions of AO 1/2003/MP for classification of battle casualty and also not caused by climatic conditions. Accordingly, this Directorate informed Artillery Records that the casualty is not covered for battle casualty classification due to above reasons.

4. However, we regret to say that there is no appreciation of the matter by the authorities. As we have also reproduced above that the competent authorities have already issued certificate that death of incumbent is attributable to military service on account of serving on high altitude area, then there is no reason as to why petitioner should not be given liberalised family pension. Therefore, order passed on 01<sup>st</sup> December, 2005 does not appear to be well founded. The policy decision under



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the head of "Circumstances for Classifying Casualties as Battle or Physical" clearly stipulates that *if death had occurred while operating on the International Border or Line of Control due to natural calamities and illness caused by climatic conditions then such casualty has to be classified as Battle Casualty.* The relevant Clause reads as under :-

**"CIRCUMSTANCES FOR CLASSIFYING CASUALTIES  
AS BATTLE OR PHYSICAL**

*(g) Casualties occurring while operating on the International Boarder or Line of Control due to natural calamities and illness caused by climatic conditions."*

5. In these circumstances, we are of the opinion that death of husband of petitioner was caused as a battle casualty and the petitioner/widow of the deceased incumbent is entitled to all the benefits of liberalised family pension. Consequently, order passed by the authorities dated 01.12.2005 whereby she was denied the benefit of liberalized family pension, order dated 10.05.2006 whereby she was denied ex-gratia payment on account of death of her husband, the order dated 31.10.2006 passed by 1862 Light Regiment and the order dated 03.04.2008 are quashed. Respondents are directed to give all the benefits of liberalised family pension to the petitioner as well as ex-gratia

payment for death of her husband in 'Operation Rakshak' and all other benefits flowing therefrom. The whole exercise should be completed within three months from today. Petition is accordingly allowed. No order as to costs.

**A.K. MATHUR**  
(Chairperson)

**M.L. NAIDU**  
(Member)

**New Delhi**  
**December 3, 2009**