

COURT No.1  
ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

OA 958/2017

Mrs. Sushmita Pandey ... Applicant  
Versus  
Union of India and Ors. ... Respondents

For Applicant : Mr. Aditya Singh Puar, Advocate with  
Ms. Shalini Puar, Advocate  
For Respondents : Mr. Shyam Narayan, Advocate

CORAM

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 Liberalised Family Pension, the applicant, widow of Major Neeraj Kumar Pandey<sup>1</sup> has approached this Tribunal seeking grant of the Liberalised Family Pension and consequential benefits including Ex-Gratia Lump Sum Compensation.

2. The deceased officer was commissioned in the Indian Army on 07.06.2008. The facts not under contention specify that the deceased officer died on 17.03.2016 due to cardiac arrest while performing operational task during validation

---

<sup>1</sup> Hereinafter referred to as "Deceased officer"

exercise in General Area Chipra near Chaglohagan District Anjaw (Arunachal Pradesh). The death of the officer was classified as 'Battle Casualty' vide AG Branch Letter No.12812/AG/IC-70763/MP-5(D) dated 06.05.2010. On receipt of family pension documents, Liberalised 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 but the claim was returned by the PCDA (Pension) with remarks that, *"Keeping in view the above it has been observed that the circumstances of death of above named deceased officer who dies on 17.03.2016 due to Cardiac Arrest while performing operational task during validation exercise in general Chipra near Chaglohagam Distt- Anjaw (Arunachal Pradesh), covers under Category-B of Para 4.1 of GOI MoD letter dated 31/01/2001 since the death of the officer occurred due to continued exposure to a hostile work environment, subject to extreme weather conditions or occupational hazards. Accordingly, special family pension has been granted w.e.f. 18/03/2016 vide PPO No. M/F/1032/2016 to Mrs Sushmita Pandey; widow of deceased officer."*

3. 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.

4. 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 'Liberalised Family Pension'.

5. 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.

6. 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.”*

7. 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.”*

8. As far as grant of ‘Liberalised 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 a 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.”*

9. Later vide letter dated 03.02.2011, the following causes of death were also included under Category D and E, to the effect:

*“Under Category ‘D’*

- (i) Unintentional killing by own troops during the course of duty in an operational area.*

(ii) *Electrocution/attacks by wild animals and snake bite/drowning during course of action in counter insurgency/war.*

(iii) *Accidental death/injury sustained due to natural calamities such as flood, avalanches, landslides, cyclone, fire and lightning or drowning in river while performing operational duties/movement in action against enemy forces and armed hostilities in operational area to include deployment on international border of line of control.*

Under Category 'E'

(i) *Death or disability arising as a result of poisoning of water by enemy agents while deployed in an operational area in active hostilities.*

*2. Cases already settled prior to the date of issue of this letter will not be reopened."*

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(d) of Adjutant General's Branch of Integrated HQ, Ministry of Defence (Army) vide letter date 06.05.2016, 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

06 May 2016

CDA(O)  
Golibar Maidan, Pune-01

Officer in Charge  
G-1 (Military Section)  
O/o the PCDA (Pension)  
Draupadighat, Allahabad-211014

FATAL CASE:IC-70763N MAJ NEERAJ KUMAR PANDEY

*The following casualty is clarified a Battle Casualty :-*

OA 958/2017  
Mrs Sushmita Pandey

(a) Personal No, Rank & Name : IC-70763N Maj Neeraj Kumar Pandey  
(b) Regt/Corps : SIGNALS  
(c) Unit : 36 LIC FW Coy  
(d) Operation : NA  
(e) Classification of Casualty : Battle Casualty (Fatal)  
(f) CDA (O) Account No : 14/242/211447F  
(g) Nature Date and Casualty : The officer died on 17 Mar 2016 due to Cardiac Arrest while performing Operational task during validation Exercise in general area Chipra near Chaglohagam Distt- Anjaw (Arunachal Pradesh)

(h) Auth for Battle Casualty : Para 1(g) of Appx A to AO 01/2003/MP

(i) Name, Relationship and Address of NOK : Smt Sushmita Pandey (Wife).

