

ARMED FORCES TRIBUNAL

REGIONAL BENCH, KOLKATA

T.A. No. 07 of 2014
(Arising out of W.P. (C) NO. 13200 OF 2008)

DATED : THE _____ DAY OF MAY, 2019

CORAM :

HON'BLE DR. (MRS.) (JUSTICE) INDIRA SHAH,
MEMBER (JUDICIAL)

HON'BLE LT GEN GAUTAM MOORTHY, PVSM, AVSM, VSM, ADC
MEMBER (ADMINISTRATIVE)

APPLICANT (S) : SAUDAMINI MOHAPATRA
w/o LATE RATNAKAR MOHAPATRA
AT & PO – SABRANGA
PS / DIST – BHADRAK (ODISSA)

Vs.

RESPONDENT (S) : 1. Union of India,
Represented through
Secretary, to the
Government of India,
Ministry of Defence
DHQ PO NEW DELHI –
110011

2. Director General of
Infantry,
Army Head Quarters,
New Delhi-110011

3. The General Officer-
Commanding
Head Quarters,
17 Mountain Division
C/o 99 APO

4. The Commandant,
Mahar Regimental
Centre, Saugor,
Madhya Pradesh-
470001

5. The Record Officer,
Mahar Regiment Records
Saugor,
Madhya Pradesh-47001

6. State of Orissa,
represented through its
Secretary to the
Government, in the
Department of Home, At-
Secretariate Building,
Bhubaneswar
Dist-Khurda (Orissa)

Ld. Counsel for the Applicant (s) : Mr. SK Pattanaik
Mr. Tapas Kumar Nayak

Ld. Counsel for the Respondent (s): Mr. Daya Shankar Mishra

ORDER

Per Lt Gen Gautam Moorthy, Member (Administrative)

1. This is a transferred Application from the Orissa High Court, Cuttack. Initially the applicant/petitioner filed OJC No. 9120 of 1999 in the Hon'ble High Court of Cuttack which was disposed off. Subsequently the applicant filed Writ Petition in the Hon'ble High Court of Odisha, Cuttack being No. WP (C) No. 13200 of 2008 in which the petitioner, a widow of a deceased Sepoy filed ^{-the} ~~this~~ Writ Petition seeking compassionate appointment to her brother-in-law, i.e. brother of her deceased husband which was denied by the authorities. After transfer of the application, while hearing the case, one of the pleas taken

by the applicant's counsel in M.A. 125 of 2015, was for amendment to the prayer. In the amended prayer, the petitioner sought suitable appointment for her son and Liberalised Family Pension with retrospective effect and all other consequential death benefits as per law.

2. After the amendment was incorporated, while hearing the case on 05.12.2018, counsel for the applicant submitted a prayer that suitable appointment to the son of the deceased employee may not be pressed and that the applicant is now interested only in Liberalized Family Pension with retrospective effect and all other consequential benefits. Accordingly, this Bench proceeded to consider only the aspect of Liberalized Family Pension to the applicant and other consequential benefits.

3. The facts of the case are that the husband of the petitioner No. 4556474P Late Sepoy Ratnakar Mohapatra of the Mahar Regiment while on duty on high altitude post in Thanggu (North Sikkim) on 31st March, 1998 got buried in an avalanche along with 18 other army personnel. All died on the spot and their bodies were recovered only after 2 days. The Unit that he belonged to was deployed "**OP FALCON**". However, his death was not considered as Battle Casualty by CCDA (P) and she was sanctioned Special Family Pension instead of Liberalized

Family Pension. The respondents while commenting on the aspect of Liberalized Family Pension have stated as below :

"As far as prayer for grant of Liberalized Family Pension to her as prayed, she is not entitled to the same. She is entitled for Special Family Pension as her husband died in an avalanche on 31 Mar 1998 while serving with 11 MAHAR in North Sikkim (OP FALCON) and the same was not considered as Battle Casualty by the competent Pension Sanctioning Authority i.e. PCDA(P), Allahabad. In view of the above the petitioner cannot get alternative reliefs as prayed by way of amendment."

4. We have heard both sides.

5. Liberalized Pensionary Awards, that is, Liberalized Family Pension and War Injury Pension, were first introduced in the present form vide Govt of India, Ministry of Defence Letter No 200847 / Pen-C / 72 dated 24-02-1972. The same however essentially only applied to disabilities and deaths in proper wars and operations that occurred after independence. Later, the Govt of India, Ministry of Defence, vide Letter No 1(5)87/D (Pensions/Services) dated 30-10-1987 provided for Liberalized Pensionary Awards for all cases of "Battle Casualties" as mentioned in the subject heading of "Part IV" of the said letter. Of course, the categorization of a disability or death was to be determined by the various Army Orders in vogue from time to time which outlined the circumstances for declaration of Battle Casualties, such as Special Army Order 8/S/85, and later Army Order 01/2003. The criterion was further liberalized by way of issuance of Letter No 1(2) /97/I /D (Pen- C) dated 31-01-2001

wherein categories from A to E were laid down to determine pension and Categories D and E were specifically the ones that were entitled to liberalized awards. Besides other circumstances laid down in Categories D and E, the most important was Category E (i) which provided for liberalized awards (that is, liberalized family pension in case of death and war injury pension in case of incurring disability) in any area of a notified operation. Of course, these categories were only illustrative and not exhaustive as mentioned in 'Note' under the said categories.

