

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

OA No. 204/2018

Smt Jyoti Devi Wd/o
Late Hav Harswarup Singh
Versus
Union of India and Ors.

... Applicant

... Respondents

For Applicant : Mr. V.S Kadian, Advocate
For Respondents : Mr. Shyam Narayan, Advocate

CORAM

HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER

This OA has been filed under Section 14 of the Armed Forces Tribunal (AFT) Act 2007 by the applicant, the widow of an Army soldier (Late Hav Harswarup Singh of the Rajput Regiment), who died during the course of an Area Domination Patrol along the Line of Control during Operation Rakshak in Keran Sector of J&K on 29.06.2015, praying for following reliefs :

(a) Quash and aside the impugned letter No 12822/AG/2997791/M/PC-BC/MP-5D dated 11.07.2016. And/or.

(b) Direct respondents to grant Liberalised Family Pension to the applicant considering the death of her husband as Battle Casualty with interest @ 12% per annum from the date

(c) Direct respondents to grant Ex-gratia lump sum compensation to the applicant @ Rs 15 Lakhs with interest @12% per annum from the date of death of her husband. And/or.

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

2. The undisputed factual matrix is that the husband of the applicant (*hereinafter referred to as 'Soldier'*) was enrolled in the Indian Army on 29.07.1998 in the Rajput Regiment. Subsequently, during attachment with 12 JAK LI, he suffered an injury in the Left eye on 28.05.2003 due to the blast of an antipersonnel mine during Operation Parakram at Nikowal Mine Field (J&K). Later on, he was again posted to High Altitude Area in Keran Sector, Kupwara (J&K) as advance party on 16.05.2014 and was deployed at the Battalion HQ at Ustad as part of Quick Reaction Team (QRT), and on 29.06.2015, he was part of an Area Domination Patrol launched from Ustad to Chhaiya Ridge from 0700 hrs to 1300 hrs in the proximity of the Line of Control (LC), J&K. On completion of patrolling, when the Quick Reaction Team reported the Battalion Adjutant for debriefing, he developed chest pain and later collapsed, thus, rushed to ADS Pharkian Gali where he was checked up by the Medical Officer, who declared him dead with the Post Mortem Report recording

the reason of death as 'due to cardiopulmonary arrest.'

3. As per the factual matrix detailed vide Para 3 of the Counter Affidavit, Initial and Detailed report had been initiated by 5 RAJPUT vide Signal No. A-1017 dated 29.06.2015 and letter no 2997791M/SSG/A dated 01.07.2015 respectively. However, IHQ of MoD (Army) vide Sig No 12822/AG/MP-5(D) (Case Sec) dated 24.08.2015 advised 5 RAJPUT that the circumstances leading to casualty (death of the individual) are not covered under category 'D' and 'E' to GoI, Min of Def letter No.(2)/97/D(Pen-C) dated 31 Jan 2001 and hence, the casualty cannot be classified as 'Battle Casualty'.

4. Para 5 of the Counter Affidavit records that the Rajput Regiment approached the applicant to submit requisite documents for notifying family pension in her name, which upon receipt was processed by the Rajput Regiment vide letter No 2997791M/FP-1/PG dated 21.12.2015 processed the case to PCDA (P) Allahabad for notifying Liberalized Family Pension.

5. Conjoined Para 6 & 7 of the Counter Affidavit states that the PCDA(P) Allahabad granted Special Family Pension to the applicant vide PPO F/20090/2016 dated 02.03.2016

instead of Liberalized Family Pension, which was rejected/returned vide PCDA (P) Allahabad vide Letter No G-4/PHP/PFO10025/2016 dated 29.02.2016 (Annexure R-3), with following observations :-

“In this connection it is intimated that after examination of the case it is found that under mentioned documents are required for adjudication for Liberalised Family Pension & Ex Gratia Compensation :-

IHQ BC Certificate.

BC Part II Order

Corps Notification & Sheet Roll entries for Operational Areas.

Opinion of DGAfms, duly linking the F.D with extreme weather conditions.

6. Accordingly, the same observations were forwarded to 5 RAJPUT by Record, the Rajput Regiment vide letter No. 2997791/FP-1 /PG dated 12.04.2016 (Annexure R-3 Colly) and thus, PCDA (P) Allahabad has granted special family pension instead of Liberalized Family Pension w.e.f. 30.06.2015 vide PPO No. F/20090/2016.

