

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

OA 34/2017 WITH MA 15/2017

Smt. Susheela Devi Applicant
Versus
Union of India & Ors. Respondents
For Applicant : Ms. Archana Ramesh, Advocate
For Respondents : Mr. YP Singh, Advocate

Date-12 November, 2024

CORAM

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

ORDER

Invoking the jurisdiction of this Tribunal applicant, widow of Late Hav Chander Bhan Yadav working in the AEC has filed this application for declaring the death of her husband as 'Battle Casualty' and granting relief to her. Applicant's husband, Late Hav Chander Bhan Yadav was working in Headquarters 70 Infantry Brigade situated at Leh. The said area is a high altitude area and in this regard High Altitude Certificate issued by the competent authority on 24th March, 2000 is filed as annexure A-2. It is the case of the applicant that her husband, Hav Chander Bhan Yadav on 12th December, 2000 was sleeping in his barrack when a fire occurred in the night and on account of the smoke and other gases inhaled, he died of flame burn and Hypoxic Lung Injury. After death of the husband the case of the applicant

for grant of family pension was processed and accordingly treating it to be a case of death attributable to military service Special Family Pension has been granted to the applicant.

2. However, it is now the case of the applicant that her husband was posted in a high altitude/field area coming in OP "Meghdoot" and, therefore, the applicant's husband's death should be classified as a 'Battle Casualty' and the applicant granted War Injury Pension.

3. It may be noted that War Injury Pension is granted to a man-in-uniform who suffers Battle Casualty and survives. After death of the employee concerned, what is paid to the dependant is the 'Liberalised Family Pension' instead of 'Special Family Pension'. Accordingly, applicant claims that after declaring the casualty which resulted in death of applicant' husband as "Battle Casualty", she should be granted Liberalised Family Pension from the date of his death and further in accordance to the policy of the Ministry of Defence, applicant is entitled to grant of ex gratia lump sum compensation of Rs. 5,00,000/- in accordance to the policy dated 22nd September, 1998 and amended subsequently vide policy dated 3rd November, 2009. Learned counsel for the

applicant also claims for compassionate appointment contained in clause 2 of Welfare Measures (annexure A-38).

4. Respondents have refuted the aforesaid and they contended that the applicant is only entitled to the grant of Special Family Pension as per existing policy applicable, the death of her husband occurred on account of the accident it was not a casualty which occurred on account of Battle, war or in any action, as per the policy contained in Government of India, Ministry of Defence letter dated 31.01.2001 and as the applicant's husband did not die on account of any accident which occurred while in action or the other eventualities as detailed in the policy dated 31.01.2001 he is not entitled to Battle Casualty. As far as grant of ex gratia lump sum compensation of Rs. 5 Lacs in accordance to Ministry of Defence letter dated 22nd September, 1998 is concerned, it is the case of the respondents that the applicant's husband did not die while performing any bona fide high altitude duty, but the same was due to an accident which took place while he was sleeping in his barrack and that is why he is not entitled to ex gratia. It is further submitted by the respondents that the applicant is not entitled to the relief of compassionate appointment also.

5. Learned counsel for the applicant has relied upon various judgments namely, Smt Saroj Devi Vs. Union of India and Ors. (OA 407/2016), Smt. Bhawna Pawar Vs. Union of India and Ors. (OA 506/213), Smt Mahuya Das Vs. Union of India and Ors. (OA 469/2011), Ex Signalman Chatru Gujar Vs. Union of India and Ors. (OA 232/2013) and Maj (Retd) Rajesh Kumar Bhardwaj Vs. Union of India and Ors. (OA 336/2011) passed by Armed Forces Tribunal, Principal Bench, New Delhi and also on the judgment passed by Hon'ble Delhi High Court in the case of Rifleman Jagdeep Singh (Retd) Vs. Union of India and Ors. (WP(C) No 19002/2006 decided on 15.01.2008) in support of her contentions.

6. We have heard learned counsel for the parties at length and perused the records. From the records, we find that applicant's husband was posted at Headquarter 70 Infantry, Brigade and this has been certified as the Field/High Altitude area as is evident from the certificate dated 24th March, 2000 annexed as A-2. Records further indicate that he was found dead in the intervening night of 12th -13th December, 2000 at about 01:40 A.M. in his living room with closed doors and windows.

7. The records available including the Injury Report indicate that Late Hav Chander Bhan Yadav whilst was sleeping inside his room on the intervening night of 12th- 13th December, 2000, an accidental fire broke out in his room around 01:45 hours because of this fire a lot of smoke was generated in the room, doors and windows were closed and on account of suffocation he became unconscious and was found dead. The Post-mortem report indicated the cause of the death due to flame burn and Hypoxic Lung injury.

