



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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CWP-35880-2019

Date of decision: 27.01.2025

Surinder Pal and another

....Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present:- Mr. Navdeep Singh and Ms. Roopan Atwal, Advocates
for the petitioners.

Mr. Amarpreet Singh Bains, AAG, Punjab.

AMAN CHAUDHARY, J. (ORAL)

1. Prayer made in the present petition is to consider petitioner No.2 eligible under the policy for a job in the category of son of a war hero/battle casualty personnel as per the policy dated 19.08.1999.
2. Petitioner No.1 having enrolled in the Indian Army on 27.12.1982, was wounded in an anti-terror operation by an Improvised Explosive Device (IED) Blast while being deployed on a quick reaction team duty during Operation Rakshak in Jammu & Kashmir and ultimately released in low medical category from the army on 31.12.2008 with the disability "Splinter Injury (Rt) Forearm with Compound Comminuted Fracture Lower End of the Humerus (Rt) Optd with Multiple Splinter Injuries, Bilateral Acoustic Trauma" which was declared attributable to military service.
3. The said disability has been assessed at 80% for life as is apparent from the Battle Casualty Certificate, Annexure P-1.
4. The premise of rejecting the claim of the benefit sought under Policy dated 19.08.1999, Annexure P-2, being the manner of his exit, for it was not due to his disability but upon completion of terms of his service, was



dealt with and decided by this Court in **Manjit Kaur vs. State of Haryana and others**, CWP-19612-2018, on 21.11.2019, against which no LPA was filed, involving a similar clause as in the present case, relevant paras of which read thus:-

“(ii) **ELIGIBILITY FOR DECEASED/DISABLED**

Ex-gratia is admissible to those personnel's of Central Police Force who got disabled for life while serving in operational areas/terrorist activities, border skirmishes and who have been medically boarded out of Central Police Force and Para Military Forces on account of their disability. The disability element should be of permanent percentage fixed by the initial medical board. Subsequent Review Medical Board reports will have no effect on the payment of Ex-gratia grant, which may increase or decrease the disability element. In case of death due to war and action against Military, Terrorists, Extremists, or during border skirmishes including Internal Security duties, Natural calamity in Election duty, MT accident / Air Crash in only flood duty, in extra ordinary efforts in saving the lives of victims of non roadable country action against military/terrorist activities.

(iv) **THOSE WHO ARE NOT ELIGIBLE**

(i) Physical Casualties i.e. Natural death accidental deaths like MT accidents, air crash in general journey or handling of explosive in any area/sector

(ii) Those disabled soldiers who are retained in the Central Para Military Forces and **not** boarded out on medical grounds even though their disability is attributable to service.”

The basis of the denial is apparently on the ground that the deceased had suffered a gun shot injury on 22.10.1996 **but had been retained in service.** Therefore, having died on 30.10.2014 and had died 18 years later and not having been boarded out on medical grounds even though the disability is attributable to service had weighed with respondent no. 5 to reject the case.

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“Thus, it is apparent that the immediate employers also recognized that the deceased was a battle casualty as such and the injury as such had eventually led to his death 18 years later. All these long years, he had suffered, which aspect has not been properly appreciated by the respondents who have rejected the case vide the impugned order



dated 31.05.2018 (Annexure P-9). The purpose of the policy as such is only to grant the benefit to the residents of the Haryana State and the ex gratia amount is to ensure that the family of such ex-serviceman who lay down their life for the nation are well looked after financially. Merely because the BSF Authorities as such had retained Constable Dilbagh Singh in the Central Para Military Forces and had not boarded him out on medical grounds recognizing his valour would not be such a ground to deny the benefits on account of clause iv(ii).

A perusal of the above said clause also would go on to show that the said clause would not be applicable to disabled soldiers who continued to be retained in the Central Para Military Forces and were duly discharged after reaching the age of superannuation. The same would not be applicable to a person who died before his superannuation and on account of the injuries he had suffered in the exchange of fire on the border. Even otherwise, once the Operational Casualty Certificate (Annexure P-4) has been granted by the BSF who have also paid ex gratia amount and also the Central Government, it was incumbent upon the State to have recognized the said certificate rather than denying the relief on technical grounds.”