7. The limited contentions of the applicant include that the soldier died while undertaking an operational activity during extreme climatic conditions in High Altitude Area as part of Operation Rakshak (J&K) and he was on bona fide military duty along the Line of Control in J&K at the Keran Sector, Kupwara. As per respondents, we note that the contention revolves around the argument that the

circumstances leading to casualty (death of the individual) are not covered under category 'D' and 'E' to GoI, Min of Def letter no. (2)/97/D(Pen-C) dated 31 Jan 2001 and hence, the casualty cannot be classified as 'Battle Casualty', as has been advised by IHQ of MoD.

8. We have heard both the parties and perused the pleadings and additional documents submitted by the respondents and the case laws on the subject. The only question is whether the deceased soldier is entitled to 'Battle Casualty' status and consequently, whether the applicant is entitled for grant of Liberalised Family Pension or not ?

9. We consider it appropriate, before proceeding to adjudicate the claim of the applicant, to place the context of rule position on record. The relevant extracts of AO 1/2003/MP which governs the policy guidelines for classification of injury as Battle Casualty is reproduced hereunder:

(a) Army Order 1/2003/MP

Para 1 to 3. xxx xxx xxx

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 or wounds or injuries (other than self-inflicted)*
- (c) Wounded or injured (other than self-inflicted)*
- (d) Missing*

5. Circumstances for classification of Physical/ Battle Casualties are listed in Appendix "A"

10. At this point, it is pertinent to refer to Appendix 'A' to AO 1/2003/MP providing for circumstances for classification of Battle Casualties, which are produced herein as under:

Appendix A to AO 1/2003/MP

Battle Casualties

1. The circumstances for classifying personnel as battle casualties are as under:-

(a) Casualties due to encounter with troops or armed personnel or border police of a foreign country or during operations while in service with peace keeping missions abroad under government orders.

(b) Air raid casualties sustained as a direct or indirect result of enemy air action

(c) Casualties during action against armed hostiles and in aid to civil authorities to maintain internal security and maintenance of essential services.

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

(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 defence 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.

- (f) *Casualties during peace time as result of fighting in war like operations, or border skirmishes with a neighbouring country.*
- (g) *Casualties occurring while operating on the International Border or Line of Control due to natural calamities and illness caused by climatic conditions.*
- (h) *Casualties occurring in aid to civil authorities while performing relief operations during natural calamities like flood relief and earthquake.*
- (j) *Casualties occurring while carrying out battle inoculations/training or operationally oriented training in preparation for actual operations due to gunshot wound/explosion of live ammunition/ explosives/mines or by drowning/electrocution.*
- (k) *Casualties occurring while carrying out battle inoculation/training or operationally oriented training in preparation for actual operations due to gunshot wound/explosion of live ammunition/Explosives/Mines or by drowning/electronution.*
- (l) *Army personnel killed/wounded unintentionally by own troops during course of duty in an operational area.*
- (m) *Casualties due to vehicle accidents while performing bonafide military duties in war/border skirmishes with neighbouring countries including action on line of control and in counter insurgency operations.*
- (n) *Casualties occurring as a result of IED/bomb blasts by saboteurs/ANEs in trains/buses/ships/aircrafts during mobilization or deployment in war/war like operations.*
- (o) *Casualties occurring due to electrocution/snake bite/drowning during course of action in counter insurgency/war.*
- (p) *Accidental death/injuries sustained during the course of move of arms/explosives/ammunition for supply of own forces engaged in active hostilities.*
- (q) *Death due to poisoning of water by enemy agents resulting in death/physical disabilities of own troops deployed in operational area in active hostilities.*

(r) Accidental deaths/injuries sustained due to natural calamities such as floods, avalanches, cyclones, fire and lightening or drowning in river while performing operational duties/movements in action against enemy forces and armed hostilities in operational area to include deployment on international border or line of control.

(s) Army personnel killed/wounded by own troops running amok in an operational area.

(t) Army personnel killed/wounded due to spread of terror during leave/in transit because of their being army personnel."

11. On a perusal of the aforesaid 'Appendix' to AO 1/2003/MP, we find that the circumstances provided in clause 'g' clearly provides for grant of 'Battle Casualty' status in cases of casualties occurring to the soldier while operating on International Border or Line of Control due to natural calamities and illness caused by the climatic conditions, with no overriding clause of enemy action.

