

**COURT No.3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

OA No.1603/2018

**Smt. Raj Kumari
Versus
Union of India and Ors.**

... **Applicant**
... **Respondents**

For Applicant : Mr. S.S. Pandey, Advocate
For Respondents : Mr. Sudhir Kumar, Advocate

CORAM

**HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)**

ORDER

Brief Facts

The applicant is the widow of Late Naik Ram Avtar, SM, (No.2688409L) who was enrolled in the GRENADIERS Regiment on 28.04.1995. After completion of military training, while serving with 14 GRENADIERS, the applicant's husband (*hereinafter called individual*) was detailed for participating in flood relief operation "**KOSI PRAHAR**" in Bihar (Trivenigani) on 31.08.2008. Due to the continued exposure to adverse unhygienic condition caused by the flood, the individual contracted illness and evacuated to Military Hospital Danapur on 13.09.2008 from the operational site and on 14.09.2008, the

individual was declared dead due to "**Acute Respiratory Distress Syndrome Septicemia**" by the medical specialist, Military Hospital, Danapur. The total service rendered by the individual was 13 years 04 months and 17 days including 03 days of non-qualified service.

2. A Court of Inquiry was held under the Army Act/Army Rules opined that the individual was on bonafide military duty "OP Kosi Prahar" (Aid to Civil Authority) and declared that the death of the applicant's husband was "attributable to military service". The casualty was declared as Battle Casualty and published vide GRENADIERS Records Part II Order No. 1/0548/0001/2008 dt. 29.09.2008.

3. The case of the applicant for grant of Liberalised Family Pension and Ex-gratia lump sum compensation processed to PCDA (P), Allahabad on 14.11.2008 was rejected vide letter dt. 21.04.2009 stating that "the cause of death due to illness in performance of duty in bonafide duty in flood relief operation in Bihar instead of accidental death in which is covered under Category 'B' of paragraph 4.1 of Mod Letter No. 1(2)/97/D(Pen-c) dt. 31.01.2001. The ibid facts were communicated to the applicant vide letter dt. 20.05.2009 and thereafter, Special

Family Pension vide PPO F/010172/2009 dt. 27.05.2009 was sanctioned to the applicant wef 15.09.2008.

4. On 04.07.2009, an appeal was filed by the applicant against the rejection of her claim for grant of Liberalized Family Pension. The IHQ of MoD(Army) rejected the appeal filed by the applicant vide letter dt. 31.05.2010. Thereafter, the applicant served a petition on 01.01.2018 through District Sainik & Ardh Sainik Welfare Office, Bhiwani (Haryana) which was suitably replied rejecting the claim of the applicant for grant of Liberalised Family Pension vide letter dt. 16.01.2018. Being aggrieved by the rejection of the claim for grant of Liberalised Family Pension, the applicant had filed this Original Application (OA) praying for the following reliefs:-

- (a) Call for records based on which the Respondents have passed such orders including the impugned order dated 07.05.2011 wherein the Respondents have denied the death benefits otherwise payable in case of Battle Casualty such as Liberalized Family Pension, and other such related financial benefits in favour of the Applicant and thereafter quash all such orders.***
- (b) Direct the Respondents to sanction Liberalized Family Pension to the Applicant wef the date of death of Applicant's husband i.e. 14.09.2008 along with arrears with interest @ 18% per annum.***
- (c) Direct the Respondents to pay the Applicant the benefit of gallantry allowances as payable for Sena Medal conferred after the death of her husband and all other financial benefits including ex gratia as payable by the Respondents and the State Government.***

(d) Pass any other order/orders as deemed appropriate by this Hon'ble Tribunal in the facts and circumstances of the present case.

Arguments by Counsel for the Applicant

5. It is the contention of the applicant that despite being an admitted fact that the death of her husband was declared attributable to military service and classified as Battle Casualty vide certificate issued on 15.10.2008, Special Family Pension was sanctioned to the applicant rejecting the claim of the applicant for grant of Liberalised Family Pension. It is further submitted that on 05.05.2011 a revised PPO dt. 07.04.2011 was issued in favour of the applicant for the payment of monetary allowance for Sena Medal and later on 07.05.2011 impugned order was issued to the applicant stating that Liberalised Family Pension is granted to those widows whose husbands are killed in action in actual war, war like saturation or CI Ops which are declared by Govt. in accordance MoD letter 31.01.2001 (Supra) and the death of the individual does not come under the purview of the ibid letter.

