

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

O.A NO. 167 OF 2011

Smt. Radhika Devi

... Applicant

Versus

Union of India and others

... Respondents

For petitioner : Mr. S.R Kalkal, Advocate

**For respondents : Mr. Ankur Chibber,
Advocate**

CORAM

**HON'BLE MR. JUSTICE A.K MATHUR, CHAIRPERSON
HON'BLE LT GEN S.S DHILLON, MEMBER**

J U D G M E N T

23.09.2011

S.S Dhillon, Member:

1. The applicant is the legally wedded wife of late Nb Sub Umed Singh, who unfortunately expired on 21.5.2002. The applicant is submitting this application under Section 14 of the Armed Forces

Tribunal Act, 2007 and is aggrieved by the respondents' letters of 26.5.2005 and 10.7.2005, wherein the applicant has been denied liberalised family pension and ex-gratia payment of Rs.7.5 lakhs, both of which she was legally entitled to.

2. The late husband of the applicant was enrolled in the Army on 13.3.1976, after having been found medically and physically fit in accordance with Regulation 135 of Regulations for the Army 1987 and Regulation 383 of Medical Services Armed Forces 1962. Her late husband was posted to 6th Bn of the Kumaon Regiment and by dint of his hard work and sincerity, he received continuous promotions and was finally promoted to the rank of Nb Sub on 24.8.1998. Her husband was deployed during Op PARAKRAM on the international border with Pakistan in the Punjab sector with effect from 19.12.2001. On 21.5.2002, while her late husband was fighting a jungle fire in the proximity of his Post, he suddenly collapsed and died.

3. The respondents, while completing the documentation of her late husband, have specifically stated that the death was attributable to military service. The remarks of the Commanding Officer of 6 Kumaon read as under:

“Yes, due to Op parakram he was under severe stress and strain as Post Cdr located eye ball to eye ball with the enemy in the sensitive Lassian Enclave of Punjab on the IB since 18 Dec 01.”

This was further verified by the Officer Commanding, 167 Military Hospital, wherein he has stated as under:

“The causes of death aggravated by military service for the following reasons:

The individual was serving under war like conditions in a sensitive area due to face with the en. The same has agg./contributed to the demise.”

Unfortunately, the clerical staff at the Kumaon Regiment Centre, Ranikhet, who were not in touch with the field conditions, rejected the ex-gratia payment and grant of liberalised pension to the applicant in May 2005. Based on their recommendation, the PCDA (Pensions) at Allahabad also rejected her claim.

4. Counsel for the applicant strongly argued that the applicant was entitled for the grant of liberalised family pension under Category E(f)(i) of Government of India, Ministry of Defence letter of 31.1.2001 as well as grant of ex-gratia payment of Rs.7.5 lakhs in accordance with Sub-clause (1)(c) of Government of India letter of 22.9.1998. Relevant extracts of these two letters are given below:

(c)	Death occurring during (i) enemy action in international war or border skirmishes; and (ii) action against militants, terrorists, extremists, etc.	Rs. 7.50 lakhs
-----	--	----------------

XX XX

XX XX

XX XX

XX XX

The fact that the applicant's late husband was posted in an operational area is not denied by the respondents. He also met the essential requirement of Para (1) of the Annexure of Government of India letter of 22.9.1998, which stipulates that **"the main condition to be satisfied for the payment of the ex gratia lumpsum compensation in the specified circumstances is that the death of the employee concerned should have occurred in the actual performance of bona fide official duties"**. Not only was the late husband of the applicant involved in bona fide duty, but he was deployed in the sensitive area Lassian under observation of the enemy post and in fact in eye ball to eye ball confrontation with the enemy and hostilities appeared imminent. It is not denied that the stress and strain of war like conditions had a bearing on the death of the applicant's husband and that she was accordingly entitled to liberalised family pension and ex-gratia payment of Rs.7.5 lakhs as he had **"died in**

harness", which was another essential criteria for entitlement of ex-gratia allowance.

5. Since the disease "Ischemic Heart Disease" as a consequence of which the applicant's late husband died, has been accepted as attributable to military service and he was serving in a war like situation, which clearly falls in Category E(f)(i) as defined in Government of India, Ministry of Defence letter dated 31.1.2001, she was illegally being denied the benefits that accrued to her. Counsel for the applicant has cited the judgment of the apex Court in C.A No. 5591 of 2006 (**K.J.S Buttar v. Union of India and another**) dated 31.3.2011.

6. The matter was strongly contested by the respondents. To be fair, the respondents accepted the fact that the late husband of the applicant was deployed for Op. PARAKRAM and also that his death was attributed/aggravated by military service. However, what was disputed was whether the death could be classified as a battle casualty, thereby entitling the applicant to liberalised family pension and ex-gratia.

