

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

COURT NO. 2

O.A. No. 243 of 2016

Wednesday, this the 9th day of November, 2016

**“Hon’ble Mr. Justice D.P.Singh, Judicial Member
Hon’ble Air Marshal Anil Chopra, Administrative
Member”**

No 3004762N Sepoy Raghvendra Singh, of 27 Rajput
Regiment, C/O 56 APO **Applicant**

Versus

1. Union of India, through its Secretary, Ministry of
Defence, New Delhi.
2. Chief of Army Staff, Army Headquarters, New Delhi.
3. Directorate Gen of Inf/Inf-6 (Pers), IHQ, MoD, New
Delhi.
4. Records, Rajput Regiment, C/O 56 APO.

.....**Respondents**

**Ld. Counsel appeared
for the applicant**

**- Shri K.K.Mishra
Advocate**

**Ld. Counsel appeared
for the Respondents**

**- Mrs. Anju Singh
Addl Central
Government Counsel**

Assisted by OIC Legal Cell

- Col Kamal Singh

ORDER (ORAL)

1. Present O.A has been preferred by the Applicant under section 14 of the Armed Forces Tribunal Act, 2007 being aggrieved by the denial of status for Battle Casualty.

2. The Applicant was enrolled in the Indian Army on 20.04.2002. On 18.06.2008, he was posted in 58 Rajput Rifles. It is claimed that on 20.05.2010, he suffered an accident while on way back from Operation recce. To be precise, it is submitted that on way back from Operation recce to Company Operating Base Dharmari, the vehicle in which the Applicant was travelling, met with accident and fell down 80 meters below on steep slope after Driver of the vehicle lost control. Thereafter, the Applicant was placed on dangerous ill list on 20.05.2010 and he was diagnosed to have suffered "Fracture right mandible and Thoraco-Lumbar Vertebrae". It is further submitted that thereafter, prayer was made to treat the case of the Applicant as Battle casualty which prayer, it is further submitted, was noded in disapproval by the IHQ of MoD (Army) MP-3 vide Signal No 350318 dated 04.06.2010 on the ground that the casualty in respect of the Applicant was classified as Physical Casualty and

the same was not covered under Para 1 of Appx A to AO 1/2003/MP. It is in the above backdrop that the Applicant has come up in this tribunal for the aforesaid relief.

3. We have heard learned counsel for the Applicant and also learned counsel for the respondents. We have also gone through the materials on record.

4. Learned counsel for the Applicant invites our attention to the Army Order no 1 of 2003 and submits that the case of the Applicant is squarely covered by the said order. He also submits that the case of the Applicant for treating him as battle casualty was duly recommended by the Unit in which he was posted and serving.

5. Per contra, learned counsel for the respondents contends that 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 of 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 Casualties – 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) **Accidental injuries and deaths occurring in action in an operational area will be treated as battle casualties.(Emphasis supplied).**
- (v) Accidental injuries 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 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.

- (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.”

7. 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 area where 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."

8. 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 **Dadi Jagannadhan vs Jammulu Ramulu (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) 11 SCC 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 magis valeat quam pereat". 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. Maddula Ratnavali (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 **Japani sahu 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."

9. In view of the above, the injuries suffered by the Applicant seem to be covered by Para-meter 2 and by this reckoning, the case of the applicant is to be treated as battle casualties.

10. 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.

11. A conjoint reading of the entire provisions of both the Army Orders regarding battle casualty (supra) would reveal that controversy in question is covered by the aforesaid provisions and the applicant seems to be entitled to be declared as 'battle casualty'. A plain reading of Note (vii) of Para 4 of the SAO 8/S/85 (Old Army Order) shows that even in peace time also in a war like operational situation if a defence personnel sustain casualties shall be classified as 'battle casualty'. Definition given in Note (vii) clearly covers the applicant's case. Note (viii) provides that in accidental injuries sustained due to natural calamities at the time of performing operational duties or movements shall also be treated as battle casualty. Note (viii) also supports applicant's case. Note (ix) stipulates that reports regarding personnel wounded or injured in action will specify the nature of wound or injury and shall also state whether the personnel remained on duty. Admittedly, the COI report indicates that the applicant was on bona fide military duty, when the accident occurred and not to blame anyone for the said incident. As per Note (iv)

accidental injuries which occur in **action** in an operational area shall be treated as battle casualties. As per Black's Law Dictionary the word "**action**" means '**the process of doing something; conduct or behaviour**' and '**thing done**'. It is an admitted fact that while the applicant sustained accidental injuries he was in the process of assigned military duty in the operational area of a war like situation under OP Rakshak. Therefore, Note (iv) and (ix) also support the applicant's case. Clause 7 of Section I of SAO 8/S/85 under the heading "Active Hostilities" provides that active hostilities cover actual operations against enemy, including preparatory activities, e.g. reconnaissance and deployment prior to declaration of war and all military movements and measures subsequent to cease fire. Fact of the case reveals that the applicant sustained accidental injury on account of the vehicle in which the Applicant was travelling having fallen down 80 meters on steep slope on way back from operation Rakshak. In view of the above, the applicant deserves to be declared as Battle Casualty.

12. Before parting, we cannot resist observing that when individuals place their lives on peril in the line of duty, the sacrifices that they are called upon to make cannot ever be lost sight of through a process of

abstract rationalization as appears to have prevailed with the respondents. This case amply demonstrates how for several years after OP Rakshak in the thick of which the applicant was deployed after having participated in a war like operational situation, his injuries was casually classified as those ordinarily suffered whilst proceeding on duty in a government vehicle. Though he operated under extremely hard circumstances at high altitude, the respondents in a cavalier manner rejected the applicant's claim for treating him as Battle Casualty.

ORDER

13. In view of the above, the original application succeeds and is allowed. The impugned order dated 02.07.2014 (Annexure A-6 to the O.A) is set aside. The applicant shall be deemed to be treated as injured in operational area and his injury shall be converted from Physical Casualty to "Battle Casualty". The applicant is entitled to all consequential benefits of battle casualty. Let consequential benefits be provided within six months.

(Air Marshal Anil Chopra)
Member (A)

(Justice D.P. Singh)
Member (J)

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