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Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

O.A. No. 282 of 2016

Thursday, the 11th day of January, 2018

Hon'ble Mr. Justice D.P. Singh, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

Ex Gdsm Varun Kumar Pandey (13688551H) son of late Sri Ram Achal Pandey, R/o Village Nagwasi, Post Dugavli, DistMirzapur.

…. Applicant

Ld. Counsel for the Applicant : **Shri A.K. Srivastava, Advocate**

Vs.

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi - 110011
3. OC Records, Brigade of the Guards, Panchmari.
4. Principal Controller of Defence Account (Pension), DraupadiGhat, Allahabad.

…Respondents

Ld. Counsel for the Respondents : **Dr. Shailendra Sharma Atal, Advocate,** Assisted by **Maj SalenXaxa,** OIC Legal Cell.

ORDER (Oral)

1. We have heard Shri A.K. Srivastava, Ld. Counsel for the applicant and Dr. Shailendra Sharma Atal, Ld. Counsel for the respondents, assisted by Maj SalenXaxa, OIC Legal Cell and perused the record.

2. The present petition has been preferred for payment of disability pension in pursuance of final judgment of this Tribunal dated 12.12.2011 w.e.f. 05.12.1992 on the basis of review medical board opinion. Further applicant's counsel has claimed war injury pension in pursuance of Army Instructions relaying upon the earlier order/ judgment of this Tribunal passed

in O.A. No.243 of 2016**Sepoy Raghvendra Singh vs. Union of India and others** decided by this Tribunal on 09.11.2016. The material facts necessary for adjudication of present controversy are that the applicant was enrolled in the Brigade of Guards Regiment on 17.10.1986. On 01.01.1990 he suffered back bone injury being crushed by a sliding iceberg during 'operation MEGHDOOT' in Siachin Glacier, the highest battle field in the world. On 26.03.1991 applicant applied for voluntary discharge, which was not sanctioned for almost two years. However, applicant was invalided out from service with 20% disability on 05.12.1992 for LOW BACKACHE, aggravated by military service, to be re-assessed after two years. The applicant was not granted disability pension on ground that he was discharged voluntarily and was not invalided out of service. Thereafter review of disability of applicant was not done after two years. Being aggrieved with the commission and omission of the respondents the applicant filed writ petition, bearing W.P. No. 40804 of 2003 in the Allahabad High Court, which was transferred to this Tribunal under Section 34 of the Armed Forces Tribunal Act, 2007 and was re-numbered as T.A. No. 1221 of 2010, which was decided by judgment and order dated 12.12.2011 allowing 20% disability for two years and directing for re-assessment of the applicant's disability by the review medical board. Applicant continued with 20% disability by resurvey medical board (for short RSMB) held in Army Hospital on 20.04.2012. Thus, it is evident that the RSMB held applicant's disability for life. Accordingly, respondents on 05.12.1992 sanctioned disability to the applicant for life and continued with 20% disability pension subsequent to 20.04.2012, when RSMB was held. P.P.O. was issued on 23.12.2014 for the purpose.

3. Applicant being aggrieved with the action of the respondents on the ground that once 20% disability has been assessed for life then it is not open

to the respondents to deny the disability from the original date in pursuance to judgment of the Tribunal. Accordingly, he served legal notice dated 15.07.2016, which was rejected by the authorities on 02.08.2016. The copy of the rejection order of applicant's entitlement was communicated to him vide letter dated 26.08.2016.

4. Apart from claiming 20% disability pension in continuity, that is from the date of discharge, applicant has also claimed war injury pension in accordance with the instructions issued by the Army in this regard from time to time. It is argued by the applicant's counsel that he suffered injury during operation 'MEGHDOOT' in Siachin Glacier, in pursuance to Army instructions of 1987, followed in 2003 he is entitled to war injury pension. With regard to war injury pension reliance has been placed on earlier judgment of this Tribunal rendered inT.A. No.1221 of 2010**Varun Kumar Pandey vs. Union of India and others**.

5. In response to argument advanced by the learned counsel for the applicant learned counsel for the respondents Dr. Shailendra Sharma Atal vehemently submits that the applicant has not suffered any injury during operation 'MEGH DOOT' and applicant has filed false affidavit with regard to cause of injury. It is also pleaded in the counter affidavit that the applicant has not suffered injury in Siachin Glacier, hence he is not entitled for payment of war injury pension. The other limb of argument advanced by the learned counsel for the respondents is that applicant's disability has been assessed in RSMB on 23.12.2014, hence he has rightly been sanctioned disability pension for life beginning from 23.12.2014.

6. Coming to first limb of argument with regard to continuity of disability pension, we have perused the earlier judgment of this Tribunal. A plain

reading of the judgment of the Tribunal in the transfer application, bearing T.A. No. 1221 of 2010 shows that this Tribunal held that applicant suffered injury while he was in military service and same was aggravated on account of military service. Respondents were unable to demonstrate that the injury was suffered otherwise. Accordingly, the Tribunal directed the respondents to grant disability pension to the applicant assessed at 20% for a period of two years with effect from the date when it was found i.e. 05.12.1992 and further directed to re-constitute RSMB for payment of disability pension for later period. For convenience Paras- 9, 10 and 11 of the judgment and order of the Tribunal dated 12.12.2011 passed in T.A. No. 1221 of 2010 are reproduced as under :-

