

COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA 443/2019
with
MA 1004/2019

Smt. Kamlesh Devi Wd/O Applicant
Late Ex Hav Rishi Raj
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Virender Singh Kadian, Advocate
For Respondents : Mr. Arvind Patel, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

MA 1004/2019

Keeping in view the averments made in this application and finding the same to be bona fide, in the light of the decision in the case of Union of India and others Vs. Tarsem Singh [(2008) 8 SCC 648], the instant application is allowed condoning the delay in filing the OA.

2. The MA stands disposed of.

OA 443/2019

3. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the

applicant has filed this application and the prayers made in

Para 8 read as under:

“(a) Quash and set aside the impugned letter No B/38039/Rishi/AG/PS-4(Imp-1) dated 19.05.2016. and/or

(b) Direct respondents to treat the death of the husband of the applicant as Battle Casualty and grant her Liberalised Family Pension with all consequential benefits as applicable. and/or Grant Ex-Gratia lump sum compensation accordingly. And.or

(c) Direct respondents to pay the due arrears of Liberalised Family Pension with interest @12% p.a. with effect from the date of death of her husband with all the consequential benefits. And/or

(d) Any other relief which the Hon’ble Tribunal may deem fit and proper in the fact and circumstances of the case.”

4. By the impugned order dated 19.05.2016 (Annexure A-1), Liberalised Family Pension granted to the applicant by the Ministry of Defence vide letter dated 24.11.2014 has been treated as cancelled in view of the observations made by the PCDA (P), Allahabad, which the said office has not agreed with the grant of Liberalised Family Pension to the applicant.

5. Facts in nut shell which are not in dispute indicate that the applicant’s husband Hav/SKT Late Rishi Raj was enrolled in the Army on 13.07.1987. While serving with 525 ASC Bn, the applicant’s husband was performing the duties of Senior NCO. Then on 02.10.2002 at about 2000 hrs, it was found

that one Nk/MT NK Chetia who was detailed for guard duty at main gate No.10 of the Comp Pl ex 525 ASC Bn was found absent from duty. Late Hav Rishi Raj being the senior NCO went to the unit line to summon Nk/MT NK Chetia. On being asked to report for duty, Nk/MT NK Chetia fired from his personal weapon SMC on applicant's husband who sustained five gun-shot wound. The late husband of the applicant was immediately evacuated to 150 General Hospital but on the next day, i.e., 03.10.2002 at around 1730 hrs, the husband of the applicant succumbed to his injuries and died. A detailed report (Annexure R-1) was prepared with regard to the incident in question and in the detailed report the death of late Hav Rishi Raj was classified as a Battle Casualty. The report is available as Annexure R-1 and it is clearly indicated that it is a Battle Casualty.

6. It is an admitted position that a Court of Inquiry (CoI) was conducted into the matter which also declared the death of Late Hav Rishi Raj as attributable to Military Service while on duty in Op-Parakram and Op-Rakashak and the same was to be treated as Battle Casualty. A copy of the inquiry report dated 10.01.2003 is also filed as Annexure R-2, wherein, it is clearly indicated that the death was on account of gunshot

wound which was caused while serving in Op-Parakram and Op-Rakshak (J & K) areas and it has been ultimately classified as a Battle Casualty.

7. Based on the aforesaid proceedings of the CoI, pension documents was prepared by the ASC Records (South) vide Annexure R-3 and the documents were forwarded to the PCDA (P) Allahabad along with all supporting documents for grant of Liberalised Family Pension in favour of the applicant, namely, Smt. Kamlesh Devi. The PCDA (P) Allahabad, rejected the claim for the Liberalised Family Pension vide Annexure R-5, wherein, it was stated that under the provisions of Para 3 of SAO 8/S/85, casualty in operational area and when there is no fighting and person is killed other than for the cause mentioned in the SAO, the same will be treated as physical casualty. Hence, it was said that the case cannot be treated as a Battle Casualty and sanction for Special Family Pension was authorized vide Annexure A-5 instead of Liberalised Family Pension. The ASC Records (South) again on 09.03.2004 (Annexure A-5) approached the PCDA (P), Allahabad, to treat the case as a case of Battle Casualty in accordance with the provisions of Appendix to SAO 1/2003/MP and asked to issue a

corrigendum Pension Payment Order for the Liberalised Family Pension. In response to this request made by the ASC Records (South) vide letter dated 09.03.2004, PCDA (P), Allahabad vide communication dated 02.04.2005 (Annexure R-7) made the following observations:

“6. That thereafter, in response of ASC Records (South) letter dated 09 Mar 2004, PCDA (P) Allahabad letter No G4/BCD/ASC (S)/Misc/X dated 02 Apr 2005 (Annexure-R-7) stated that “While going through the AO 1/2003/MP, it is transpired that Army Personnel killed by own troops running amok in an operational area will be treated as Battle Casualty. But in the instant case though the deceased died in op area by his date of casualty is 02 Oct 2002, whereas the ibid AO came into effect from 12 Feb 2003. It is, therefore, advised to obtain GOI/AHQ's sanction, so that the NOK may be granted Liberalized Family Pension”.”

and treating the case to be that of Battle Casualty. Finally, the MoD vide Annexure R-9 also accorded sanction and on receipt of sanction, the case was again referred to PCDA (P), Allahabad vide Annexure R-11 for grant of Liberalised Family Pension along with supporting documents which was again rejected by the PCDA (P), Allahabad. Finally, the IHQ of MoD (Army) vide order dated 24.05.2016 (Annexure R-14) observed that:

“12. That therefore, IHQ of MoD (Army) (ST-12) vide letter No 78402/6384156/RR/IV/Q/IV/ST-12 dated 24 May 2016 (Annexure R-14) therein stated that “the subject case was processed with Competent Authority i.e. AG/PS-4 (Imp-I). However, the Competent Authority has not been agreed with the grant of Liberalised Family Pension to smt. Kamlesh wife of Hav/SKT Late Rishi Raj. They have also cancelled their earlier sanction letter No B/389039/Rishi/AG/PS-4 (Imp-1) dated 24

Nov 2014 vide their even No dated 19 May 2016 (Annexure-R-15)."

and, accordingly, the claim was rejected and now the applicant has sought Liberalised Family Pension.

8. In the communication (Annexure R-7), it is seen that even though the case was processed and recommended for grant of sanction treating it to be a case of Battle Casualty as is evident from the documents on record, it has only been rejected on the ground that the date of casualty was 02.10.2002 whereas the AO in question, namely, AO 1/2003/MP came into force with effect from 12.02.2003. It was indicated in the records that sanction may be obtained from GoI, MoD, Army HQ for Liberalised Family Pension. From the documents that have come on records, it is clear that in accordance to the requirement of AO 1/2003/MP, the death of applicant's husband is a case of Battle Casualty and even in case where in an operational area such an incident occurs it is to be treated as Battle Casualty and when the case of the applicant was being processed, the Army Order, i.e., 1/2003/MP in question came into force, the claim was approved based on the Army Order itself after it was implemented w.e.f. 12.03.2003 and sanction for grant of Liberalised

Family Pension was granted to the applicant. It is seen from the records that the Competent Authority in the MoD had agreed with the grant of Liberalised Family Pension to the applicant vide letter dated 24.11.2014 but it was rejected in view of the observations made by the PCDA (P), Allahabad on 10.04.2015 and, therefore, by the impugned order passed on 19.05.2016, sanction for grant of Liberalised Family Pension was cancelled.

9. The only question involved for our consideration is as to whether the applicant is entitled to Liberalised Family Pension? Admittedly in the case of the applicant all the ingredients required for the purpose of grant of Liberalised Family Pension in accordance to the AO 1/2003/MP issued on 12.02.2003 is fulfilled and now it is being denied to the applicant only on account of the fact that the incident in question took place on 02.10.2002 and the applicant's husband, namely, Late Hav Rishi Raj had died on 03.10.2002 and, therefore, the Army Order cannot be applied.

