

Court No.1

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

Original Application No. 340 of 2022

Monday, this the 8th day of August, 2022

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No. 4189789-L, Sep Krishna Kumar Yadav, Son of Shri (Late) Ram Khelawan Yadav, Village – Chanderpur, Post- Raipur, Dist- Unnao (U.P.)- 209863.

..... Applicant

Ld. Counsel for the Applicant : **Shri Shailendra Kumar Singh,**
Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, Government of India, New Delhi-110011.
2. The Chief of Army Staff, IHQ, Min of Def (Army), South Block, New Delhi – 110011.
3. Senior Record officer, Records The Kumaon Regiment, Pin- 900473, C/o 56 APO.
4. Office of the PCDA (P), Draupadi Ghat, Allahabad (UP)- 211014.

..... Respondents

Ld. Counsel for the : **Shri Yogesh Kesarwani,**
Respondents **Central Govt Counsel**

ORDER**“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 the applicant has sought following reliefs:-

“(A) To issue/ pass an order directing the respondent to issue afresh Corr PPO for issuance of War Injury Element @ 100% along with Constant Attendant Allowance (CAA) at the existing rate, payable to him wef 01 Sep 2013.

(B) To issue/ pass an order or directions of appropriate nature to the respondents to pay the arrears of War Injury Element and constant attendant allowance (CAA) along with suitable rate of interest as deemed fit and proper by this Hon’ble Tribunal.

(C) Any other relief as considered proper by the Hon’ble Tribunal be awarded in favour of the applicant.”

2. The factual matrix of the case is that the applicant was enrolled in the Army on 31.08.1996. While serving in Siachen Glacier in ‘OP MEGHDOOT’, applicant suffered disability “MULTIPLE INJURY WITH FROSTIBITE BOTH HAND WITH ACUTE RENAL FALTURE” on 22.02.1999. The injury was considered as attributable to and aggravated by military service. Part II Order considering the disability of the applicant as ‘Battle Casualty’ was published. Disability of the applicant was assessed at 90%. As per Army Order 46/80, employment

of permanent low medical category personnel, at all times, is subject to availability of suitable sheltered appointment commensurate to their medical category and their retention which should not exceed the sanctioned Low Medical Category (LMC) strength of the Regiment/Corps. Sheltered appointment was not available in the unit, therefore, he was discharged from service on 31.08.2013 under Rule 13 (3) (III) (i) of Army Rules 1954 in low medical category A3 (Permanent) after rendering 17 years of service. He was granted service pension vide PPO dated 12.08.2013 and disability pension @ 90% for life vide Corr PPO dated 30.01.2014. In the year 2022, he came to know that in similar facts and circumstances, service personnel have been granted War Injury Element. Applicant has filed instant O.A. for grant of war Injury Element and Attendant Allowance.

3. Learned counsel for the applicant submitted that applicant while serving at Siachen (J&K) was deployed in OP MEGHDOOT and he suffered disability "MULTIPLE INJURY WITH FROSTIBITE BOTH HAND WITH ACUTE RENAL FALTURE". His disability was declared as battle casualty and occurrence to this effect was published vide part II Order No 1/0041/004/2003. Classified Specialist (Surgeon) of Artificial

Limb Centre, Pune issued disability certificate dated 28.09.1999 and his disability was assessed as 90% for life. On 03.03.2010, applicant was diagnosed a case of 'RENO PARENCHMAL HYPERTENSION (CKD). His disabilities were considered as attributable to and aggravated by military service. He was discharged from service on 31.08.2013. He was granted service pension vide PPO dated 12.08.2013. He was also granted disability element @ 90% vide PPO dated 30.01.2014. Learned Counsel for the applicant submitted that since the applicant suffered disability in 'OP MEGHDOOT' when unit was deployed in Siachen Glacier, the disability suffered by the applicant during bonafide military duty should be considered as war injury and he should be granted War Injury Element and Attendant Allowance.

4. Ld. Counsel for the applicant further submitted that applicant's case is similar to judgment passed by AFT (RB), Kolkata in O.A. No. 113 of 2013, **Ex Nb Sub Sachidanand Singh vs. Union of India & Ors**, decided on 07.08.2015, hence, applicant is entitled for grant of War Injury Element and Attendant Allowance.

