

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No. 241 of 2020****Monday, this the 26th day of July 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Manoj Kumar (JC-481095W Sub/Sol GD) son of Shri Gajadhar Prasad Katare, resident of Pratap Ward, Sharma Colony, Opposite Hari Om Marble House, Bina, District Sagar (M.P.)-470113 (presently posted at 12 U.P. Battalion, Fatehgarh (Uttar Pradesh).

..... Applicant

Ld. Counsel for the applicant : **Shri Yashpal Singh,
Advocate**

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi.
2. Additional Directorate General of Manpower (Policy and Planning)/MP 5 (d), Adjutant General's Branch, Integrated Headquarters of Ministry of Defence (Army), West Block III, RK Puram, New Delhi-110066.
3. Officer-in-Charge Records, The Rajput Regiment, PIN-900427, C/O 56 APO.
4. Commanding Officer, 14 Rajput Regiment, PIN-912114, C/O 56 APO.

..... Respondents

Ld. Counsel for the Respondents : **Dr. Chet Naraian Singh, Advocate
Central Govt. Counsel**

ORDER (Oral)

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby he has claimed the following reliefs :-

- (i) Issue/pass an order setting aside the order/letter dated 19.07.2019 rejecting the claim of the applicant for Battle Casualty, after summoning the relevant original record.
- (ii) Issue/pass an order directing the respondents to consider and classify the 'severe electric shock and burn injury' sustained by the applicant on 29.09.2002 while participating in Operation Parakram as 'Battle Casualty' and provide all benefits including monetary benefits attached thereto from due date.
- (iii) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.
- (iv) Allow this Original Application with cost.

2. The factual matrix of the case is that applicant was enrolled in the Army as Sepoy on 27.08.1994 and rose to the rank of Sub. While serving with 14 Rajput deployed in "Op Parakram" at Suratgarh (Rajasthan) on 30.09.2002 during the course of exercise he got electrocuted and sustained severe injury resulting into his admission to 184 Military Hospital. Subsequently he was placed in low medical category S1H1A2(T-24)P1E1 for a period of six months w.e.f. 16.01.2003 for the diagnoses "20% TBSA Thermal Burns (Optd)". A Court of Inquiry (C of I) was conducted which gave the following opinion:-

- "(a) No 2992974 Naik Manoj Katare (Now JC-481095W Subedar Manoj Kumar) suffered electric shock and burns on 29 Sep 2002 at 0930 hours during Exercise Chakravyuh in Op Parakram.*
- (b) The radio set AN PRC-25 Regd No 30041 got badly damaged due to high voltage flow through it.*
- (c) There is no foul play involved.*
- (d) Injury sustained by No 2992974 Nk Manoj Katare (Now JC-481095W Subedar Manoj Kumar) is attributable to military service."*

Applicant had undergone various re-categorization medical boards and in all medical boards applicant was placed in low medical category A2 (permt). A case was taken up with Army Headquarters to classify the injury as battle casualty but vide letter dated 19.07.2019 the competent authority has turned down the case with the remarks that “the circumstances leading to injury in respect of the applicant is not covered under SAO 8/S/1985 (being the case of 2002) for classification of the injury as Battle Casualty. It was also opined to classify the injury as physical casualty attributable to military service and not as Battle Casualty”. This O.A. has been filed for consideration of aforesaid injury as battle casualty.

3. Learned Counsel for the applicant submitted that applicant while serving with 14 Rajput Regiment deployed in ‘Op Parakram’ sustained severe burn injury on 29.09.2002 resulting in prolonged hospitalisation, operation and downgradation of medical category (permanent). His further submission is that Court of Inquiry declared the injury as attributable to military service in ‘Op Parakram’ and also held that there was no foul play involved in the incident. Based on the opinion of the Court of Inquiry, recommendations of Commanders in chain of command, his case for grant of ‘Battle Casualty’ status was forwarded to Adjutant General’s Branch, Integrated Headquarters of Ministry of Defence (Army), but it was turned down vide letter dated 19.07.2019 and classified as ‘Physical Casualty’ attributable to military service and not ‘Battle Casualty’. The applicant is presently serving with 12 UP Battalion, Fatehgarh. While arguing the case learned counsel for the applicant placed reliance on the following judgements and submitted that applicant’s case is squarely covered by

these judgements which entitles the applicant for grant of Battle Casualty status and the pension after retirement on that count :-

(a) Hon'ble Delhi High Court judgment in Writ Petition No. (C) 4488/2012, **Maj Arvind Kumar Suhag vs. Union of India and Ors**, decided on 21.02.2013.