6. Drawing our attention to Army order AO/1/2003, the Learned Counsel for the applicant submitted that the death of the applicant's husband occurred while he was performing bonafide duty in flood relief operation in Bihar, which is a

natural calamity and the death of the applicant be categorized as battle casualty in terms of Para 1(h) which clearly provides that casualty occurring in aid to civil authorities while performing relief operations during natural calamities like flood relief and earthquake. Further, it is urged by the counsel that after being conferred an award of Sena Medal, the applicant is entitled for grant of benefit of Liberalised Family Pension, allowance for gallantry award and ex gratia payment.

Arguments by Counsel for the Respondent

7. Per contra, learned counsel for the Respondents by filing counter affidavit has not disputed the grant of Sena Medal Award to the applicant's husband and also not disputed the death of the applicant's husband being treated as attributable to Military Service. However, they supported the opinion of the PCDA (P) Allahabad and stated that the case of the applicant lies in category 'B' of Government Policy letter dt. 31.01.2001 (supra) because his death had occurred due to illness in performance of duty in bonafide duty in flood relief operation. It is further argued by the counsel that merely declaring a deceased soldier as Battle Casualty never entitled a widow to draw Liberalised Family Pension.

8. The Learned Counsel for the Respondents have brought on record of Para 5.1 of Government of India, Ministry of Defence letter dated 31.01.2001 regarding Special Family Pension and pointed out the updated circumstances covered under category "B" of Para 5.1 of above letter. Hence, the applicant has been granted Special Family Pension based on relevant rules and she is not entitled to claim Liberalised Family Pension.

ANALYSIS

9. We have heard the contending parties and perused the pleadings and documents submitted by the respondents and the case laws on the subject.

10. It is an admitted fact that the husband of the applicant was getting the gallantry allowance for Sena Medal vide PPO No. 217200800467 dt. 14.09.2008. Now, the moot issue that needs to be interpreted in the present case is whether the case of the applicant's husband lies in category 'D' or in category 'E' of Para 4.1 of the Government Policy letter dt. 31.01.2001 (supra) which prescribed the grant of Liberalised Family Pension or in Category 'B' as contended by respondents rejecting the claim of the applicant for grant of Liberalised Family Pension and Lump sum Ex-gratia payment. The categories mentioned in the

aforesaid letter are reproduced herein:-

Category A xxxxxx

Category B

Death or disability due to causes which are accepted as attributable to or aggravate by military service as determined by the competent medical authorities. Diseases contracted because of continued exposure to a hostile work environment, subject to extreme weather conditions or occupational hazards resulting in death or disability would be examples.

Category C xxxxxx

Category D

Death or disability due to acts of violence/attack by terrorists, anti-social elements, etc whether on duty other than operational duty or 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 the 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 peace keeping mission abroad.*
- (c) Border skirmishes.*
- (d) During laying or clearance of mines including enemy mines as also mines sweeping operation.*
- (e) On account of accidental explosions of mines while laying operationally oriented mine-filled or lifting or negotiating minefield laid by enemy or own forces in operational areas near 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 on way to an 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, anti-social elements, etc. Death/disability while employed in the aid of civil power in quelling agitation, riots or revolt by demonstrators will be covered under this*

category.

(i) Operations specially notified by the Government from time to time."

