

**ARMED FORCES TRIBUNAL, CHANDIGARH  
REGIONAL BENCH AT CHANDIMANDIR**

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OA 2509 of 2012

<b>Smt. Harjinder Kaur</b>	.....	<b>Petitioner(s)</b>
<b>Vs</b>		
<b>Union of India and others</b>	.....	<b>Respondent(s)</b>

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For the Petitioner (s) : Mr. Rajeev Anand, Advocate

For the Respondent(s) : Mrs. Sangeeta Dubey, CGC.

**Coram: Justice Prakash Krishna, Judicial Member.  
Lt Gen (Retd) HS Panag, Administrative Member.**

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**ORDER  
15-11-2013**

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This application has been filed by the petitioner who is the widow of late Lance Naik Malkit Singh, under Section 14 of the Armed Forces Act. 2007 seeking the following reliefs:-

- (i) For quashing of the order dated 19-05-2012 (Annexure A-9) wherein rejection has been made to the claim of the applicant for declaration of the death of her husband as a Battle Casualty and grant of all consequential benefits like the Liberalised Family Pension and other monetary benefits while performing active duties in High Altitude Area in Leh Ladakh deployed in Operation Falcon and being under severe physical and mental stress for which the unit of the husband of the applicant has processed the case of her husband being a Battle Casualty;
- (ii) For the grant of all benefits, incentives and declarations as required for the death of the husband of the applicant being a Battle Casualty along with all arrears from the date the same were due with interest @ 18% till the release and payment of such benefits;
- (iii) Any other order that the Hon'ble Tribunal may deem fit in the facts and circumstances of the case.

Shorn of unnecessary details, the brief facts of the case are that the husband of the petitioner was enrolled in the Army on 28<sup>th</sup> October, 1996. At the time of enrolment he was found fit in all respects. In the course of service, he

remained posted at various places. While serving in Operation Falcon, on 20-06-2009 her husband was deployed in High Altitude Area (Operation Falcon) where he served till 08-04-2010. Subsequently, he was inducted into 'Operation Meghdoot' from 10-04-2010 to 31-12-2010. While serving in Operation Meghdoot, he remained deployed at Kaman Complex of Siachen Central Glacier at the height of 17000 Feet during the period 22-09-2010 to 10 December, 2010. After the completion of Unit's tenure of "Operation Meghdoot", her husband was re-deployed in "Operation Falcon" w.e.f. 19-02-2011. While on duty on 15-03-2011 her husband suffered "Myocardial Infarction" leading to sudden cardiac arrest resulting into his death.

It is averred that the claim for grant of family pension in favour of the petitioner was recommended by respondent No.2 and forwarded to PCDA (P), Allahabad vide letter dated 16-07-2011 (Annexure A-3) which was, in turn, returned to respondent No.2 with the advice that since the husband of the petitioner had suffered severe "Myocardial Infarction" which resulted in sudden cardiac arrest leading to his death while performing bona fide military duty, the case be referred to DGAFMS for examination and their opinion. Accordingly, the Records The Punjab Regiment vide letter dated 26-08-2011 (Annexure A-4), referred the case to the office of DGAFMS, Ministry of Defence, New Delhi, for seeking their opinion under the provisions of Govt. of India, Ministry of Defence letter No. 1(2)2002/D (Pen-c) dated 01-09-2005 and IHQ of Mod (Army) ADGPS letter No. B/40122/MA/AG/PS-5 dated 20 July 2006.

. It is further averred that the Unit of the husband of the petitioner made a request to the Additional Director General of Manpower, Integrated HQ of Mod Army, New Delhi to declare the death of her husband as a "Battle Casualty." and copy of that letter was also sent to the petitioner. Similar request in this regard was also made by the records The Punjab Regiment vide its letter dated 9th March 2012 to Additional Director Gen of Manpower" but in spite of all this, the death of the petitioner's husband was not declared as "Battle Casualty" by the competent authority and Special Family Pension was recommended in her favour treating the death of her husband as 'Physical Casualty'.

