

Court No. 2
Reserved Judgment

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW
ORIGINAL APPLICATION NO 223 of 2017**

Monday, this the 12th day of February, 2018

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

Mohd. Nasim No. 2649105 Ex. Gdr. Village – Kurebhar
(Faizabad Road) Post – Kurebhar Tehsil Sadar District
– Sultanpur (U.P.) Pin - 228001

....Applicant

Ld. Counsel for the : **Shri Rajendra Pratap Singh,**
Applicant **Advocate.**

Verses

1. Union of India, through Ministry of Defence (Army) (Military Secretary Branch) South Block, New Delhi.
2. Chief of the Army Staff Integrated Headquarter (Army) DHQ, PO New Delhi, Pin - 900256 C/o 56 APO
3. Directorate General of Ind/Inf-6 (Pers) General Staff Branch, Integrated HQ of MoD(Army) Pin - 900256 C/o 56 APO.
4. The Grenadiers Regt, Centre Pin – 908775 C/o 56 APO

.....Respondents

Ld. Counsel for the : **Shri Asheesh Agnihotri,**
Respondents **Advocate, Addl. Central**
Govt Standing Counsel.

ORDER**“Per Hon’ble Air Marshal BBP Sinha, Member (J)”**

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act for the following reliefs.

“That in view of the facts, mentioned in para 4 above the applicant prays for the following relief:

(A) This Hon’ble Tribunal may graciously be pleased to set aside the communication/order dated 30.05.2016 issued from the office of integrated H.Q. of MoD (Army) Military Secretary’s Branch South Block, New Delhi – 110011.

(B) The Hon’ble Tribunal may graciously be pleased to Direct the respondents to consider the case / representation of the applicant and decide it on merit and grant recognition of his bravery during Indo-Pak War 1965 and get it endorsed in the service record of the applicant.

(C) This Hon’ble Tribunal may graciously be pleased to pass any other order or direction which this Hon’ble Tribunal may deem fit and proper under the circumstances of the case.

(D) This Hon’ble Tribunal may graciously be pleased to award the cost of the Original application in favour or the applicant.”

2. The concise salient facts are that the applicant was enrolled in the Indian Army in the Grenadiers Regiment on 22.12.1962 and was discharged on 31.12.1977 on fulfilling the terms and conditions of his enrolment. The total service rendered by the Applicant was 15 years and 09 months. On 05.09.1965, a war broke out between India and Pakistan and at that time, the Battalion of the Applicant was stationed at Ambala Cantt from where it was ordered to move for battle on the frontline. At that time, the applicant was posted as Driver in the M.T. Platoon under over all command of Lt Colonel Farhat Bhatti. On 06.09.1965, the applicant was posted from Adm Company (RCL Gun Mounted Jeep) Commanded by Mr Mool Chand to S.P.Company commanded by CQMH Abdul Hameed. On 08.09.1965, Pakistani Army started unprovoked firing since 7 am. At 3 pm applicant and his Commander QMH Abdul Hameed PVC saw the Pakistani armoured Tank (Patent Tank) advancing towards Indian post and the Tanks were within the range of detachment. On being ordered, the shell was fired from the launcher which hit the first Pakistani Tank. Thereafter, on being ordered, the Applicant changed the position of the Jeep and another Pakistani

Tank was targeted and destroyed. The rest of the Tanks started retreating. Thereafter, the detachment on being ordered retreated. On 09.09.1965, the detachment of the applicant was positioned near Cheema Village in Khemkaran Sector. On that date, one Pakistani tank was seen hiding and taking position to target the detachment but was seen and was destroyed. On 10.09.1965, the armoured jeep of the Applicant was positioned in a cotton field. At 10 am, when one of the enemy tank was taken in the range of firing, and CQMH Abdul Hameed was just about to fire at the enemy tank, when a tank shell of the enemy hit the Villy Jeep and CQMH Abdul Hamid was hit and he died and his body was scattered all around. However, the applicant jumped from the Jeep and took shelter on the ground to escape being hit by the shell of the Pakistani Tank. On the said date, ceasefire was declared between India and Pakistan. It is alleged that although in the discharge certificate, the character of the applicant is mentioned as exemplary but in his service book there is no mention of applicant's courage bravery and manoeuvring skill displayed during the battle of Khemkaran in 1965. It is alleged that the applicant sent several representations for recognition of bravery which he displayed during the Indo Pak War

but the same yielded no response. He refers to the last representation dated 11.08.2015 in which he requested for recognising/acknowledgement of the applicant as the driver of RCL Gun Mounted Jeep of Late CQMH Abdul Hameed's detachment since 6.09.1965 till the declaration of ceasefire. It is further alleged that his representation aforesaid was turned down mentioning that it was too late.