8. In the backdrop of the aforesaid fact, the case of the applicant for grant of ex gratia and pensionary benefits was processed by the competent authority and after processing of the case it was found that the applicant was not entitled to ex gratia compensation of Rs. 5 lacs in accordance to the policy as the death did not occur due to any action in field area, it was, therefore, not classified as Battle casualty in accordance to the policy of February, 2003 available at annexure A-34. As far as grant of compassionate appointment to the applicant's son is concerned, it was considered and rejected on the ground that at that point of time the son was 16 years

old and no vacancy on the compassionate category was available.

9. We have gone through the detailed submissions made before us and also perused all the material available on record. In the statement prepared by the competent office of ASC records, Bangalore on 22nd May 2001 approval and recommendation was made under the signature of the Offg OC Tps for grant of ex gratia relief to the applicant. The matter was processed and it is seen that the pension payment authority came to a conclusion that death of the applicant's husband was not caused because of any act which is attributable to or aggravated by military service and, therefore, ex gratia is not admissible. A communication dated 24.02.2004 (annexure A-21) was made to the applicant indicating why the PCDA (P) (Allahabad), the pension sanctioning authority has rejected the claim for grant of ex gratia lump sum to the applicant.

10. As far as this issue is concerned, the provision for grant of ex gratia as contained in Army Order of February, 2003 (annexure A-34) which lays down instructions for management of physical and battle casualty and further the provisions for payment of compensation are laid down in the

policy letter dated 22nd September, 1998. In the Army Order of February, 2003 in Para 3 Physical Casualty is described and classified as under:-

“Physical Casualties are those, which occur in non-operational areas or in operational where there is no fighting Casualties of this type consist of the following categories:-

- (a) Died or Killed
- (b) Seriously or dangerously ill
- (c) Wounded or injured (including self-inflicted)
- (d) Missing”

And thereafter in Para 4 and 6 Battle Casualty and operational areas have been classified, and in Army Order AO/1/2003, the appendix ‘A’ clarifies the circumstances for classifying casualties in Battle or Physical as listed. It is therefore, appropriate at this stage to analyse the case of the applicant in the backdrop of this Army Order and record the findings as to under which category the casualty which resulted in death of the applicant’s husband, Late Hav Chander Bhan Yadav can be classified.

11. A perusal of the policy as contained in the Army Order clearly shows that physical casualty are those which occur in both non-operational or operational areas even when there is no fighting casualties and it has been classified in the various categories as are detailed in clause (a) to (d) therein. As far as

Battle Casualty is concerned, in clause 4 Battle Casualties are those casualties or injuries sustained in action against enemy forces or whilst repelling enemy air attacks and the four categories of these casualties are classified in clause a, b, c and d and an operational area is defined in clause 6. Clause 4 and clause 6 of the Army Order are reproduced here as under:-

“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

xxxx xxxx xxxx

6. Operational Area:-

Any geographical area occupied by a field force ordered to participate in specific operations/active hostilities against enemy or insurgents. It will include all the areas within which operations are intended to be conducted as well as the locations of its integral, logistical and administrative installations providing support to the field force.”

12. A reading of these definitions along with circumstances specified in Appendix ‘A’, i.e., circumstances for classifying

casualties as battle or physical casualties we find that applicant claims that the casualty of her husband should be classified as Battle Casualty in view of the provisions of clause 1(d) of Appendix-A which reads as under:-

“(d) Accidental injuries and deaths which occur in action in an operational area.”

13. A perusal of the aforesaid indicates that accidental injury and death which occur in action in operational area can only be classified as Battle Casualty. That apart certain situations which occur when even not in action but are accidental injuries not sustained in action are classified in clause 1(e) which reads as under:-

“(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, notwithstanding 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.”

The casualty suffered by Hav C. B. Yadav which resulted in his death will not come in any of these categories. That being

so, as far as prayer made for classifying the death of applicant's husband and accident which resulted in his death as Battle Casualty is concerned, we are of the considered view that the same is not permissible as it does not fall within the category prescribed.

14. However, for the purpose of grant of ex gratia benefit we find from the policy dated 22nd September, 1998 laid down in this regard, the Government of India after due approval from the Hon'ble President decided that families of defence personnel who died in uniform in performance of their bona fide military duties shall be paid ex gratia of lump sum compensation in the eventualities detailed in clause a, b and c of the table provided therein and the table reads as under:-

(a)	Death occurring due to accident in the course of performance of duties	Rs. 5.00 lakhs
(b)	Death occurring in the course of performance of duties attributable to acts of violence by terrorists, anti-social elements etc	Rs. 5.00 lakhs
(c)	Death occurring during (i) enemy action in international war border skirmishes and (ii) action against militants, terrorists, extremists etc.	Rs. 7.5 lakhs

A perusal of the aforesaid would clearly show that death of applicant's husband arose due to accident during the course of performance of his duty as the certificate issued by the competent authority and the documents available on record clearly indicate that the death and accident of Late Hav/Clerk Chander Bhan Yadav has been declared as arising out of and attributable to military service, the same is clear from a perusal of the documents brought on record not only by the applicant but also by the respondents themselves. Once the competent authority has held the accident while on duty, it has to be held as attributable to military service.