Permanent address

Village & Post Office : Tiwaripur  
Tehsil : Gorakhpur  
Distt : Gorakhpur  
State : Uttar Pradesh  
PIN : 273001

Sd/-xxxxxx  
Lt Col  
Officer Commanding  
36 LIC FW Coy "

11. At this moment, we find that the identical facts as in the instant case have been dealt by the Hon'ble Supreme Court in Kanchan Dua Vs. UoI (CA No 7459-7460 of 2010) wherein dealing with the grant of Liberalised Family Pension, it has observed to the effect :

*"5. It will be relevant to refer to the relevant Instructions to understand the scope of the modifications made to the pension Rules/Regulations governing the Armed Forces personnel from time to time. By a letter dated 24.02.1972, the Chiefs of the Army, Navy and the Air Staff were informed about modifications to the then existing Rules and orders relating to the grant of special family pensionary awards and disability pension.*

*Liberalised Family Pension was announced in favour of the families of the Armed Forces personnel killed in action or to those who have been disabled on account of injuries sustained in the operations against Pakistan, commencing from 03.12.1971. The awards sanctioned therein were also made applicable to personnel who were killed in action or were disabled on account of injuries sustained in the international wars of 1965 (including Kutch and Kargil Operations), 1962 and 1947-1948 (Kashmir Operations), as well as the Goa and Hyderabad Operations. The Liberalised Family Pension was further extended to personnel who died or were disabled as a result of fighting in war-like Operations or border skirmishes either with Pakistan on the ceasefire line or any other country and those who fought against armed hostiles like Nagas and Mizos and during fighting in service with peace keeping missions abroad on or after 15th August, 1947. A decision was taken pursuant to the recommendations of the 4th Central Pay Commission regarding pensionary benefits to the Armed Forces personnel on 30.10.1987. Part IV of the letter dated 30th October, 1987 deals with Liberalized Pensionary Awards (battle casualty and such other cases as may be specially notified by the Government). The Government of India issued Instructions on 31.01.2001 for implementation of the recommendations of the 5th Central Pay Commission regarding Liberalised Family Pension for the Armed Forces personnel retiring, invaliding or dying in harness on or after 01.01.1996. There was a broad division of cases arising out of attributable/aggravated causes into five categories. Operations specially notified by the Government from time to time were included in Category 'E'. The eligible member of the family of the Armed Forces personnel falling in Category 'E' was entitled to Liberalised Family Pension in case of his death or disability. As the contention of the Appellant is that her husband was part of Operation Rakshak which was notified by the Government of India, it is necessary to refer to the notification dated 07.05.1990 for assessing her eligibility to Liberalised Family Pension. Certain concessions were made to the Armed Forces personnel who were deployed in Operation Rakshak by the said notification. Apart from others, Liberalized Pensionary*

*Awards, subject to the conditions laid down in para 1 of the letter dated 24.02.1972 were made applicable to personnel in Operation Rakshak. It is important to note that troops who were engaged in active operations against militants were held to be entitled to the field service concessions which were applicable to the location. In addition, those troops which were engaged in active operation against militants were held to be entitled to Liberalized Pensionary Awards, subject to the conditions laid down in the letter dated 24.02.1972.*

*6. Mrs. V. Mohana, learned Senior Counsel was appointed as Amicus Curiae to appear for the Appellant. She submitted that all the Army personnel working in the State of Jammu and Kashmir were declared to be on active service as per the notification dated 05.09.1977. She relied upon Section 3 and 9 of the Army Act, 1950 to submit that the Appellant's husband was in active service at the time of his death. Though the Appellant's husband was working as Commandant of the Animal Transport Battalion, his death due to sudden cardiac failure took place when he was in active service. She emphasized that the Appellant's husband died during his service in Operation Rakshak which was a notified Operation mentioned in Category 'E' of para 4.1 of the Instructions dated 30.01.2001. She submitted that according to the Instructions that were issued on 31.01.2001, the Appellant is entitled to Liberalised Family Pension as per para 6 therein. She relied upon judgments of the High Court of Delhi, High Court of Jammu and Kashmir and the High Court of Punjab and Haryana in support of her submission that the family members of the Armed Forces personnel who died during their service in the notified Operations are entitled to Liberalised Family Pension.*

*7. Ms. Madhavi Divan, learned Additional Solicitor General contended that Liberalised Family Pension is associated exclusively with pension granted in respect of death or injury caused in live action. Placing reliance on a judgment of this Court in Brij Mohan Lal v. Union of India, she submitted that grant of Liberalised Family Pension for death by natural causes would diminish the sheen of sacrifice of the servicemen who were killed in*

*live action. The death of the Appellant's husband due to sudden cardiac failure would fall under Category 'B' of the Instructions issued on 31.01.2001 and the applicable Special Family Pension was rightly granted to the Appellant. The very genesis of the Liberalised Family Pension highlighted by the learned Additional Solicitor General was through a communication dated 24.02.1972 which was issued for the purpose of acknowledging the sacrifice of persons who were killed in live action.*

*8. The basis of the claim of the Appellant for Liberalised Family Pension flows from the Instructions dated 31.01.2001. There is no doubt that Operation Rakshak is a notified Operation falling under Clause 9 of Category 'E' thereof. There is also no dispute that those covered in Category 'E' are entitled for Liberalised Family Pension. However, the notification issued by the Government extending concessions to the Armed Forces personnel deployed in Operation Rakshak provides that Liberalized Pensionary Awards are extended only to those troops in active Operations against militants in terms of para I of the letter dated 24.02.1972. A bare perusal of para I of letter dated 24.02.1972 would make it clear that only personnel killed or disabled on account of injuries in action are eligible for Liberalized Pensionary Awards. Therefore, we are in agreement with the Respondent that the Appellant is not entitled for Liberalised Family Pension.*