> "9. We have gone through letter dated 26th March, 1991 written by the applicant addressed to the Commanding Officer perusal of which shows that the applicant did not want to continue in Military Service on account of certain personal problems at home. This letter however was not acted upon i.e. neither the request of the applicant was acceded to nor was rejected. He however was allowed to continue in service for almost one year and nine months. Finally he was discharged from service on 04.12.1992 on account of disability i.e. "Low Back Ache". The Medical Report was also placed before us upon perusal of which it revealed that the disability that the applicant was suffering from was assessed at 20 percent for a period of two years and the same was found aggravated by the Military service. It is abundantly clear that from the date of making of his application till the date of discharge the applicant continued I n military service during which period it appear that the disability aggravated. The Learned Counsel for the respondents was unable to demonstrate otherwise therefore natural presumption would be that during the continuance of the applicant in service beyond March, 1991 disease aggravated. The Medical Authorities having found the same as 20 per cent and aggravated by Military Service, the applicant as such in our considered opinion was entitled for disability pension. In not allowing the same we find that the action of the respondents is manifestly illegal and against the provision of Regulation 173 of the Army Regulations. This being so the petition deserves to be allowed.
>
> 10. In the circumstances the Transferred Application is allowed in part. The applicant shall be allowed disability pension assessed at 20 percent for a period of two years with effect from the date when it was found i.e. 5th December, 1992, the date on which the Review Medical Board was carried out.

> 11. It is further directed that the applicant shall appear before the Review Medical Board within period of three months from today and in case of disability is still found to be persisting; the disability shall be allowed as determined from the date of the Review Medical Board".

7. A plain reading of the earlier final order of the Tribunal (supra) indicates that the Tribunal held applicant entitled for payment of disability pension from the date of RSMB to be held, which ought to have been constituted immediately within three months from the date of judgment. The judgment was delivered on 12.12.2011. Accordingly, RSMB should have been constituted on or before 11.03.2012. But as observed hereinabove, RSMB was constituted on 23.12.2014 in flagrant violation of order passed by the Tribunal. It does not only amount to non – compliance of the order of the Tribunal but it also constitutes a contempt of the order of the Tribunal and makes entitled the applicant for payment of exemplary cost. Keeping in view the facts that since respondents have violated the order of the Tribunal as they have not constituted RSMB within three months from the date of order as directed, it shall be appropriate to give benefit of disability pension to the applicant w.e.f. 11.03.2012 i.e. immediately after expiry of three months' period of the order of the Tribunal in its letter and spirit.

8. The other limb of argument of the respondents is with respect to war injury pension. The respondents in this regard have pleaded that applicant has filed false affidavit and he never suffered injury in Siachin Glacier during his deployment there. Relevant portion of the counter affidavit filed by the respondents as contained in Paras- 4 and 16 is reproduced as under :-

> " 4. That as per Integrated Headquarters of Ministry of Defence Letter No. A/09381/AG/PS-4(d)(a) dated 10/19 Jun 1970 (Copy att as **Annexure III**), the Army personnel who seek premature retirement t his own request are not entitle for any award on account of disability. Hence, claim for grant of disability pension in favour of the petitioner was not processed at PCDA (P), Allahabad.

> 16. That averments made in para 4.1 and 4.2 of the affidavits are not admitted as stated and in reply thereof it is submitted that the petitioner is trying to mislead the Hon'ble Tribunal by stating false statement, because as per record held with this office, the petitioner had not sustained injury while he was deployed in **"SIACHEN GALCIER".** Hence, the petitioner is neither a Battle Casualty nor sustained would/injury during service.

9. A plain reading of Para-4 of the counter affidavit shows that the respondents have objected even payment of disability pension in the present case on the ground of applicant's taking premature retirement at his own request. The second fact borne out from the pleading on record is that the respondents have categorically pleaded that the applicant has not suffered injury while he was deployed in Siachin Glacier during operation 'MEGH DOOT'. This pleading has been brought on record by Col Rajbir Yadav of 11 GRRC, on behalf of the respondents Army under the teeth of earlier final order of the Tribunal dated 12.12.2011 (supra). In the earlier judgment (supra) the Tribunal has noted in Para-3 regarding injury caused to the applicant in Siachin Glacier. For convenience Para-3 of the order of the Tribunal dated 12.12.2011 passed in T.A. No. 1221 of 2010 (supra) is reproduced as under :-

> "3. The applicant was appointed as a soldier in Brigade of Guards Regiment on 17.10.1986. On 16.03.1989 he was posted in Siachin Glacier for doing the operation "**Mega Doot**" where he performed his service till 01.01.1990. While coming back from Siachin Glacier the applicant got injured on account of heavy Iceberg sliding. On the basis of the advice of the Medical Board he was released on 04.12.1992. The disability pension was not allowed to the applicant despite the matter having been represented by him to the authorities, he approached the High Court for relief claiming disability pension which petition is now before us by transfer".

10. The aforesaid observation has been followed by further observation in Para-9 of the judgment, which has already been reproduced hereinabove. The conclusive finding in the order of the Tribunal with regard to applicant's plighthas been concealed by the respondents with different stand while filing

counter affidavit. This amounts to concealment of fact by the person who filed counter affidavit on behalf of the Indian Army. The question with regard to penal action against the State in case some facts are concealed is no more RES INTEGRA. The Tribunal itself is empowered to deal with such action sternly since it amounts to interference in the administration of justice and erodes people's faith to uphold majesty of law. There will be chaos in the country in case the Government of India does not come with clean hands and conceals facts while approaching the courts, Tribunals or authorities conferred with judicial or quasi- judicial jurisdiction. It is always expected that before filing counter affidavit the respondents shall look into the earlier judgments and material facts on record. Why the respondents in the present case have not looked into the findings recorded by this Tribunal, is not understandable. The concealment appears to be deliberate and it shall be appropriate to deal with certain cases in this regard where concealment of fact had occurred.

