

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION No 416 of 2021**

Tuesday, this the 01st day of February, 2022

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

Girish Chandra Shakya No. 14247709 N, Ex. Sigmn Sepoy,
S/o Shri Pahalwan Singh R/o – Vivek Vihar Colony, Behind
District Hospital, Near Avas Vikas Colony, Radharaman Road,
District- Mainpuri (U.P)-205001.

..... Applicant

Learned counsel for the: **Shri Vijay Kumar Pandey**, Advocate.
Applicant

Versus

1. Union of India through Secretary, Ministry of Defence,
South Block, R.K. Puram, New Delhi-110011.
2. Addl Dte Gen Pers Services-4 (Imp-II), Adjutant
General's Branch, Integrated HQ of MoD (Army), Kashmir
House, DHQ Post, New Delhi-110011.
3. Officer-in-Charge Records, the Records Signals, PIN -
908770, C/o 56 APO.
4. PCDA (P), Draupadi Ghat, Allahabad (U.P)-211014.

.....Respondents

Learned counsel for the : **Ms. Appoli Srivastava**, Advocate
Respondents. Central Govt Counsel

ORDER (Oral)

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- (i) *That this Hon'ble Tribunal may kindly be pleased to quash the impugned order / orders, if any, after summoning the same from the opposite parties, and grant the War Injury Pension to the applicant w.e.f. 01.09.1991, along with interest 18% p.a since due date to actual date of payment and also onwards, in the interest of justice.*
- (ii) *That this Hon'ble Tribunal may kindly be pleased to summon the entire medical/service record of the applicant from the opp. Parties in the interest of justice.*
- (iii) *That this Hon'ble Tribunal may be pleased to pass any other order or direction which this Hon'ble Court may deem just and proper be passed in favour of the applicant.*
- (iv) *That this Hon'ble Tribunal may be pleased to award the cost of this original application and legal expenses Rs. 50,000/- (Fifty Thousand) and allow the same.*

2. Brief facts of the case are that the applicant was enrolled in the Army (Corps of Signals) on 05.01.1983. During the course of his service, while availing annual leave, on 15.06.1985 a tree branch fell on his right hand which resulted in "Unreduced Dislocation (Rt) 2nd MP Joint (Optd)" [IAFY-2006 (Injury Report -Annexure 10)]. Accordingly, he was hospitalized from 09.07.1985 to 22.08.1985 and his medical category was downgraded to CEE (Permanent) w.e.f. 18.02.1987 which was reviewed from time to time. He was provided sheltered appointment to continue in service. On 07.11.1990 he submitted an unwillingness certificate to continue in service and pursuant to that the Commanding Officer did not recommend

continuation of his service. His case was forwarded to Signals Records and the Officer-in-Charge Records approved his discharge. Accordingly, his Release Medical Board (RMB) was conducted on 13.06.1991 which assessed his medical disability @ 30% for two years neither attributable to nor aggravated by military service (NANA). He was discharged from service w.e.f. 31.08.1991 (AN) in low medical category CEE (Permanent). Claim for grant of disability pension was processed and he was granted disability pension @ 30% vide PPO No. D/389/1992 dated 22.09.1992. Applicant has filed this O.A. for grant of war injury pension.

3. Learned counsel for the applicant submitted that the applicant though being in low medical category was fit in all respects. He was posted to Sri Lanka (Operation Pawan) for the duration 13.11.1989 to 02.01.1990 where he sustained injury while fighting with LTTE. He further submitted that due to fighting with enemy his medical board could not be carried out due to paucity of time and no injury report was prepared. Making base of the report of the Graded Specialist (Surgery) dated 25.05.1991 he submitted that the specialist endorsed his opinion after return from Sri Lanka which clearly indicates that the injury was sustained during Op Pawan. The applicant has alleged that his report was manipulated and it was related to the injury sustained during the year 1985. It is further alleged that applicant's condition of injury was serious in nature which

resulted in loss of function of right hand finger. He has further alleged that the respondents have made the ground of discharge for the injury sustained in the year 1985 and not on the ground of injury sustained during Op Pawan. He pleaded for grant of war injury pension.

