

Jayamary Vs. Union of India and Others

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Court : Armed forces Tribunal AFT Regional Bench Chennai

Decided On : Jan-10-2014

Judge : V. Periya Karupiah, (Member-Judicial) & the Honourable Mr. Lt. Gen Anand Mohan Verma, (Member-Administrative)

Appeal No. : O.A. No. 65 of 2013

Appellant : Jayamary

Respondent : Union of India and Others

Judgement :

L.t. Gen Anand Mohan Verma, Member-Administrative):

1. This application has been filed praying for the following reliefs:

(a) To set aside the impugned order/letter of the 2nd respondent in its Letter No.4541/2574395/NE-1dt. 21 June, 2012 as it is arbitrary, illegal, unjust and untenable;

(b) To convert the classification of the death of the applicants husband from Physical Casualty into Battle Casualty, grant Liberalised Family Pension and pay all consequential monetary and other benefits to the applicant from the date of death of the applicants husband, i.e., from 11.09.1992;

(c) Grant costs of this case and

(d) Pass suitable further orders that may be deemed just and necessary in the circumstances of the case and thus render justice.

2. The facts of the case are that the petitioners husband late Havildar P.Singarayar who was serving with 14 Assam Regiment died on 11.09.1992 when the vehicle in which he was travelling from Srinagar to Leh fell into Indus River at a place 15 Kms from Khalsi TCP on Srinagar-Leh Road. After this accident, the body of the petitioners husband could not be recovered and his death was classified Physical Casualty in OP Rakshak.

3. The petitioner would plead that since the death occurred during Operation Rakshak, the death has to be classified as Battle Casualty and not Physical Casualty. The petitioner came to know in March 2012 that Subedar K. Ravichandran had sustained multiple injuries due to MT accident while en route to North Hill on an Operational Recce in OP RAKSHAK while serving with 7 Engineer Regiment. The death of the said Subedar K. Ravichandran was attributable to military service and it was classified as Battle Casualty in terms of SAO 1/2003/MP. The petitioner would claim that the case of her husband and that of K. Ravichandran are identical and therefore, classifying her husbands death as Physical Casualty is discriminatory and unlawful. The petitioner submitted an application dated 16th March 2012 to the respondents requesting them to re-consider the case of her husband and to declare it as Battle Casualty. The respondents replied that there was no provision in SAO 8/S/85 for declaring Battle Casualty to an individual who died due to MT accident. The learned counsel for the petitioner would also cite a judgment dated 11th August 2010 rendered by the Armed Forces Tribunal, Regional Bench, Jaipur in T.A.No.318 of 2008 (Smt. Indrawati Devi vs. Union of India and Ors.) and also a judgment of the same Regional Bench in O.A.No.1 of 2009, dated 1st September 2010 (Smt. Laxmi Devi vs. UOI and Ors.) in support of the case of the petitioner and pray that the reliefs sought be granted.

4. The respondents would state that the late Havildar P. Singarayar was enrolled in Madras Regiment on 03rd October 1975 and was subsequently transferred to Assam Regiment on 24th November 1985. He died on 11th September 1992 due

to MT accident while travelling in a 4 Ton Army vehicle. The death was classified as Physical Casualty in terms of SAO 8/S/1985. The petitioner has been granted Special Family Pension vide PPO No.F/609/1993 and all death benefits have been paid to her. The petitioners request that she be granted Liberalised Family Pension by treating her husbands death as Battle Casualty was considered. It has been explained to her in response to the application of the petitioner and the Statutory Notice, that her husbands death has been correctly classified as Physical Casualty as there is no provision in SAO 8/S/1985 to declare the death of the petitioners husband whose death was due to MT accident as Battle Casualty. Referring to the death of Subedar K.Ravichandran, the respondents would state that the death had occurred during Operational Recce in OP Rakshak whereas the petitioners husband had died due to MT accident and was not on any operational task. The respondents would request that considering the facts on record, this application be dismissed being devoid of merit.

5. Heard both sides and perused the documents.

6. The only point for determination is whether the death of the petitioners husband can be classified as Battle Casualty or not?

7. A perusal of the Court of Inquiry dated 13th November 1992 and subsequent dates to investigate into the circumstances leading to MT accident of vehicle BA 88D 78646H would reveal that this vehicle met with an accident at a place 15 KMs from Khalsi TCP towards Leh. Twelve (12) personnel were travelling in this vehicle. This vehicle was part of the convoy carrying main body of 14 Assam which was moving from Jammu to Leh. All 12 were feared dead. While dead bodies of four could be recovered, bodies of other 8 could not be recovered as these were washed away by the river. Body of the petitioners husband was not recovered. The respondents vide their letter dated 24th December 2013 submitted by the petitioner have intimated that the deaths of 3(three) other co-passengers in the same accident were classified as Physical Casualty (OP Rakshak). The death of petitioners husband too has been reported as Physical Casualty (OP Rakshak). In this regard, it is worthwhile to go through the Special Army Order SAO 8/S/85 which reads thus:

œScope:

1. This Army Order lays down instructions for reporting a physical and battle casualties to various authorities, intimation to next of kin, submission of reports on accidents involving loss of life and injuries, issue of condolence letters and death certificates and presumption of death of personnel reported missing.