11. In connection with it, we may refer to the case of **Dalip Singh vs State of U.P. reported in (2010) 2 SCC 114** in which the Hon'ble Supreme Court considered the question whether relief should be denied to the appellant who did not state correct facts in the application filed before the prescribed Authority and who did not approach the High Court with clean hands. After making reference to some of the precedents, it was observed:

> *"9.....while exercising discretionary and equitable jurisdiction under Article 136 of the Constitution, the facts and circumstances of the case should be seen in their entirety to find out if there is miscarriage of justice. If the appellant has not come forward with clean hand, has not candidly disclosed all the facts that he is aware of and he intends to delay the proceedings, then the Court will not non-suit him on the ground of contumacious conduct*."

12. In ***Oswal Fats and Oils Ltd vs. Commr (Admn),*** (20P10) 4 SCCF 728 relief was denied to the appellant by making the following observations (SCC pp.738-39 paras 10-20)

> *"19. It is quite intriguing and surprising that the lease agreement was not brought to the notice of the Additional Commissioner and the learned Single Judge of the High Court and neither of them was apprised of the fact that the appellant had taken 27.95 acres land on ease from the Government by unequivocally conceding that it had purchased excess land in violation of Section 154(1) of the Act and the same vested in the State Government. In the list of dates and the memo of special leave petition filed in this Court also there is no mention of lease agreement dated 15.10.1994. This shows that the appellant has not approached the Court with clean hands. The withholding of the lease agreement from the Additional Commissioner, the High Court and this Court appears to be a part of the strategy adopted by the appellant to keep the quasi-judicial and judicial forums including this Court in dark about the nature of its possession over the excess land and make them believe that it has been subjected to unfair treatment. If the factum of execution of lease agreements and its contents were disclosed to the Additional Commissioner, he would have definitely incorporated the same in the order dated 30.5.2001. In that event, the High Court or for that reason this Court would have none suited the appellant at the threshold. However, by concealing a material face, the appellant succeeded in persuading the High Court and this Court top entertain adventurous litigation instituted by it and pass interim orders. If either of the courts had been apprised of the fact that by virtue of lease deed dated 15.10.1994, the appellant has succeeded in securing temporary legitimacy for its possession over excess land, then there would have been no occasion for the High Court to entertain the writ petition or the special leave petition.*
>
> *20. <u>It is settled law that a person who approaches the court for grant of relief, equitable or otherwise, it is under a solemn obligation to candidly disclose all the material/important facts which have bearing on the adjudication of the issues raised in the case. In other words, he</u>*

owes a duty to the court to bring out all the facts and refrain from concealing/ suppressing any material fact within his knowledge or which he could have known by exercising diligence expected for a person of ordinary produce. If he is found guilty of concealment of material facts or making an attempt to pollute the pure stream of justice, the court not only has the right but a duty to deny relief to such person"

13. In view of above, since the respondents have concealed the material facts and filed false counter affidavit to negate the affidavit and pleadings on record, there is no other option except to comply with the order of Hon'ble Supreme Court to deal with such matters. It is a fit case where a heavy cost should be imposed upon the respondents under Section 19 of the Armed Forces Tribunal Act, 2007 since the action of respondents amounts to obstruct the judicial process.

14. Now we come to war injury pension. Admittedly, the applicant has notraised the issue in earlier petition with regard to war injury pension. This fact is evident from earlier judgment of the Tribunal, whereby applicant has been granted disability pension. While dealing with identical case a Bench of this Tribunal vide order dated 09.11.2016 in O.A. No. 243 of 2016 (supra) considered Appendix-A to Army Order, which has been relied upon by the respondents. It shall be appropriate to quote the relevant portion from earlier judgment of the Tribunal contained in Paras -5, 6, 7 and 8 as under:-

"5. Per contra, learned counsel for the respondents contendsthat the case of the Applicant for treating him as battle casualty was rejected by the Army Headquarters on justifiable grounds and in connection with it, he drew our attention to 1 of Appx A to AO 1/2003/MP.

6. In the above perspective, it would be appropriate to take into reckoning the Army order No 1 of 2003 which seems to have not been taken into consideration in its totality by the competent Authority while rejecting the claim of the Applicant. The relevant portion of Army Order 1 of 2003 being germane to the controversy is reproduced below.

"Section I INTRODUCTION

1. This Army Order lays down instructions for reporting of physical and battle casualties to various authorities, intimation to next to kin, submission of reports on accidents involving loss of life and injuries, issue of condolence letters and death certificates and presumption of death of personnel reported missing.

   Definitions :

2. For the purpose of these instructions, definitions of various terms used herein will be as in the succeeding paragraphs.
3. Physical Causalities – Physical Casualties are those which occur in non-operational areas or in operational areas where there is no fighting or whilst in aid to civil power to maintain internal security. Such casualties fall in to the following categories :-
   (a) Died or killed.
   (b) Seriously or dangerously ill
   (c) Wounded or injured (including self-inflicted)
   (d) Missing.
4. Battle Casualties: - Battle Casualties are those casualties sustained in action against enemy forces or whilst repelling enemy air attacks. Casualties of this type consist of the following categories:-
   (a) Killed in action
   (b) Died of wounds or injuries (other than self-inflicted)
   (c) Wounded or injured (other than self-inflicted)
   (d) Missing

Notes:

(i) Air raid casualties are those sustained as a direct or indirect result of enemy air raid. These will be treated as battle casualties.