12. 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 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."*

13. 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."

14. We have taken note of the fact that the applicant's husband (deceased soldier) died due to cardiac arrest during his participation in an operational activity undertaken close to the Line of Control in J&K in war like condition during extreme climatic conditions as part of notified Army Operation (Op Rakshak) consequent to which it was recommended as a 'Battle Casualty' by his Commanding Officer and endorsed by the Brigade Commander, Division

Headquarters, as well as Corps Headquarters. Battle Casualty Certificate dated 29.06.2015 is reproduced hereunder as follows :-

BATTLE CASUALTY CERTIFICATE OPERATION RAKSHAK
(JAMMU & KASHMIR) VIDE ARMY ORDER 1/2003/MP
AND
INTEGRATED HEADQUARTERS OF MINISTRY OF DEFENCE
(ARMY) LETTER NO 12822/AG/MP-5(D) DATED 13
FEBRUARY 2008

1. Certified that No 2997791M Hav Harswarup Singh of 5 RAJPUT deployed at the Bn HQ at Ustad as part of Quick Reaction Team was declared "Dead" at 1510 hrs on 29 Jun 15 at ADS, Pharkiyani Gall, due to environmental conditions in HAA, while performing bonafide military duty along the Line of Control in Jammu & Kashmir at Keran Sector, Kupwara, Operation RAKSHAK (Jammu & Kashmir). The indl was dell for an Area Domination PII from Ustad to Chhaiyya Ridge and had complained of chest pain during the debriefing.

2. I certify that above individual is a Battle Casually as per Army Order 1/2003/MP and Integrated Headquarters of Ministry of Defence (Army) letter No 12822/AG/MP-5(D) dated 13 February 2008.

Unit : 5 RAJPUT
Station c/o 56 APO
Dated : 29 June 2015

Sd/-
No : IC-596160
Rank : Colonel
Name : Pratyush Kumar
Designation : Commanding Officer
Unit : 5 RAJPUT

COUNTERSIGNATURE OF HEADQUARTERS 268 INFANTRY BRIGADE

Station : c/o 56 APO
Dated : 29 Jun 2015

Sd/-
Brig
Cdr
HQ 268Inf Bde

COUNTERSIGNATURE OF HEADQUARTERS 28 INFANTRY DIVISION

Station : c/o 56 APO

Dated : 29 Jun 2015

Sd/-

Col

Col A

HQ 26 Inf Div

COUNTERSIGNATURE OF HEADQUARTERS 15 CORPS

Station : C/o 56 APO

Dated : 30 Jun 2015

Sd/-

Col

Col A

HQ 15 Corps

15. It is pertinent to record our observations that the deceased soldier could not be provided proper medical care due to terrain, climate and resource constraints in the forward area along side LoC in OP RAKSHAK due to which he had died by the time he could have access to proper medical attention.

16. We find it essential to note that in the case of Lt Col. Sunil Datt Vs UOI & Ors¹, 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.

17. It would also be appropriate for us to refer to the judgement of Hon'ble Delhi High Court in Maj AK Suhag Vs

¹ OA No. 54/2016, Armed Forces Tribunal, Regional Bench Kolkata

UOI and others,² wherein the officer was ordered to report for briefing while "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

² WP(C) 4488/2012 decided on 21.02.2013

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.”

18. We also find resonance in the opinion of the Hon'ble Delhi High Court in Maj AK 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. We, therefore, opine that a positive interpretation of the existing rules and regulations needs to be taken.

19. On proximity of factual scenario of the instant case, it is pertinent to refer to a recent case adjudicated upon by the Hon'ble Supreme Court in Union of India & Ors Vs Saroj Devi³ wherein the Apex Court while dealing with the grant of Liberalised Family Pension to a widow whose husband has died due to Heart Attack while posted on the LoC, held as under:

"7. In the present case, the respondent has not contended that the case of the deceased falls in category D. The tribunal accepted that the case falls in category E, which reads thus:

"Category E

Death or disability arising as a result of:-

(a) Enemy action in international war.

(b) Action during deployment with a peacekeeping mission abroad.

(c) Border skirmishes.

