

**A.F.R.**  
**Reserved**

**Court No. 1**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**ORIGINAL APPLICATION No. 414 of 2017**

Tuesday, this the 17<sup>th</sup> day of July, 2018

**“Hon’ble Mr. Justice SVS Rathore, Member (J)**  
**Hon’ble Air Marshal BBP Sinha, Member (A)”**

Ex Sep (DMT) Gajanan Upadhyay, son of late Ganesh Upadhyay, resident of EWS 318, ADA Colony, Neem Sarai, P.S. & Post Dhoomanganj, District Allahabad.

**..... Applicant**

Ld. Counsel for the Applicant: **Shri Rang Nath Pandey, Advocate**

Versus

1. Union of India, through Secretary, Ministry of Defence, Government of India, New Delhi.
2. Chief of the Army Staff, Army Headquarter, Sena Bhawan, New Delhi-110011
3. Deputy Commandant, Head Quarter, Artillery Centre, Nasik Road Camp, Nasik Maharashtra, PIN 908800.
4. Senior Officer in Charge, Topkhana Abhilekh, Artillery Records, Nasik Road Camp, APS PIN 908802
5. Officer Commanding, 173 Field Regiment, C/o 56 APO

**.....Respondents**

Ld. Counsel for the Respondents: **Shri Siddharth Dhaon,**  
Addl. Central Govt. Standing Counsel

**ORDER****Per Justice S.V.S. Rathore, Member (J)**

1. We have heard learned counsel for the parties and perused the record.
2. By means of this OA under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has made the following prayers:

*“(a) To quash the impugned order dated 27.03.2016, Rejection of Grant of War Injury Pension instead of Disability pension claim of the applicant, passed by respondent no. 5 vide letter No. CF/14488089F/15/8 by which respondent concerned has declared that the injury sustained by the applicant cannot be classified as battle casualty as Disability was contracted during services in peace area and not in a war or war like situation and the matter has become infructuous and no more infructuous correspondence may be entertained in future. (Annexure No. A-1 to compilation no. 1).*

*(b) To direct the respondent concerned to consider the claim of the applicant for Grant of War Injury Pension instead of Disability pension in accordance with law with effect from 1.12.1993.*

*(c) To direct the respondent concerned to grant all the consequential benefits of the war injury pension which is applicable to the applicant vide Army order no. 1/2003 i.e. accidental injuries and deaths which occur in action in an operational area.*

*(d) To issue any suitable writ order or direction which this Hon’ble Tribunal may deem fit and proper under the present facts and circumstances of the case.*

*(e) To award the cost of the proceeding to the applicant.”*

3. In brief, the facts of the case, as averred in the OA, are as under:

The applicant was enrolled in Indian Army (Artillery) on 02.11.1983 as an MT driver and was posted to 43 Field Regiment in the year 1985. Thereafter he was transferred from 43 Field Regiment to 173 Field Regiment and he remained there till the date of his discharge from service. In the meantime, his Regiment moved to Jammu and Kashmir. The applicant performed his duties to the satisfaction of the Army authorities. In the year 1991, while the applicant was posted to Dharangdhara (Gujarat), his Regiment moved to Chohtan, District Barmer, Rajasthan (Operational Location Area). Not only the Regiment of the applicant, but the entire Brigade and Command also moved to Chohtan and the applicant was deployed there for 15 days. The entire Regiment, Brigade as well as Command kept on moving from one place to another upto the month of January, 1992 in the vicinity of Barmer, which comes within operational area. On 30.11.1991, when the applicant was deployed in the operational location at Chohtan (Rajasthan) at FOL dump, there was a long waiting line and while waiting for his turn to refuel the jeep bearing No. BA No. 84B-31846X which he was driving, the front vehicle 1 Ton, BA No. 80 C-26241 H, which was being driven by Gnr Harish Kumar all of a sudden moved back at the time when the applicant was doing maintenance work by leaning towards the engine of the jeep dragged by the front 1 Ton vehicle, he sustained serious injuries in his right leg and lost consciousness. The applicant was immediately evacuated to nearby Military Hospital on 30.11.1991

and got admitted at 177 Military Hospital, Jalipa (Rajasthan) with lacerated wound on left leg and fracture of fibula proximal end (It). As the aforesaid injuries were severe, the applicant, after giving first aid, was transferred from 177 Military Hospital Jalipa (Rajasthan) to Military Hospital Jodhpur on 30.11.1991 itself and got admitted there. The doctors found extensive deep lacerated wound on thigh and left leg of the applicant with compromise blood supply fracture fibula. The applicant was treated there upto 16.12.1991. On 19.12.1991, the applicant was again transferred for treatment of his injuries from Military Hospital Jodhpur to Army Hospital Delhi, where he was admitted and got treated upto 10.01.1992.