(d) Armed Forces Tribunal, Regional Bench, Lucknow judgement in O.A. No. 174 of 2014, **Balbir Singh Vs. Union of India & Ors** decided on 31.05.2016.

4. Per contra, learned Counsel for the respondents submitted that applicant was a part of Brigade exercise "**Exercise Chakravyuh**" while deployed in 'Op Parakram' and the incident occurred during the course of exercise in which he got electrocuted on account of high voltage flow in Radio Set which he was operating and sustained severe injury on 29.09.2002 at 0930 hrs. His further submission is that the competent authority i.e. Adjutant General's Branch, IHQ of MoD (Army) scrutinised the case and rejected to treat this as battle casualty in terms of SAO 8/S/1985. Further submission of learned counsel for the respondents is that as per aforesaid SAO battle casualties are those injuries sustained in action against enemy forces or whilst repelling enemy air attacks and casualties of this type consist of the following categories:-

- (i) Killed in action
- (ii) Died of wounds or injuries (other than self-inflicted)
- (iii) Wounded or injured (other than self-inflicted).
- (iv) Missing.

Respondents learned counsel pleaded for dismissal of the O.A. on the ground that applicant's injury is not covered in the category of battle casualty.

5. Heard learned counsel for the parties and perused the records.

6. Learned Counsel for the respondents, though initially contested the case vehemently based his arguments on various policy letters and Special Army Order, however, when the question was raised about applicability of the judgements referred by learned counsel for the applicant in the instant case, he conceded that the facts and circumstances given in the judgements are similar to that of the present case and the case of the applicant is covered by these judgements.

7. Before dealing with the rival submissions, it would be appropriate to examine the relevant Rules and Regulations on the subject matter which are reproduced as under :-

(a) **Army Order 1/2003**

Physical/Battle Casualties

Para 1 to 3. x x x x x x x x x XXX

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 or wounds or injuries (other than self-inflicted)*
- (c) *Wounded or injured (other than self-inflicted)*
- (d) *Missing*

5. *Circumstances for classification of Physical/Battle Casualties are listed in Appendix 'A'.*

Appendix A to AO 1/2003

Battle Casualties

1. *The circumstances for classifying personnel as battle casualties are as under:-*

(a) *Casualties due to encounter with troops or armed personnel or border police of a foreign country or during operations while in service with peace keeping missions abroad under government orders.*

(b) *Air raid casualties sustained as a direct or indirect result of enemy air action*

(c) *Casualties during action against armed hostiles and in aid to civil authorities to maintain internal security and maintenance of essential services.*

(d) *Accidental injuries and deaths which occur in action in an operational area.*

(e) *Accidental injuries which are not sustained in action and not in proximity to the enemy but have been caused by fixed apparatus (e.g. land mines, booby traps, barbed wire or any other obstacle) laid as defence 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 the casualties occur within the period laid down by the government.*

(f) *Casualties during peace time as result of fighting in war like operations, or border skirmishes with a neighbouring country.*

(g) *Casualties occurring while operating on the International Border or Line of Control due to natural calamities and illness caused by climatic conditions.*

(h) Casualties occurring in aid to civil authorities while performing relief operations during natural calamities like flood relief and earthquake.

(i) Casualties occurring while carrying out battle inoculation/training or operationally oriented training in preparation for actual operations due to gunshot wound/explosion of live ammunition/explosives /mines or by drowning/electrocution.

(j) Casualties occurring while carrying out battle inoculations/training or operationally oriented training in preparation for actual operations due to gunshot wound/explosion of live ammunition/explosives/mines or by drowning/electrocution.

(k) Army personnel killed/wounded unintentionally by own troops during course of duty in an operational area.

(l) Casualties due to vehicle accidents while performing bonafide military duties in war/border skirmishes with neighbouring countries including action on line of control and in counter insurgency operations.

(m) Casualties occurring as a result of IED/bomb blasts by saboteurs/ANEs in trains/buses/ships /aircrafts during mobilization or deployment in war/war like operations.

(n) Casualties occurring due to electrocution/snake bite/drowning during course of action in counter insurgency/war.

(o) Accidental death/injuries sustained during the course of move of arms/explosives/ammunition for supply of own forces engaged in active hostilities.

(p) Death due to poisoning of water by enemy agents resulting in death/physical disabilities of own troops deployed in operational area in active hostilities.

(q) Accidental deaths/injuries sustained due to natural calamities such as floods, avalanches, cyclones, fire and lightening or drowning in river while performing operational duties/movements in action against enemy forces and armed hostilities in operational area to include deployment on international border or line of control.

