

**RESERVED**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW  
(CIRCUIT BENCH NAINITAL)**

**Original Application No. 422 of 2019**

Tuesday, this the day 01<sup>st</sup> of December, 2020

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

JC-541145 Ex Nb Sub Harish Chandra Joshi S/O Mathura Datt Joshi,  
R/O Bujiya No 3, Near Purnagiri Mandir, Village and Post Office-  
Naugaon Thaggu, District-Udham Singh Nagar, Uttarakhand.

..... Applicant

Ld. Counsel for the: **Shri Kishore Rai**, Advocate  
Applicant

Versus

1. Union of India, Ministry of Defence through its Secretary,  
South Block, New Delhi-110001.
2. P.C.D.A. (P) Allahabad, Uttar Pradesh.
3. Addl Dte Gen Personnel Services Adjutant General's Branch  
IHQ of MoD (Army), Room No-11, Plot No-108 (West) Brassey  
Avenue, Church Road, New Delhi-110001.
4. Senior Record Officer, Records The Kumaon Regiment PIN  
900473, C/O 56 APO.

..... Respondents

Ld. Counsel for the : **Shri Rajesh Sharma**  
Respondents Central Govt Counsel assisted by  
**Col Subodh Verma**, Departmental  
Representative.

**ORDER**

1. This application has been filed seeking directions to treat the injury of the applicant which he suffered as a battle casualty and to grant the War Injury Pension instead of disability pension with effect from 01.03.2004 i.e. date of discharge from service.

2. The brief facts are that the applicant was enrolled in the Army on 28.02.1978 and was discharged from service in low medical category on 28.02.2004 after rendering 26 years service (Annexure 1 to O.A.). At the time of enrolment his medical category was AYE. He thereafter served at various field and peace areas. On 17.06.1988 while performing military duty at field area in J&K he sustained severe injury "Amputation Symes Rt Mine Blast Injury" on account of mine explosion while moving in field area. He was thereafter admitted in various hospitals and placed in low medical category A3. A Court of Inquiry was held on 03.07.1988 which held the injury sustained by the applicant as attributable to military service (Annexure CA-I) and to be treated as battle casualty. Occurrence to this effect was also notified vide unit Part II Order dated 12.01.1989. The applicant is in receipt of disability pension. Claim of the applicant is that since the casualty to this effect was notified as battle casualty he should be granted war injury pension instead of disability pension.

3. Written statement has been filed by the respondents and it is stated that the applicant was enrolled in the Army on 28.02.1978. He was admitted in various hospitals due to mine blast injury sustained in field area on 17.06.1988 while collecting wood log from jungle for repair of bunker roof which was devastated during fire accident. The injury sustained by him was declared as attributable to military service. He was downgraded to medical category, A3 (Permanent) on 01.09.2003 (Annexure CA-iv). After holding Release Medical Board (RMB) he was discharged from service on

28.02.2004 in low medical category P3 (permanent) and is in receipt of disability pension on superannuation.

4. While arguing the matter, learned counsel for the applicant stated that applicant was carrying wooden logs for repair of bunker roof in Field Area. A certificate to this effect was issued by competent authority signifying the injury sustained to be treated as battle casualty.

5. Heard learned counsel for the parties and perused the record. The fundamental contention of the applicant is to treat the physical disability as a battle casualty and release benefits accordingly.

6. We have gone through the records and find that the applicant suffered injury due to mine blast while carrying out bonafide military duty in field area which is not in dispute. The injury being declared as attributable to military service and a certificate being issued to this effect by the competent authority itself denotes that the applicant is eligible for grant of war injury pension. More so, while arguing the respondents have conceded that the applicant is entitled for war injury pension but it could not be granted on account of certain documents which were not available.

7. In view of the above, the applicant seems to be entitled to war injury pension. The O.A. deserves to be allowed, hence **allowed**.

8. The respondents are directed to grant war injury pension to the applicant with effect from the date of his discharge alongwith arrears.

9. The entire exercise shall be carried out of within a period of four months from today. Default will invite interest @ 8% per annum.

10. No order as costs.

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

Dated : December, 2020  
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