

(2024) 12 SC CK 0002

Supreme Court Of India

Case No: Civil Appeal No. 13730 Of 2024 (Arising Out Of Diary No. 20250 Of 2021)

Union Of India & Ors

APPELLANT

Vs

Saroj Devi

RESPONDENT

Date of Decision: Dec. 3, 2024

Hon'ble Judges: Abhay S Oka, J; Augustine George Masih, J

Bench: Division Bench

Advocate: Vikramjeet Banerjee, Mukesh Kumar Maroria, Arunima Dwivedi, Shetty Uday Kumar Sagar, Vishakha, Bhuvan Mishra, K.Parameshwar, A.K.Trivedi, Vaibhav Trivedi, Dr. Ramsankar, Harini Ramsankar, Kanti, Raji Gururaj, Srinivas Patil, Chitransha, M/s Ram Sankar & Co,

Final Decision: Dismissed

Judgement

Abhay S. Oka, J

1. Leave granted.

FACTUAL ASPECT

2. The respondent is the widow of late Naik Inderjeet Singh (for short, "the deceased"). The deceased was employed in the Indian Army on 27th February 1996. He was part of an Area Domination Patrol. The Area Domination Patrol was launched from Manjit Main to Rangwar Post for domination of the Rangwar gap in the proximity of the Line of Control (for short, "LC") along the Anti Infiltration Obstacle System (for short, "AIOS"). A fence built by the Indian Army to prevent cross-border infiltration is known as AIOS. He complained of breathlessness during duty in extreme climatic conditions from 1.00 a.m. to 3.30 a.m. on 23rd January 2013. He was taken to the nearby Rangwar Post. The regimental medical

officer found the condition of the deceased very critical. He could not be air-evacuated due to bad weather. Therefore, he was evacuated on foot.

When he was taken to Chowkibal's MI room, he was declared dead. The cause of death was cardiopulmonary arrest. His death was initially classified

as a "battle casualty" but was later classified as a "physical casualty" attributable to military service. The respondent was granted all

terminal benefits, including a special family pension. As she was denied a Liberalised Family Pension (LFP), she filed an original application before the

Armed Forces Tribunal (for short, "the Tribunal"). The respondent sought quashing of the order dated 10th February 2016, by which the benefit

of LFP was denied to her. She prayed for a direction to grant her LFP with interest. The appellants opposed the original application. Ultimately, by the

impugned judgment dated 23rd August 2019, the Tribunal allowed the application and directed that the respondent be granted LFP and ex-gratia

lumpsum amount payable in case of battle casualties dying in harness. The present appeal takes exception to the said judgment and order.

SUBMISSIONS

3. Shri Vikramjeet Banerjee, learned Additional Solicitor General, pointed out that LFP is governed by the order dated 31st January 2001 issued by the

Director (Pensions) of the Ministry of Defence, Government of India. He submitted that LFP is granted in case of death of an armed forces personnel

under the circumstances mentioned in categories D and E of paragraph 4.1 of the order dated 31st January 2001. He submitted that, admittedly,

category D does not apply to the deceased. He submitted that the case of the deceased is not covered by any of the clauses in category E. He

submitted that as the deceased died due to cardiopulmonary arrest, his case was classified as a "physical casualty" attributable to military

service, and, therefore, the respondent was paid a special family pension. He relied on this Court's decisions in the case of *Kanchan Dua v. Union of*

India and Anr. (2020) 18 SCC 709, and *Radhika Devi v. Union of India and Ors.* (2020) 18 SCC 715. He submitted that the present case is

covered by both decisions. He submitted that the view taken by the Tribunal is entirely erroneous.

4. Shri K Parameshwar, learned senior counsel appearing for the respondent, supported the impugned judgment by relying upon documents annexed to the counter affidavit.

CONSIDERATION OF SUBMISSIONS

5. We must deal with the factual aspects. In paragraph 4.3 of the original application filed by the respondent, the following are the averments made:

“4.3 That while the husband of the applicant was posted in J&K and was part of Area Domination Patrol which was launched from Manjit Main to Rangwar Post

for domination of Rangwar Gap in the proximity of LC and along the AIOS in extreme climatic condition on 23/01/2013 from 0100 Hrs to 0330 Hrs. The husband of the

applicant complained of breathlessness and was taken to Rangwar Post where he was given First Aid. The condition of the husband of the applicant deteriorated and

was required for immediate evacuation, but due to the inclement weather, air evacuation could not be done and husband of the applicant was taken on foot to

Chowkibal where he was declared dead. The Commanding Officer of the Unit has issued a Battle Casualty Certificate on 23/01/2013 whereby the death of the husband

of the applicant has been treated as Battle Casualty.”