Because of the injuries sustained by the applicant as aforesaid, he was placed in permanent low medical category and was boarded out from service in low medical category. His disability was assessed to be 40%. The claim of the applicant is that he had sustained injuries while performing his duties of MT driver in operational area at the time when there was war like situation, where not only the regiment of the applicant but also the entire brigade as well as Command was deployed for duties. After the incident, a Court of Inquiry (Col) was ordered in the matter, in which the applicant was examined as witness No. 1 besides some other witnesses. It is pleaded by the applicant that neither copy of proceedings of Col nor other supporting documents were supplied to him and he was awarded disability pension with effect from 1.12.1993. The applicant continued to

correspond with the respondents for grant of War Injury Pension, but the same was not sanctioned to him.

4. In the counter affidavit, the facts as narrated by the applicant in the OA, have been admitted to a large extent. However, it has been specifically pleaded by the respondents that the area where the applicant had sustained injuries, was a peace area and not operational area. The Col was conducted in order to ascertain the cause of injuries sustained by the applicant. The Court was of the opinion that:-

*“(a) The injury FRACTURE FIBULA (LT), EXTENSIVE LACERATED WOUND (LT) LOWER LIMB was owing to reasons beyond the control of the individual.*

*(b) The individual No. 14488089F Gnr (DMT) Gajanand Upadhyay was performing his professional duty and cannot be blamed for injuring himself.”*

The Commanding Officer vide order dated 22.05.1992 concurred with the opinion given by the Col.

5. The submission of learned counsel for the applicant is that since the area, where the applicant was performing duty, was an operational area, therefore any injury sustained by him at any point of time, even if by accident, must be treated to be a war injury and accordingly, he was entitled to War Injury Pension.

6. On behalf of the respondents, it is submitted that the area where the applicant had received injury, was a peace area and it was not an operational area. That apart, at the time the injury was sustained by the applicant, there was no war like situation; the applicant was on routine duty when he was in queue to get his vehicle filled with fuel; therefore, the applicant's injury cannot be

treated to be a war injury; hence the claim of the applicant has rightly been turned down by the respondents.

7. Before proceeding further, we would like to quote the Army Order 1/2003, which defines physical/battle casualties. It is as under:

“(a) **Army Order 1/2003**

**Physical/Battle casualties**

Paras 1 to 3 xxx xxx xxx

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 Paragraph*

5: *Circumstances for classification of Physical/Battle Casualties are listed in Appendix ‘A’.*

**Appendix A to AO 1/2003**

**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 peace time as a result of fighting in war like operations, or border skirmishes with a neighbouring 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 operations due to gunshot 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 or by drowning/electrocution.*

*(k) Army personnel killed/wounded unintentionally by own troops during course of duty in an operational area.*

*(l) Casualties due to vehicle accidents while performing bonafide military duties in war/border skirmishes with*

*neighbouring 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 course of action in counter insurgency/war.*

*(o) Accidental death/injuries sustained during the course of move of arms/explosives/ammunition for supply of own forces engaged in active hostilities.*

*(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) Accidental deaths/injuries sustained due to natural calamities such as floods, avalanches, landslides, cyclones, fire and lightning or drowning in river while performing operational duties/movements in action against enemy forces and armed hostilities in operational area to include deployment on international border or line of control.*

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

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

### **Physical Casualties.**

*2. Deaths 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**

*(a) Saboteurs, even of own country, will be treated as enemy for the purpose of classifying their actions as enemy action 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, eg, 'believed killed', 'believed prisoner of war', of 'believed drowned' etc.

