

A.F.R.

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(Circuit Bench at Nainital)**

ORIGINAL APPLICATION No. 174 of 2021

Monday, this the 15th day of November, 2021

**“Hon’ble Mr. Justice Umesh Chandra Srivastava (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

JC-541349P x Sub Daleep Singh, S/o Sri Ganga Singh, R/o
Village and Post – Okhalswan, District- Bageshwar, (U.K.).

..... **Applicant**

Ld. Counsel for the applicant : **Shri CS Rawat, Advocate**

Versus

1. Union of India through Secretary, Ministry of Defence, Central Ceibvil Secretariat, New Delhi.
2. The Chief of the Army Staff, Integrated Headquarters, Ministry of Defence (Army, New Delhi.
3. Director Pension/ Policy, Govt of India, Min of Defence, Department of Ex Servicemen Welfare, New Delhi.
4. Record Officer, Kumaon Regiment, Ranikhet, District- Almora.
5. PCDA (P), Allahabad.

..... **Respondents**

Ld. Counsel for the Respondents : **Shri Neeraj Upreti,
Central Govt. Counsel**

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby he has claimed the following reliefs :-

“(i) Humbly petitioner/applicant seeks prayer to summon the entire records and after calling to quash the impugned letter dated 22.07.2019 pertaining to rejection for declaring the injury as Battle Casualty by the respondents.

“(ii) Humble petitioner/applicant seeks prayer to direct the respondents to forthwith process in the matter of the petitioner and declare the injuries by the petitioner as battle casualty and to grant of War/Battle Injury pension in terms of the Circular dated 31.01.2001, clause 4.1 (E) (g) and pay the differential admissible to him as per the prevailing guidelines and circular with 12% interest from the date which is admissible, otherwise petitioner shall suffer irreparable loss and injury.

“(iii) Such other suitable order is deemed fit and proper in the facts and circumstances of the case also kindly be pleased to meet in the interest of justice.

2. Counter affidavit filed by the respondents is taken on record.

3. The factual matrix of the case is that the applicant was enrolled in the Army on 10.06.1991 and discharged from service on 01.07.2019 in Low Medical Category P3 (Permanent) due to disability **“STROKE ISCHEMIC RIGHT MCA INFARCT”** under Rule 13 (3) I (i) (a). He was brought

before Release Medical Board at Military Hospital, Ranikhet prior to his discharge from service and his disability was regarded as attributable to military service. Applicant is getting disability element of disability pension @ 50% for life from the date of discharge. The applicant has also been granted service pension for life for the services rendered in the army. Applicant submitted an Appeal to the competent authority for consideration for grant of Battle Casualty benefits and war injury pension but the same was rejected vide letter dated 10.09.2019 explaining factual position of the case regarding non entitlement of Battle Casualty benefits and war injury pension as per rules in vogue. Aggrieved, the applicant has filed the instant Original Application for grant of Battle Casualty status and liberalised pension.

4. Learned counsel for the applicant submitted that the applicant was deputed in operation to counter the threat of terrorist while posted to J&K. On 27.04.2017, the anti social elements started throwing the stones and during the said stone pelting the applicant received injury and thereafter he was evacuated to Command Hospital, Northern Command, wherein he remained under treatment and in medical case sheet injury was ascertained as **“STROKE ISCHEMIC RIGHT MCA**

INFARCT” and the applicant was completely paralysed. He remained in hospital till 30.06.2019 and he was invalided out of service with 50% disability. Learned counsel for the applicant submitted that applicant sustained injury in operational area so notified by the union government which was part of Battle Activity but the respondents treated the injury of the applicant as physical casualty. Applicant submitted representation to the competent authority for consideration for grant of ‘Battle Casualty’ status and for grant of liberalised pension but the same was wrongly rejected stating that injury of the soldier cannot be classified as ‘Battle Casualty’ as per the rules in vogue. He further submitted that as per Army Order 1/2003, which deals with the cases of Battle Casualty, in the Miscellaneous Cases the applicant’s case is fully covered. The aforementioned Army Order reads as follows:

“Any casualty occurring during deployment/mutilation of troops for taking part in war or war like operation, will be treated as Battle Casualty.”

5. Learned counsel for the applicant further submitted that at the time of injury, applicant was detailed to counter the threat of terrorist in operational area in J&K which was part of Battle activity. Under the circumstances, the injury sustained to the applicant ought to have been declared as Battle Casualty. He

prayed that case of the applicant be considered for grant of Battle Casualty status and liberalised pension be granted to the applicant