(ii) Casualties in fighting against armed hostiles and those whilst in aid of civil power to maintain internal security are classified as physical for statistical purposes but are treated as battle casualties for financial purposes.

(iii) Casualties due to encounter with troops or armed personnel or border police of a foreign country, or during fighting in service with peace keeping missions abroad under governments orders will be classified as battle casualties.

(iv) <u>Accidental injuries and deaths occurring in action in an operational area will be treated as battle casualties.(Emphasis supplied).</u>

(v) <u>Accidental injuries</u> which are not sustained in action and are not in proximity to the enemy, if these 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 <u>classified as battle casualties notwithstanding the place of occurrence or agency laying those, viz, own troops or enemy provided casualties occur within the time limits laid down by the government.</u>

(vi) Saboteurs, even of own country will be treated as enemy for the purposes of classifying their action as enemy action, and encounters against them as encounters against the enemy.

(vii) All casualties during peace time as a result of fighting in war like operations or border skirmishes with a neighboring country will be treated as battle casualties.

(viii) Accidental deaths/injuries sustained due to natural calamities (such as floods, avalanches, and slides and cyclones) or drowning in river crossings at the time of performance of operational duties movements whilst in action against enemy force will be treated as battle casualties. (Emphasis supplied).

(ix) Reports 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.

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

5. Battle Accident – Battle Accidents are those which take place in operational areas during the period of active hostilities but not in proximity to the enemy. (If the accident occurs in proximity to the enemy, it is classified as battle casualty).

6. Operational Area – Any geographical area occupied by a field force ordered to participate in specific operations / active hostilities against an enemy or insurgents. It will include all the areas within which operations are intended to be conducted as well as the locations of its integral, logistical and administrative installations providing support to the field force.

7. Active Hostilities – Active Hostilities cover actual operations against the enemy, including preparatory activities, eg, reconnaissance and deployment prior to declaration of war and all military moves and measures subsequent to a cease fire.

8. Proximity to Enemy - Any area dominated by enemy by small arms fire or observation coupled with mortar / artillery shelling or patrolling and ambush or sabotage activities will come within the purview of this term.

9. Officers commanding Unit – An officer commanding a unit."

15. While deciding O.A No 54 of 2016 Lt Col **Sharma Sunil Datta vs Union of India and others**, vide order dated 29.09.2016, a Division Bench of Armed Forces Tribunal, Regional Bench, Kolkatta

presided over by one of us (Hon. Devi Prasad Singh, Member (J), had observed as under:

"14. A plain reading of clause (iv) of section 4 of the Army Order 1/2003 shows that accidental injuries in operational area are treated as battle casualties. Para 4 when read with para 5 of the Army Order (supra) shows that even accidental injuries which are not sustained in action and are not in proximity to the enemy but sustained on duty shall be classified as battle casualties notwithstanding the place of occurrence. All casualties suffered during peace time as a result of fighting in war like operations shall be treated as battle casualties. Needless to say that the injuries suffered by the applicant during Op Parakram. Op Parakram was war like operations wherein the applicant suffered injuries.

15. Para 5 of Army Order 1/2003 defines battle casualties, according to which accident taken place in operational area during the period in active hostilities not in the proximity to enemy, shall be deemed to be battle casualties like Op Parakram.

16. The operational area has been defined in para 6 which includes operational area or area within which operation is intended to be conducted. Such definition shall include the areawhere applicant suffered injuries during Operation Parakram. The combined reading of notes of Section 4, followed by Section 6, 7 & 8 establish that injuries suffered by the applicant is an instance of battle casualty and not physical casualty.

Para 69 of the Army Order 1/2003 deals with classification of injuries. For convenience sake the same is reproduced as under:-

"69. Cause and Nature of Injury – The classification of

wounded battle casualty will be guided by the parameters of cause/circumstances and the severity of injury sustained. Only when both these parameters are met, the casualty would be classified as a Battle Casualty.

(a) Parameter No.1 – The cause or the circumstances under which the injury has occurred. These are -

(i) Gun Shot Wound/ Splinter injuries sustained in action against enemy / militants. OR
(ii) Gun Shot Wound/Splinter injuries sustained accidentally / due to firing by own troops while carrying out operations against enemy / militants. OR
(iii) Mine Blast / IED blast injuries sustained in explosion of mines / IEDs caused by enemy / militants. Mines to included those planted by own troops against enemy. OR
(iv) Injuries sustained due to accidents because of natural / environmental reasons like avalanche, crevasse, landslides, flash floods etc. while in action against enemy / militants. OR
(v) Injuries sustained during enemy air raids, NBC warfare and hand-to-hand fights which are other than gunshot / splinter injuries must also be included.

(b) Parameter No. 2 - The injury should at least be of grievous nature. The following will be governing factors :-
(i) Emasculation
(ii) Permanent privation of the sight of either eye
(iii) Permanent privation of hearing of either ear
(iv) Privation of any member or joint
(v) Destruction or permanent impairing of the power of any member of joint.
(vi) Permanent disfiguration of the head or face.
(vii) Fracture or dislocation of a bone or tooth.
(viii) Any hunt, which endangers life or which causes the sufferer to be, during the space of 20 days, in severe bodily pain or unable to follow his ordinary pursuits."

