



Smt. Jaswinder Kaur v. Union of India, (AFT) (Regional Bench At Chandimandir) : **Law Finder Doc Id # 1999613**

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ARMED FORCES TRIBUNAL

(Regional Bench At Chandimandir)

Before:- Mr. Justice Mohammad Tahir, Member (J) and Admiral Hcs Bisht, Member (A).

OA 837 of 2020. D/d. 22.04.2022.

Smt. Jaswinder Kaur - Applicant

Versus

Union of India and Ors. - Respondents

For the Applicant:- Mr. GS Ghuman, Advocate.

For the Respondent:- Mr. KK Bheniwala, Sr PC.

ORDER

Mr Justice Mohammad Tahir, Member (J). - By means of this application, the applicant, who is the widow of ALD Surjit Singh (Army Number 15495838L), has prayed for the grant of Liberalized Family Pension instead of Special Family Pension w.e.f. 03.04.2018.

2. The applicant's husband, namely late ALD Surjit Singh was enrolled in the Army on 15.04.2004 and died on 02.04.2018 at Military Hospital, Jhansi while on bonafide military duty and got injured during conduct of tank biathlon competition trials at Babina Field Firing Range. The husband of the applicant had rendered 13 years, 11 months and 18 days of service in the Army till his death. Thereafter, a Court of enquiry was ordered to be convened by the Station HQ, Babina Cantt to investigate the circumstances under which the deceased soldier sustained a severe head injury on 01.04.2018 and as a result of which he died on 02.04.2018 at 12.20 hours. Accordingly, the death of the husband of the applicant was considered as attributable to military service and the casualty has been declared as "Physical Casualty". However, being accidental case while on duty, the next of kin of the deceased soldier has been paid ex gratia. Further, as per direction of IHQ of MoD (Army), case of the applicant was processed to Additional Directorate General of Manpower (Policy & Planning MP-5 (d), for declaration of the death of individual as "Battle Casualty" by 5 Armoured Regiment which was not considered by them due to policy constraints. Meanwhile, family pension claim was processed to PCDA (P) Allahabad, which in turn granted Special Family Pension w.e.f. 03.04.2018 for life. Then, applicant filed petition before the authority concerned for grant of Liberalized Family Pension instead of Special Family Pension which was replied by them. hence, this Original Application.

3. Learned counsel for the applicant has submitted that the case of the applicant comes under Battle Casualty in the light of Para 4.1, Category E, (f) (ii) of Government Policy dated 31.01.2001 and the Para (j) of Appendix 'A' to AO/1/2003, so the widow of the deceased soldier is entitled to Liberalized Family Pension instead of Special Family Pension.



4. On the other hand, learned counsel for the respondents has submitted that the claim of the applicant for grant of Liberalised Family Pension has been rejected by the pension sanctioning authority, that is, PCDA(Pensions), Allahabad and the Special Family Pension has rightly been granted to the applicant. The widow of deceased soldier is not entitled to Liberalized Family Pension and she has been granted the Special Family Pension as per entitlement.

5. We have considered the rival submissions of learned counsel for the parties and perused the record.

6. Firstly, it is to be seen as to whether the death of the applicant's husband is a physical casualty or Battle Casualty? In terms of Para 4.1, Category E, (f) (ii) of Government Policy dated 31.01.2001 and Para 1(j) of Appendix 'A' to AO (supra), the death of applicant's husband was treated as "Battle Casualty".

7. The claim of the applicant was rejected by the administrative authority on the ground that the circumstances under which the individual died are not covered under the requisite parameters as laid down for class of "Battle Casualty" in AO 1/2003/MP. Hence, casualty of the individual is declared as physical casualty. Now, we have to see whether the rejection of the administrative authority, is in accordance with the law Government Policy as well as the Special Army Order) or not?

8. For ready reference, Para 4.1, Category E, (f) (i) of Government Policy dated 31.01.2001 indicating conditions for liberalized Family Pension and Para 1(j) of Appendix 'A' to Army Order (supra), giving details of Battle Casualty, quoted are as here-under

"Para 4J Category A to D x x x x x

Category E

Death of disability arising as a result of

(a) to (e) x x x x x x x

(f) War like situations, including cases which are attributable to/aggravated by

(ii) Battle inoculation training exercises or demonstration with live ammunition.

Para (i) of Appendix (A' to AO/1/2003

Para 1 (a) to (h) x x x x x x.

(j) Casualties occurring while carrying out battle inoculation/training or operationally oriented training in preparation for actual operation due to gunshot wounds/explosion of live ammunition/explosive mines or by drowning/electrocution. "

9. It is undisputedly proved that at the time of the accident in question, the deceased soldier was performing the bonafide military duty during conduct of tank biathlon competition trials at Babina Field Firing Range which was part and parcel of battle inoculation training. It is also undisputedly proved that the death of the applicant's husband has been declared as "Battle Casualty" vide "Battle Casualty Certificate" (Annexure A-2), page 37 of the paper book. Therefore, we are of the opinion that the applicant is entitled to grant Liberalized Family Pension. Our view is also supported by Para 6.1 of Ministry of Defence letter dated 31.01.2001, quoted are as here-under



"6. Liberalized Family Pension.

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. "

10. For the reasons and discussions herein above, we come to the conclusion that the death of the applicant's husband comes in the category of Battle Casually and opinion of the administrative authority, is accordingly, set-aside. Consequently, the applicant is entitled to Liberalized Family Pension instead of Special Family Pension.

11. In the result, this Original Application is allowed and the applicant is held entitled to the Liberalized Family Pension instead of Special Family Pension from the next day of death of her husband that is w.e.f 03.04.2020. The respondents, are directed to calculate the arrears and to pay the same to the applicant within a period of three months from the date of receipt of certified copy of this order by the teamed counsel for the respondents/ OIC, Legal Cell, failing which the arrears shall carry an interest @ 8% p.a. from the date of this order.

12. It is also made clear that the amount of Special Family Pension which the applicant has already received shall be adjusted against the amount so arrived at due to Liberalised Family Pension.

13. No order as to costs.