11. In our opinion, the death of applicant's husband lies in category 'D' of the Government policy letter (supra) because his death had admittedly occurred, while he was participating in flood relief operation "**KOSI PRAHAR**" in Bihar (Trivenigani) which is the natural calamity. Due to the continued exposure to adverse unhygienic condition caused by the flood, the individual contracted illness and died. His death does not fall in the category 'B' because he was detailed for participating in flood relief operation "**KOSI PRAHAR**" in Bihar (Trivenigani) on 31.08.2008 which is a notified operation and falls in Category E(i). Moreover, it is also pertinent to mention that Court of Inquiry in this regard was held according to which the death of applicant's husband was declared as Battle Casualty. On that count also, the death of applicant's husband falls in the category of Battle Casualty and accordingly, lies in the category 'D' of Para 4.1 of the aforesaid Government policy letter. The positive declaration of the Court of Inquiry as well as Part II order issued by the authorities declaring the applicant's husband as a 'Battle Casulty cannot be over-turned or rejected by the administrative authorities such as PCDA (P) Allahabad.

The authorities ought to have released the requisite pension in such circumstances.

12. Since the death of the applicant's husband lies in category 'D', so the applicant is entitled to the Liberalized Family Pension as per Para 6.1 of the aforesaid Government policy letter which runs as under :-

"Liberalized Family pension (LFP)

6.1 In case of death of an Armed Forces personnel under the circumstances mentioned in category 'D' & 'E' of Para 4.1 above, the eligible member of the family shall be entitled to Liberalized Family Pension equal to reckonable emoluments last drawn as defined in Para 3.1 above, both for officers and PBOR. Liberalized Family Pension at this rate shall be admissible to the widow in the case of officers and to the nominated heir in the case of PBOR until death or disqualification."

13. As far as grant of ex-gratia Lump-sum compensation is concerned, it is important to refer to the Office of the PCDA Circular No 438 dated 16.07.2010. Relevant extracts of the aforesaid circular reads as follows :-

"Para 34 (d) (ii) & (vii) Defence Services Regulations, Pension Regulations for the Army Part II (2008).

(ii) In case death due to Battle Casualty, liberalised family pension shall be granted.

(vii) Authorise ex-gratia lump-sum compensation simultaneously in the Pension Payment Order, where payable.

Para 2 PCDA (F) Allahabad Circular No 438 dated 16.07.2010

"2. Now in terms of GOI, MOD letter No. 20(5)/2009/D(Pay/Sers) dated 04.06.2010 (copy enclosed) under which a new clause (d) has been added to Para 1 of GOI, MOD letter No dated 21.10.2008 that the

families of the Defence Service Personnel who die while on duty in the specified high altitude, inaccessible border posts, on account of natural disasters, extreme weather condition in harness in the performance of their bonafied official duties shall be entitled to ex-gratia lump-sum-compensation at revised rate of Rs 15 Lakhs w.e.f. 01.01.2006."

14. In the case at hand, the death of the applicant's husband had taken place in an operational area where he was employed in the aid of civil power in dealing with natural calamities which falls in category 'D' of Para 4.1 of the aforesaid Government policy letter, hence, the circumstances of death of officer are covered under conditions laid down in the Gol, MoD letter dated 04.06.2010 and therefore, the applicant is entitled for grant of Ex-gratia lump-sum compensation. Conditions laid down as per ibid letters are:-

S. No.	Circumstances	Rates (in Rs)
(a)	Death occurring due to accidents in the course of duties	10 Lakhs
(b)	Death in the course of duties attributable to acts of violence by terrorist etc.	10 Lakhs
(c)	Death occurring during (i) enemy action in international war or border skirmishes and (ii) action against militants, terrorist, etc.	15 Lakhs
(d)	Death occurring while on duty in the specified high altitude, inaccessible border posts, etc. on account of natural disasters, extreme weather conditions	15 Lakhs

(e)	Death occurring during enemy action in international ware or war like engagements specifically notified.	20 Lakhs
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15. The respondents are directed to forthwith process the petitioner's claim for Liberalised Family Pension for life in terms of the aforesaid letter dt. 31.01.2001 Clause 4.1(D) instead of Special Family Pension from the date of death of her husband and Ex-gratia lump sum compensation as per the conditions laid down in the Gol, MoD letter dated 04.06.2010 within 12 weeks from today, failing which, it will attract interest @ 6% per annum.

16. Pending application(s) also stands closed.

Pronounced in open Court on this day 27^k November' 2025

(JUSTICE NANDITA DUBEY)
MEMBER (J)

(RASIKA CHAUBE)
MEMBER (A)

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