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ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Court No. 1

Original Application No. 389 of 2020

Tuesday this the 28th day of September, 2021

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

Harbans Singh P. No. 67154, Indian Navy, Rank M.E. (I), Resident of 124A/540, Block 11, Govind Nagar, Kanpur-208006,
Through his next friend Manmeet Singh, son of Harbans Singh, resident of 124A/540, Block 11, Govind Nagar, Kanpur-208006.

....Applicant

Ld. Counsel for the applicant: **Shri D.S.Tiwari, Advocate**

Versus

1. The Union of India through Secretary, Ministry of Defence, 101 A, South Block, New Delhi-110011
2. Joint Secretary, Department of Ex Servicemen Welfare, Room No 99A, South Block, New Delhi – 110011.
3. Chief of Naval Staff, Integrated Head Quarters, Ministry of Defence, Sena Bhawan, New Delhi-110011.
4. Director (Navy III) Room No 321, Sena Bhawan, New Delhi - 110011

.....Respondents

Ld. Counsel for the:
Respondents.

Shri Arun Kumar Sahu,
Central Govt. Counsel.

ORDER

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

1. This Original Application(appeal) has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 with the following prayers:

- “1. To pass an order, direction to declare the applicant as a war veteran of Indo Pak War of 1965 as expeditiously as possible since the applicant is suffering from DM with HT with CKD (Chronic Kidney Disease) at the age of 78 years.*
- 2. To award costs of the present application in favour of the applicant.*
- 3. To issue any other suitable order or direction which this Hon’ble Court may deem fit and proper.”*

2. In brief, the facts of the case are that the applicant was enrolled in the Indian Navy on 04.04.1960 and was medically boarded out on 30.09.1965 after rendering 05 years, 05 months and 26 days of service. This Tribunal granted disability pension to applicant vide order dated 09.02.2018 and applicant is getting disability pension and arrears. ECHS Centre at 7 Air Force Hospital Kanpur Nagar has issued medical referral letter because applicant is suffering from DM with HT with CKD (Chronic Kidney Disease). He approached respondents vide letter dated 26.06.2014 to add the name of Harbans Singh in the records in which the name of all officers and sailors were recorded who had become disabled while rendering their services

during the Indo Pak War of 1965 and to declare War Veteran but respondents have not taken any action. Being aggrieved, applicant has filed instant Original Application for declaring War Veteran.

3. Learned counsel for the applicant submitted that applicant joined the Navy on 04.04.1960 and was medically boarded out on 30.09.1965 on the ground of individual physical unfit for Naval Services after rendering 05 years, 05 months and 26 days of service. The applicant is a psychopathic personality. Applicant filed O.A. No 324 of 2016 in this Tribunal which was allowed vide order dated 09.02.2018 and applicant is getting disability pension. The applicant was awarded "Raksha Medal" which is awarded to those personnel, who had taken active part in Indo Pak War of 1965. Applicant is entitled to obtain war injury pay and other benefits under Govt of India, Min of Def letter No 200847/Pen-C/72 dated 24.02.1972. Learned counsel for the applicant submitted that directions be given to respondents to declare the applicant War Veteran and grant war injury pension as granted to War Disabled Veteran.

4. On the other hand, learned counsel for the respondents submitted that applicant served in Indian Navy from 04.04.1960 to 30.09.1965. Service documents of the applicant have been destroyed after completion of 25 years of its retention period being non-pensioner as per Regulations for the Navy, Part – I, 1965 . Hence the

applicant is trying to capitalise on the issue after destruction of documents. In vindication of his stand, the applicant has not brought on record any document which may vouch for the fact that he was discharged on account of injury suffered by him in war. The Applicant was discharged from service in the year 1965 and he woke up to claim disability pension in the year 2016 in which he made the first representation. The applicant filed O.A. No 324 of 2016 in this Tribunal which was inordinate delay but Tribunal allowed the application considering the pathetic condition of the applicant and applicant is getting disability pension @ 50% with arrears.

5. The Applicant was discharged on 31.10.1965 and he waited for above 37 years to approach the Tribunal. In the meantime the record was destroyed after 25 years of discharge. The Applicant could not get any premium for his inaction in the matter during this period. The Apex Court in the case **State of Tripura and others Vs. Arabinda Chakraborty and others (2014) 6 SCC 460** has observed that 'termination order was challenged after 13 years, in the meantime the record was destroyed, no harm should be caused to the employer because the employer should not keep the record pertaining to termination of the employee forever'. The above principle will be fully applicable to the facts of the present case.

6. Furthermore, 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 :-

No (Spl) 03/2009 , Reporting of Casualties

Classification of Casualties

(a) Physical Casualties

Para (i) to (v) x x x x x x

(b). **Battle Casualties:** *Battle Casualties are caused by enemy action or by the agency of forces in action against the enemy, wherever they may occur as outlined at Appendix "A" to this order. These are classified as under:-*

- (i) *Killed in action*
- (ii) *Died of injuries
(other than self-inflicted)*
- (iii) *Injured in action.*
- (iv) *Missing (believed killed/drowned/Taken prisoner of war).*

7. Before proceeding further we may also reproduce Paragraph 4.1 of Government of India, Ministry of Defence letter dated 31.01.2001 (Annexure A-24) which reads as under:-

**PART II- PENSIONARY BENEFITS ON DEATH/ DISABILITY IN
ATTRIBUTABLE/AGGRAVATED CASES**

1. to 3. xxx xxxx xxxx

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. 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.

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-filed 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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8. Besides the accidental injuries being sustained in an operational area, it is also qualified 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 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. This letter cannot be read in isolation and need to be read in their full context.

9. 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.

10. 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.

11. 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.*”

12. We may 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*”.

13. 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.

14. Having considered the facts and circumstances of the case, the rules and policy governing such accidents and the above principles of interpretation, we are of the view that the applicant did not qualify for

being declared as a War Veteran and for grant of War Injury Pension. Applicant has not produced any document which can ascertain that disability suffered by the applicant was due to participation in war. For grant of war injury pension there are some parameters i.e. matter should be reported to Naval Headquarters within 24 hours of the accident and same should have been processed accordingly. In the instant case nothing was done. His disability was appropriately held to be attributable to military service by this Tribunal, hence as per policy applicant was granted disability pension in accordance with the normal rules. Govt of India, Min of Def letter dated 24 February, 1972 is not applicable to applicant as there is no document on record to prove that applicant suffered disability in war. In this view of the matter, we are of the opinion that the applicant has failed to prove his case that he is entitled for facility of War Veteran.

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

16. No order as to costs.

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

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

Dated: 28 September, 2021

Ukt/-