10. In our considered view, even though nothing was canvassed before us with regard to retrospective applicability of the Army Order and we have not been asked to determine the said effect, i.e., retrospective effective

of the Army Order, we should take note of the following peculiar facts and circumstances that are available on record for deciding the controversy:

(a) In accordance to the policy stipulated in the AO 1/2003/MP, the injury sustained by the applicant's husband and his consequential death is to be classified as a Battle Casualty.

(b) The ASC Records processed the case and after going through the findings of the CoI classified it as a Battle Casualty and recommended for its payment. After the PCDA (P), Allahabad, rejected the claim, the MoD also sanctioned grant of Liberalised Family Pension treating the case as that of Battle Casualty in accordance to AO 1/2003/MP.

Finally it was cancelled only because the PCDA (P), Allahabad came out with an objection to say that AO 1/2003/MP will not be applicable as the accident took place before the Army Order came into force. However, two aspects of the matter have to be taken note by this Tribunal in the matter of bestowing justice to the widowed lady of a deceased soldier who succumbed to the injuries sustained by him while performing military duty and the true meaning of the policy

in vogue, the AO in question has been formulated to give Liberalised Family Pension to dependence of officers and man in uniform who succumbed to eventualities classified as "Battle Casualties" and ultimately lose their life. The policy only clarifies as to what are the eventualities or details nature of the accident or incident which come within the purview of Battle Casualty. The AO has been brought into force as a clarificatory order clarifying various factors which can be taken into consideration for classifying an accident or incident as a Battle Casualty. That being so, when the policy is nothing but a clarification with regard to what categories of cases would fall within the purview of Battle Casualty, it is imperative for a statutory Tribunal which has to dispense justice keeping in view the socio economic and financial situation of the claimants before it by adopting a liberal approach. In the present case, the benefit of the policy is being denied to the applicant only on the technical ground that the accident happened about three and a half months before coming into force of the Army Order. However, we cannot lose sight of the fact that when the Army Order came into force the case of the applicant was not settled and was not even processed, the CoI and others proceedings were

going on and finally when the processing of the case took place it was processed as per the requirement of the Army Order 1/2003/MP which has come into force and recommendation for grant of Liberalised Family Pension was made treating the accident to be a Battle Casualty. Even, the IHQ of the Indian Army and the MoD allowed the same. It was only on account of the audit objection that the claim of the widow lady has been rejected.

11. In our considered view and in the light of the aforesaid peculiar facts and circumstances of the case a liberal approach devoid of technicalities should be adopted in the special and peculiar facts and circumstances of the case particularly when the policy was in vogue when the case of the applicant was being processed. That being so, without laying down any precedent or without commenting on the retrospective application of the policy in question and without going into the various technical aspects of the matter only on the ground that the applicant needs a special consideration and the call for justice requires a liberal approach to be adopted, we direct that the applicant is entitled to be granted Liberalised Family Pension and respondents are directed to grant the said benefit to the

applicant w.e.f. 04.10.2002, i.e., the next day of death of her husband, i.e., 03.10.2002, after making adjustment of the amount already paid against the Special Family Pension to the applicant.

12. Accordingly, the respondents are directed to calculate, sanction and issue necessary Corrigendum PPO to the applicant within three months from the date of receipt of the copy of this order and the amount of arrears, if any, shall be paid by the respondents, failing which, the applicant shall be entitled to interest @ 6% per annum till the date of payment.

13. Before parting we would again like to emphasize that we had decided the issue in question purely on the peculiar facts and circumstances of this case which we find to be special in view of various factors which are detailed in the order and without setting any precedent we are deciding this case. The issue of retrospective effect of the policy, namely, AO 1/2003/MP is left open and we are not delving into the same and if required it would be considered in accordance with law in an appropriate case. For the reasons which we have discussed hereinabove treating this to be

special and peculiar case on the facts and circumstances that have come on record we allow this application.

14. Accordingly, the OA stands disposed of.

15. No order as to costs.

16. Pending miscellaneous application(s), if any, stands closed.

Pronounced in open Court on this 9 day of July, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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