7. The respondents argued that the late husband of the applicant was deployed in Op PARAKRAM and that while briefing the fire fighting party on the fateful day of 22.5.2002, he suddenly collapsed and

died. The cause of death was because of heart attack and not because of any battle injuries. Accordingly, in accordance with Army Order No. AO/1/2003/MP, he could not be treated as a battle casualty but as a physical casualty. The relevant portion of the said Army Order is extracted below:

AO/1/2003/MP—Instructions for the Management of Physical and Battle Casualties

Appendices : A - Circumstances for Classifying Casualties as Battle or Physical

XX XX
XX XX

XX XX
XX XX

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

XX XX
XX XX

XX XX
XX XX

CIRCUMSTANCES FOR CLASSIFYING CASUALTIES AS BATTLE OR PHYSICAL

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 defences 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, not withstanding 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 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.

(h) Casualties occurring in aid to civil authorities while performing relief operations during natural calamities like flood relief and earthquake.

(j) Casualties occurring while carrying out battle inoculation/training or operationally oriented training in preparation for actual operations due to gun shot wounds/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 accident while performing bona fide military duties in war/border skirmishes with neighbouring countries including action online of control and in counter insurgency operations.

(m) Casualties occurring as a result of IED/bomb blasts by saboteurs/ANEs in trains/business/ships/aircrafts during mobilization for deployment in war/war like operations.

(n) Casualties occurring due to electrocution/snake bite/drowning during the course of action in counter insurgency war.

(o) Accidental death/injuries sustained during the course of move of arms/explosives/ammunition for supply of own forces engaged in active hostilities.

(p) Death due to poisoning of water by enemy agents resulting in death/physical disabilities of own troops deployed in operational area in active hostilities.

(q) Accident death/injuries sustained due to natural calamities such as floods, avalanches, land slide, cyclones, fire and lightening or drowning in river while performing operational duties/movements in action against enemy forces and armed hostiles in operational area to include deployment on International Border or Line of Control.

(r) Army personnel killed/wounded by own troops running amok in an operational area.

(s) Army personnel killed/wounded due to spread of terror during leave/in transit because of their being army personnel.

It was therefore apparent that the applicant's husband did not come in the category of "Battle Casualty". Being a physical casualty, the applicant was entitled to special family pension, which has been given and paid to the applicant.

8. It was next argued that the applicant was informed about her non-eligibility for liberalised family pension and ex-gratia on 10.7.2005, after which she has not made any appeal against this decision till she filed this present writ in April 2011 with the Armed Forces Tribunal. Therefore, she has accepted this decision for almost six years

and has not agitated against it. Accordingly, the writ deserves to be dismissed for delay and laches.

9. With regard to Government of India letter of 31.1.2001, the respondents stated that the applicant's husband was classified as a physical casualty since the death was not on account of battle injuries and consequently she was not entitled to liberalised family pension. The mere presence of an individual in operational area at the time of death is not an eligibility criteria for grant of liberalised family pension. The death of the applicant's husband occurred due to disease and not on account of field operations/fighting, hence no question arises for grant of liberalised family pension.

10. With reference to Government of India letter of 22.9.1998, the respondents argued that the criteria for grant of ex-gratia was that death should have occurred due to accident or because of acts of violence by terrorists, anti social elements, etc or death occurring due to enemy action in international war or border skirmishes and action against militants, terrorists, extremists, etc. The applicant's husband has died because of a disease and not because of any of the factors listed above. This aspect is also clarified at Para 8 of the Annexure to ibid letter

of 22.9.1998 which states “**ex-gratia compensation under Clause (c) of Para 1 will generally be extended only to those cases where death of the employee is directly because of actual field operations**”. Counsel for the respondents argued that this case was squarely covered by the judgment given by this Tribunal in **Smt. Manju Tiwari v. Union of India and Ors.** (O.A No. 78 of 2010) dated 18.2.2011, the relevant portion of which is extracted below:

“7. Counsel for the respondents also argued that notwithstanding the unfortunate and tragic death of the appellant’s husband, the designation of “battle casualty” carries certain reverence, dignity and aura and ipso facto implies a war injury or death on account of severe exertion on the battle field brought about by adverse, harsh and inclement operational or climatic conditions. Battle casualties occupy an elevated pedestal in the eyes of society and the Government of India recognises such contribution of soldiers by bestowing on them certain awards, ex-gratia allowances, courtesies and concessions. The status of a “battle casualty” is earned by display of valour, courage and fortitude in war/war like situations, wherein a soldier, while fighting or by his actions, places his life or limb at risk for a national cause. Accordingly, the Union of India has a responsibility to ensure that while entitled soldiers receive

the benefits endowed by a grateful nation, the sanctity and esteem in which society views a "battle casualty" is not diluted."

It was therefore necessary for the respondents to distinguish between death due to "enemy" action or on account of a disease, both of which may have occurred in the designated operational area. With regard to **KJS Buttar's case** (supra), the respondents argued that the facts of this case were not relevant to the issue at hand.

11. Keeping in view the above facts, we find that the applicant is not eligible for grant of liberalised family pension or ex-gratia payment in accordance with rules. The application is dismissed. No order as to costs.

A.K MATHUR
(Chairperson)

S.S DHILLON
(Member)

Pronounced in open Court
on ^{23/9} 23 September 2011