3. We have heard learned counsel for the Applicant as also learned counsel for the respondents. We have also gone through the material facts on record.

4. In the instant case, the stand of the applicant is that he does not begrudge being not enlisted for grant of gallantry award but the bravery shown by him in taking the Armoured Jeep in the direction for facilitating the aiming of Paton Tank ought to have been recorded in his service book.

5. In the instant case, vide order dated 13.11.2017, the respondents were directed to produce the entire available record and also to explain their stand on this matter. On being ordered as such, the parent Battalion of the applicant, it is contended, was intimated of the order of the Tribunal which informed that no documents or records were available to substantiate

the claim of the Applicant or his achievements in Battlefield.

6. On the other hand, the learned counsel for the Applicant submits that the Applicant has brought on record various documents to vouchsafe the fact that he at that time was driving the Armoured Jeep and that he had also furnished the affidavit of Maj Abdul Hafeez who was then Captain in the M.T Platoon and also the certificate dated 06.11.2012 (Annexure 3 to the O.A.). The Applicant has also placed on record the photographs (Annexure 5 to the O.A) which clearly go to show that the Applicant had actively participated and was the Driver of the Armoured Jeep commanded by CQMH Abdul Hameed.

7. It may be noted that the applicant has applied for grant of bravery certificate for his heroic acts in 1965 Indo Pak War after efflux of almost 50 years. At present, no evidence or record is available with the Parent Battalion to substantiate the claim of the Applicant. The documents brought on record have not been substantiated by the Parent Battalion ostensibly for want of record. Although the Applicant claims that he had made several representations but none of them have been brought on record except the last one. In the counter affidavit, it is clearly averred that there is

nothing on record available to prove that the Applicant was the driver of the armoured Vehicle commanded by CQMH Abdul Hamid which destroyed three Pakistani Tank. Even if, it be assumed that he was the driver of the Armoured Jeep, his heroic acts are not comparable to the gallant and bravery shown by CQMH Abdul Hamid. The fact that Abdul Hamid got killed & his driver survived possibly explains this difference in the risk involved.

8. Army is an organisation which encourages valour & recognises bravery in the face of enemy. However, Army has no tradition of demanding Bravery awards or recognition by a soldier who has participated in such operations himself. It is always the Commanding Officer of a formation, who recommends soldiers for bravery awards & other forms of recognition during war as per Army traditions.

9. We are of the opinion that a bravery award or a recognition for participating in a war can't be demanded by a soldier as a right. Additionally the claim that a soldier has worked in close proximity of another gallantry awarded soldier or worked as a part of his team and therefore he should also be considered for recognition is untenable. Army always fights in a group and as a team. At the end of the day every

Battle/war is a team effort by the Army that is how Army has a tradition of issuing medals after every war or major operations for every participating soldier. Thus who should get a bravery award or a recognition in a war/operation has to be decided by Army as per their well established traditions and rules. Therefore as per traditions of Army, it is always the Commanding Officer of the formation who decides on such matters and makes recommendations for bravery awards & recognition.

10. What has not happened in 1965 through Army traditions can not happen in 2018 through Judicial process. We are not inclined to interfere with Army and advise them on how to give gallantry awards & recognition in war. At this belated stage, in our view, the COAS has rightly rejected the representation on the ground that the matter is 50 year old and there is no document on record and also on the ground that Honours and Awards are conferred within a specific period from the date of the act. The letter dated 03.04.2016 rejecting the claim of the Applicant being relevant is reproduced below.

"Tele No :23019390

*Integrated HQ of MoD (Army)
Military Secretary's Branch
South Block, New Delhi – 110 011*

A/45101/REP/Gen/MS (X)

03 May 2016

Ex Gdr Mohd Nasim
 Kurebhar (Faizabad Road)
 PO – Kurebhar
 Tehsil – Sadar
 Distt – Sultanpur (Uttarpradesh)

HONOURS AND AWARDS

1. Reference your representation dated NIL addressed to Chief of Army Staff regarding grant of Gallantry Awards to you for bravery shown by you during Indo- Pak War of 1965.

2. In this regard, it is intimated that Honours and Awards are conferred within a specific period from the date of the act. Since the act mentioned in your letter pertains to 1965 Indo-Pak war, which is more than 51 years old, it is not feasible to process your case at this belated stage.

Sd/- x x x x
 (Prabhat Ross)
 Dy Dir/Ms (X)
 For Military Secretary"

11. In the above conspectus, we are of the view that the O.A is devoid of merit and is accordingly dismissed.

(Air Marshal BBP Sinha) (Justice S.V.S. Rathore)
Member (A) Member (J)

Dated: February, , 2018

MH/-