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

(e) On account of accidental explosions of mines while laying operationally oriented mine-field or lifting or

³ Civil Appeal No 13730 of 2024

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 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, antisocial 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 Govt. from time to time.”
(emphasis added)*

A perusal of the reply filed to the original application shows that the stand of the appellants is that clause (f) of category E is not applicable as the death of the deceased was attributable to military service and was classified as a ‘physical casualty’. It was contended that the death was not treated as a ‘battle casualty’. The stand taken is that the case of the deceased was not covered by clause (f) of category E as it was not a case of ‘battle casualty’ as the deceased died due to cardiopulmonary arrest. Therefore, the only question to be decided is whether the case will be covered by the category of ‘battle casualty’.

8. It is brought on record that initially, the Commanding Officer had categorised the death as a ‘battle casualty’, and later on, it was changed to a ‘physical casualty’. To the counter filed by the respondent, a copy of Army Order 1 of 2003 has been annexed as Annexure R-6. The circumstances for the classification of physical/battle casualties have been incorporated in Appendix ‘A’. In Appendix ‘A’, category 1 is of battle casualties. Clause (g) thereto reads thus:

“(g) Casualties occurring while operating on the International Border or Line of Control due to natural calamities and illness caused by climatic conditions.”

9. Coming to the facts of the case, it is not disputed that on the date of the death, the deceased was posted with his battalion in Jammu and Kashmir as part of Operation Rakshak. He was part of an Area Domination Patrol for domination of the Rangwar gap in the proximity of LC. He was doing duty from 1.00 a.m. to 3.30 a.m. The certificate issued by the Commanding Officer records the following facts:

a) The deceased was working in extreme climatic conditions on the date of his death;

b) He was part of Operation Rakshak, and he was also part of the routine Area Domination Patrol close to LC. There were extreme climatic conditions at that place; and

c) When the deceased became breathless, his condition was such that he needed immediate evacuation. However, immediate evacuation by air could not be done due to bad weather conditions. Ultimately, he was taken on foot, and when the team carried him to Chowkibal's MI room, he was declared dead.

10. Thus, the death can be attributed to illness caused by extreme climatic conditions. Hence, as per clause 1 (g) of Appendix 'A' of the Army Order 1 of 2003, the case will fall in 'Battle Casualties'. The reason is that the deceased was operating near LC in extreme climatic conditions. He was part of Operation Rakshak and was on duty near LC. The casualty caused by illness due to climatic conditions is covered by clause 1 (g). In this case, the respondent's husband was a victim of illness caused by extreme climatic conditions. Therefore, the case of the deceased will fall in the category of 'Battle Casualties'.

11. Clause (f) of category E is attracted when death arises as a result of war-like situations. The definition of death as a result of war-like situations is an inclusive definition, and the case cannot remain confined to sub clauses (i) to (iii) of category E (f). In this case, the death has occurred as a result of a war-like situation prevailing near LC. Therefore, we concur with the

view taken by the Tribunal that clause (f) of category E was applicable.

12. The decisions in the cases of *Kanchan Dua v. Union of India and Anr.* and *Radhika Devi v. Union of India and Ors.* have been decided on the basis of the peculiar facts of the cases. The same can have no application to the facts of this case. In the first case, the deceased was found dead in his room. In the second case, the death was not caused by extreme climatic conditions.

13. In our view, in a case like this, the respondent ought not to have been dragged to this Court, and the decision making authority of the appellants ought to have been sympathetic to the widow of a deceased soldier who died in harness. Therefore, we propose to impose costs quantified as Rs.50,000/-, which will be payable to the respondent.

14. Accordingly, the appeal is dismissed. The directions contained in paragraph 13 of the impugned judgment shall be implemented within a maximum period of three months from today. We direct the appellants to pay the costs quantified as Rs.50,000/- to the respondent within a period of two months from today.”

