

ARMED FORCES TRIBUNAL, REGIONAL BENCH CHANDIGARH
AT CHANDIMANDIR

OA 1597 of 2021

Friday, the 28th day of Jul, 2023

CORAM:

HON'BLE MR JUSTICE DHARAM CHAND CHAUDHARY, MEMBER (J)
HON'BLE LT GEN (Dr) RANBIR SINGH, MEMBER (A)

Smt Madhulika Siddiqui Applicant

(By Navdeep Singh, Advocate with Akanksha Duvedi, Advocate)

Versus

Union of India and others Respondents

(By Satyawan Ahlawat Sr PC)

ORDER

Justice Dharam Chand Chaudhary, Member (J) Oral:-

Today, this case has been listed in the cases to be adjourned, however, taken up for hearing as mutually agreed upon by the learned counsel representing the parties on both sides.

2. By means of this application, following relief (s) have been sought to be granted:-

- (a) Direction to the respondents to grant the **Liberalized Family Pension instead of Special Family Pension** to the applicant with effect from 05.08.1999 on account of death of her husband declared as **Battle Casualty** (Annexure A-3) and also the claim covered under the **policy dated 31.01.2001** (Annexure A-2) ;
- (b) Direction to the respondents to quash and set aside the orders Annexure A-5 and A-6 thereby rejecting her claim ;
- (c) To pass any other or further order as deemed fit and proper in the given facts and circumstances of this case.

3. The Late husband of the applicant namely Sqn.Ldr. F.S.Siddiqui was **commissioned in the India Air Force** on 19.12.1987. He was called upon by the authorities on the request of civil administration to **rescue German**

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trekkers stranded in Lahaul-Spiti region of Himachal Pradesh on account of natural calamity and flooding caused due to cloud burst in the region. The helicopter of her husband took off from Manali on 4.8.1999 and unfortunately crashed due to the treacherous weather conditions while undertaking life saving mission during low flying and died during aid to civil authorities during a natural calamity. Copy of Death Certificate is Annexure A-1. She was sanctioned Special Family Pension vide PPO No.08/14/A/F/0393 dated 22.11.1999 treating death of her late husband as attributable to military service. The respondents, however, rejected her claim for the grant of Liberalised Family Pension illegally. Later on in the year 2001, the Government of India, Ministry of Defence issued a policy dated 31.01.2001 (Annexure A-2) with retrospective effect from 01.01.1996 covering there under the deaths occurred while called upon in aid to civil authorities during natural calamities and entitling the next of kin for grant of Liberalised Family Pension. Even "Battle Casualty" Certificate Annexure A-3 was also finally issued in favour of the applicant.

4. The respondents though have granted the Special Family Pension to the applicant, however, rejected her claim for the grant of Liberalized Family Pension on the sole ground that in terms of Para 2 of letter dated 03.02.2011, such benefits were available only to casualties occurring after the issuance of the said letter and the cases settled prior to the issuance of the same shall not be reopened. Hence, her claim for **Liberalized Family Pension** does not fall under the criteria prescribed for the purpose.

5. Learned counsel representing the applicant submits that the issues raised in this application are squarely covered in favour of the applicant by

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Category D of policy dated 31.01.2001 (Annexure A-2) which is effective from 01.01.1996. The same is reproduced below:-

“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”.

Para 6.1. of Government of India letter (supra) makes it clear that deaths under category ‘D’ are entitled to Liberalised Family Pension. The same is reproduced below:-

“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 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”.

The **“Battle Casualty Certificate”** issued by the respondents (Annexure A-3) is also reproduced herein below:-

2. “Amend to read “SUBJECT HEADING” of ibid letter as under:-

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FOR

CASUALTY SERVICE PARTICULARS OF SQN LDR SIDDIQUI
FARHAT SAMJULLAH (19123) F (P)

AS

BATTLE CASUALTY CERTIFICATE

LATE SQN LDR FARHAT SAMJULLAH SIDDIQUI (19213) f (P)

3. *Further, Para 1 of the GSP issued vide this Sub-Dte letter of even reference dated 20 Aug 99 has been amended and henceforth read as follow:-*

FOR

1. *The above mentioned Air Force Officer of 117 HU died in a Flying Accident at KURGIAKH Airfield while on duty on 04 Aug 99 at 1015 hours (Apex) it is requested that action for the grant of pension and gratuity to his family may be taken immediately, as admissible.*

AS

1. *The abovementioned officer of 117 HU AF died in a Flying Accident at Kurgialkh airfield while on duty on 04 Aug 99 at 1015 hrs (Appx). The sortie falls under death/disability occurring while employed in the aid of civil power in dealing with natural calamities as specified in death/ disability under Category D covered under Para 4.1. vide MoD GoI letter NO. 1(2)/97/D (Pen-C) dated 31 Jan 2001 and further amplified in corrigendum letter issued vide No.2(1)/2011-D (Pen/Policy) dated 03 Feb,2011, and PCDA (Pension) Allahabad Circular No 458 dated 06 Apr 2011. This sortie falls under Pension Category D and hence all NoK are authorised for Liberalised Family*

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Pension. It is requested that necessary action for the grant of pension and gratuity to his next-kin may be taken immediately, as admissible”.

6. When the “**Battle Casualty Certificate**” issued by the Air Force authorities was sent to the office of the Accounts Branch i.e the **Joint Controller of Defence Accounts**, the said office rejected the claim of the applicant vide Annexure A-6 dated 09.09.2021 stating that the case does not fall within the policy. It is settled law that when there is a positive declaration in favour of the claimant by the concerned authority, it cannot be overturned by the Accounts Branch which is only supposed to calculate the amount of pension and not to sit over the findings of the competent authority. It is so held by the **H’ble Punjab and Haryana High Court in Ramesh Kumar Sharma Vs. Union of India 2003 SCC ON LINE P& H 1654** and by the .

7. We are therefore not in agreement with the stand taken by the respondents (Union of India and others) as there is no denial to that part of the applicant’s case in which she has claimed that the points in issue in this application are squarely covered in her favour by the policy dated 31.01.2001. When the applicant has successfully made out a case that the points in issue in this application are covered in her favour by the **policy dated 31.01.2001**, she is also entitled to the said benefits.

8. For the reasons stated herein above, we allow this application. Consequently, there shall be a direction to the respondents to grant the **Liberalised Family Pension instead of Special Family Pension** to the applicant with effect from 05.08.1999, the day next to the death of her husband. **The difference of amount between Special family Pension**

and Liberalised Family Pension be calculated and adjusted and thereafter the due and admissible benefits released to the applicant within a period of three months from the date of receipt of certified copy of this order by learned Senior Panel Counsel/OIC, Legal Cell, failing which together with 8% interest from the date of this order.

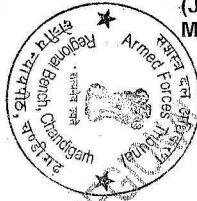
9. This application is accordingly, disposed of, so also the pending Misc.Application (s) if any.

10. No order so as to costs.

Sd/-
(Lt Gen (Dr) Ranbir Singh)
Member (A)

Sd/-
(Justice Dharam Chand Chaudhary)
Member (J)

28th Jul, 2023
RR



PREPARED BY :-

CHECKED BY :-

31/8/23
31/8/23

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