5. The procedure for invalidment being in place, the decision whereof vested with the authorities and the continuation of the petitioner in service, despite having suffered disability, rather goes to his credit while the same has been construed otherwise, appals this Court, in this regard, the relevant Rule of the Entitlement Rules for Casualty Pensionary Awards, reads thus:-

“4. Procedures for Invalidment.

(j) Battle Casualties. All battle casualties will be retained in service till completion of their terms of engagement in the rank held / to which promoted. Only if the individual is unwilling to serve or in exceptional case due medical reasons will invalidment proceedings be forwarded to AG Branch for approval as per procedure laid down in Para 4 (a) to (e) above.”



6. The impugned decision is also in teeth of the judgment rendered by Hon'ble the Supreme Court in **Sansar Chand Atri vs. State of Punjab and another**¹, wherein it was observed that, "Testing the provisions in this context we are of the view that a person in the army who has earned pension after putting in the requisite period of service before leaving the army whether at his own request or on being released by the employer or on any ground should be treated as an ex-serviceman who has retired from the army. Such treatment is to be meted out to all such persons irrespective of whether the nomenclature used is "released" or "discharged" or "retired". If the contention raised on behalf of the Service Commission and the State Government that since the appellant has been discharged from the army at his own request, he cannot be treated as an ex-serviceman, is accepted then it will create a class within a class without rational basis and, therefore, becomes arbitrary and discriminatory. It will also defeat the purpose for which the provision for reservation has been made."

7. In the same vein, in the case of **Mahavir Singh Narwal vs. Union of India and another**², against which SLP was also dismissed on 04.01.2008, a case though of entitlement to disability pension, which was being denied on the basis of the fact that he was not invalidated from the service on account of disability but had sought discharged on his own accord, it was held that, "On careful perusal of the aforesaid rule it is manifestly clear that invalidated from service is necessary condition for grant of disability pension. What has to be seen for entitlement for disability pension is whether an individual at the time of his release was in a low medical category than that in which he was recruited if it was so then such person will be treated as invalidated from service."



8. It was held in **Ex. Naik Parmod Kumar vs. Union of India and others**, CWP-19417-2007, decided on 18.02.2009, against which LPA was also dismissed on 11.09.2009, a case of entitlement to pension that any differentiation viz. discharged on compassionate ground or on account of disability suffered, attributable to Military Service or aggravated by it would clearly be unreasonable, injudicious, illogical and arbitrary.

9. The policy dated 19.08.1999, Annexure P-2 was framed by the Government of Punjab for granting appointments of honour and gratitude to dependents of members of the families of the War Heroes, who were bona fide residents of State of Punjab, which in itself says it all. It was solely on account of the fact that as to he though undeniably had suffered a battle casualty and placed in a low medical category, but since was not discharged from service by the authorities, the benefit of which would not enure is iniquitous, unjust and arbitrary, to say the least.

10. On cumulative consideration of the matter, it stands unequivocally established that the claim of the petitioner is both legally sustainable and substantively justified, due to legislative intent behind the policy, when harmoniously construed with fairness and equity, precludes a rigid or hyper-technical interpretation that would undermine its very essence, while judicial precedents, serving as guiding beacons, affirm that the nature of discharge cannot be wielded as an instrument to deny legitimate entitlements, thereby binding the respondents by the principles of justice and the imperatives of settled law to extend the benefits envisioned under the policy in a manner that upholds both its letter and spirit.

11. Taking stock of facts and the legal position and as a fall out thereof, the present petition is allowed. The order dated 04.09.2018 is hereby



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appointment in terms of the policy dated 19.08.1999. Needful to be done
within a period of three months.

(AMAN CHAUDHARY)
JUDGE

27.01.2025
Hemant

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No