20. We cannot lose sight of the fact that serious concerns with respect to restricted interpretation have been earlier flagged by “Report of Raksha Mantri’s Committee of Experts on Review of service and pension matters including Potential Disputes, Minimizing Litigation and Strengthening Institutional Mechanisms related to Redressal of Grievances, 2015” vide Para 2.2.15, reproduced as under:

NON ACCEPTANCE OF DECLARATION OF BATTLE CASUALTY
AND NON GRANT OF WAR-INJURY OR LIBERALIZED
BENEFITS TO CASUALTIES IN OPERATIONAL AREAS:

The term 'Battle Casualty' is a misnomer since it not only encompasses disabilities and deaths in proper battles but also in operational areas under various circumstances. It is seen that the concept of 'Battle Casualty' is being misinterpreted and misunderstood by the Defence Accounts Department and at times also by the Services HQ and the same is being confused with the concept of 'war injury pension' as granted under pensionary provisions. Many deserving cases are not being declared 'Battle Casualty' on the pretext that they do not fall under Category D or E of Para 4.1 of Govt of India, Ministry of Defence Letter No 1(2) /97/D (Pen-C) dated 31-01-2001 (Annexure-12). At the outset, it becomes important to state here that the ibid letter dated 31-01-2001 does not deal with the subject of 'Battle Casualty' and is simply a letter determining the various kinds of pensionary awards introduced after the 5th Central Pay Commission including disability and war injury pension and that too only for post-1996 retirees. The said letter neither lays down nor purports to lay down classification of 'battle casualty' and is merely limited to the circumstances which lead to grant of various kinds of pensions including war injury pension. The letter does not even contain any direct or indirect reference to the terminology of 'battle casualty'. While 'battle casualty' status leads to various benefits including facilities and benefits by the Services HQ, the Central and the State Governments and other organizations, and also relates to certain aspects of cadre management and posting profiles, the letter dated 31 Jan 2001 on the other hand is only restricted to types of pensionary awards. While 'war injury pension' and 'liberalized family pension' were introduced only in the year 1972, the concept of 'battle casualty' has existed in the defence services even prior to that.

In case of the Army, for example, for the first time after independence, the concept of Battle Casualty was codified vide Special Army Order (SAO) 11/S/1965. The said order was later amended vide SAO 8/S/1985 and then vide AO 1/2003 which is applicable as on date. All the above Army Orders basically signify that casualties occurring in operations or in operational areas are to be categorized as Battle Casualties. The concept is not just related to injury or death in war but includes many other circumstances too such as natural illnesses while operating near the border or line of control, casualties during flood relief & earthquakes, unintentional killings by own troops etc. As explained above, 'battle casualty' status brings with it

various benefits and privileges such as monetary grants by State Governments and even local bodies and NGOs. It has no direct correlation with pension as perceived by some, and both are mutually exclusive, though they may overlap at places.

While battle casualty status is defined by various orders defined above, the concept of war injury pension (earlier called war injury pay) and liberalized family pension (earlier called special liberalized family pension) on injury or death in proper operations respectively, was for the first time introduced through Govt of India, MoD Letter No 200847 / Pen-C / 72 dated 24 Feb 1972. It hence may be noted that 'battle casualty' status vide SAO 11/S/1965 pre-dates the concept of war-injury or liberalized family pension first introduced in 1972. After the 4th CPC, the Govt vide Part IV of Govt of India MoD Letter No 1(5)87/D (Pensions/Services) dated 30 Oct 1987 provided for war injury and liberalized family pension for all 'Battle Casualty' cases and hence the two concepts converged for this aspect. Hence all Battle Casualties were also made eligible for war injury and liberalized family pension awards besides other facilities, privileges and benefits. The concept of war-injury and liberalized family pension was further liberalized after the 5th CPC vide Govt of India letter dated 31-01-2001 when 5 categories for pensionary benefits were introduced and Categories D and E of Para 4.1 laid down the sub-categories which entitled a person for war-injury pension (on disability) and liberalized family pension (on death) vide Paras 6.1, 10 and 11 of the same letter. This Category E inter alia contains references to enemy action, accidental explosions, war like situations etc but most importantly Category E (i) provides that death and disability (not just injury, but any disability) in all notified operations would be covered for war-injury and liberalized family pension. As is well known, notified operations are those which are properly and specially notified by the Govt and which include operations such as OP Rakshak/Rhino/Vijay/Parakram/Meghdoot etc. Further, Note (i) under Para 4.2 of the same letter dated 31 Jan 2001 clearly stipulates that these examples as above are only illustrative and not exhaustive.

