

Hellan Sagayamony Vs. the Commanding Officer, Madras Regiment and Others

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Court : Armed forces Tribunal AFT Regional Bench Chennai

Decided On : Sep-05-2011

Judge : A.C. Arumugaperumal Adityan (Member-Judicial) & the Honourable Lt Gen (Retd) S. Pattabhiraman (Member " Administrative)

Appeal No. : O.A.No.20 of 2011

Appellant : Hellan Sagayamony

Respondent : The Commanding Officer, Madras Regiment and Others

Judgement :

(ACA Adityan)

1. An unfortunate mother, who had lost her son, who was in the defence service, had approached the respondents for liberalised family pension and exgratia payment. The respondents have rejected both the claims of the applicant, but were gracious enough to grant special family pension alone on the ground that the applicants son had breathed his last due to disease, which made the applicant to approach this Tribunal for liberalised family pension and exgratia compensation allowance and also for a direction to the 1st respondent to recommend for Government of Jammu and Kashmir Battle Casualty Allowance.

2. According to the applicant, her son late sepoy A.Stalin was born on 22nd June 1984 and he was enrolled as a Sepoy in the Madras Regiment on 28th January 2002. While serving in the Army, he had an opportunity to serve in the field area like OP RAKSSHAK from 20.12.2002 to 04.04.2003, OP RHINO from 14.12.2003 to 15.02.2004 and CPMHAUCC(JAK) from 24.07.2007 to 29.12.2007. The applicants son late Sepoy A.Stalin was inducted in DAR SHAK POST and was working at high snow falling place. As a result of cold injury, subsequently Sepoy A.Stalin was evacuated to 403 field ambulances on 29.12.2007, where it was diagnosed that he was suffering from High Altitude Cerebral Oedma (HACO) and he was placed in DIL on the same date. Subsequently, he was evacuated to CH (WC), Chandimandir on 30.12.2007 and further to Army Hospital (R and R) on 24.01.2008 where he was declared dead due to spontaneous Intra cerebral Haemorrhage as a result of cold injury HIGH ALTITUDE CEREBRAL OEDEMA by Army Hospital (R andR) on 25.01.2008 at 09.00 hours.

2(a) The applicants son late Sepoy A.Stalin had served in the Army for 5 years 11 months and 22 days. The death of Sepoy A.Stalin was classified as Battle Casualty (OP MEGHDOOT) vide the Office BC Part II order No.02/2008 dated 11.02.2008 and Liberalised Special Family Pension and Exgratia claims were submitted to PCDA (P), Allahabad, for sanction. But, PCDA (P), Allahabad had rejected both the claims of the applicant on the ground that the said Sepoy A.Stalin died due to stress and strain and not due to climatic condition which is beyond justification and special family pension alone was sanctioned to the applicant. Since the death of the applicants son comes under the purview of Battle Casualty, the applicant is eligible for Liberalised family pension, but the same was denied to the applicant by the 3rd respondent. A letter dated 12.03.2009 from the Ex-Servicemen Welfare Association was submitted by the applicant for the sanction of Rs.5 lakhs under Karkil Soldier rehabilitation fund, but the same was also denied by the respondents.

2(b) As per the G.O.No.1(2)/97/D(pen-C), Government of India/Bharat Sarkar Ministry of Defence/Raksha Mantralaya, New Delhi, dated 31st January 2001, in the case of death of an Armed Forces Personnel under the circumstances mentioned in category D and E the eligible member of the family shall be entitled

to Liberalised Family Pension (As per V Central Pay Commission). Since the applicants sons death comes under the category E, the applicant is entitled to the Liberalised Family Pension. As per the data card dated 15.07.2010, the allowances given by the Central Government are still in progress and till the date of filing of this application, the applicant was not given her due allowances. Since the applicants sons death took place at Siachen Glacier (OP MEGADOOT), which is within the jurisdiction of the Jammu and Kashmir Government, the respondents may be directed to recommend the case of the applicant to the Jammu and Kashmir Government for Battle Casualty allowances (the learned counsel for the applicant during the course of his argument has not pressed this relief by way of an endorsement). Hence, the application.

3. The respondents in their joint counter would contend that as per the field service details relating to the applicants son late Sepoy A.Stalin, he was engaged in OP RAKSHAK (J and K) between 20th December and 6th April 2003, in Modified Field / OP RHINO (Assam) between 14th June 2003 and 14th February 2004, in HAUCL (High Altitude) between 24th July 2007 and 3rd October 2007 and in Siachen Glacier (OP MEGHDOOT) between 24th October 2007 and 28th December 2007. Late Sepoy A.Stalin (No.2609324W) was inducted to DARSHAK Post (Central Glacier Battalion under OP MEGHDOOT) as a part of Support Company of 17 Madras on 20th December 2007.