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

**(b) Government of India, Ministry of Defence  
Letter No.1(2)/97/D (Pen-C) dated 31.01.2001**

1 to 3      xxx              xxx              xxx

4.1 For determining the pensionary benefits for death or disability under different circumstances due to attributable/aggravated causes, the cases will be broadly categorized 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 organized 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 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, anti-social 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.*

*4.2 Cases covered under category 'A' would be dealt with in accordance with the provisions contained in the Ministry of Defence letter No. 1(6)/98/D(Pen/Services) dated 3.2.98 and cases under category 'B' to 'E' will be dealt with under the provisions of this letter.*

*Notes:-*

*(i) The illustrations given in each category are not exhaustive. Cases not covered under these categories will be dealt with as per Entitlement Rules to casualty pensionary awards in vogue.*

*(ii) The question whether a death/disability is attributable to or aggravated by military service will be determined as per provisions of the Pension Regulations for the Armed Forces and the Entitlement Rules in vogue as amended from time to time.*

*(iii) In case of death while in service which is not accepted as attributable to or aggravated by Military Service or death after retirement/discharge/invalidment, Ordinary Family Pension shall be admissible as specific in Min of Def letter No. 1 (6)/98/D(Pen/Ser) dated 03 Feb as modified vide Ministry of Defence Letter No.1 (I)99/D(Pen/Ser) dated 7.7.99.*

*(iv) Where an Armed Forces personnel is invalided out of service due to non-attributable/non-aggravated causes, Invalid pension/gratuity shall be paid in terms of Para 9 of Ministry of Defence letter No 1 (6)/98/D (Pen/Ser) dated 03 Feb as amended/modified vide Ministry of Defence letter No. 1(I)/99/D (Pen/Ser) dated 07.06.99.*

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*10.1 Where an Armed Forces Personnel is invalidated out of service on account of disabilities sustained under circumstances mentioned in Category 'E' of Para 4.1, above he/she shall be entitled to War Injury Pension consisting of Service element and War Injury element."*

8. In support of his submissions, learned counsel for the applicant has placed reliance on some pronouncements, which shall be considered at the relevant part of this judgment.

9. In view of the rival submissions made by learned counsel for the parties, two points emerge for consideration by this Tribunal.

They are-

- (i) whether the area, where the applicant was serving, was an operational area or a peace area? and
- (ii) keeping in view the policy of battle casualties, whether the injury sustained by the applicant can be treated to be War Casualty or not?

10. So far as the first point is concerned, though the applicant has averred in the OA that Chohtan in District Barmer of Rajasthan was an operational area, but in the counter affidavit, the respondents have specifically denied this fact. No notification has been placed on record whereby the aforesaid area has been declared as operational area. A perusal of the Policy shows that the term 'in action' has been used in a very restricted sense. The term 'active service' has been defined in Section 3(i) of the Army Act, 1950, which reads as under:

*“(i) “active service”, as applied to a person subject to this Act, means the time during which such person-*

- (a) is attached to, or forms part of, a force which is engaged in operations against an enemy, or*
- (b) is engaged in military operations in, or is on the line of march to, a country or place wholly or partly occupied by an enemy, or*
- (c) is attached to or forms part of a force which is in military occupation of a foreign country.”*

11. Section 9 of the Army Act gives power to the Central Government to declare persons to be on active service. It reads as under:

**“9. Power to declare persons to be on active service.-** Notwithstanding anything contained in clause (i) of section 3, the Central Government may, by notification, declare that any person or class of persons subject to this Act shall, with reference to any area in which they may be serving or with reference to any provision of this Act or of any other law for the time being in force, be deemed to be on active service within the meaning of this Act.”

12. Thus, it is clear that the term “active service” has limited meaning. It actually refers to operation of the army in relation to enemies or counter insurgency operations, while in the instant case, the fact is that the applicant was waiting on his vehicle in queue to get the fuel tank of his vehicle filled. So, whether this duty falls within the purview of “active service” as required under the Policy of Battle Casualties, is a question to be considered in the instant case.