6. Incongruously, due to a scripting or drafting error, or reasons which go beyond logic, deaths and disabilities occurring on the Line of Actual Control (LAC) are not being held qualified for Battle Casualty benefits under the *ibid* letter dated 30-10-1987 read with the Army Orders defining 'Battle Casualty' and also the letter dated 31-01-2001 for the reason that while deaths and disabilities occurring on the 'Line of Control' (LC, or more popularly known as LOC) which is the border in J&K opposite Pakistan Occupied Kashmir and 'International Border' (IB) are mentioned in the various Army Orders, the term 'Line of Actual Control' (LAC) which is the border between India and Tibet (China), is not mentioned. This has resulted in making it difficult to bring them under the ambit of the letter dated 30-10-1987, and as far as the letter dated 31-01-2001 is concerned, it only covers 'notified operations' such as

'Operation Rakshak', 'Operation Meghdoot', 'Operation Rhino', etc, in Category E (i), but does not cover 'Operation Falcon' since the same is not notified due reasons which are not known to this Bench.

7. Be that as it may, to examine, the issue further, it would be pertinent to reproduce the above provisions hereunder:

Special Army Order 8/S/85

11. *Casualties occurring while operating on the international border or line of control due to natural calamities and illness caused by climatic conditions will be treated as physical casualties for statistical purposes and battle casualties for financial purposes. (Added vide Corrigendum to SAO 8/S/85 on 15 May 1991). (Emphasis added).*

*Army Order 01/2003
Appendix A*

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

** * **

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

** * **

(q) Accidental deaths / injuries sustained due to natural calamities such as floods, avalanches, land slides, 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.

8. As the above would show, the terminology used is LOC and IB, and the nomenclature of LAC is missing in the relevant provisions, but this should not, in any way, preclude the applicant from claiming relief as it seems to be a patently arbitrary omission or perhaps even an oversight. Be that as it may, on the strength of sound principles laid down by judicial dicta while interpreting such beneficent provisions, we must underline that it would be totally discriminatory to accept the proposition of availability of benefits on the LOC and IB but not at the LAC since the intention of rule-makers most definitely cannot be to deny benefits to two similarly placed individuals in identical situations only because of a hyper-technical reasons whereas the tribulations and the vagaries of nature faced by our soldiers are similar in all such areas. Hence, such rules must have the same connotation for our soldiers who are deployed on our hostile borders, irrespective of whether it is called the LOC, the LAC or IB.

9. Constitutional Courts have long held that in case of beneficial provisions, courts must give a wide and liberal meaning to the written word so as to eliminate the scope of restrictive interpretation. In *Madan Singh Shekhawat Vs Union of India* 1999 (6) SCC 459 while citing Lord Denning, the Hon'ble Supreme Court observed the following:

12. It is the duty of the Court to interpret a provision, especially a beneficial provision, liberally so as to give it a wider meaning rather than a restrictive meaning which would negate the very object of the Rule.

13. In Seaford Court Estates Ltd. v. Asher, 1949(2) All ER 155, Lord Denning L.J. (as he then was) held :-

"When a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament and then he must supplement the written word so as to give "force and life" to the intention of the legislature A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they should have straightened it out ? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

10. In Union of India Vs General Secretary, Karnataka Central Excise and Customs Executive Officers' Association 1999 SCC (L&S) 1161, the Govt had refused certain allowances in somewhat similar circumstances at 'high seas' to officers of the excise department while granting them to custom officers, however the Hon'ble Supreme Court held both categories entitled to the allowances in light of both facing the same high seas.

11. In *RD Gupta and others Vs Lieutenant Governor, Delhi Administration* (1987) 4 SCC 505, the Hon'ble Supreme Court deprecated the refusal of ex-gratia payments to employees of New Delhi Municipal Corporation based upon their deployment in various wings such as the electricity and waterworks wing on one side, and the general wing on the other.

12. The Hon'ble Kerala High Court in *Writ Appeal 709/2015 Chief of the Army Staff & Ors Vs V Tusli Nair* decided on 30-01-2015, set aside the discrimination between members of Assam Rifles and the Regular Army qua admissibility of facilities of the Ex-Servicemen Health Scheme (ECHS), by observing as under:

"...A beneficial service to retired Assam Rifles combatants cannot be denied on these finicky distinctions having no rationale basis. To a combatant who has spent his life in strenuous conditions operating side by side with the Indian Army fighting alien enemies and insurgents and when the functions, organisations and duties of Assam Rifles are similar to that of the Indian Army, there cannot be any justification for denial of ECHS facilities to the retired personnel of Assam Rifles alone..."