3(a) On 29th December 2007 due to extreme cold climatic condition and High Altitude, he had developed problems in breathing and was given medical treatment by the Doctor at the post. Thereafter, he was evacuated to 403 Filed Hospital where he was diagnosed as a case of HIGH ALTITUDE CEREBRAL ODEMA and placed on dangerously Illness List (DI List) on 29th December 2007. He was transferred to Command Hospital, Chandimandir on 30th December 2007 and further evacuated to Army Hospital (R and R) on 24th January 2008. On 25th January 2008 at 09.00 hours, he was declared dead by medical authorities and the cause of death shown in AFMSF-93 Part II is SPONTANEOUS INTRACEREBRAL HAEMORRHAGE (INTRA CEREBRAL BLEED).

3(b) While the applicants son was engaged in the operation on the International Border and Line of Control, he suffered the illness caused by climatic conditions and he was classified as Battle Casualty and accordingly BC Part II order No.02/2008 dated 11th February 2008 was published. Even though the respondents have processed the Liberalised Family Pension and Exgratia compensation to Pension Sanctioning authority ie., PCDA (P), Allahabad, the same have been rejected by them vide letter No.G4/BC/Madras/Misc/X dated 26th August 2008 (Exhibit R-2) on the ground that the individual died due to stress and strain and not due to climatic condition/altitude factor. Exgratia lump sum compensation from Central Government was also not sanctioned being disease case. However, Special Family Pension was sanctioned to the applicant vide PPO No.F/006583/2008(Army).

3(c) The issue regarding the rejection of Liberalised Family Pension and Exgratia from Central Government by Pension Sanctioning Authority had been referred to IHQ of MoD (Army) vide Records The Madras Regiment Letter No.2609324/W/BC/76/PG-2, dated 6th December 2008 (Exhibit R-3) for examination under the provisions of Para 1(g) of Appx A to AO.1/2003 and to issue suitable directions. IHQ of MoD (Army) has intimated that the name of the individual has been included in the list of denied cases of Liberalised Family Pension and will be discussed in the Joint meeting to be held in MoD vide letter No.12822/AG/MP-5(D), dated 13th January 2009 (Exhibit R-4) and outcome is awaited from IHQ of MoD (Army). The claim for sanction of exgratia payment of Rs.5 lakhs from Central Government was submitted to PCDA (P), Allahabad, but the same had been rejected on the ground that the individual died due to disease. Hence, the application is liable to be dismissed.

4. We heard the learned counsel Mr.P.Balamurali appearing for the applicant and Mr.P.Selvam, learned Junior counsel of Mr.S.Haja Mohideen Gisthi, SPC and the learned JAG Officer Captain Jitender Singh appearing for the respondents and considered their respective submissions.

5. The only point for consideration in this application is whether the applicant is entitled to Liberalised Family Pension and exgratia compensation and also to the

allowances given by the Central Government as per the data card dated 15.07.2010 as prayed for?

6. The Point:- The admitted facts of the case of the applicant is that she is the mother of late Sepoy A.Stalin No.2609324W, who after completing 5 years 11 months and 22 days of defence service died on 25.01.2008 at RR Hospital due to Spontaneous Intra Cerebral Haemorrhage as a result of cold injury HIGH ALTITUDE CEREBRAL OEDEMA (OP MEGHDOOT). Even in the counter filed by the respondents they would admit the fact that the applicants son late Sepoy A.Stalin No.2609324W was inducted to DARSHAK Post (Central Glacier Battalion under OP MEGHDOOT) as a part of Support Company of 17 Madras on 20th December 2007 and due to extreme cold climatic condition and high altitude, the applicants son late Sepoy A.Stalin had developed problems in breathing and was given medical treatment by the Doctor at the post on 29th December 2007 and thereafter he was evacuated to 403 Field Hospital where he was diagnosed as a case of HIGH ALTITUDE CEREBRAL OEDEMA and placed on dangerously illness list (DI list) on 29th December 2007 and thereafter he was transferred to Command Hospital, Chandimandir on 30th December 2007 and further evacuated to Army Hospital (R and R) on 24th January 2008. On 25th January 2008 at 09.00 hours, he was declared dead by medical authorities and the cause of death shown in AFMSF-93 Part II is SPONTANEOUS INTRA CEREBRAL HAEMORRHAGE (INTRA CEREBRAL BLEED). The respondents would further admit that subsequent to the death of Sepoy A.Stalin BC Part II Order No.2/2008 dated 11th February 2008 was published classifying the death of the applicants son as Battle Casualty (Exhibit R-1 to the respondents typed set of papers). But, the contention of the respondents is that even though the respondents have recommended the case of the applicant to Liberalised Family Pension and exgratia to the Central Government, the Pension Sanctioning Authority ie., PCDA (P), Allahabad, had rejected the claims vide letter No.G4/BC/Madras/Misc/X dated 26th August 2008 (Exhibit R-2) on the ground that the individual died due to stress and strain and not due to climatic condition/altitude factor. This reasoning for rejecting the claims of the applicant for Liberalised Family Pension and exgratia compensation by PCDA (P), Allahabad, is diametrically opposite to the finding given by the Medical Authority in AFMSF-93 Part II as SPONTANEOUS INTRA CEREBRAL