6. **Per contra**, learned Counsel for the respondents submitted that on 11.11.2016 while the applicant was posted with 33 Rashtriya Rifles Battalion, was admitted to 92 Base Hospital. He was transferred to Command Hospital, Northern Command and discharged from service on 01.07.2019 in low medical category P3 (Permanent). As per medical report, the disability of the applicant was due to acute onset caused by intravascular events due to atherosclerosis, a lifestyle disorder. The applicant sustained blunt trauma to head 02 days back during stone pelting. It is stressed that no initial/detailed report to show that in fact the applicant had sustained any such injury on his head by stone pelting. The disability does not qualify for Battle Casualty as per the provisions of A.O. 1/2003, Section 5, Para 69 and 70. Accordingly, his claim for grant of Battle Casualty was rejected by the respondents vide letter dated 10.09.2019. His injury was considered as attributable to military service and the applicant was granted disability element @ 50% for life. In this case neither any court of inquiry was held nor any Situation Report was initiated by

the unit regarding such incident. Learned counsel for the respondents submitted that Rule 99 (a) of Pension Regulations (Part-1), 2008 specifies that where service personnel is invalided from service on account of disability sustained under circumstances mentioned in category 'E' of Regulation 82 of these Regulations, he shall be entitled to war injury pension as enumerated in that Section. His injury was not declared as Battle Causality since the injury does not meet the parameter mentioned in Category 'E' of Rule 82 of Pension Regulations for the Army 2008. Hence he was not considered eligible for war injury pension. Applicant was granted disability element @ 50% as his disability was considered as attributable to military service. He further submitted that in case of death of an Armed Forces Personnel under the circumstances mentioned in category "D" (Death due to acts of violence/ attack by terrorists, anti social elements e.t.c.) and "E" (Death arising due to enemy action in international war, action during deployment with a peace keeping mission abroad, border skirmishes, during laying or clearance of mines, war like situation, an act of violence/ attack by extremists, anti social elements while on operational duty and death arising as a result of poisoning of water by

enemy agents etc), the eligible member of the family shall be entitled to Liberalised Family Pension. He further submitted that Para 5.1 of Govt. of India letter dated 31.01.2001 specifies that in case of death of an individual under the circumstances mentioned in category "B" (Death or disability due to causes which are accepted as attributable to or aggravated by military service, disease contracted because of continued exposure to a hostile work environment, subject to extreme weather conditions or occupational hazards resulting in death or disability) or category "C" (Death or disability due to accidents in performance of duties), Special Family Pension shall be admissible to the families of such personnel. Further Para 5.1 has been incorporated in Pension Regulations for the Army (Part-1) 2008 at Rule 105 (Extract of Rule 105 of Pension Regulations for the Army (Part-1) 2008. Learned counsel for the respondents has placed reliance on judgment passed by Hon'ble Armed Forces Tribunal Chandigarh Regional Bench in ***O.A. No 1546 of 2012, Suresh Nath vs. Union of India and Others*** decided on 17.01.2014 in the similar matter and submitted that present O.A. has no force, hence liable to be dismissed.

7. Heard learned counsel for the parties and perused the record.

8. Before dealing with the rival submissions, it would be appropriate to examine the relevant Rules and Regulations on the subject matter. For grant of Battle Causality status unit concerned has to take following action as per SAO 8/S/85 as amended by AO 1/2003/MP which were not taken i.e.:

- (i) Initial Report within 24 hours.
- (ii) Detailed report within 72 hours.
- (iii) Completion of injury report initiated by Military Hospital.
- (iv) Publication of Part II Order declaring battle casualty and
- (v) Submission of case to higher authorities for grant of ex- gratia.

9. In the instant case no any such action was taken by the unit and even no statement of case for belated sanction for reporting and declaring of Battle Causality was taken and Battle Causality Certificate was not issued to the applicant by the Commanding Officer under the provisions of Para 4 of A.O. 1/2003/MP. It is evident that injury sustained to the applicant was not due to actual fighting with enemy terrorist. In

this case no Part II Order was published to declare the case as Battle Causality. As the applicant had suffered injury while on bona fide military duty, the injury was appropriately considered as attributable to military service. The Release Medical Board found his disability attributable to military service and was granted disability element @ 50% for life.

10. We consider it appropriate, before proceeding to adjudicate the claim of the applicant, to place the chronology and context of various rule position on record which are reproduced as under :-

(a) **Army Order 1/2003/MP**

Physical/Battle Casualties

Para 1 to 3. x x x x x x x x x x

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 or wounds or injuries (other than self-inflicted)*
- (c) *Wounded or injured (other than self-inflicted)*
- (d) *Missing*

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

Appendix A to AO 1/2003/MP

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 defence 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 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.

(j) Casualties occurring while carrying out battle inoculations/training or operationally oriented training in preparation for actual operations due to gunshot wound/explosion of live ammunition/ explosives/mines or by drowning/electrocution.

(k) Casualties occurring while carrying out battle inoculation/training or operationally oriented training in preparation for actual operations due to gunshot wound/explosion of live ammunition/Explosives/Mines or by drowning/electronution.

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

(m) *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.*

(n) *Casualties occurring as a result of IED/bomb blasts by saboteurs/ANEs in trains/buses/ships/aircrafts during mobilization or deployment in war/war like operations.*

(o) *Casualties occurring due to electrocution/snake bite/drowning during course of action in counter insurgency/war.*

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

(q) *Death due to poisoning of water by enemy agents resulting in death/physical disabilities of own troops deployed in operational area in active hostilities.*

(r) *Accidental deaths/injuries sustained due to natural calamities such as floods, avalanches, cyclones, fire and lightening 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.*

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

(t) *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.*

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 operations.
- e) On account of accidental explosions of mines while laying operationally oriented mine-field or lifting or negotiating mine-field 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 while on operational duty.