The above decision was further affirmed by the Hon'ble Supreme Court in *SLP (Civil) D No 1044/2018 Union of India Vs V Tusli Nair* on 09-02-2018.

13. The Hon'ble Himachal Pradesh High Court in *Nirja Batta Vs Union of India* 2004 (3) CLJ (HP) 90, had held that the Petitioner in that case could not be denied the benefit of Special Compensatory Allowance (Remote Locality) when others in the area were being paid the same.

14. It is also important to note that this matter has been discussed by a Committee of Experts constituted by the Defence Minister, the report of which is available at the official website of the Ministry of Defence wherein in Paragraph 2.2.15 it was observed as under:

"...Another flaw that we have noticed in the system of award of war injury and liberalized benefits or declaration of 'battle casualties' is that disabilities and deaths occurring in 'OPERATION FALCON' are not being included for grant of said benefits or declaration of 'battle casualty' status and consequential benefits since the said Operation has not been officially notified ostensibly due to diplomatic reasons. We are constrained to say that such a situation is extremely unfortunate since benefits to similarly placed individuals in parallel on-ground situations cannot be held back due to such hyper-technical reasons or lack of paper formalities. In case there is any genuine reason for not notifying the operation, then at least it could be provided that deaths and disabilities in Operation Falcon would be treated as battle casualties for financial purposes but physical casualties for statistical purposes. It may be pointed out here that such a system was in vogue for casualties under SAO 8/S/85 (See Notes 11 and 12 under Para 4 of SAO 8/S/85 added vide corrigendum dated 15-05-1991)...."

15. It seems that follow-up action on the above has not yet culminated into an all encompassing policy for those who died or were disabled in Operation FALCON or any other area on or near the LAC. This, however, should not restrain us, since we are of the opinion that there should be no discrimination between deaths and disabilities on the LOC and IB vis-a-vis those which occurred on or near the LAC since the same would not only be hyper-technical and giving credence to a scripting error or oversight but also highly discriminatory between two soldiers in identical and practically parallel situations facing the same difficulties and travails. It may not be out of place to mention here that the Chandigarh Bench of the AFT has already granted similar benefits for a casualty occurring in Operation FALCON in OA 2509/2012 Harjinder Kaur Vs Union of India decided on 15-11-2013.

16. In view of the discussion above, it is held that the Applicant is fully entitled to the grant of Liberalized Family Pension in consequence of the death of her husband near the Line of Actual Control (LAC) in an avalanche in Operation FALCON based on various compelling reasons. Firstly, since the denial of the same is discriminatory because the same is being released by the Respondents in cases disabilities and deaths on the Line of Control (LOC) and International Border (IB) and there being no material difference between the vagaries faced

by personnel deployed on LOC and IB vis-a-vis the LAC. As discussed above, even practically speaking, a line that runs through a region dividing it into two territories must have the same connotation for our soldiers who are deployed there, irrespective of whether it is called the LOC, the LAC or IB. Secondly, we cannot permit the denial of the benefit which would be tantamount to perpetrating a patently arbitrary and hyper-technical clause which might have actually been just as a result of an oversight or a scripting/drafting error. Thirdly, Hon'ble Constitutional Courts have already held discrimination in such circumstances to be bad in law and have also held that it is the duty of judicial fora to interpret beneficial provisions liberally to give purposeful meaning to the intention behind such provisions and to iron out the creases.

17. In the result, the Applicant is held to be entitled to Liberalized Family Pension with effect from the day next to the date of death of her husband, after adjusting the family pension already received, along with 9% interest. The Applicant shall be entitled to full arrears as per law laid down by the three Judge Bench of the Hon'ble Supreme Court in Civil Appeal 3086/12 Balbir Singh Vs Union of India decided on 08-04-2016 since her valuable right has been wrongly held back and also in view of

the latest decision of the Hon'ble Supreme Court in Civil Appeal 11485/2018 Madan Prasad Sinha Vs Union of India decided on 08-04-2019. The Applicant shall also be released the ex-gratia lumpsum compensation as per then existing rates, if not already released, and all benefits as above are directed to be paid within a period of three months from the date of receipt of a certified copy of this judgement.

18. O i/c Legal Cell had made an oral submission that in case of an adverse order, he be permitted to file an appeal before the Hon'ble Supreme Court under Sec 31 of the AFT Act 2007. As there is no point of general public importance, the leave to appeal is denied.

19. No order as to costs.

20. Let a plain copy of this order be supplied by the Tribunal Officer after observance of all usual formalities.

(LT GEN GAUTAM MOORTHY)
MEMBER (ADMINISTRATIVE)


(JUSTICE INDIRA SHAH)
MEMBER (JUDICAL)