4. On the other hand, submission of learned counsel for the respondents is that the applicant sustained injury on 15.06.1985 while he was availing annual leave. He further submitted that the applicant was serving in low medical category by providing sheltered appointment and on 07.11.1990 when he furnished a certificate with regard to his unwillingness to continue in service, he was discharged from service in low medical category CEE (permanent) w.e.f. 31.08.1991 (AN). He further submitted that the RMB has not recommended his case for grant of disability pension being NANA, however, it was processed twice and later he was granted disability pension which he is in receipt of vide PPO dated 22.09.1992. The learned counsel for the respondents further submitted that on an appeal dated 21.11.2020 from the applicant with respect to grant of war injury pension, he was informed that since he had not sustained any injury while performing any operational duties in war or war like situation, his request for grant of war injury pension is not tenable. He pleaded for dismissal of O.A.

5. We have heard learned counsel for the parties and perused the material placed on record and also gone through the relevant orders and instructions regarding classification of casualties/injuries.

6. Facts on record indicate that the applicant suffered injury on 15.06.1985. We have perused the injury report-IAFY-2006 (Annexure-10) in which the applicant has himself endorsed that he sustained the injury to his right hand due to fall of branch of a tree while on leave. The reason behind the RMB declaring his disability as NANA is exactly in conformity with the injury taking place during leave and having no causal connection of injury with military duty. Thus, keeping in view the material facts on record, contention of the applicant that he sustained injury while serving in Sri Lanka (Op Pawan) (between 13.11.1989 to 02.01.1990) is not sustainable.

7. The policy laid down by the Government of India, Ministry of Defence vide letter No.1(2)/97/D(Pen-C) dated 31.1.2001 clearly stipulates the conditions of granting Liberalized Family Pension/Special Family Pension/War Injury Pension as follows :-

"In case of death/disability of an Armed Forces Personnel under the circumstances mentioned in Category "D" and "E" of Para 4.1, the armed forces personnel/eligible member of the family shall be entitled to "War Injury Pension/Liberalized Family Pension".

*(a) **4.1 "D" Category:** 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.

(b) **4.1 "E"Category** : Death or disability arising as a result of :-

- (i) enemy action in international war.
- (ii) action during deployment with a peace keeping mission abroad.
- (iii) border skirmishes.
- (iv) during laying or clearance of mines including enemy mines as also minesweeping operations.
- (v) on account of accidental explosions of mines while laying operationally oriented mine-field or lifting or negotiating minefield laid by the enemy or own forces in operational areas near international borders of the line of control.
- (vi) War like situations, including cases which are attributable to/aggravated by:-
 - (aa) extremists acts, exploding mines etc. while on way to an operational area.
 - (bb) battle inoculation training exercises or demonstration with live ammunition.
 - (cc) Kidnapping by extremists while on operational duty.
- (vii) an act of violence/attack by extremists, anti-social elements etc. while on operational duty.
- (viii) action against extremists, anti-social 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.
- (ix) operations specially notified by the Government from time to time."

8. In the instant case, the circumstances which led to injury of the applicant are not covered under the provisions for granting War Injury Pension as laid down in the Ministry of Defence letter quoted above. The fact is that the injury was sustained by the applicant on 15.06.1985 while he was availing

annual leave. Army Order No.1/2003/MP which lays down the circumstances for classifying the casualty as battle and physical casualties, clearly indicates that the accidental injuries and death which occurred in action in an operational area are to be classified as battle casualty. It further states that even casualties that occurred due to vehicle accident while performing bonafide military duties in War/Border skirmishes with neighbouring countries including action on line of control and in counter insurgency operations are classified as battle casualties. Hence, the applicant's case is not covered for classifying the injury as battle casualty.

9. The Rules governing the circumstances for classifying a casualty as battle or physical are laid down in Appendix "A" to Army Order No.1/2003/MP. This Army Order has listed out the various circumstances under which casualty can be classified as battle casualty or physical casualty. Similarly, the Ministry of Defence letter No.1(2)/97/D (Pen-C) dated 31.1.2001 deals with disability/war injury pension/Special Family Pension/Liberalized Family Pension/Dependent Pension/Liberalized Dependent Pension for Armed Forces Officers and Personnel below officers rank retiring, invaliding or dying in harness on or after 1.1.1996. Para 4.1 of the said letter lays down pensionary benefits on death/disability in attributable/aggravated cases. For determining the pensionary benefits for death or disability under different circumstances,

the cases have been broadly divided into five categories i.e. A, B, C, D and E. War Injury Pension has been allowed in case of death/disability under category "E". Since applicant's case does not fall under category "E", he is not entitled to war injury pension.

10. With the above observations, the Original Application is **dismissed**.

11. No order as to costs.

12. Miscellaneous application(s), pending if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

Dated: 01st February, 2022
rathore

(Justice Umesh Chandra Srivastava)
Member (J)