HAEMORRAHAGE (INTRA CEREBRAL BLEED), which was due to HIGH ALTITUDE CEREBRAL EDEMA diagnosed at 403 Field Hospital. It is further admitted by the respondents that at the time of enrolment, the applicant's son late Sepoy A. Stalin was in robust health and he had developed the said ailment only while he was posted at DARSHAK Post (Central Glacier Battalion under OP MEGHDOOT).

6(a) now the point is whether the applicant is entitled to Liberalised Family Pension as per the existing Government Orders in force? The relevant Government Order on this point is No.1(2)/97/D (Pen-C), Government of India/Bharat Sarkar, Ministry of Defence/Raksha Mantralaya, New Delhi, dated 31st January 2001. As per Para 6 of the said GO, Liberalised Family Pension is classified as follows:-

6.1 In case of death of an Armed Forces Personnel under the circumstances mentioned in category D and 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 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.

6.2 If the Armed Forces Personnel is not survived by widow but is survived by child/children only, all children together shall be eligible for Liberalised Family Pension at the rate equal to 60% reckonable emoluments as defined in Para 5.2. Liberalised Family Pension shall be payable to the child/children for the period during which they would have been eligible as in the case of Special Family Pension. The Liberalised Family Pension shall be paid to the senior most eligible child at a time. On his/her death/disqualification it will pass on to next eligible child. The provision of para 5.3 (except rates) will be applicable here also.

Note: In view of the rationalisation of Liberalised Family Pension and provisions on re-marriage of widow, Children Allowance will not be payable in addition to Liberalised Family Pension.

6.3 Families of SSCOs and ECOs who die under circumstances mentioned in category D and E of para 4.1 above shall also be entitled to Liberalised Family Pension as per para 6.1 above.

6.4 Dependent pension (Liberalised) in respect of Commissioned Officers (including MNS Officers, TA Officers and ECOs/SSCOs): Where an officer dies as a bachelor or as a widower without children under circumstances mentioned in para 4.1 D and E above Dependent Pension (liberalised) shall be admissible to parents without reference to their pecuniary circumstances at the rate of 75% of Liberalised Family Pension for both parents and at the rate of 60% of Liberalised Family Pension for single parent. On the death of one parent, dependent pension at the later rate shall be admissible to the surviving parent. In the absence of parents, dependent pension shall be admissible to dependent brother(s)/sister(s) if otherwise eligible, at the rate or 60% of LFP.

Note: Condition as laid down in Para 5.3 above regarding age limit and marriage shall equally apply to dependent brother/sister for grant of dependent pension which shall be paid to the senior most eligible brother/sister at a time.

6.5 Second life award (Liberalised Family Pension) in respect of PBOR including NCs (E): Second life award in respect of personnel below officer rank who die under the circumstances mentioned in para 4.1 D and E above shall be regulated as under:

(a) If the first recipient (other than the parents) of the family pensionary award dies/is disqualified earlier than 7 years (counting from the date of casualty), the award will be continued at the same rate to the parents as second life award, if still alive, for the balance of 7 years without any reduction. After the initial period of 7 years, the second life award will be continued at the rate of 60% of the Liberalised Family Pension.

(b) Where the first life award was given to parent and the widow remarries, the Liberalised Family Pension shall be regulated depending upon the period of widows remarriage as follows:-

(i).

(ii).