Ultimately, the petitioner was granted Special Family Pension by the PCDA (P), vide PPO dated 12-01-2012 Annexure A-6). Thereafter she approached the Director Adjutant General's Branch, New Delhi by way of appeal dated 20-04-2012 for grant of Liberalised Family Pension on the ground that the disease "Myocardial Infarction" which led to sudden death of her husband was acquired by him having been deployed in "Operation Meghdoot" and "Operation Falcon". Her appeal was not accepted and she was intimated by the Records, vide letter dated 19-05-2012 (Annexure A-9) that as per IHQ of MoD (Army) letter dated 22 March 2012, circumstances of casualty in respect of her

husband was due to climatic condition, therefore, death as mentioned in the C of 1 is neither covered under Category 'D' & 'E' of GOI, MoD letter No. 1(2)/97/D (PEN-C) dated 31-01-2001 nor GOI, MoD letter No. 1(1)/85/Pen-C dated 26 March 1985.

Being aggrieved by the action of the authorities declining her request for grant of Liberalised Family Pension, the petitioner filed the present petition.

On notice having been issued, reply has been filed on behalf of the respondents, wherein it has been stated that the petitioner's husband was enrolled in the Army (Punjab Regiment) on 28-10-1996 and died on 15 March 2011 due to severe "Myocardial Infarction" which resulted into sudden cardiac death at 153 General Hospital, Leh. As per the Court of Inquiry proceedings dated 20 March 2010 and remarks of the Station Commander Leh, dated 22-04-2011, the death of husband of the petitioner was declared as 'Battle Casualty'.

It is further stated that the claim for grant of Special Family Pension was preferred to PCDA (P), Allahabad, who, in turn, returned the same vide letter dated 20/21<sup>st</sup> July 2011 with an advice to Records, The Punjab Regiment to refer the case to DGAFMS, Ministry of Defence for their opinion. Accordingly, the case was sent to DGAFMS vide letter dated 26-08-2011 for examination and their opinion. The DAFMS vide letter dated 17 September 2011 intimated that the death of the husband of petitioner having taken place during military duty was declared to be attributable to military service. The claim of Special Family Pension in favour of the petitioner was again recommended to PCDA (P), Allahabad for notification of PPO. Accordingly, she was granted Special Family Pension till her widowhood.

The categorical stand of the respondents in the reply is that an eligible family member of a deceased soldier shall be entitled for grant of Liberalized Family Pension if the death of a soldier is established/ascertained to have caused under the circumstances mentioned in Category 'D' or 'E' of para 4.1 of Government of India, Ministry of Defence letter dated 31 January 2001. Since in the present case, the death of the petitioner's husband being not covered under the circumstances mentioned in the said two categories and the death having caused due to severe "Myocardial Infarction", it cannot be declared as Battle Casualty", as such Liberalised Family Pension is not admissible to the widow of the deceased soldier and she was rightly granted Special Family Pension as per rules treating the death as "Physical Casualty".

On these grounds, the respondents have prayed for the dismissal of the present petition.

We have heard the learned counsel for the parties and have carefully perused the documents on record.

During course of arguments, it was vehemently argued by the learned counsel for the petitioner that the husband of the petitioner while serving in "Operation Falcon" died on 15-03-2011 on account of "Myocardial Infarction" leading to sudden cardiac arrest. He further argued that at the time of his enrolment in the Army in October, 1996, he was found medically fit in all respects and was not found to be suffering from any kind of disease. He further contended that the husband of the petitioner participated in "Operation Falcon" as well as "Operation Meghdoot" continuously for a period of two years. While serving in "Operation Falcon" he remained deployed at Dogra Fort Kiari in Ladakh at a height of approximately 14105 feet during the period 20-6-2009 to 08-4-2010. Similarly, while serving in "Operation Meghdoot" he remained deployed at Kaman Complex of Siachen Glacier at a height of 17000 feet during the period from 22-09-2010 to 10-12-2010. The case of the petitioner is that her husband was recently deployed in Operation Falcon on 19-02-2011 and earlier to that he was participating in "Operation Meghdoot". There is everylikelihood of acquiring the aforesaid disease by her husband while serving in Operation Meghdoot which may have aggravated within a short span of four weeks due to climatic change on having his deployed in "Operation Falcon." In support of his contention, the learned counsel placed strong reliance on the proceedings of Court of Inquiry which was held to investigate the circumstances under which the petitioner's husband expired at 153 GH on 15-03-2011. He also contended that having regard to the well reasoned findings, opinion and the recommendation of higher authority i.e. Brig R Srivastava, the husband of the petitioner ought to have been declared as a "Battle Casualty" and his widow should have been granted Liberalised Family Pension.

