

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

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OA 822/2019

Sunajhari Devi W/O

Late Nb Sub Satendra Yadav

..... Applicant

Versus

Union of India & Ors.

..... Respondents

For Applicant : Mr. Indra Sen Singh, Advocate

For Respondents : Mr. Satya Ranjan Swain, Advocate for

R 1-4

Mr. Sanjay Jain, Advocate for R-5

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER

29.02.2024

Vide our detailed order of even date, we have allowed the main OA No. 822 /2019. Faced with this situation, learned counsel for the respondents makes an oral prayer for grant of leave for impugning the order to the Hon'ble Supreme Court in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007.

After hearing learned counsel for the respondents and going through our order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order, therefore prayer for grant of leave to appeal stands dismissed.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN C.P. MOHANTY]
MEMBER (A)

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**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)**

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, and aggrieved by the non-grant of the Liberalized Family Pension, the applicant, widow of Late Nb Sub Satendra Yadav¹ has approached this Tribunal seeking grant of the Liberalised Family Pension and consequential benefits including Rs. 10 Lakh as Ex-Gratia Payment.

2. The deceased soldier was enrolled in the Indian Army on 30.04.1984. The facts not under contention specify that the deceased soldier was employed as Platoon Commander of the Charlie Company deployed at Forward Post Black Rock, and on 27.03.2008, after execution of Operation Sadbhavana-X at Vill: Gabra (J&K), vehicle carrying the deceased soldier and nine other

¹ Hereinafter referred to as "Deceased Soldier"
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Army personnel, fell into a nallah approx 100 metres deep on operation track Niti-Geeta-Black Rock in Counter Insurgency, Tangdhar Sector (J&K), wherein the deceased soldier, a JCO laid down his life.

3. The death of the deceased soldier was declared as 'Battle Casualty' and the Battle casualty Certificate dated 28.03.2008 was issued by the HQ 15 Corps, and subsequently, the Part-II Order was also published vide Order No. 1/0015/001/2008 dated 21.05.2008. On receipt of family pension documents, Liberalized Family Pension claim in respect of the applicant along with the Statement of Case for grant of ex-gratia compensation were submitted to Principal Controller of Defence Account (Pension), Allahabad vide Records The Bihar Regiment letter no. JC-559833/I/FP/58/NE dated 24.05.2008, but the claim was returned by the PCDA (Pension) with remarks that, *"As the cause of death, in both the cases due to MT accident in the performance of bonafide official duty in OP area and therefore the same may be regarded as Physical Casualty as per Paragraph 3 of Army Order 1/2003/MP and Paragraph 2 of Appendix 'A' to Army Order 1/2003/MP, instead of Battle Casualty as proposed, as the cause of death was not due to any action/fighting with enemy/terrorists."*

4. It is the case of the applicant that the applicant has been granted only 'Special Family Pension' whereas she is entitled to

receive 'Liberalised Family Pension', since the death of the applicant's husband falls under Category 'E' as enshrined in Para 4(i) of the Govt of India Policy vide Notification bearing no. 1(2)/97/D(Pen-C) dated 31.01.2001.

5. Per Contra, Respondents submit to the effect that the PCDA has rejected the claim of the applicant on the ground that the death of the deceased soldier doesn't qualify as 'Battle Casualty' and hence, the applicant is not entitled to 'Liberalized Family Pension'.

6. We have heard the contending parties and perused the pleadings and additional documents submitted by the respondents and the case laws on the subject. Now, the moot issue that needs to be interpreted in the present case is whether the injury of the applicant is to be classified as Battle Casualty or Physical Casualty by appropriate interpretation of the impugned policy letter.

7. We consider it appropriate, before proceeding to adjudicate the claim of the applicant, to place the context of rule position on record. Therefore, the relevant extracts of para 1(g) of Appendix A to Army Order 1/2003, which governs the policy guidelines for classification of injury as Battle Casualty is reproduced hereunder:

"1(g): Casualty occurring while operating on the international border or LoC due to natural calamities and illness caused by climatic conditions."

8. Before dealing with the rival submissions, it would be

appropriate to refer to Para 3(d) of the aforesaid AO wherein under the heading of Miscellaneous Aspects, it is specified as under:-

"3(d): Any casualty occurring during deployment/mobilization of troops, for taking part in war or war like operations, will be treated as battle casualty."