The concepts of 'battle casualty' and 'war injury pension' are mutually exclusive, though overlapping at places, however the Government of India in letter dated 31-01-2001 has not laid down or directed or ordered the Services HQ to declare battle

casualties only as per circumstances listed out in the said letter. Moreover, most of the casualties declared as 'Battle Casualty' under the AOs/SAOs anyway fall under Category E (being operational disabilities) of the Govt of India Letter dated 31-01-2001 thereby entitling them to war injury pension.

Though in the past, no problem was being faced in the release of 'war injury pension' or 'liberalized family pension' to operational disabilities or deaths, in the last few years the Defence Accounts Department started refusing such benefits except to those cases who had suffered deaths or disabilities as a result of enemy fire etc in war like engagements. This despite the fact that hundreds of cases have been granted the benefit in the past and sudden discontinuance of such benefits was incongruous and also discriminatory on the face of it. Moreover, if only war like engagements were to be considered eligible for such benefits then all other categories from E(a) to E(i) of the said letter become redundant and superfluous. It must be appreciated that those posted in operational areas are performing cardinal functions for the nation's defence and are facing the vagaries of nature and also many other dreadful eventualities which cannot be measured or predicted or laid down with a straightjacket formula. A person getting disabled or dying in an operational area of illnesses induced by harsh climatic conditions of such an area or due to an accident while patrolling in such an area is not less important a sacrifice than another dying by a bullet in the same locale. All such individuals posted in operations are an integral part to the success of such operations and the sustenance of such operations.

The proposal of the Man Power Directorate for including further sub-categories in Category E does not merit acceptance simply because by such an action wheels within wheels would be created and rather than simplifying and rationalizing the already misinterpreted issue, we would be further complicating it and would also be giving more excuses and leverage of fishing out artificial distinctions in the categories for denial of benefits. The said Category by its very nature is liberal and broad-based and covers most of the operational disabilities. Further it is qualified by a Note in the same letter that the illustrations are not exhaustive and merely illustrative. The issue is already covered by decisions of Constitutional Courts

which are anyway binding on the Ministry and the Services. Some of such decisions are as follows:

- *Supreme Court in Special Leave to Appeal (Civil) CC 19992/2011 Union of India Vs Harjinder Singh decided on 05-12-2011 wherein the judgement of AFT in OA 90/2010 Harjinder Singh Vs Union of India decided on 12-07-2010 was upheld. In this case, the family of a soldier who had died in Operation Meghdoot due to a natural illness was denied Liberalized Family Pension under Category E on the pretext that he had not died in action of an injury. However it was held that death or disability in a notified operation was covered under Category E(i) thereby entitling the person to liberalized family pension.*
- *Delhi High Court in WP 4488/2012 Maj Arvind Kumar Vs Union of India decided on 21-02-2013 wherein the officer was injured in J&K in a notified operational area in a motor vehicle accident and the High Court came to the conclusion that he was very much entitled to the benefit of war injury pension under Category E since the disability had occurred in a notified operation, that is, Operation Rakshak. Delhi High Court in WP 5262/2003 Manju Tiwari vs Union of India dated 04-03- 2005 wherein the widow of a soldier who had died due to Cardiac failure during Operation Vijay was denied benefits of Category E on the pretext that the death was due to a natural illness but the High Court held that since the death was in a notified operation, the widow was entitled to liberalized family pension by treating the death under Category E(i).*
- *Supreme Court in SLP (C) CC 15338/2015 Union of India Vs Sumitra Devi dated 01-09-2015 wherein the decision of the Punjab & Haryana High Court in CWP 3810/2013 Sumitra Devi Vs Union of India dated 17-02-2014 was affirmed in which it was held that the husband of the Petitioner, who had died of a heart attack in an operational area would be entitled to the benefit of Category E(i).*

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The Committee thus recommends that in terms of the very liberal nature of applicable policy and decisions of Constitutional Courts, the deaths and disabilities arising in notified operations may continue to be granted disability and

liberalized pensionary awards without hyper-technically insisting on hairsplitting requirements that do not actually exist in the rules. It is further recommended that the Services HQ may continue awarding 'battle casualty' status to their personnel under their own instructions since the status of 'battle casualty' is not just restricted to pensionary awards but encompasses many other issues such benefits and grants from welfare funds, ex-gratia by States, posting and cadre management etc. The Committee also recommends that all such cases taken up by the Services HQ and pending with the Defence Accounts Department for release of benefits may be cleared within a period of 4 months by intervention of the MoD so as not to prolong the agony of the affected disabled soldiers or the affected military widows and all necessary amendments in service record and pensionary documents be carried out consequently. Deaths and disabilities occurring in Operation Falcon must also be covered under the same terms and conditions as under other notified operations and if need be, the said operation may be declared as equal to other notified operations for financial benefits."

