

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

O.A.No. 78 of 2010

Smt. Manju Tiwari

.....Petitioner

Versus

Union of India and Ors.

.....Respondents

For the Petitioner : Mr.S.R.Kalkal, Advocate

For the Respondents : Mr. Ankur Chhibber, Advocate(R-1,3&4)
Mr. Pradeep Tiwari, Advocate(R-2)

C O R A M:

HON'BLE MR. JUSTICE A.K.MATHUR, CHAIRPERSON

HON'BLE LT.GEN. S.S DHILLON, MEMBER

JUDGMENT

18.02.2011

1. This O.A has been filed by the appellant in her capacity as widow of L/Nk Urba Dutt, who died on 11.8.1999 while posted with 8th Battalion of Kumaon Regiment, which was deployed during Op Vijay (Kargil War) in the Rajasthan Sector of Sri Ganganagar. It is an admitted position that the appellant's husband was deployed

within the area of Op Vijay and that the death of her husband was attributable to military services.

2. Counsel for the appellant gave a brief backdrop by stating that the appellant was granted Special Family Pension by the respondents. However, she filed W.P (C) No. 5262 of 2003 before the Delhi High Court seeking grant of liberalised family pension. The High Court decided in her favour and entitled her to liberalised family pension and held that the death of her husband had occurred in a war like situation, as enumerated in Clause (f) of Category E of the Government Instructions dated 31.1.2001. After Op Vijay, certain financial and other benefits were announced by Government of India as well as various State Governments, which were listed in Army HQ letter of 21.3.2000. The appellant also applied for grant of such entitlements i.e. ex-gratia payment of Rs.7.5 lakhs, cost of dwelling unit Rs. 5 lakhs, assistance for

education at the rate of Rs.1 lakh per child and ex-gratia from U.P Government for Rs.10 lakhs.

3. Since such payments were not forthcoming, the appellant filed W.P (C) No. 1973 of 2006 before the Delhi High Court seeking directions to the respondents to pay her the above entitlements. The High Court held that "the case of the petitioner, is, thus agreed to be re-examined in terms of aforesaid and a reasoned decision be taken within three months from today". Consequently, the matter was re-examined by the Army authorities and she was informed by the impugned order of 29.04.2009 that since the death of her husband occurred because of "acute anteroseptal and inferior wall myocardial infarction", which was a physical casualty she was not entitled to any of the grants/compensation listed in Army HQ Letter of 21.3.2000. Being aggrieved, she has now filed this O.A seeking directions to the respondents to quash the impugned order of 29.4.2009 and to direct the

respondents to pay her the ex-gratia and other entitlements as due to "battle casualties".

4. Counsel for the appellant argued that the Delhi High Court, in its judgment of 12.11.2008, had held that "the issue of the petitioner being in Clause (f) of Category E (of Government of India letter dated 31.1.2001) is no more res integra and thus all benefits as are admissible to persons in Category E are liable to be paid to the petitioner". Reference was also drawn to the earlier decisions of Punjab and Haryana High Court in W.P (C) No. 14276 of 2003 (Kanta Yadav v. Union of India) and W.P (C) No. 18469 of 2001 (Dr. S.S Bali v. Union of India and others), where in both these cases death had occurred because of physical reasons and not because of any war injury, but the High Court had treated these to be "battle casualties" and had enhanced the ex- gratia payment from Rs. 5 lakhs to 7.5 lakhs. It was also argued that the classification as "physical casualty" was for statistical purposes only

and the same person could be termed a "battle casualty" for financial purposes.

5. Counsel for the respondents argued that as directed by the Hon'ble Delhi High Court on 12.11.2008, the entire issue had been re-examined by Army HQs. The cause of death of the appellant's husband was due to "acute anteroseptal and inferior wall myocardial infarction". As per the autopsy report issued by 184 Military Hospital, he had sudden frothing from the mouth, acute breathlessness and fell unconscious and he was correctly classified as physical casualty and not as a battle casualty. Counsel argued that unlike the other two cases of Maj Nitin Bali and L/Nk Anoop Singh (late husband of Smt. Kanta Yadav), there was no physical exertion which resulted in the death of her husband and neither were the weather/climatic conditions as hostile or challenging and neither was there any war/operational hysteria as there was in the other two cases. Counsel also clarified that in the case of Maj

Bali and L/Nk Anoop Singh, the Army authorities had classified their death as battle casualty and recommended them for grant of liberalised family pension and it was only on account of some financial/bureaucratic hassles that the matter had to be resolved by the judgments of the Hon'ble Punjab & Haryana High Court. In the present case of the appellant's husband, it had been classified as a "physical casualty". It was also argued that although the Delhi High Court did place L/Nk Anoop Singh in Category E of the Government order of 21.03.2000, it had, at no stage, changed the status of the death from "physical casualty" to "battle casualty". In fact, Maj Nitin Bali was posthumously conferred the valour award of Sena Medal for courage and gallantry prior to his death. Therefore, there was a difference between the cases of Maj Bali and L/Nk Anoop Singh, and the husband of the appellant.

6. This issue was also examined at Army HQs and PCDA (P), Allahabad and it was felt that while the Hon'ble High Court of Delhi had entitled the appellant to liberalised family pension in accordance with the provisions of Ministry of Defence letter of 31.1.2001, the same analogy could not be extended to the grant of ex-gratia and other benefits which were governed by different provisions contained in Army HQ Letter of 21.3.2000, which specifically states that "the various welfare packages applicable for the widows/NOK of personnel killed and disabled soldiers who are **battle casualties** are mentioned in the succeeding paragraphs". Accordingly, when the husband of the appellant had not been categorised as a "battle casualty", the rules did not permit the release of ex-gratia or other grants as sought by the appellant.
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.

8. Keeping the above facts in view, we do not find any substance in the plea of the appellant. Accordingly, the O.A is dismissed.

[Justice A.K. Mathur]
Chairperson

[Lt. Genl. SS Dhillon]
Member (A)

New Delhi

18th February, 2011