

**THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

CWP No. 19207 of 2004 (O&M)  
Date of decision: February 26, 2015

Smt. Pushpa Devi

...Petitioner

Versus

State of Haryana and others

...Respondents

**CORAM:- HON'BLE MR. JUSTICE K. KANNAN**

1. **Whether Reporters of local papers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest?**

Present: Mr. Bhim Sen Sehgal, Advocate,  
for the petitioner.

Mr. Kesav Gupta, AAG, Haryana.

**K. KANNAN, J. (Oral)**

1. The petitioner is before this court seeking for review of the respondent/State's decision to deny her claim for ex-gratia payment announced by the Haryana Government through its instructions dated 20.9.1999 for the families of defence forces, who died in any action or warlike engagement, which is specifically notified by the Ministry of Defence, Government of India. The petitioner's husband died along with 17 other on 28.12.2001 at Laungewala in a mine accident while “harbouring and arming” and reported as battle casualty to the Indian army (AGORG) by Indian Army (ADP Centre). The casualty report forwarded to Secretary Zila Sainik Board, Ambala, also reports the death as a battle casualty who died “in mine blast in OP Parakram on 28.12.2001 in Laungewala sector”. When

a claim was made, the State referred to its own scheme to decline the plea and cited the persons who are not eligible under the scheme, as stipulated in terms of eligibility in Annexure B attached to the notification. The State counsel would refer to me the particularly clause which would apply to the petitioner, which reads as under:-

**“Those who are not eligible**

1.       xx                   xx       xx
2.       Physical Casualties i.e. natural death, accidental death like MT accidents, air crashes or handling of explosives in any area/sector.”
2.       The State counsel would explain that the handling of explosion in any area or sector which happens by way of accident cannot be taken to be a battle casualty to merit the ex-gratia payment. The counsel would also explain that while the army itself could compensate the victims and their families, the State rewards must be seen through the particular scheme that recognises the acts of valour engaged in warlike situation and the petitioner's husband's death cannot be termed as a battle casualty under the scheme though it may be termed as such by army itself.
3.       I have no difficulty in accepting the situation that if the scheme is made for the benefits under the State scheme, the petitioner shall show her case as falling within the requirements of the scheme. In this case, the petitioner's reliance is on how the army treated the case of death of the petitioner's husband and 17 others and characterized the same as a battle casualty to claim the benefit. It is not taken to be merely an accident but on the other hand, it is stated to be, while carrying out a particular army operation called 'OP Parakram'. Even the expression a mine accident while

harbouring and arming, I would understand to be a situation of a person coming by fatality, while undertaking the arduous duties of national security. It is not merely recorded as some casualties on an army personnel but it is recorded as a casualty—battle. The expression 'battle' must therefore, be understood as also a person preparing for a battle and coming by a fatal accident. The clause which the State would refer to, which we have already extracted, must be read by applying ejusdem generis principle. The first clause of exclusion would be a case of natural death by a person who is engaged in the army even if he is in battle front. The second situation is accidental death and explains some situation like MT accident, air crashes or handling of explosion. If a person comes by death while handling an explosion which was a mere accident, I would understand that the nature of accident which is perceived as the nature of handling explosion that did not involve any battle. In this case, the cause of death has been referred to as a casualty battle. This court had an occasion to deal with the situation of a personnel dying as a result of mechanical transport in operational area in Major Arvind Kumar Suhag Versus State of Haryana and others 2011 (1) SLR 661. This court has held as under:-

“If we must give the expression battle casualty any meaning, I would understand it to mean to a situation where a person while actively involved in the military service in an area, which is a battle zone suffers an injury, then it shall be a battle casualty. In fact, the certificate issued by the Additional Directorate General characterises the injury suffered by the petitioner as a battle casualty. If an entitlement to a benefit under ex gratia policy has to be applied, the Government ought not to be looking for

any certification more than how the army itself has treated the injury as having arisen. If there is, therefore, a certificate that the petitioner has suffered a battle casualty (see para 1 above), to take a different view and stonewall the claim of the petitioner from obtaining a benefit of the policy will make meaningless the beneficent and lofty objective which the policy proffers. A State cannot drive a person, who claims a benefit under the policy for a full-fledged adjudication in a Civil Court to ascertain the nature of injury, so long as the policy statement itself does not require any specific mode of proof. There could be no better proof than how the Army has itself perceived the injury as having resulted and that ought to be sufficient for the State to apply its Policy.”

4. I will apply the same reasoning what was stated in the said case and would take the assessment made by the army itself to dictate the nature of casualty as resultant to a battle in a warlike situation while carrying out operation of army and hence qualified for the petitioner's claim.

5. The writ petition is, therefore, allowed as prayed for. The amount which is granted under the policy shall be disbursed with interest at the rate of 9% per annum from the date when the claim was decided on 17.9.2002 till the date of payment, within six weeks from the date of receipt of a copy of this order.

**February 26, 2015**  
**prem**

**(K.KANNAN)**  
**JUDGE**