17. A collective reading of parameter No 1 deals with different situations with regard to injuries. Clause (iv) of parameter No 1 specifies injuries sustained due to accidents because of natural/environmental reasons like avalanche crevasse, landslides, flash floods etc while in action against enemy / militants. While rejecting the applicant's case, the authorities concerned have failed to look into the provisions in its totality. Cause and nature of injuries under parameter No 1 has not been taken into consideration. Parameter No 2 seems to cover the applicant's case. It provides the governing factors viz emasculation, permanent privation of the sight of either eye, permanent privation of hearing of either ear, privation of any member or joint, destruction or permanent impairing of the power of any member of joint, permanent disfiguration of the head or face, fracture of dislocation of a bone or tooth and any hunt, which

endangers life or which causes the sufferer to be, during the space of 20 days, in severe bodily pain or unable to follow his ordinary pursuits."

In the aforesaid case, the Bench also considered the principles of interpretation required to be followed while considering the order, decision or statutory provisions. The relevant observations are contained in paras 18 to 34 of the said decision which are reproduced below for ready reference.

"18. In **District Mining Officer vs. Tata Iron and Steel Co.*(2001) 7 SCC 358*** *: Hon'ble Supreme Court has held that, function of the Court is only to expound the law and not to legislate. A statute has to be construed according to the intent of them and make it the duty of the court to act upon true* ***Intention of the legislature****. If a statutory provision is open to more than one interpretation, the court has to choose the interpretation which represents the true intention of the legislature.*

19. In **DadiJagannadhan vs JammuluRamulu*(2001) 7 SCC 71****: Hon'ble Supreme court has held that, while interpreting a statute the court must start with the presumption that legislature did not make any mistake and must interpret so as to carry out the oblivious intention of legislature, it must not correct or make up a deficiency, neither add nor read into a provision which are not there particularly when literal reading leads to an intelligent result.*

20. In ***Krishna vs. state of Maharashtra (2001) 2 SCC 441 :****Hon'ble Supreme court has held that, in absence of clear words indicating legislature intent, it is open to the court, when interpreting any provision, to read with other provision of the same statute.*

21. In ***Essen Deinki vs. Rajiv Kumar (2002) 8 SCC 409:*** *Hon'ble Supreme court has held that, it is the duty of the court to give broad interpretation keeping in view the purpose of such legislation of preventing arbitrary action, however statutory requirement can not be ignored.*

*22. In **Grasim industries ltd.vs. Collector of Custom (2002) 4 SCC 297:** Hon'ble Supreme court has held that, while interpreting any word of a statute every word and provision should be looked at generally and in the context in which it is used and not in isolation.*

*23. In **Bhatia international vs.Bulk trading S.A. (2002) 4 SCC 105:** Hon'ble Supreme court has held that, where statutory provision can be interpreted in more than one way, court must identify the interpretation which represents the true intention of legislature. While deciding which is the true meaning and intention of the legislature, court must consider the consequences that would result from the various alternative constructions. Court must reject the construction which leads to hardship, serious inconvenience, injustice, anomaly or uncertainty and friction in the very system that the statute concerned is suppose to regulate.*

*24. In **S.Samuel M.D. Harresons Malayalam vs, UOI (2004) 1 SCC 256:** Hon'ble Supreme court has held that, when a word is not defined in the statute a common parallence meaning out of several meanings provided in the dictionaries can be selected having regard to the context in which the appeared in the statute.*

*25. In **M.Subba Reddy vs. A.P. SRTC (2004) 6 SCC 729**: Hon'ble Supreme court has held that, although hardships can not be a ground for striking down the legislation, but where ever possible statute to be interpreted to avoid hardships.*

*26. In **Delhi Financial Corpn**. **Vs Rajiv Anand (2004) 11SCC 625**: Hon'ble Supreme court has held that, legislature is presumed to have made no mistake and that it intended to say what it said. Assuming there is a defect or an omission in the words used by the legislature, the court can not correct or make up the deficiency, especially where a literal reading there of produces an intelligible result the court is not authorized to alter words or provide a casus omissus.*

*27. In**Deepal Girish bhai soni vs. United India insurance ltd. (2004) 5 SCC 385:** Hon'ble Supreme court has held that, statute to be read in entirety and purport and object of Act to be given its full effect by applying principle of purposive construction.*

*28. In **Pratap Sing vs. State of Jharkhand(2005) 3 SCC 551: Hon'ble Supreme court has held that, interpretation of a statute depends upon the text and context there of and object with which the same was made. It must be construed having regard to its scheme and the ordinary state of affairs and consequences flowing there from – must be construed in such a manner so as to effective and operative on the principle of "ut res magisvaleatquampereat". When there is to meaning of a word and one making the statute absolutely vague, and meaningless and other leading to certainty and a meaningful interpretation are given, in such an event the later should be followed.*

*29. In **Bharat petroleum corpn. Ltd. vs. MaddulaRatnavali (2007) 6 SCC 81:** Hon'ble Supreme court has held that, Court should construe a statute justly. An unjust law is no law at all. Maxim "Lex in just non est."*

*30. In**Deevan Singh vs.Rajendra Pd. Ardevi (2007) 10 SCC 528:** Hon'ble Supreme court has held that, while interpreting a statute the entire statute must be first read as a whole then section by section, clause by clause, phrase by phrase and word by word the relevant provision of statute must thus read harmoniously.*