5. On the other hand, learned Counsel for the respondents submitted that the applicant suffered disability in Siachen Glacier in "OP MEGHDOOT" while performing military duty, hence disability was considered as attributable to and aggravated by military service. The disease of the applicant does not fall under the policy prescribed for grant of War Injury Element, therefore, applicant is not entitled for War Injury Element. At the time of discharge, the applicant was brought before a Release Medical Board which regarded the disability as attributable to military service and assessed the disablement @ 90% for life. Accordingly, disability pension of the applicant was preferred to PCDA (P) Allahabad and applicant was granted service pension and disability element wef 01.09.2013. Applicant did not approach any forum for grant of War Injury Element for the period from Apr 2014 to Feb 2022 under a belief that he is being granted correct entitlement in terms of existing rules and provisions of disability pension. Disability of the applicant was due to acute cold climatic condition and not in the face of enemy, hence it was regarded as physical casualty and applicant was granted disability element in addition to service pension. Learned counsel for the respondents pleaded that instant O.A. has no substance and is liable to be dismissed.

6. We have heard learned Counsel for the parties and perused the documents available on record.

7. The question before us to decide is “whether the applicant who suffered disability in ‘OP MEGHDOOT’, whose disability has been opined as ‘Battle Casualty’ and considered as attributable to and aggravated by military service is entitled for grant of War Injury Element and Attendant Allowance”?

8. Before dealing with the rival submissions, it would be appropriate to examine the relevant Rules and Regulations on the subject matter which are reproduced as under :-

(a) **Army Order 1/2003**
Physical/Battle Casualties
 Para 1 to 3. 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 of 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

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.*
- (i) 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/electrocution.*
- (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) 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 or 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, 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.

(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

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. 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 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.*

XX

XX

XX

10.1. Where an Armed Forces Personnel is invalided 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."

9. It is not disputed that the applicant suffered disability while serving in the unit deployed in "OP MEGHDOOT" in Siachen Glacier in Jammu and Kashmir and disability of the applicant was considered as attributable to and aggravated by military service. The applicant is in receipt of 90% disability pension for life. He is aggrieved for non grant of War Injury Pension in spite

of his disability being considered as 'Battle Casualty' and Part II Order to this effect was published.

10. In the instant case the applicant while serving in the unit deployed in Siachen Glacier in "OP MEGHDOOT" in Jammu and Kashmir suffered from disability "MULTIPLE INJURY WITH FROSTIBITE BOTH HAND WITH ACUTE RENAL FALTURE" and "RENO PARENCHMAL HYPERTENSION (CKD)". His disability was opined as attributable to and aggravated to military duty and disability was considered as 'Battle Casualty'. Though Part II Order declaring the case of the applicant as 'Battle Casualty' was published by the unit but the applicant was granted only service pension and disability element. Case of the applicant is covered under Category 'B' to Govt of India, Min of Def letter dated 31.01.2001 which reads as under:-

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. Disease 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.

11. It is well settled proposition of law that while interpreting statutory provisions or beneficial provisions every clause of a statute should be construed with respect to the context and the other clauses of the Act, so far as possible to make a consistent interpretation of the whole statute or series relating to the subject. It is an elementary rule of construction that no provision 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 interpretation of the whole statute.

12. While rejecting the applicant's case, the authorities concerned have failed to look into the provisions in its totality. In view of the above, the disability suffered by the applicant seem to be covered under Category 'B' to Govt of India, Min of Def letter dated 31.01.2001 and by this reckoning, the case of the applicant is to be treated as 'Battle Casualty'. In view of the above, the applicant deserves to be declared as Battle Casualty.

13. In view of the above, the original application succeeds and is **allowed**. The applicant shall be deemed to be treated as disabled in operational area and his disability shall be treated as "Battle Casualty". The respondents are directed to grant War

Injury Element along with Attendant Allowance to the applicant as per rule. However, due to law of limitation, arrears of War Injury Element shall be restricted from three years prior to filing of O.A. The O.A. was filed on 27.04.2022. The respondents are directed to make necessary calculations with regard to deficiency in pension so accrued on grant of War Injury Element and pay the same to the applicant within a period of four months from the date of receipt of a certified copy of this order. In case the respondents fail to give effect to this order within the time as stipulated above, the amount accrued to the applicant would start earning interest at the rate of 8% from due date till the date of actual payment.

14. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)(Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated : 08 August, 2022

Ukt/-