13. In reply to the submission of learned counsel for the respondents that since the applicant was discharged prior to 01.01.1996, he was not entitled to the benefit of War Injury Pension, learned counsel for the applicant has placed reliance on the pronouncement of the Hon'ble Apex Court in the case of **KJS Buttar v. Union of India**, reported in (2011) 11 SCC 429, wherein the Hon'ble Apex Court held as under:

*“12. It may be mentioned that the Government of India Ministry of Defence had been granting War Injury Pension to pre 1996 retirees also in terms of para 10.1 of Ministry's letter No.1(5)/87/D(Pen-Ser) dated 30.10.1987 (Page 59 Para 8). The mode of calculation however was changed by Notification dated 31.1.2001 which was restricted to post 1996 retirees. The appellant, therefore, was entitled to the War Injury Pension even prior to 1.1.1996 and especially in view of the instructions dated 31.1.2001 issued by the Government of India. The said instruction was initially for persons retiring after 1.1.1996 but later on by virtue of the subsequent Notifications dated 16.5.2001 it was extended to pre 1996 retirees also on rationalization of the scheme.*

*13. As per the Instructions, different categories have been provided by the Government for award of pensionary benefits on death/disability in attributable/aggravated cases. As per Para 10.1 of the Instructions dated 31.1.2001, where an Armed Forces personnel is invalided on account of disability sustained under circumstances mentioned in Category-E(f)(ii) of Para 4.1, he shall be entitled to War Injury Pension consisting of service element and war injury element. Para 4.1 provides for the different categories to which the pensionary benefits are to be awarded. Category-E(f)(ii) of Para 4.1 pertains to any death or disability which arises due to battle inoculation, training exercises or demonstration with live ammunition.*

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*16. As per para-6 of these instructions/letter dated 16.5.2001, any person, who is in receipt of disability pension as on 1.1.1996 is entitled to the same benefit as given in letter dated 31.1.2001. Further as per para-7 of this letter w.e.f. 1.1.1996 the rates of War Injury element shall be the rates indicated in letter dated 31.1.2001.*

*Thus, in our opinion in view of the instruction dated 31.1.2001 read with our opinion 16.5.2001, the appellant was entitled to the War Injury Pension. It is pertinent to state that reading of paras 6, 7 and 8 of the Notifications/Circular dated 16.5.2001 makes it absolutely clear that the said benefits were available to pre 1996 retirees also but the rates were revised on 31.1.2001 and the revised rates were made applicable to post 1996 retirees only. But subsequently by means of the Notification dated 16.5.2001 the revised rates were extended to pre 1996 retirees also.*

*17. At any event, we have held that there will be violation of Article 14 of the Constitution if those who retired/were invalided before 1.1.1996 are denied the same benefits as given to those who retired after that date.”*

Thus, the aforesaid question has already been settled by the Hon'ble Apex Court and it requires no further discussion on this point.

14. Reliance has also been placed on the pronouncement of a coordinate Bench of this Tribunal in OA No. 243 of 2016, **Sep Raghvendra singh versus Union of India and others**. In the said case, on way back from operation recce to Company Operating Base Dharmari, the vehicle in which the applicant was travelling, met with an accident and fell down 80 meters below on steep slope after driver of the vehicle lost control. So, in that case, the Tribunal held that it was a case of War Injury. Apparently the facts of the present case are entirely different from those of the case of **Raghvendra Singh** (supra). The applicant is, therefore, not entitled to the benefit of this case law.

15. Reliance has also been placed upon the pronouncement of a coordinate Bench of AFT Kolkata, reported in 2017 (1) ESC 3 (AFT) (Kol) **Lt Col Sharma Sunil Dutta versus Union of India**, wherein the War Injury Pension had been granted to the applicant.

In the said case, while the applicant was performing the duty assigned to him, his feet slipped at the time when he was getting down from the vehicle and he fell down on his back on the hard ground which was slippery on account of heavy rains during the night and sustained injury. The facts of this case also are entirely different from the instant case. In the said case, the applicant was on duty in Operation Parakram, while in the instant case, the applicant was not performing his duty in operational area. There is nothing on record to show that it was an operational area. No notification has been issued by the Central Government declaring the area, in which the applicant was performing duty, to be an operational area. The respondents have specifically averred that the area was not an operational area. Learned counsel for the applicant has failed to bring anything on record to rebut this specific averment made on behalf of the respondents.

16. Now, we will examine the Policy of battle casualties in view of the facts admitted to the parties. Submission of learned counsel for the applicant is that the case of the applicant is covered by sub-clause (iv) of Army Order 1/2003, which reads as under:

*“(iv) Accidental injuries and deaths occurring in action in an operational area will be treated as battle casualties.”*

On the strength of this provision, learned counsel for the applicant submits that since the applicant sustained injury in an operational area, therefore, he is entitled to Battle Casualty pension.