*31. In**Japanisahoo vs. Chandra Shekhar Mohanty (2007) 7 SCC 394:** Hon'ble Supreme court has held that, a court would so interpret a provision as would help sustaining the validity of law by applying the doctrine of reasonable construction rather than making it vulnerable and unconditional by adopting rule of literal legis.*

*32. In **2010 (9) SCC 280, Zakiya Begum Vs. Shanaz Ali :**Hon'ble Supreme court has held that, an explanation to a section should normally be read to harmonise with and clear up any ambiguity in the main section and normally not to widen its ambit.*

33. In ***2010(7) SCC 129, Bondu Ramaswamy Vs. Bangalore Development Authority:*** *Hon'ble Supreme court has held that, vague and ambiguous provision – An interpretation that would avoid absurd results should be adopted – when the object or policy of a statute can be ascertained, imprecision in its*
language not to be allowed in the way of adopting a reasonable construction which avoids absurdities and incongruities and carries out the object or policy – A court cannot supply a real casus omissus nor can it interpret a statute to create a casus omissus when there is really none.

34. Maxwell on the Interpretation of Statutes (12th edition page 36) opined as under:-

> *"A construction which would leave without effect any part of the language of a statute will normally be rejected. Thus, where an Act plainly gave an appeal from one quarter sessions to another, it was observed that such a provision, though extraordinary and perhaps an oversight could not be eliminated."*

16. Keeping in view the fact that the applicant suffered injury in operation '**MEGH DOOT'** he appears to be entitled for war injury pension under the Army Instructions. It shall be appropriate to state that while dealing with a beneficial provision effort should be made to broaden the benefit instead of narrowing its applicability.

17. Not only the 2003 Army Instructions but the 1987 Army Instructions also provide that in war like situation, in the present case operation "MEGH DOOT' injury suffered by the members of the Armed Forces, in the present case Army, applicant shall be entitled for war injury pension. Since the factum of operation '**MEGH DOOT'** has neither been denied nor any petition has been filed by the respondents in the Supreme Court challenging the order passed by the Tribunal, it has attained the finality. Hence there appears no room of doubt that the applicant is also entitled for war injury pension.

18. It is well settled proposition of law that the Court/ Authorities or Tribunalmay not travel beyond the pleadings. In the absence of any material on record, supported by pleadings, we may not hold that the applicant has not suffered injuries at Siachin while discharging duty under operation '**MEGH DOOT'** .

19. Hon'ble Supreme Court while dealing with an issue in **Kalyan Singh Chouhan vs. C.P. Joshi**, AIR 2011 SC 1127 after placing reliance on a very large number of its judgments including **Trojan & Co. vs. RM. N.N. NagappaChettiar**, AIR 1953 SC 235, **Om Prakash Gupta vs. Ranbir B. Goyal**, AIR 2002 SC 665, **Ishwar Dutt vs. Land Acquisition Collector**, AIR 2005 SC 3165 and **State of Maharashtra vs. Hindustan Construction Company Ltd.**, (2010) 4 SCC 518 held that relief not founded on the pleadings cannot be granted. A decision of a case cannot be based on grounds outside the pleadings of the parties. No evidence is permissible to be taken on record in absence of the pleadings in that respect. No party can be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. It was further held that where the evidence was not in the line of the pleadings, the said evidence cannot be looked into or relied upon.

20. In **Bachhaj Nahar vs. Nilima Mandal**, AIR 2009 Supreme Court 1103, the Supreme Court held that a case not specifically pleaded can be considered by the Court unless the pleadings in substance contain the necessary averments to make out a particular case and issue has been framed on the point. In absence of pleadings, the Court cannot make out a case not pleaded, suomotu.

21. Accordingly, there is no room of doubt that the applicant suffered injuries at Siachin while discharging duty under operation ‘MEGH DOOT’ and the affidavit has been filed by the respondents by concealing the fact that the applicant has not suffered injuries at Siachin, that too under the judgment of the Tribunal (supra), warranting exemplary cost payable to the applicant, who has served the Nation as lowest rug of Indian Army.

COST

22. There can be no dispute with respect to the settled legal proposition that a judgment of the apex Court is binding, particularly, when the same is that of a co-ordinate bench, or of a larger bench. It is also correct to state that, even if a particular issue has not been agitated earlier, or a particular argument was advanced, but was not considered, the said judgment does not lose its binding effect, provided that the point with reference to which an argument is subsequently advanced, has actually been decided. The decision therefore, would not lose its authority, “merely because it was badly argued, inadequately considered or fallaciously reasoned”. The case must be considered, taking note of the ratio decidendi of the same i.e., the general reasons, or the general grounds upon which, the decision of the court is based, or on the test or abstract, of the specific peculiarities of the particular case, which finally gives rise to the decision, vide **Somawanti vs. State of Punjab**, AIR 1963 SC 151, **BallabhdasMathuradas Lakhani vs. Municipal Committee Malkapur**, AIR 1970 SC 1002, **Ambika Prasad Mishra vs. State of Uttar Pradesh**, AIR 1980 SC 1762, **Director of Settlements, Andhra Pradesh vs. M.R. Apparao**, AIR 2002 SC 1598 and **State of Gujarat vs. Hon’ble Mr. Justice R.A. Mehta (Retd.)**, AIR 2013 SC 693.