(r) *Army personnel killed/wounded by own troops running amok in an operational area.*

(s) *Army personnel killed/wounded due to spread of terror during leave/in transit because of their being army personnel.*

Physical Casualties.

2. *Deaths caused due to natural causes/illness/accident/suicide/murder due to family disputes in operational and non-operational areas will be treated as physical casualties.*

Miscellaneous Aspects

(a) *Saboteurs, even of own country, will be treated as enemy for the purpose of classifying their actions as enemy action and encounters against them as encounters against the enemy.*

(b) *Report 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.*

(c) *Reports on personnel missing in action will indicate, if possible, their likely fate, eg, 'believed killed'. 'believed prisoner of war', of 'believed drowned' etc.*

(d) *Any casualty occurring deployment/mobilization of troops for taking part in war or war like operation, will be treated as battle casualty.*

(b) **Govt of India, Ministry of Defence letter No. 1(2)/97/D/(Pen-C) dated 31.01.2001**

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-field 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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10.1. Where an Armed Forces Personnel is invalided out of service on account of disabilities sustained under circumstances mentioned in Category "E" of Para 4.1 above, he/she shall be entitled to War Injury Pension consisting of Service element and War Injury element."

8. In the instant case, applicant was deployed in 'Op Parakram' (Operation Chakravayuh) in Rajasthan Sector of our country. Nk Manoj Kumar (now Subedar) was operating Radio Set and sustained severe burn injuries due to electrocution on account of high voltage. His injury was declared as attributable to military service by Court of Inquiry conducted to inquire into the circumstances leading to burn injury. His case for 'Battle Casualty' status based on the opinion of the Court of Inquiry was forwarded to Integrated Headquarters of Ministry of Defence (Army), Adjutant General's Branch, duly recommended by commanders in chain but his injury was classified as 'Physical Casualty' attributable to military service and not 'Battle Casualty'.

9. The applicant is still in service and serving at the post of Subedar in 12 UP Battalion. It is not disputed that the applicant sustained burn injuries while taking

part in 'Op Parakram' and it is also apparent from the submissions of learned counsel for the parties that based on Court of Inquiry, Brigade Commander and Divisional Commander had recommended his case for consideration as a 'Battle Casualty', but it was rejected by Adjutant General's Branch, Army Headquarters vide letter dated 19.07.2019. Learned counsel for the respondents after referring the judgements cited above has also conceded that the case of applicant is covered by these judgements as it is of similar nature.

10. We have gone through the policy letters underlying concept and spirit for declaring injury sustained in 'Op Parakram' as a Battle/Physical Casualty. The applicant sustained injury while on bonafide military duty in 'Op Parakram' (Op Chakravayuh) in Operational Area of Rajasthan Sector which has been accepted by Court of Inquiry, Brigade Commander and Divisional Commander and his case has been recommended for grant of 'Battle Casualty' status. Extract of Appx 'O' to SAO 8/S/85 i.e. Certificate for Battle Casualty issued by Commanding Officer, 14 RAJPUT is reproduced as under:-

"1. Certified that No 2992974Y Nk Manoj Kumar of 14 RAJPUT sustained flash burn injuries both lower limbs on 30 Sep 2002 during OP PARAKRAM.

2. As per SAO 8/S/85 this was a Battle Casualty.

3. Given at this day of 06 January 2003.

*Unit : 14 RAJPUT
Station : C/O 56 APO*

Dated : 06 Jan 2003

*sd/- x x x x x x
(Mukul Bhandari)
Lt Col
CO, 14 RAJPUT"*

11. In our view the case of the applicant is covered by Para 4.1, Category E (j) to Govt. of India, Ministry of Defence letter No. 1(2)/97/D(Pen-C) dated

31.01.2001 and Serial 1 (d) of Appendix 'A' to AO 1/2003, which are reproduced as under :-

Para 4.1, Category E (j) to Govt. Of India, Ministry of Defence letter No. 1(2)/97/D(Pen-C) dated 31.01.2001

“(j) Operations specially notified by the Govt. from time to time.”

Serial 1 (d) to Appendix 'A' to AO 1/2003

“(d) Accidental injuries and deaths which occur in action in an operational area.”

12. Thus, keeping in view the facts and circumstances of the case, various policies and judgements in similar cases, we converge to the view that injury sustained by applicant be considered as Battle Casualty.

13. Accordingly Original Application is **allowed**. The impugned order dated 19.07.2019 is hereby set aside. The respondents are directed to grant 'Battle Casualty' status to the applicant and publish necessary casualty to this effect within a period of three months from the date of receipt of this order.

14. No order as to costs.

15. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

Dated: 26.07.2021
rathore

(Justice Umesh Chandra Srivastava)
Member (J)