

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

O.A. No. : 50 of 2015

DATED : THE Seventh DAY OF SEPTEMBER, 2018

CORAM : HON'BLE DR. (MRS.) JUSTICE INDIRA SHAH, MEMBER (J)  
HON'BLE LT GEN GAUTAM MOORTHY, MEMBER (A)

Applicant (s) : Kanak Lata, wife of No. 13697049P  
Late Nk Akhilesh Srivastava, Presently  
Residing at C/o Sri Dinanath Prasad,  
Village - Subhashnagar, Sai Temple,  
Post Office - Godra, Via-Telco,  
Jamshedpur,  
District - East Singhbhum,  
Jamshedpur (Jharkhand) : PIN – 831 004

Versus

Respondent (s)

1. The Union of India Service  
Through the Secretary,  
Ministry of Defense,  
South Block, New Delhi-110011
2. The Chief of the Army Staff,  
Integrated HQ of Ministry of Defence (Army),  
Defence HQ Post Office; New Delhi-110011
3. The Secretary  
Department of Ex-Servicemen Welfare,  
5-A, South Block, R.K. Puram,  
New Delhi – 110011
4. The Principal Controller of  
Defence Account (Pension),  
Draupadi Ghat, Allahabad – 211001
5. Officer-in-Charge, Records, Brigade of  
The Guards, Kamptee, PIN-900746, C/o 56 APO

Ld. Counsel for the applicant : Mr. Aniruddha Datta, Ld. Advocate

Ld. Counsel for the Respondents : Mrs. Hema Mukherjee, Ld. Advocate

ORDER

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

1. This is a case filed under Section 14 of the Armed Forces Tribunal Act, 2007, (The Act) by the widow of No. 13697049P Late Nk Akhilesh Srivastava.
2. The facts of the case in brief are that Late Nk Akhilesh Srivastava was posted in unit 59 RR (Assam) deployed on the line of control in J&K. On 20.06.2009 the said late Nk Akhilesh Srivastava, being the Commander of a small team in "OPERATION BRAHMIDHAR" left the Company Operating Base at 0630 hours on an area dominating patrol. While returning from the patrol he developed chest pain at 1215 hours and received on the spot medical attention as well as medication. After that, he was brought back to the Company Operating Base where he went to sleep at about 1400 hours. He again developed severe pain in the chest at 1530 hours. A helicopter was brought to evacuate him. He was taken by helicopter to Sub Divisional Hospital, Mahore at 1800 hours where he was declared "Brought in Dead".
3. A Court of Inquiry was then conducted wherein his casualty was classified as "Battle Casualty". For the sake of convenience the Battle Casualty Certificate issued by the authorities is reproduced below :-

"1. It is certified that Number 13697049P Late Naik Akhilesh Srivastava of 59 Rashtriya Rifles (ASSAM) died on 20 Jun 2009 at 1800 hours.

2. On 20 Jun 2009, individual was commander of a small team in Operation Brahmihar (MY 8136). The party left Company Operation Base at 0630 hours on 20 Jun 2009 to dominate area Brahmihar (MY 8136) and Choti Nar (MY 8237). While returning back from the Operation, the individual developed chest pain due to illness cause by climatic conditions at 1215 hours on 20 Jun 2009. Number 13965147A Havildar (Nursing Assistant) SK Biswas was despatched from the Company Operating Base to attend to the individual. After medication the individual reached Company Operating Base and went off to sleep at 1400 hours on 20 Jun 2009. Suddenly, the individual developed pain in left side of chest and left arm at 1530 hours on 20 Jun 2009. Helicopter was demanded. Individual was declared brought in dead by civil doctors at Sub Divisional Hospital, Mahore at 1800 hours on 20 Jun 2009.

3. The death of the individual is covered under Parameter Number 1 given at paragraph 1(g) of Appendix 'A' to Army Order 1/2003/MP and will be treated as "Battle Casualty" for all purposes.