17. The law on the point is settled that every policy, rule or regulation has to be interpreted giving due value to each and



every word used in it. The Court or Tribunal, while interpreting a particular provision of law, is not required to overlook or remove any word from the original text. The word “*in action*” used in the aforesaid provision assumes great importance. The word “*in action*” has not been defined under the Army Act, but keeping in view the purpose with which this Policy has been framed, it would mean ‘active action of the army with the enemies or in counter insurgency operations or other war like operations.

18. Though the word “in action” has not been defined under the Army Act, we, for the purposes of this case, tried to search this word in internet and found the term “killed in action” which has been defined as under:

*“Killed in action (KIA) is a casualty classification generally used by militaries to describe the deaths of their own combatants at the hands of hostile forces. The United States Department of Defense, for example, says that those declared KIA need not have fired their weapons but have been killed due to hostile attack. KIAs do not come from incidents such as accidental vehicle crashes and other “non-hostile” events or terrorism. KIA can be applied both to front-line combat troops and to naval, air and support troops. Someone who is killed in action during a particular event is denoted with a dagger beside their name to signify their death in that event or events.*

*Further, KIA denotes one to have been killed in action on the battlefield whereas **died of wounds (DOW)** relates to someone who survived to reach a medical treatment facility. The North Atlantic Treaty Organization (NATO) also uses DWRIA, rather than DOW, for “died of wounds received in action”. However, historically, militaries and historians have used the former acronym.”*

19. A careful examination of the Battle Casualty Policy quoted above shows that whenever the accidental injuries are covered by

the Policy, then it is nowhere stated that it would mean 'accidental injuries caused in normal conditions.' The aforementioned Policy covers accidental injuries and deaths which occur in action in an operational area. Para (e) of the Policy deals with the accidental injuries which are not sustained in action and not in proximity to the enemy but have been caused by fixed apparatus. Thus, it also says that when an army personnel in active service suffers injury because of some accident during the course of such active service, only then it would be treated as battle injury. Para (f) of the Policy says that casualties during peace time as a result of fighting in war like operations, or border skirmishes with a neighbouring country would be treated as Battle Casualties. Further, Para (q) of the Policy says that accidental deaths/injuries sustained due to natural calamities, such as floods, avalanches, landslides, cyclones, fire and lightning or drowning in river while performing operational duties/movements in action against enemy forces and armed hostilities in operational area to include deployment on international border or line of control, would be termed as Battle Casualties. In aforesaid Para (q), the term "in action" has again been used.

20. Thus, on a careful examination of the Policy we find that the word "in action" has a very important and logical meaning. The entire Policy cannot be read in isolation of this word. If we exclude the word "in action" and include all accidental injuries in context of battle casualties, then the very purpose of this Policy would stand frustrated.

21. When the facts of the instant case are examined in the aforesaid background, then it is clear that the applicant was not on 'active service' when he met with the alleged accident; therefore, by no stretch of imagination, the injury sustained by him would fall within the ambit of battle casualty. Even if we, for the arguments sake, assume that the place where the accident had taken place, was an operational area (though the respondents have specifically denied this fact and averred that it was a peace area), even then when the accident had taken place, the army was not 'in action'. It is in evidence that the applicant was at that time busy in some maintenance work of his vehicle and was waiting for his turn to refuel his vehicle when it was hit by 1 Ton vehicle, due to which he sustained serious injury in his right leg. Taking fuel for the vehicle was a routine work and it cannot be taken to mean that the applicant was on duty in action when he sustained this injury by accident.

22. We find substance in the submission of learned counsel for the respondents that in case the scope of war casualty or battle casualty is expanded to such an extent, then it would have a demoralising effect on those army personnel who sustain injuries in direct confrontation with the enemies or in counter insurgency area while in action. Therefore, keeping in view the aforesaid provision and the reasonable interpretation of clause (iv) of Section 4 of Army Order 1/2003, we are of the considered opinion that the applicant is not entitled to War Casualty or Battle Casualty pension.

23. Accordingly, this OA being devoid of merit deserves to be dismissed and is hereby **dismissed**.

No order as to costs.

**(Air Marshal BBP Sinha)**  
**Member (A)**

**(Justice S.V.S. Rathore)**  
**Member (J)**

Dated: July 17<sup>th</sup>, 2018  
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