*9. We have examined the judgments of the High Courts cited by Mrs. V. Mohana, learned Amicus Curiae in Manju Tewari v. Union of India, Preeti Sidhu v. Union of India, K.J.S. Buttar v. Union of India, Major Arvind Kumar Suhag v. Union of India, J. P Bhardwaj v. Union of India, Radhika Devi v. Union of India and Pushpa Devi v. State of Haryana. Though relief of Liberalised Family Pension was granted by the High Courts in those judgments, the High Courts have not examined the letter dated 24.02.1972 and the notification dated 07.05.1990. Therefore, no relief can be given to the appellant on the basis of the said judgments. The judgments relied upon by Mrs. V. Mohana, leaned Amicus Curiae have to be*

*considered to have been determined on the particular facts of those cases.*

*10. Mrs. Mohana relied upon the recommendations of a Committee of Experts, appointed by the Ministry of Defence, Government of India to review matters pertaining to service and pension. Certain recommendations made in the said report are in favour of the Appellant. It was observed in the said report that persons disabled or dying in an Operational area due to illnesses induced by harsh climatic conditions of such an area or due to an accident while patrolling in such an area is no less important a sacrifice than another dying by a bullet in the same locale. After obtaining Instructions, the learned Additional Solicitor General submitted a note according to which the said recommendation of the Committee was not accepted by the Government. Hence, we cannot rule in favour of the Appellant on the basis of the recommendations of the Committee of Experts.”*

12. Similarly, relying upon the aforesaid judgment, Hon'ble Supreme Court in Smt Radhika Devi Vs. UOI & Ors (CA 7525-7526 of 2019) dealing with the issue of grant of Liberalised Family Pension to a soldier who died due to Ischemic Heart Disease while being posted at International Border in Operation Parakram, held to the effect :

*“2. Naib Subedar Umed Singh was enrolled in the Army on 13.03.1976. On 19.12.2001, he was posted at the International Border in Operation Parakram. While taking part in the fire fighting drill activities at about 4.00 pm on 21.05.2002, he collapsed and was declared dead. According to the death certificate, he died due to Ischemic heart disease leading to cardiac arrhythmia (ventricular fibrillation).*

*3. The Respondents granted Special Family Pension to the Appellant. Unsatisfied with the grant of Special Family*

*Pension instead of the Liberalised Family Pension, the Appellant filed O.A. No.167 of 2011 before the Armed Forces Tribunal, Principal Branch, New Delhi (for short "the Tribunal"). The Tribunal dismissed the O.A. on 23.11.2011, holding that the Appellant was not entitled to either Liberalised Family Pension or ex-gratia payment. Aggrieved by the order of the Tribunal, the Appellant filed a Writ Petition in the High Court of Delhi, which was allowed. The High Court found that the Appellant was entitled to Liberalised Family Pension and ex-gratia payment of Rs.5 lakhs. The Appellant challenged the judgment of the High Court to the extent that ex-gratia payment of Rs.7.5 lakhs was not awarded in her favour. The Respondent, Union of India has also filed an appeal questioning the judgment of the High Court in so far as it relates to the declaration that the Appellant is entitled to the Liberalised Family Pension and the award of Rs.5 lakhs as ex-gratia amount.*

*4. The claim of Liberalised Family Pension by the Appellant is on the basis of the Instructions issued by the Government of India on 31.01.2001. As per the said Instructions, a member of the family of a deceased Armed Forces Personnel whilst employed in an operation notified by the Government of India would be entitled to Liberalised Family Pension. In *Kanchan Dua v. Union of India & Anr.* 9, we have discussed in detail the modifications issued to the rules and regulations granting beneficiary awards to the family members of the Armed Forces Personnel who died in action by the letter dated 24.02.1972. We have also carefully examined the scope of the entitlement of Liberalised Family Pension in case of the death of persons employed in the operations notified by the Government of India. After a close scrutiny of the relevant circulars, we have held that Liberalised Family Pension in accordance with the Instructions issued by the Government of India is payable only to the family members of Armed Forces personnel who have died in action.*

*5. In view of the death of the Appellant due to cardiac failure, the Appellant is not entitled to Liberalised Family Pension. In so far as the payment of ex-gratia*