Unit : 59 Rashtriya Rifles (ASSAM)  
Station : c/o 56 APO  
Date : 26 Jan 2010

(Charandeep Singh)  
Colonel  
Commanding Officer

COUNTERSIGNED BY THE COMMANDER, 15 SECTOR RASHTRIYA RIFLES

Station : c/o 56 APO  
Dated : 28 Jan 2010

Brig  
Commander  
HQ 15 Sect RR

4. However, no ex-gratia payment was made to the applicant. Thereafter, in February, 2011 the applicant all of a sudden received a letter (Annexure-4) stating that as her husband died due to severe chest pain, his casualty is classified as Physical Casualty and not Battle Casualty, as initially reported. For the sake of convenience the letter dated 02 Feb 2011 (Annexure-4) is reproduced below :-

"Tele: 3373571

Dte Gen Mech Forces(Pers)  
General Staff Branch  
Integrated HQrs of MOD (Army)  
DHQ, PO, New Delhi-110011  
02 Feb 2011

89555/Gds/GS/MF (Pers)  
Smt. Kanak Lata  
C/o No. 13697049P  
Late Akhilesh Srivastava  
Mohalla Chhotta Govindpur,  
Near Sai Mandir,  
PO: Gadra  
Bhaya – Telco  
Jamshedpur

BATTLE CASUALTY REGARDING

1. Please refer your petition dated 31/12/2010.
2. On checking from Records, Brigade of the Guards, it is revealed that your husband No. 13697049P late Nk Akhilesh Srivastava died on 20 June 2009 due to severe chest pain. Though his case was reported by 59 RR as a Battle Casualty, however, it was classified as Physical Casualty by Adjutant General's Branch (AG/MP-5D) because as per the circumstances leading to casualty, your husband was not covered under Appx'A' to AO 1/2003/MP. Hence No. 13697049P late Nk Akhilesh Srivastava was classified as 'Physical Casualty'.

(HS Bindra)  
Col  
MF (Pers)

Encl : As above

Copy to:

Records

Brigade of the Guards

PIN : 900476

c/o 56 APO - For info w.r.t your letter 0147/03/RA-8 dated 20 Jan 2011"

5. Counsel for the Respondents while not controverting the facts have stated in their affidavit-in-opposition that the case was processed to PCDA(P), Allahabad, for adjudication for grant of special family pension and the grant of ex-gratia payment but has been rejected by PCDA (P)

vide their letter No. G4/07/10/97/VIII/G-636510 dated 13.7.2010 stating "that the death did not occur due to any accident while performing bonafide military duty". In addition, the respondents have quoted IHQ of MoD (Army Letter No. 89555/GDS/GS/MF(PRS) dated 2.2.2001 wherein it has been stated "the casualty incurred by the individual is classified as Physical Casualty by AG's Branch (AG/MP-5D)) vide their signal No. 350343 dated 12.8.2009/MP.

6. The applicant from then on has put up many applications and has been running from pillar to post to get the casualty of her husband to be classified as Battle Casualty which would entitle her to liberalized family pension as well as ex-gratia payment of Rs. 15,00,000/- (Rupees Fifteen Lac) only .

7. We have perused appendix-A to the Army Order 01/2003 which is regarding "Circumstances for Classifying Casualties as Battle or Physical" The relevant paragraph is set out as under:-

*"Appendix 'A' to AO/1/2003  
(Refers to Para 5)*

**CIRCUMSTANCES FOR CLASSIFYING CASUALTIES AS BATTLE OR PHYSICAL**

***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 the peace time as a result of fighting in war like operations, or border skirmishes with a neighboring 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 operation due to gun shot 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.*
- (k) *Army personnel killed / wounded unintentionally by own troops during course of duty in an operational area.*
- (l) *Casualties due to vehicle accident while performing bonafide military duties in war / border skirmishes with neighboring 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 the course of action in counter insurgency war.*

(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) Accident death/injuries sustained due to natural calamities such as floods, avalanches, land slide, cyclones, fire and lightning or drowning in river while performing operational duties/movements in action against enemy forces and armed hostiles in operational area to include deployment on International Border or Line of Control.

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

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

### **Physical Casualties**

2. Death 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.

### **Miscellaneous Aspects**

3. (a) Saboteurs, even of own country, will be treated as enemy for the purpose of classifying their actions as enemy act and encounters against them as encounters against the enemy.

(b) Report regarding personnel wounded or injured in action will specify the nature of the wound or injury and will also state whether the personnel remained on duty.

(c) Reports on personnel missing in action will indicate, if possible, their likely fate, e.g., 'believed killed', 'believed prisoner of war' or 'believed drowned' etc.,

(d) Any casualty occurring during deployment / mobilization of troops, for taking part in war or war like operations, will be treated as battle casualty.