(h) Action against extremists, antisocial elements, etc. Detach/disability while employed in the aid of civil power in quelling agitation, riots or revolt by demonstrators will be covered under this category.

(j) 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 specified in Min of Def letter No. 1 (6)/98/D(Pen/Ser) dated 03 Feb 98 as modified vide Ministry of Defense 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 Defense letter No 1 (6)/98/D (Pen/Ser) dated 03 Feb 98 as amended/modified vide Ministry of Defense letter No. 1 (I)/99/D(Pen/Ser) dated 07.06.99.

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12. Learned counsel for the applicant placed strong reliance on Para 4 of SAO 8/S/85 and Para 1 (d) of Appendix A to A.O. 1/2003 both of which provide for 'injury and deaths which occur in action in an operational area' to be treated as Battle Casualty, the contention being that the applicant suffered the injury during stone pelting in an operational area.

13. For declaring Battle Casualty status and for grant of liberalised pension, besides the injury or death being sustained in an operational area, it is necessary that applicant should be engaged by an action. The dictionary defines action as: Expenditure of energy, deed, operation, gesture, battle lawsuit. In action would mean while engaged in battle. Mere presence in an operational area would not qualify as being in action. We understand that the entire state of Manipur and Nagaland and parts of adjoining states are notified under Operation Hifazzat, Parts of Sikkim, Assam, and J&K are similarly notified as operational areas. A full reading of the Army Orders and Government of India letter dated 31.01.2001 relating to Battle Casualties and classification of casualties for pensionary purposes shows that in all circumstances there is a direct and immediate relationship with the enemy or actions related to the

enemy. In other words there should be a direct and casual connection between the duties being performed and the cause of accident or death. These Army Orders and letters cannot be read in isolation and need to be read in their full context.

14. Here we may refer to a few judgments which clarify the scope and interpretation of statutes. As said by Lord Davey: “Every clause of a statute should be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject matter. To ascertain the meaning of a clause in a statute the court must look at the whole statute, at what precedes and at when succeeds and not merely at the clause itself. As stated by **Sinha, CJI**, “The court must ascertain the intention of the Legislature by directing its attention not merely to the clauses to be construed but to the entire statute, it must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs. It is also apt to take note of few decisions of the Apex Court with regard to interpretation of Statutes.

15. In **CIT vs Mcdowell & Co Ltd (2009) 10 SCC 755 (Para 20)**, it has been held that when particular words pertaining to a

class or genus are followed by general words, the general words are construed as limited to things of the same kind as those specified.

16. The Apex Court in ***Union of India and others vs. Brig PS Gill, (2012) 4 SCC 463*** had an occasion to interpret Sections 30 and 31 of the Armed Forces Tribunal Act 2007. The question which was up before the court was as to whether against a decision by the Armed Forces Tribunal, an appeal can be filed as a matter of right under Section 30 of the said Act which is subject to the provision of Section 31. The Court examined the scope of Sections 30 to 31 and while doing so it had held that ‘it is one of the settled canons of interpretation of statutes that every clause of the statute should be construed with respect to the context and the other clauses of the Act, so far as possible to make a consistent enactment of the whole statute or series relating the subject’. Reference to the decisions of this Court in ***M Pentiah v. Muddala Veeramallapa, AIR 1961 SC 1107*** and ***Gammon India Ltd v. Union of India (1974), SCC 596***, should in this regard suffice. In *Gammon India Ltd*, this Court observed “19....*Every clause of a statute is to be construed with reference to the context and other provisions of the Act to*

make a consistent and harmonious meaning of the statute relating to the subject matter. The interpretation of the words will be by looking that the context, the collocation of the words and the object of the words relating to the matters.”

17. We can also gainfully extract the following passage from **V. Tulasamma V. Sesha Reddy (1977) 3 SCC 99** wherein this Court observed “69. *It is an elementary rule of construction that no provisions of a statute should be construed in isolation but it should be construed with reference to the context and in the light of other provisions of the statute so as, as far as possible, to make a consistent enactment of the whole statute”.*

18. In **Raheja Universal Ltd Vs NRC Ltd (2012) 4 SCC 148**, it has been held that statute should be construed in its entirety any section or sub section should not be construed and read in isolation.

19. Having considered the facts and circumstances of the injury sustained by the applicant, the rules and policy governing such accidents and the above principles of interpretation and opinion of medical report that applicant

suffered disability due to atherosclerosis, we are of the view that the applicant did not qualify for being declared as a battle casualty and for grant of liberalized pension. His injury and disability was appropriately held to be attributable to military service and he has been granted the appropriate benefits as per rules.

20. In view of the above, the Original Application is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

21. No order as to costs.

22. Pending applications, if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 15 November, 2021
Ukt/-