Para 4.1 to the above said GO formulates five categories under which the deceased army personnel's heirs will be entitled to Liberalised Family Pension. They are as follows:-

Category A : Death or disability due to natural causes neither attributable to nor aggravated by military service as determined by the competent medical authorities. Examples would be ailments of nature of constitutional diseases as assessed by medical authorities, chronic ailments like heart and renal diseases, prolonged illness, accidents while not on duty.

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

Category C : Death or disability due to accidents in the performance of duties such as :

(i) Accidents while travelling on duty in Government Vehicles or public/private transport

(ii) Accidents during air journeys

(iii) Mishaps at sea while on duty

(iv) Electrocution while on duty, etc

(v) Accidents during participation in organized sports events/adventure activities/expeditions/training.

Category D: Death or disability due to acts of violence/attack by terrorist, antisocial 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 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 operations.

(e) On account of accidental explosions of mines while laying operationally oriented minefield or negotiating minefield laid by the 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 while on operational duty

(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.

So, the death of the applicants son late Sepoy A.Stalin squarely comes under the Category B r/w E(i) to para 4.1 of the said GO. Even though the pension sanctioning authority ie., PCDA (P), Allahabad, has granted Special Family Pension to the applicant, they have rejected the claim of Liberalised Family Pension and the claim of exgratia on the ground that the death of the applicants son Sepoy A.Stalin does not come under the Category D. But, it is seen from the materials placed by the respondents themselves that the applicants son late Sepoy A.Stalin was inducted to DARSHAK Post (Central Glacier Battalion under OP MEGHDOOT), where he had developed problems in breathing and was given medical treatment and he was diagnosed as a case of HIGH ALTITUDE CEREBRAL EDEMA and was placed under DI list on 29th December 2007 and as per AFMSF-93 Part II, his death was due to SPONTANEOUS INTRA CEREBRAL HAEMORRHAGE (INTRA CEREBRAL BLEED). So, the death of the applicants one Sepoy A.Stalin had resulted while he was inducted to OP MEGHDOOT, a specially notified operation by the Government (Category E(i) to Para 4.1 of G.O.No.1(2)/97/D (Pen-C), dated 31.01.2001), where he had developed the disease diagnosed as a HIGH ALTITUDE CEREBRAL EDEMA, which resulted in SPONTANEOUS INTRA CEREBRAL HAEMORRHAGE (INTRA CEREBRAL BLEED) as per AFMSF-93, which comes under Category B to Para 4.1 of G.O.No.1(2)/97/D (Pen-C), dated 31.01.2001. So, as per the above said GO, the applicant is entitled to Liberalised Family Pension.

6(b) As far as the claim of exgratia compensation is concerned, the respondents in their counter at para 9 would state that the claim of the applicant for sanction of exgrata payment of Rs.5 lakhs from Central Government was submitted to PCDA (P), Allahabad, but the same was rejected on the ground that the applicants son died due to the disease (Exhibit R-2). The G.O.No.20(1)/98/D (Pay/Services), Government of India, Ministry of Defence, D(Pay/Services) New Delhi dated 21st October 2008 is the latest on this point, which had substituted or modified the G.O.No.20(1)/98/D (Pay/Services), Bharat Sarkar/Government of India, Raksha Mantralaya / Ministry of Defence, New Delhi, dated 22nd September 1998. Under category 1(a) to the said GO previous lump sum exgratia granted was Rs.5 lakhs, which has subsequently been enhanced to Rs.10 lakhs as per the said GO dated 21st October 2008. Under such circumstances, the applicant is entitled to

Liberalised Family Pension and exgratia compensation as per Rules.

6(c) The applicant would admit in her application that her claim for the allowances from the Central Government is in progress as per date card dated 15.07.2010. If it is so, the respondents are hereby directed to expedite the same and pass suitable orders in favour of the applicant expeditiously. Point is answered accordingly.

7. In fine, the application is allowed and the impugned orders are set aside and the applicant is declared entitled to Liberalised Family Pension and exgratia compensation as per the Government Orders referred to in the penultimate paragraphs [para 6(a) to (c)]. The respondents are directed to expedite the claim for allowances from the Central Government as mentioned in the data card dated 15.07.2010 expeditiously. With regard to the 3rd prayer viz. to recommend the case of the applicant to the Government of Jammu and Kashmir for Battle Casualty, the application is dismissed (as not pressed). The respondents are directed to expedite the relief at an early date not later than three months from the date of this order, failing which the applicant will be entitled to 9% interest per annum for the arrears. No costs.

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