8. As per paragraph 1 (g) of the said Army Order casualties occurring while operating on the International Border or Line of Control due to natural calamities and illness caused by climatic condition entails the casualty to be classified as Battle Casualty. The Certificate rendered by the unit clearly states:-

*“While returning back from the Operation, the individual developed chest pain due to illness cause by climatic conditions at 1215 hours on 20 Jun 2009. Number 13965147A Havildar (Nursing Assistant) SK Biswas was despatched from the Company Operating Base to attend to the individual. After medication the individual reached Company Operating Base and went off to sleep at 1400 hours on 20 Jun 2009. Suddenly, the individual developed pain in left side of chest and left arm at 1530 hours on 20 Jun 2009. Helicopter was demanded. Individual was declared brought in dead by civil doctors at Sub Divisional Hospital, Mahore at 1800 hours on 20 Jun 2009.”*

9. In addition, Govt. of India, Ministry of Defence letter No. 1(2)/97/I/D (Pen-C), dated 31.1.2001 in paragraph 4(1), states that category E (i) “operation specifically notified by the government from time to time” will also classify as Battle Casualty. Extracts of the letter are appended below :-

***“PART II- PENSIONARY BENEFITS ON DEATH / DISABILITY IN ATTRIBUTABLE / AGGRAVATED CASES***

*4.1 For determining the pensionary benefits for death or disability under different circumstances due to attributable/aggravated causes, the cases will be broadly categorised 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. 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 organised 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 operations.*

*(e) On account of accidental explosions of mines while laying operationally oriented mine – field or lifting 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) 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, 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 Government from time to time.”*

10. It is manifestly clear that the applicant's husband was indeed leading a patrol on the Line of Control on that fateful day. He suffered from intense pain in the chest which was obviously is a symptom of a heart attack and although given medical aid and brought back to the Company Operating Base to rest, his condition deteriorated as he suffered another heart attack from which he did not recover. Hence there is no doubt in our minds that the cause of his death was due to the stress and strain of the intense physical activity of patrolling which is an operational activity in an operational area and hence falls very much within the purview of

1(g) of Appendix 'A' to Army Order 1/2003/MP as well as in Category E (i) of para 4.1 of Govt. of India, Ministry of Defence letter No. 1(2)/97/I/D (Pen-C), dated 31.1.2001.

11. This issue is no longer res-integra and is also covered in a number of judgments :-

(a) AFT, Regional Bench, Chandigarh in O.A. 305/2014 dt. 15.12.2015 (Kameshwar Gautam vs. UOI).

(b) AFT, Regional Bench, Kolkata in O.A. 72/2014 decided on 22.3.2016, (Roni Devi vs. UOI).

(c) In Punjab & Haryana High Court (Sumitra Devi vs UOI) in C.W.P. No. 3810/2013 decided on 17.02.2014.

(d) Union of India vs. Harjinder Singh, Special Leave to Appeal (Civil) CC No.19992/2011, decided on 05.12.2012 upholding the decision of AFT, Chandigarh Bench (Annexure A-7 & A-8).

(e) Manju Tiwari vs. Union of India, WP (C) No.5262/2003, decided by the High Court of Delhi on 04.03.2005.

(f) Major Arvind Kumar Suhag vs. Union of India, WP (C) No.4488/2012, decided on 21.02.2013 (Delhi High Court).

12. Hence there is no doubt in our minds that the casualty of the applicant's husband should correctly be classified as "Battle Casualty" and not as "Physical Casualty".

13. Before parting with the case, we are at pains to point out that such a hyper technical view being adopted by authorities in such cases of

tragic death occurring in combat situations in operationally notified areas which are not only covered by the relevant Army Order and the Govt Letter on the subject, results in the sad plight of a war widow running from pillar to post to get of her rightful dues which is being denied to her because of misinterpretation of rules, regulations and orders. This is highly unacceptable. We, therefore, urge the authorities not to adopt a hidebound and negative approach to such cases in future.

14. We, therefore, direct that the letter of 02.02.2011 issued by the office of DGMF mentioned in paragraph ~~3~~<sup>4</sup> above be quashed and the Battle Casualty status be restored upon the applicant's husband. As a consequence to this, the applicant be granted liberalized family pension from the date following the death of her husband i.e. 21.06.2009. The ex-gratia relief of Rs. 15,00,000/- (Rupees Fifteen Lac) only is also to be paid by the respondents to the applicant. This order is to be executed by the respondents within a period of three months from the date of receipt of this order, failing which a simple interest of 12% per annum is to be paid by the respondents to the applicant on the arrears thereof.

15. The OA is according allowed without any order as to costs.

16. The OA (O.A. -50/2015) thus, disposed of.
17. Let the original documents (if any held) be returned to the respondents on proper receipt.
18. Let a plain copy of this order, duly counter signed by the Tribunal Officer, be given to the parties upon observance of requisite formalities.

(LT GEN GAUTAM MOORTHY)  
MEMBER (ADMINISTRATIVE)

(JUSTICE INDIRA SHAH)  
MEMBER (JUDICIAL)