Definitions:

2. For the purpose of these instructions, definitions of various terms used herein will be as in the succeeding paragraphs.

3. Physical Casualties: Physical Casualties are those which occur in non-operational areas or in operational areas where there is no fighting, or whilst in aid to civil power to maintain internal security. Such casualties fall in to the following categories:-

- (a) Died or killed
- (b) Seriously or dangerously ill
- (c) Wounded or injured (including self-inflicted)
- (d) Missing

4. Battle Casualties: Battle Casualties are those 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 of wounds or injuries (other than self-inflicted)
- (c) Wounded or injured (other than self-inflicted)
- (d) Missing.?

Army Order 1/2003 defines Battle Casualties. The relevant extracts are as follows:

œ Paragraph 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 of wounds or injuries (other than self-inflicted)
- (c) Wounded or Injured (other than self-inflicted)
- (d) Missing

Paragraph 5: Circumstances for classification of Physical/Battle Casualties are listed in Appendix A. Appendix A to AO 1/2003

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 defences 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 a 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.

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

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

(k) Army personnel killed/wounded unintentionally by own troops during course of duty in an operational area.

(l) 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.

(m) Casualties occurring as a result of IED/bomb blasts by saboteurs/ANEs in trains/buses/ships/aircrafts during mobilization for deployment in war/war like operations.

(n) Casualties occurring due to electrocution/snake bite/drowning during course of action in counter insurgency/war.

(o) Accidental death/injuries sustained during the course of move of arms/explosives/ammunition for supply of own forces engaged in active hostilities.

(p) Death due to poisoning of water by enemy agents resulting in death/physical disabilities of own troops deployed in operational area in active hostilities.

(q) Accidental deaths/injuries sustained due to natural calamities such as floods, avalanches, landslides, cyclones, fire and lightning 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.

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

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

Physical Casualties

2. Deaths caused due to natural causes/illness/accident/suicide/murder due to family disputes in operational and non-operational areas will be treated as physical casualties. æ

A perusal of the above two Army Orders makes it clear that a death due to MT accident when the deceased is not engaged on any operational task or action is to be classified as Physical casualty.

8. The Government of India, Ministry of Defence in Letter No.1(2)/97//D (Pen-C) dated 31st January 2001 lays down the pensionary benefits on death/disability in attributable/aggravated cases. Para-1 categorizes the death or disability into 5 categories which are,

æCategory 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. Diseases 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 terrorists, 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 mines 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) 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, 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.œ

9. According to Para 5.1 of this letter, those classified as Categories B or C, would be entitled to Special Family Pension. Liberalised Family Pension would be entitled to cases covered under Categories D and E.

10. The petitioner has cited the case of Subedar K.Ravichandran. A perusal of Army Order 1/2003 would indicate that K. Ravichandran was on an operational task as described in Para-1 (l) and Para 1(d) of Appendix A to the Army Order reproduced above. Therefore, the death of Subedar K.Ravichandran was correctly classified as Battle Casualty. In the case of T.A.No.318 of 2009 decided by the Armed Forces Tribunal, Regional Bench of Jaipur, the respondents had declared

the death of an individual who had died in the same accident as Battle Casualty whereas the death of the petitioners husband in that case was classified as Physical Casualty. Thus there was a dichotomous situation and the Tribunal partially allowed the application. In the instant case, there is no such ambiguity or dichotomous situation and the petitioner cannot claim relief from the judgment in TA 318/2009. In the case of O.A.1 of 2009 decided by the Armed Forces Tribunal, Regional Bench of Jaipur, the petitioners husband had died in MT accident in an operational area and his death was rightly classified as Physical Casualty. Therefore, the request of the petitioner to classify the death of her husband as Battle Casualty was dismissed by the Tribunal. The petitioner in the instant case cannot claim relief relying upon the said judgment too.

11. In the instant case, we find that the petitioners husband died in MT accident while travelling in a vehicle which was moving as part of a convoy of main body of a Unit which had been inducted into an operational area. The petitioners husband was not deployed on any operational task and the Unit was being inducted as part of OP Rakshak. Accordingly, his death would be classified as Physical Casualty as laid down in Para-2 of Army Order 1 of 2003 and Para-3 of SAO 8/S/1985 and the death cannot be classified as Battle Casualty under the provisions of these two Army Orders. The death of the petitioners husband would fall under the Category C of the Government of India, Ministry of Defence letter dated 31st January 2001 quoted above and accordingly she would be entitled to Special Family Pension alone which has been already granted to her. Therefore, we are not inclined to grant the reliefs asked for by the petitioner.

12 In fine, the application is dismissed being devoid of merit. No costs.

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