21. However, the recommendations of the Raksha Mantri's Committee of Experts with respect to the aforesaid issue was partially accepted to the effect:

"Govt. orders dated 07.03.2018 for inclusion of accidental death/injury due to natural calamities while performing in operational duties/movement during deployment on LAC under category D of Para 1 Clause (iii) of MoD letter dated 03.02.2011 making them eligible for LFP has been issued."

22. It is indeed concerning to note that soldiers who serve this nation with unwavering dedication are making the ultimate sacrifice in the line of duty, wherein we expect that the AG's Branch of IHQ, MoD, as an administrative authority, must approach such cases with the utmost care and consideration, without adopting a mechanical course. It is

essential that the interpretation of beneficial policies is not applied in a manner that undermines the sacrifices of these brave individuals. The recommendations put forth by the Commanding Officer, Brigade Commander, and Corps Commander, which reflect a thorough understanding of the challenging and often perilous conditions faced in Field and Counter Insurgency Operations, should have been given due weight. The AG's Branch, in its capacity as the competent authority, is encouraged to thoughtfully consider these recommendations rather than adopting a mechanical approach that may inadvertently disregard the intent behind these policies.

23. As far as 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 Sixth 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 12th April 1999, 03rd August 1999, 19th May 2000 and 21st October, 2008, and letter No. No. 20(2)/2016/D(Pay/Services) dated 04.06.2010 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 the 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 course of performance of duties</i>	<i>25 Lakhs</i>
<i>(b)</i>	<i>Death in the course of performance of duties attributed to acts of violence by terrorists, anti-social elements etc.</i>	<i>25 Lakhs</i>
<i>(c)</i>	<i>Death occurring during enemy action in war or border skirmishes or in action against militants, terrorists, extremists, sea pirates.</i>	<i>35 Lakhs</i>
<i>(d)</i>	<i>Death occurring while on duty in the specified high altitude, inaccessible border posts, etc. on account of natural disasters, extreme weather conditions</i>	<i>35 Lakhs</i>
<i>(d)</i>	<i>Death occurring during enemy action in war or such war like engagements which are specifically notified by Ministry of Defence and death occurring during evacuation of Indian Nationals from a war-torn zone in foreign country.</i>	<i>45 Lakhs</i>

2. This letter takes effect from 01.01.2016.

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

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

*Yours faithfully
(xxx xxx xxx)*

Under Secretary to the Government of India"

24. With the deceased soldier's death falling within the purview of clause 'd' of the aforesaid letter dated 02.11.2016, the applicant is clearly entitled to the grant of Ex-gratia lump sum compensation at the rate of Rs. 35 lakhs.

25. In view of the aforesaid analysis, 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. 35 Lakhs along with all consequential benefits from the date of death of the deceased soldier, within three 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. Needless to emphasize, there shall be no restriction on arrears of the aforesaid benefits.

26. Before parting, it is imperative to emphasize that higher authorities must diligently adhere to their own policies, particularly Army Order 1/2003/MP, which includes Category D & E (i) [later E(j)], a provision clearly stipulates that death and disability arising from all notified operations are entitled to war-injury benefits and liberalized family pension. The operations in question, such as OP Rakshak, OP Rhino, OP Vijay, OP Parakram, and OP Meghdoot, are specifically designated by the Government. It is crucial that

the higher authorities accept and acknowledge the judicial forums assertively upholding these provisions and ensure that the sacrifices of our soldiers are recognized and honored in accordance with the law, and the widows of such soldiers are not dragged to the Courts. Hence, we additionally impose a cost of Rs. 50,000 on the Respondents to be paid to the applicant within two months from the date of the pronouncement of this order.

27. Consequently, the OA No. 204/2018 is allowed.

28. Pending MA(s), if any, stands closed.

29. No order as to costs.

30. Furthermore, Registry is directed to circulate the copies of this judgement to all the benches of this Tribunal.

Pronounced in open Court on this 29th day of May, 2025.

(JUSTICE NANDITA DUBEY)
MEMBER (J)

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

Akc