In the reply filed to the original application, the appellants did not dispute the correctness of the averments made in paragraph 4.3. The appellants could

not have disputed the said facts as they were also mentioned in the certificate issued by the Commanding Officer.

6. There is no dispute that the grant of LFP is governed by the order dated 31st January 2001 issued by the Director (Pensions). The said order

applies to those who were in service as of 1st January 1996 or joined service thereafter. Clause 6.1 of the order dated 31st January 2001 reads thus:

“6. Liberalised Family Pension (LFP)

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 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.

[illegible]

7. In the present case, the respondent has not contended that the case of the deceased falls in category D. The tribunal accepted that the case falls in

category E, which reads thus:

Category E

Death or disability arising as a result of:-

- (a) Enemy action in international war.
 - (b) Action during deployment with a peacekeeping 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, 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.
- (emphasis added)

A perusal of the reply filed to the original application shows that the stand of the appellants is that clause (f) of category E is not applicable as the

death of the deceased was attributable to military service and was classified as a "physical casualty". It was contended that the death was not treated as a "battle casualty". The stand taken is that the case of the deceased was not covered by clause (f) of category E as it was not a case of "battle casualty" as the deceased died due to cardiopulmonary arrest. Therefore, the only question to be decided is whether the case will be covered by the category of "battle casualty".

8. It is brought on record that initially, the Commanding Officer had categorised the death as a "battle casualty", and later on, it was changed to a "physical casualty". To the counter filed by the respondent, a copy of Army Order 1 of 2003 has been annexed as Annexure R-6. The circumstances for the classification of physical/battle casualties have been incorporated in Appendix A. In Appendix A, category 1 is of battle casualties. Clause (g) thereto reads thus:

"(g) Casualties occurring while operating on the International Border or Line of Control due to natural calamities and illness caused by climatic conditions."

9. Coming to the facts of the case, it is not disputed that on the date of the death, the deceased was posted with his battalion in Jammu and Kashmir as part of Operation Rakshak. He was part of an Area Domination Patrol for domination of the Rangwar gap in the proximity of LC. He was doing duty from 1.00 a.m. to 3.30 a.m. The certificate issued by the Commanding Officer records the following facts:

a) The deceased was working in extreme climatic conditions on the date of his death;

b) He was part of Operation Rakshak, and he was also part of the routine Area Domination Patrol close to LC. There were extreme climatic conditions at that place; and

c) When the deceased became breathless, his condition was such that he needed immediate evacuation. However, immediate evacuation by air could not be done due

to bad weather conditions. Ultimately, he was taken on foot, and when the team carried him to Chowkibal's MI room, he was declared dead.

10. Thus, the death can be attributed to illness caused by extreme climatic conditions. Hence, as per clause 1 (g) of Appendix A of the Army

Order 1 of 2003, the case will fall in "Battle Casualties". The reason is that the deceased was operating near LC in extreme climatic conditions.

He was part of Operation Rakshak and was on duty near LC. The casualty caused by illness due to climatic conditions is covered by clause 1 (g). In

this case, the respondent's husband was a victim of illness caused by extreme climatic conditions. Therefore, the case of the deceased will fall in

the category of "Battle Casualties".

11. Clause (f) of category E is attracted when death arises as a result of war-like situations. The definition of death as a result of war-like situations is

an inclusive definition, and the case cannot remain confined to sub-clauses (i) to (iii) of category E (f). In this case, the death has occurred as a result

of a war-like situation prevailing near LC. Therefore, we concur with the view taken by the Tribunal that clause (f) of category E was applicable.

12. The decisions in the cases of *Kanchan Dua v. Union of India and Anr.* (2020) 18 SCC 709, and *Radhika Devi v. Union of India and Ors.*

(2020) 18 SCC 715 have been decided on the basis of the peculiar facts of the cases. The same can have no application to the facts of this case. In

the first case, the deceased was found dead in his room. In the second case, the death was not caused by extreme climatic conditions.

13. In our view, in a case like this, the respondent ought not to have been dragged to this Court, and the decision-making authority of the appellants

ought to have been sympathetic to the widow of a deceased soldier who died in harness. Therefore, we propose to impose costs quantified as

Rs.50,000/-, which will be payable to the respondent.

14. Accordingly, the appeal is dismissed. The directions contained in paragraph 13 of the impugned judgment shall be implemented within a maximum

period of three months from today. We direct the appellants to pay the costs quantified as Rs.50,000/- to the respondent within a period of two months

from today.