23. In **M. Nagabhushan vs. State of Karnataka**, AIR 2011 SC 1113, the Hon'ble Supreme Court held that doctrine of res judicata was not a technical doctrine but a fundamental principle which sustains the rule of law in ensuring finality in litigation. The main object of the doctrine is to promote a fair administration of justice and to prevent abuse of process of the court on the issues which have become final between the parties. The doctrine was based on two age old principles, namely, 'interest reipublicaeut sit finislitium' which means that it is in the interest of the State that there should be an end to litigation and the other principle is 'nemol debt bisvexarisiconstat curiae quod sit pro una et eadem causa' meaning thereby that no one ought to be vexed twice in a litigation if it appears to the court that it is for one and the same cause. In a country governed by the rule of law, finality of judgment is absolutely imperative and great sanctity is attached to the finality of the judgment and it is not permissible for the parties to reopen the concluded judgments of the court as it would not only tantamount to merely an abuse of the process of the court but would have far reaching adverse effect on the administration of justice. It would also nullify the doctrine of stare decisis a well established valuable principle of precedent which cannot and should not be unsettled lightly. Precedent keeps the law predictable and the law declared by the Supreme Court, being the law of the land, is binding on all courts/ tribunals and authorities in India in view of Article 141 of the Constitution. The judicial system "only works if someone is allowed to have the last word" and the last word so spoken is accepted and religiously followed. The doctrine of stare decisis promotes certainty and consistency in judicial decisions and this helps in the development of the law. Besides providing guidelines for individuals as to what would be the consequences if he chooses the legal action, the doctrine promotes confidence of the people in the system of the

judicial administration. Even otherwise it is an imperative necessity to avoid uncertainty, confusion. Judicial propriety and decorum demand that the law laid down by the highest court of the land must be given effect to.

24. In **Union of India vs. Major S.P. Sharma,** (2014) 3 SCALE 484, the Supreme Court held :

> " In a country governed by the rule of law, the finality of a judgement is absolutely imperative and great sanctity is attached to the finality of the judgement and it is not permissible for the parties to reopen the concluded judgements of the court as it would not only tantamount to merely an abuse of the process of the court but would have far-reaching adverse effect on the administration of justice. It would also nullify the doctrine of stare decisis a well-established valuable principle of precedent which cannot be departed from unless there are compelling circumstance to do so. The judgment of the courts and particularly of the apex count of a country cannot and should not be unsettled lightly. Precedent keeps the law predictable and the law declared by the Supreme Court, being the law of the land, is binding on all courts/tribunals and authorities in India in view of article 141 of Constitution. The judicial system only works if someone is allowed to have the last word and the last word so spoken is accepted and religiously in judicial decisions and this helps in the development of the law. Besides, providing guidelines for individuals as to what would be the consequences if he chooses the legal action, the doctrine promotes confidence of the people in the system of the judicial administration. Even otherwise it is an imperative necessity to avoid uncertainly, confusion, Judicial propriety and decorum demand that the law laid down by the highest Court of the land must be given effect to."

In view of above the judgements of the court and particularly of the Apex Court of a country cannot and should not be unsettled lightly.

25. Keeping in view the above fact that the question with regard to payment of war injury pension has ben settled by the Principal Bench of the Tribunal as

well as Regional Bench, Kolkata of the Tribunal (supra) there is no option except to follow the settled proposition of law for grant of war injury pension. It is not open for the Tribunal to deviate from the law laid down by the earlier Bench of the Tribunal.

26. It is matter of great concern and pain that while filing counter affidavit, respondents/ Union of India through its officers of the Army have tried to conceal material fact with regard to finding and observation made in earlier judgment of the Tribunal, wherein there is observation based on pleading, that the applicant suffered injury during operation 'MEGH DOOT' (supra). In the absence of denial the Tribunal accepted that the injuries were suffered by the applicant during operation 'MEGH DOOT' and held that he is entitled for disability pension. Since war injury pension and disability pension are different facets of service pension and relief with regard to war injury pension was not claimed in the earlier petition and the finding recorded in the earlier judgment has attained finality, it was not open to the respondents to file affidavit contrary to the finding recorded therein by the Tribunal. This is sorry state of affairs. Such an affidavit appears to have been filed under the teeth of earlier judgment (supra) with an intention to conceal the material fact, which is deprecated. It is fraud with the Constitution, affecting the fundamental right guaranteed under Article 21 of the Constitution to a person who has served the Nation and is a member of lowest rug of Indian Army, that too in Siachin, hence deserves to be compensated by the Tribunal.

27. In view of settled proposition of law of Hon'ble Supreme Court that in case for any reason, whatsoever, litigants are compelled to enter into litigation then payment of cost is must and it shall be exemplary in case there is some high handedness on the part of the authorities while dealing with the matter without application of mind to the statutory instructions, rules or regulations,

vide***Ramrameshwari Devi and others V. Nirmala Devi and others,*** (2011) 8 SCC 249, ***A. Shanmugam V. AriyaKshetriyaRajakulaVamsathuMadalayaNandhavanaParipalanai Sangam represented by its President and others,*** (2012) 6 SCC 430. Hon'ble Supreme Court in the case of***A. Shanmugam*** (supra)Hon'ble the Supremeconsidered a catena of earlier judgments for forming opinion with regard to payment of cost; these are:

1. ***Indian Council for Enviro-Legal Action V. Union of India,*** *(2011) 8 SCC 161;*
2. ***Ram Krishna Verma V. State of U.P***.,(1992) 2 SCC 620;
3. ***Kavita Trehan V. Balsara Hygiene Products Ltd***. (1994) 5 SCC 380;
4. ***Marshall Sons & CO. (I) Ltd. V. SahiOretrans (P) Ltd.,*** (1999) 2 SCC 325;
5. ***Padmawati V. HarijanSewak Sangh,*** (2008) 154 DLT 411;
6. ***South Eastern Coalfields Ltd. V. State of M.P.,*** (2003) 8 SCC 648;
7. ***Safar Khan V. Board of Revenue***, 1984 (supp) SCC 505.