9. As far as grant of 'Liberalized Family Pension' is concerned, we find it pertinent to refer to MoD letter No. 1(2)/97/D (Pen-C) dated 31.01.2001, which provides that liberalised family pension will be eligible to members of the family of soldiers in case of death of the Armed Forces Personnel under circumstances mentioned in category D & E of the aforesaid letter, the contents of which are reproduced herein:

"Category D - Death or disability due to acts of violence/attack by terrorists, anti social elements, etc whether on duty other than operational duty even when not on duty. Bomb blasts in public places or transport, indiscriminate shooting incidents in public, etc. would be covered under this category, besides death/disability occurring while employed in aid of civil power in dealing with natural calamities.

Category E - Death or disability arising as a result of:-

(a) Enemy action in international war.

(b) Action during deployment with a person keeping mission abroad.

(c) Border skirmishes.

(d) During laying or clearance of mines including enemy mines as also minesweeping operations.

(e) On account of accidental explosions of mines while laying operationary oriented mine-field or lifting or negotiating mine field laid by the enemy or own forces in operational areas international borders or the line of control.

(f) War like situations, including cases which are attributable to/aggravated by:-

(i) Extremist acts, exploding mines etc, while on way to operational area.

- (ii) Battle inoculation training exercises or demonstration with live ammunition.*
- (iii) Kidnapping by extremists while on operational duty.*
- (g) An act of violence/attack by extremists, anti-social elements etc.*
- (h) Action against extremists, antisocial elements etc.*
- (i) Death/disability while employed in the aid of civil power in quelling agitation, riots or revolt by demonstrators will be covered under this category.*
- (j) Operations specially notified by the Government from time to time."*

10. Before adjudication, it is pertinent to refer to the decision of the competent authority i.e. Additional Directorate General of Manpower (Policy & Planning)/MP-5 of Adjutant General's Branch of Integrated HQ, Ministry of Defence (Army) vide letter date 13.03.2019, certifying the death of the deceased soldier as 'Battle Casualty', and the same is reproduced herein:

Additional Directorate General of
Manpower (Policy & Planning)/MP-5(d)
Adjutant General's Branch
Integrated HQs MoD (Army)
West Block III, R.K. Puram
New Delhi-110066

12822/AG/MP-5(D)/Fatal/JC559833

13 Mar 2019

Records The BIHAR Regt
PIN-908765
c/o 56 APO

ISSUE OF BATTLE CASUALTY CERT

1. Ref your letter No. JC559833/FP/NE dt 09 Marc 2019.
2. Battle cas cert in r/o JC 559833K Nb Sub (Late) Satyendra Yadav of 16 BIHAR Regt is fwd herewith for your further action. You are advised to h/o one original copy of the same

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to the widow of the concerned JCO and maintain a record of the same at your end.

3. For info.

Sd/-
Nitin
Lt Col
AAG MP 5(d)

Copy to:-
16 BIHAR
PIN-910516
c/o 56 APO

- For info along with copy of BC in r/o above deceased

TO WHOM IT MAY CONCERN

It is certified that Name of JC 559833K Nb Sub (Late) Satyendra Yadav of 16 BIHAR died on 27 Mar 2008 due to military vehicle fell down into a deep Nallah during execution of Op Sadbhavna-X project in "OP RAKSHAK" is existing in Battle Casualty Database of this HQ provided by Records The BIHAR Regt.

C.F. No. 12822/AG/MP5(d)/Fatal BC/JC 559833K
Place: New Delhi
Dated: 13 Mar 2019

Maj
OIC Legal Cell
For OIC Records

11. It is important to note that in the case of Lt Col Sunil Datt Vs UoI & Ors², this Tribunal had accorded Battle Casualty status to the applicant who had sustained accidental injuries while he was in the process of performing assigned military duties in an operational area (Op Parakram) which was a near war like situation.