On the other hand, the stand of the respondents is that the death of the petitioner had not caused due to the circumstances mentioned in Categories 'D' or 'E' of Para 4.1 of Government of India, Ministry of Defence letter dated 31-01-2001. Therefore, his death cannot be declared as a "Battle Casualty". Though the petitioner's claim for grant of Liberalised Family Pension was examined by the highest authority of the Ministry of Defence and having not covered under the relevant rules/instructions/Army Order, the same was not accepted. Since the death of the petitioner's husband was not declared as a "Battle Casualty" by the competent authority, she is not entitled for the grant of Liberalised Family Pension.

We have given our thoughtful consideration to the submissions of the learned counsel for the parties and also perused the Court of Inquiry Proceedings dated 22-04-2011 placed on record by the petitioner's counsel at the time of arguments.

Admittedly, the petitioner is in receipt of Special Family. Undisputedly, her husband died on 15-03-2011 due to “Myocardial Infarction” leading to sudden cardiac arrest while serving in “Operation Falcon”. The husband of the petitioner had served in “Operation Falcon” from 20-6-2009 to 08-04-2010 and subsequently in “Operation Meghdoot” from 10-04-2010 to 31-12-2010. Thereafter he was again deployed in “Operation Falcon” w.e.f. 19-02-2011 till his death on 15-03-2011. The evidence of Major Ranyodh recorded in the Court of Inquiry clearly reveals that the husband of the petitioner while serving in “Operation Falcon” remained deployed at Dogra Fort, Kiari at a height of approximately 14105 from 20-06-2009 to 08-04-2010 and he also remained deployed at Kaman Complex of Siachen Central Glacier at a height of 17000 feet during the period 22-09-2010 to 10-12-2010 while serving in “Operation Meghdoot”. Undoubtedly, it is true that when he died on 15-03-2011 on account of disease – “Myocardial Infarction” he was serving in “Operation Falcon”.

In the case in hand, the petitioner’s husband was not declared as “Battle Casualty” mainly on the ground that his death is stated to be not covered under the circumstances mentioned in category ‘D’ or ‘E’ of the Govt of India letter dated 31-01-2001. From the perusal of this letter, we find that that by way of this letter, the Govt of India have issued detailed instructions on the subject of Pension including the Liberalised Family Pension for implementation of the recommendations of the Fifth Pay Commission. Para 6 thereof dealing with Liberalised Family Pension is reproduced below:-

*“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 Liberalised Family Pension equal to reckonable emoluments last drawn as defined in Para 3.1. above, both for officers and PBOR Liberalised Pension at this rate shall be admissible to the widow in the case of officer and to the nominated heir in the case of PBOR until death or disqualification.”*

The aforesaid para clearly provides that an eligible member of the family of a deceased soldier shall be entitled to Liberalised Family Pension if the death of an Armed Forces Personnel occurs under the circumstances mentioned in category ‘D’ or ‘E’ of paragraph 4.1 of the Govt of India letter dated 31-01-2001. It is relevant to quote both these categories which read as under:-

Category – ‘D’

*Death or disability due to acts of violence/attack by terrorists, and 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 minesweeping operation*
- (e) on account of accidental explosions of mine while laying operationally oriented mine-field 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) extremists 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, 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 Govt. from time to time.”***