*amount/compensation is concerned, we are convinced that the Appellant is entitled to Rs.5 lakhs as ex-gratia compensation in accordance with the Instructions dated 22.09.1998. The special benefits that were granted by the Government of India for ex-gratia payment is payable in all cases of death and disability in service to the family members of the Armed Forces Personnel who died in harness. As the death of the Appellant's husband was not during enemy action in international war or border skirmishes and action against militants, terrorists, extremists etc., the Appellant is not entitled to Rs.7.5 Lakhs as claimed by her.*

*6. We set aside the judgment of the High Court declaring that the Appellant is entitled for Liberalised Family Pension. She is entitled only for the Special Family Pension. Further, we uphold the judgment of the High Court that the Appellant is entitled for ex-gratia payment of Rs.5 lakhs. With the above observations, the Appeals are disposed of, accordingly."*

13. On a perusal of a aforesaid judgments we find that the circumstances of death of the officer in the instant case are identical to those elaborated in aforesaid cases, and therefore, keeping in view the above facts, we are of the opinion that the while the officer is indeed a 'Battle Casualty' as per para 1(g) of Appendix A to Army Order 1/2003, his wife i.e. applicant is not eligible for grant of Liberalised Family Pension, in accordance with rules, as the policies for conferring 'Battle Casualty' status and that of grant of 'Liberalised Family Pension' is purely different and that her case does not falls within the

parameters laid down by MoD letter No. 1(2)/97/D (Pen-C) dated 31.01.2001.

14. As far grant of ex-gratia Lump-sum compensation is concerned, we find that the husband of the applicant passed away on duty while performing operational duties near the Line of Control on account of extreme weather conditions and as such applicant's case qualifies under Category (d) of Govt of India, MoD letter dated 02.11.2016 reproduced as under :-

*No. 20(2)/2016/D(Pay/Services)  
Government of India  
Ministry of Defence  
D(Pay/Services)*

*New Delhi, 2nd November, 2016*

*To  
The Chief of Army Staff  
The Chief of Air Staff  
The Chief of Naval Staff*

*Subject: Ex-gratia lump sum compensation - Recommendations of the Seventh Central Pay Commission*

*Sir,*

*I am directed to refer to this Ministry's letter No. 20(1)/98/D(Pay/Services) dated 22.09.1998 as amended vide letter of even number dated 12.04.1999, 03.08.1999, 19.05.2000, 21.10.2008 and letter No. 20(5)/2009/D (Pay/Services) dated 4.6.2010 on the above subject and to say that in pursuance of Government's decision on the recommendations of the Seventh Central Pay Commission, the existing rate of ex-gratia lump sum compensation to the next of kin of the deceased Defence Forces Personnel is revised as follows:*

<i>S.No</i>	<i>Circumstances</i>	<i>Rates (in Rs)</i>
<i>(a)</i>	<i>Death occurring due to accidents in the course of duties</i>	<i>25 Lakhs</i>
<i>(b)</i>	<i>Death in the course of duties attributable to acts of violence by terrorist, anti-social elements etc.</i>	<i>25 Lakhs</i>
<i>(c)</i>	<i>Death occurring during (i) enemy action in international war</i>	<i>35 Lakhs</i>

OA 958/2017  
Mrs Sushmita Pandey

Page 14 of 16

	<i>or border skirmishes and (ii) action against militants, terrorist, extremists, separatists etc.</i>	
(d)	<i>Death occurring while on duty in the specified high altitude, inaccessible border posts, etc. on account of natural disasters, extreme weather conditions</i>	35 Lakhs
(e)	<i>Death occurring during enemy action in international war or war like engagements, which are specifically notified by Ministry of defence and death occurring during evacuation of Indian National from a war torn zone in foreign country."</i>	45 Lakhs

2. The letter takes effect from 01.01.2016.

3. The other terms and conditions contained in the Ministry's letter dated 22.09.1998 remain unchanged.

4. This issues with the concurrence of the Finance Division of this Ministry vide UO No. (8)1/2016-AG(414-PA) dated 27.10.2016.

*Yours faithfully*  
*(xxx xxx xxx)*

*Under Secretary to the Government of India"*

15. In light of the aforesaid letter, we find that the date of this letter taking effect is 01.01.2016, while the deceased officer died on 17.03.2016, which means the letter was in force at the time of death of the officer. Therefore, we are of the opinion that while the applicant is not entitled for a Liberalised Family Pension, she is still entitled for grant of ex-gratia lump sum compensation of Rs 35 Lacs, which if not granted till date, shall be granted to the applicant within three months from the date of pronouncement of this judgement.

20. Consequently, the OA 958/2017 is disposed of in terms of aforesaid directions.

16. No order as to costs.

17. Miscellaneous applications, if any, pending stand closed.

Pronounced in the open Court on 9 day of Aug, 2024.

---

(JUSTICE RAJENDRA MENON)  
CHAIRPERSON

---

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

Akc/Ps