12. It would be appropriate for us to refer to the judgement of Hon'ble Delhi High Court in Maj AK Suhag Vs UOI and others,³ wherein the officer was ordered to report for briefing while

² OA No. 54/2016, Armed Forces Tribunal, Regional Bench Kolkata

³ WP(C) 4488/2012 decided on 21.02.2013

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"OPERATION RAKSHAK-III" was on and met with an accident leaving him with 100% disability. He was later discharged from service. The Armed Forces Tribunal rejected his case holding that the petitioner's case falls under category C (accidents while travelling on duty in Government vehicles or public/private transport) and not under category E (operations specially notified by the Government from time to time). The Hon'ble High Court observed as given below:-

"11. It is apparent from the above materials that the petitioner was deployed in Kargil and, according to his unit's communication dated 6-7-2007, was the Transport commander. He was asked to report for a briefing. This was evidently when OPERATION RAKSHAK - III was on. Whilst in transit, his jeep met with an accident, and he suffered serious head injury, besides other injuries. There seems to be no doubt in this Court's mind that the injuries were classifiable as falling under category E(j) i.e during "Operations specially notified by the Government from time to time."

12. What persuaded the Tribunal to hold otherwise is that the petitioner's injuries were not incurred during actual operations. In doing so, the Tribunal restricted the eventualities in category-E (j) to actual operations, i.e. injuries incurred during military combat or such like situations or as a result of explosion of mines etc. This would appear from its observation that only if someone is victim to extremism or any other contingency as a result of injury, would it be attributable to operation. With great respect, such a narrow interpretation of what is otherwise a widely phrased condition, is unwarranted. This would necessarily imply that those who are on the way - like the petitioner, in an operation-notified area and are intrinsically connected with the success of such operations cannot ever receive war-injury pension even though their aid and assistance is essential and perhaps crucial for its success. The classification of the residual head, i.e. "operations specially notified by the government from time to time" has to be read along with the broad objective of the policy, i.e. - those who imperil themselves - either directly or indirectly - and are in the line of fire during the operations, would be covered if the

injuries occur in that area or in the notified area of operation. This is also apparent from the situations covered in Clause(g) and (h) which nowhere deal with battle or war. In fact, clause (h) even covers injuries and death which occurs while personnel are "employed" in the aid of civil power in quelling agitation, riots or revolt by demonstrators" This means that if someone is travelling in the thick of such unrest and the accident results in death or injury, his next of kin would be entitled to war-pension whereas those who actually suffer similar injuries in an area where operations are notified, would not be entitled to such war injury pension."

13. We find resonance in the opinion of the *Hon'ble High Court in Maj Suhag (supra)* that this Court cannot resist observing that when individuals place their lives on peril in the line of duty, the sacrifices that they are called upon to make cannot ever be lost sight of through a process of abstract rationalisation as appears to have prevailed with the PCDA. *We are of the opinion that soldiers who imperil themselves in border areas in the vicinity of the LC, LoC or the international border have to be treated differentially and merely giving their death/disability attributability to military service is a dis-service to these brave men besides being an inadequate recompense for soldiers who are willing to lay down their life in the service of the nation. Giving mere attributability to military service would be an inadequate recompense in such cases.* We, therefore, opine that a positive interpretation of the existing rules and regulations needs to be taken. .

14. *It is disheartening to observe that the soldier serving for this country are laying down their lives in action, and PCDA as a pension disbursing authority is acting in a mechanical manner denying the benefit to the soldiers attaining supreme sacrifice, by applying the restricted interpretation of the beneficial policies in such a manner so as to be detrimental to the deceased soldier, specifically wherein a statement of case has been taken up with them, by the competent authority with a due interpretation and that the PCDA in its role as pension disbursing authority has no authority to overrule the recommendations of the competent authority, which after due application of mind, being aware of the life threatening situations/hard life situations in the Field/Counter Insurgency Operations has made those recommendations.*

15. In view of the aforesaid analysis, and the facts and circumstances of the case, we frame our opinion based on interpretation of the impugned policy letter which classifies a personnel as Battle Casualty, and therefore, we are of considered opinion that the applicant's prayer to classify her husband's death as 'Battle Casualty' is justified and therefore, we direct the Respondents to classify the death of the deceased soldier as "Battle Casualty", and grant Liberalized Family Pension to the applicant added with Ex-Gratia Payment of

Rs. 10 Lakhs along with all consequential benefits from the date of death of the deceased soldier, within 3 months of the date of pronouncement of this judgment failing which the respondents would be liable to pay interest @ 6% p.a. on the arrears due from the date of pronouncement of this judgment.

16. Consequently, the O.A. 822/2019 is allowed.

17. Pending application(s), if any, also stands disposed of.

18. No order as to costs.

Pronounced in the open Court on this day of 29 February 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

(LT GEN C.P MOHANTY)
MEMBER (A)

Ps
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