In the instant case, the main contention of the learned counsel for the respondents is that the death of petitioner’s husband is not covered under the circumstances mentioned in the aforesaid two categories. We are not unmindful of the fact that the husband of the petitioner took active part in Operation Falcon and “Operation Meghdoot” from June 2009 till his death i.e. 15-03-2011 continuously for a period of two years. It is undoubtedly true that the husband of the petitioner while serving in “Operation Falcon” remained deployed from 20-6-2009 to 08-04-2010, at Dogra Fort Kiari at a height of approximately 14105 feet. Similarly, while serving in “Operation Meghdoot” the individual remained deployed at Kaman Complex of Siachen Central Glacier at a height of 17000 feet. There is every possibility of onset of the disease – Myocardial Infarction” during his stay at High altitude area of Siachen Glacier which may have aggravated due to continuous extreme climatic conditions when he was deployed in

“Operation Falcon”. As per the evidence of Major Deepak Mulajker in Court of Inquiry, who was posted as Medical Specialist at 153 General Hospital, Leh on 15-03-2011, the individual was a case of severe Myocardial Infarction” which could be the cause of his death. In his opinion the individual was deployed in high altitude areas where low atmospheric pressure leads to hypoxic condition. Under these circumstances cases of sudden cardiac death are a known entity and the same could have been the case with the individual. Further according to him, in super altitude areas with rarified atmosphere, “Myocardial Infarction” leading to cardio pulmonary arrest can occur without any previous history of pre-disposing factors. The severity of climatic conditions may have lead to Myocardial infarction in the case of the petitioner’s husband which subsequently led to his death. It is an admitted fact that the petitioner was not suffering from any kind of disease when he was enrolled in the Army in the year 1996.

From the perusal of Court of Inquiry proceedings, we find that there is a clear opinion given by the Court that the individual was SHAPE -1 and had no previous medical history of any illness. As per the Medical Specialist Opinion and post-mortem report, the death of the individual could have occurred due to prolonged stay in super High Altitude areas prevalent in Eastern Ladakh and Siachen Glacier where the individual had been serving w.e.f. 20 June 2009 till his death. Having regard to the findings of the Court of Inquiry, its opinion and the recommendation of Brigadier R Srivastava, Station Commander, the possibility of acquiring the disease “Myocardial Infarction” by the individual leading to his sudden death due to prolonged stay in operational areas cannot be ruled out. However, the stand of the respondents is that the death of husband of the petitioner is a case of physical casualty which was declared as attributable to military service by the Medical Board and as such his death cannot be declared as a Battle Casualty. It is also the stand of the respondents that since the death of the individual had occurred while he was serving in “Operation Falcon”, the AO 01/2003 is not applicable in his case as it is applicable only for Operation Meghdoot”

Now the question arises for consideration in this case whether the death of the individual is a case of physical casualty as pleaded by the respondents or it is a case of “Battle Casualty” as claimed by the petitioner. The casualties occurring with effect from 2003 are dealt with Army Order 1/2003 with effect from the year 2003. In paragraph 5 of the said Army Order, circumstances for classification of Physical/Battle Casualties are listed in Appendix ‘A’. In para 1 of Appendix ‘A’ to AO 01/2003 which deals with Battle Casualty, the circumstances for classifying personnel as battle casualties have been given. The relevant para 1 (g) of Appendix A to AO 01/2003 reads as under:-

*Casualties occurring while operating on the international Border or Line of Control due to natural calamities and illness caused by climatic conditions.”*

The aforesaid paragraph leaves no manner of doubt that if any casualty occurs on the International Border or Line of Control on account of illness caused by climatic conditions, it shall be treated as a Battle Casualty. It is matter of fact that in the present case, the cause of death was “Myocardial Infarction” which, in our view, appears to have arisen due to change in climatic conditions on his having deployed at “Operation Falcon” on 19-02-2011 though earlier he was also deployed at “Operation Meghdoot” till 31-12-2010. This view of ours also find support from the finding of the Court of Inquiry wherein it was held by the Court that as per post-mortem report and medical specialist opinion, cardiac arrest could be a repercussion of prolonged tenure of the individual in HAA and Siachen Central Glacier (OP FALCON and OP MEGHDOOT respectively.) We do not see any reason to discard this well reasoned finding recorded by the Court of Inquiry. Apart from this finding, it was also opined by the Court that the individual was SHAPE -1 and had no previous medical history of illness and as per the Medical Specialist opinion and post-mortem report the death could have occurred due to prolonged stay in super high altitudes prevalent in Eastern Ladakh and Siachn Glacier where the individual had been serving from 20 June 2009 to till his death. Accepting the findings of the Court of Inquiry as well as the opinion given thereon, the higher authority i.e. Brigadier R Srivastava, Station Commander recommended that since the soldier died while on bona fide military duty in an operational area, his death be considered as a Battle Casualty in terms of para 1 (g) of Appendix ‘A’ to AO 1/2003/ MP. We do not see any reason to ignore this recommendation especially when it enjoy the support of para 1 (g) of Appendix ‘A’ to Army Order 1/2003 and in our view the case of the individual is fully covered by this para and as such his death ought to have been declared as a “Battle Casualty.”