15. In the statement prepared by the competent authority for the purpose of granting ex gratia relief due to the fire that occurred at 12th December, 2000 vide annexure A-11 dated 22nd May, 2001, the statement indicates the proposal and justification as to why the individual should be granted ex gratia on account of accident and in para 2-3 it is clearly mentioned as under:-

“

PEOPOSAL

2. It is proposed that ex-gratia payment to the next of kin (NOK) of No 6377541L Hav/Clk (GD/SD) CB Yadav namely Smt Susheela Yadav be made in terms of Govt of India, Min of Def letter No 20(1)/98/D (Pay/Services) dated 22 Sep 1998 as the demise of individual occurred due to fire accident while on duty.

JUSTIFICATION

3. No 6377541L Hav/Clk (GD/SD) CB Yadav was serving in HQ Inf Bde, deployed in field, HAA since 10 Nov 2000. In a fire that broke out around 0145 on 12 Dec 2000, late Hav/Clk (GD/SD) CB Yadav died due to Hypoxic lung injury which led to respiratory and Cardiac effort failure. The NOK of the individual Smt Susheela Yadav is entitled to ex-gratia payment of Rs. 5,00,000 (Rupees Five Lakh only) in terms of Govt of India, Ministry of Defence letter 20(1)/98/D (Pay/Services) dated 22 Sep 1998.”

A perusal of the aforesaid clearly shows that the Government of India, Ministry of Defence vide letter dated 22nd September, 1998 has clearly held that the demise of Late Hav C. B. Yadav occurred due to fire accident while on duty. Once the employee is admitted to have been died while on duty and he is recommended for grant of ex gratia as the accident can be held to be attributable to military service while on duty.

16. Accordingly, we find that even though the casualty which resulted the death of applicant's husband cannot be classified as Battle Casualty, it can surely be classified as death which occurred on duty and, therefore, attributable to military service and the applicant is entitled to the lump sum compensation of Rs. 5 Lacs. Even though we were told that the amount of compensation has been increased to Rs. 10 Lacs prospectively with effect from 01st January, 2006 as per

policy dated 03rd November, 2009, we find that for the incident that took place in 1997-1998 the said circular may not apply and enhanced amount of Rs. 10 Lacs cannot be granted to the applicant.

17. As far as grant of compassionate appointment to the applicant's son is concerned, we find that at that point of time the claim was rejected on ground of non-availability of quota for the state of Rajasthan by the Army Headquarter and also with regard to age of the applicant's son. This happened way back more than 20 years back and by now the entire situation would have been changed. That being so in the matter of granting compassionate appointment under the Welfare Measures as contained in annexure A-38, case of the applicant's son, if the applicant and her son are still interested may be processed and decided in accordance to the provisions contained in clause 2 of the said policy pertaining to grant of compassionate appointment of dependants which includes members of the armed forces personnel.

18. It is directed that in case the applicant or her son are still interested for grant of compassionate appointment, they may file an application before the competent authority within a period of three months and on the same being done the

competent authority may process it in accordance of the rules and policies applicable and take a decision within three months thereafter.

19. As far as grant of Liberalised Family Pension is concerned, we have already recorded findings to the effect that the casualty of the applicant's husband cannot be classified as Battle Casualty for the reason discussed hereinabove and once the casualty does not come within the category of Battle Casualty, the applicant is only entitled to Special Family Pension as death of her husband arose while on duty and is held attributable or aggravated by military service which has already been granted to her and, therefore, Liberalised Family Pension cannot be granted to her. To that extent, the claim stands rejected. As far as prayer made for grant of LPG gas dealership is concerned the statement has been made by the learned counsel for the applicant that the applicant is no more interested for the aforesaid relief and, therefore, we are not going into the said issue.

20. Keeping in view the aforesaid, this application is allowed in part. The impugned order dated 14.09.2009 rejecting the claim of the applicant and refusing the grant of ex gratia of Rs. 5 Lacs is disposed of to the extent as indicated

hereinabove. We direct for grant of ex gratia which has not been paid to her only on account of her claim being rejected by the pension paying authority, we direct this amount shall carry interest @ 8% per annum from the date of death of applicant's husband till its payment, this be paid to the applicant within two months from the date of receipt of this order.

21. The applicant's case for her son's compassionate appointment be also processed as brought out in Para 18 hereinabove.

22. MA 15/2017 seeking condonation of delay in filing the OA already stands disposed of vide order dated 01.02.2023, no further orders on this application are, therefore, required.

23. No order as to costs.

Pronounced in open Court on this 12 day of November, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

Priya