28. In similar circumstances where facts have been concealed in a case reported in (2010) 2 SCC 114 **Dalip Singh vs. State of U.P. & others** Hon'ble Supreme Court deprecated the conduct and rejected the case of party who tried to conceal the fact and declined to interfere with the order under challenge. For convenience relevant portion of the judgment of **Dalip Singh** (supra) is reproduced as under :-

> "20. A perusal of application dated 8.7.1976 submitted by Shri Praveen Singh for setting aside ex parte order dated 27.12.1975 passed by the Prescribed Authority makes it clear that he had pleaded his continuous illness for ten months as the cause for his inability to file objection. In paragraph 2 of the application, Shri Praveen Singh made a suggestive assertion that he had no knowledge of the proceedings initiated by the Prescribed Authority and he came to know about the case having been decided ex parte only on 7.7.1976 when he went to Lekhpal to procure memo. There was not even a whisper in the application that notice

dated 29.11.1975 issued by the Prescribed Authority under Section 10(2) of the Act had not been served upon him and on that account he could not file objections within 15 days. The application filed by Shri Praveen Singh was not supported by any medical certificate or other evidence which could prima facie establish that he was really sick for ten months. This is the reason why the Prescribed Authority refused to reconsider order dated 27.11.1975 and the Appellate Authority declined to entertain his prayer for remand of the case to the Prescribed Authority for the purpose of fresh determination of surplus area case. Notwithstanding this, in the writ petition filed before the High Court a misleading statement was made that due to serious illness, Shri Praveen Singh could not file objection and, as a matter of fact, he did not have any knowledge of the dates of proceedings which were conducted by the Prescribed Authority. In view of that statement, the learned Single Judge of the High Court felt persuaded to stay the orders passed by the Prescribed Authority and Appellate Authority which, as mentioned above, resulted in frustration of the action to be taken by the concerned authority for distribution of the surplus land to landless persons for a good period of more than eleven years and enabled the heirs of Shri Praveen Singh to retain possession of the surplus land and enjoy the same. Before the High Court also, no evidence was produced in support of the assertion regarding serious illness of Shri Praveen Singh. Insofar as this Court is concerned, Shri Sunil Kumar Singh, grandson of Shri Praveen Singh and son of the appellant, boldly made a false statement that his grandfather did not receive notice dated 29.11.1975 along with the statement of surplus land prepared under Section 10(1) and he could not file any show cause without going through the statement. We are amazed at the degree of audacity with which Shri Sunil Kumar Singh could make a patently false statement on oath.

21. From what we have mentioned above, it is clear that in this case efforts to mislead the authorities and the courts have transmitted through three generations and the conduct of the appellant and his son to mislead the High Court and this Court cannot, but be treated as reprehensible. They belong to the category of persons who not only attempt, but succeed in polluting the course of justice. Therefore, we do not find any justification to interfere with the order under challenge or entertain the appellant's prayer for setting aside the orders passed by the Prescribed Authority and the Appellate Authority."

29. In the case of **Dalip Singh** (supra) was not awarded since possession of the land in dispute was taken by the appropriate party. In the present case applicant is still suffering from denial of disability pension on account of deliberate commission and omission of the respondents.

Accordingly, cost is assessed to Rs.5,00,000/- (Rupees five lac), which shall be deposited in the Tribunal within three months and shall be released to the applicant through cheque by the Registry.

ORDER

29. O.A. is **allowed** with following directions:-

(I) The impugned order dated 02.08.2016 and 26.08.2016, contained in Annexures No.A-2 and A-3 including MoD letter dated 23.12.2014 referred therein are set aside with all consequential benefits.

(II) Applicant shall be entitled for payment of disability pension for life, after rounding off of disability from 20% to 50% w.e.f. 11.03.2012.

(II) Cost is quantified to Rs.5,00,000/-, which shall be deposited in the Tribunal within three months from today and shall be paid to the applicant through cheque by the Registry.

(IV) Since there is concealment of fact by the respondents, we issue notice to Col Rajbir Yadav of 11 GRRC, who has filed the counter affidavit on behalf of the respondents, under Section 19 of the Armed Forces Tribunal Act, 2007 as to why he may not be tried and punished for committing contempt of the Tribunal.

(V) Registrar shall register a separate case, wherein a copy of the present order shall be placed for trial of Col Rajbir Yadav of 11 GRRC. Notice will go through the Chief of Army Staff to him.Col Rajbir Yadav shall appear on the next i.e. 18.03.2018 before the Tribunal in person.

(Air Marshal BBP Sinha)
Member (A)

(Justice Devi Prasad Singh)
Member (J)

Dated: 11th January, 2018
Anb/ JPT

I am with respectful disagreement with the view taken by my esteemed Brother (Justice Devi Prasad Singh, Member (J) on the point of payment of war injury pension. Hence, I propose to deliver my own judgment on the point of war injury pension. Order reserved.

(Air Marshal BBP Sinha)
Member (A)

Dated: 11th January, 2018
ANB/JPT