During Operation Falcon late L/NK Malkit Singh was deployed at Dogra Fort Kiari. These posts are the depth defences which guard the Line of Actual Control. Operation Falcon is also a specially notified operation by the Government in terms of Category E (i) of Ministry of Defence letter dated 31-01-2001. Thus the case of L/NK Malkit Singh is squarely covered by the Category E (i). His case is also covered by provision of para 1 (g) of Appendix ‘A’ to AO 1/2003.

We also find no force in the stand taken by the respondents in the reply that para 1 (g) of Appendix 'A' to AO 01/2003 is solely applicable for Operation Meghdoot" which is incorrect as it nowhere reflects in this regard. Furthermore, while dealing with the death case of late L/NK Malkit Singh, the authorities have taken a rigid view of the matter. However, having regard to the well reasoned findings of the Court of Inquiry as well as the recommendation of the Station Commander as also the facts and circumstances leading to sudden death of the individual, the authorities should have taken a compassionate view of the matter. It is our considered view that the death of late L/NK Malkit Singh occurred while on duty in "Operation Falcon". We have absolutely no doubt that this is a case of Battle Casualty, which is squarely covered by the provision of Category-E(i) of Govt. of India/Ministry of Defence letter dated 31-01-2001 as Operation Falcon is an operation specially notified by the Government of India. Our this view is also supported by the judgment of Hon'ble the Supreme Court dated 04-03-2005 in the case titled **Mrs. Manju Tiwari Vs. Union of India and others**, wherein it has been held in para 9 of the judgment as under:-

*"Having heard learned counsel for the parties and perused the material on record, we are of the view that there is merit in the stand of the petitioner. The parties are at ad item that deceased's unit was deployed in Operation Vijay as published in Western Command Order and petitioner's husband was on the posted strength of the unit. Thus, it is not in dispute that the death of the petitioner's husband was on account of his participation in an operation in a war like situation, as enumerated in clause (i) of Category of the Instructions. The said operation was also notified in terms of clause (i) in the said category. Thus, from a bare reading of the said instructions, which are binding on the respondents, we have no hesitation in coming to the conclusion that the death of petitioner's husband was covered under Category-E (i) of the Instructions and she is entitled to Liberalised Family Pension"*

Apart from the above, the case is also covered by the provision of para 1 (g) of Appendix 'A' to Army Order 1/2003. At the time of his death, the individual was deployed at Dogra Fort Kiari and was in the process of proceeding on leave from there. The individual was deployed on Depth Defences which guard the Line of Actual Control.

In view of the foregoing discussion, the present petition is allowed and the impugned order dated 12-05-2012 (Annexure A-9) is set aside being illegal and arbitrary. The respondents are directed to grant Liberalised Family Pension to the petitioner as per Rules/Regulations from the date of death of her husband i.e. 15-03-2011. The difference of the amount between Special Family Pension and Liberalised Family Pension be paid with interest @ 10% per annum to the petitioner along with all other benefits admissible to her under the rules within a period of four months from the date of receipt of a certified copy of this order by the respondents. In case the arrears is not paid within the stipulated period, the petitioner shall be further entitled to interest @ 10% per annum on the amount due till actual payment.

**(Justice Prakash Krishna)**

**(Lt Gen (Retd) HS Panag)**

**15.11.2013**  
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Whether the judgment for reference to be put on Internet –Yes/No