

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No. 343 of 2019**Thursday, this the 8th day of July, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)R.F. No. 13767757 Ex Sepoy Shamsheer Shahi
S/o Sri Azimullah Shahi
R/o House No. Village and Post - Sihaijpur,
Tehsil – Bansgaon, District – Gorakhpur

..... Applicant

Ld. Counsel for the Applicant : **Shri Veer Raghav Chaubey,**
Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, Government of India, South Block, New Delhi-110011.
2. The Records, Jammu Kashmir Rifles.
3. Office of the PCDA(P), Draupadi Ghat, Allahabad.
4. Record office, Jmmu Kashmir Rifles, C/o 56 APO.

..... Respondents

Ld. Counsel for the : **Shri Anurag Mishra,**
Respondents Central Govt Counsel**ORDER**

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

“(i) This Hon'ble Tribunal may kindly be pleased to consider the case of the applicant as a battle casualty under operation MEGHDOOT and grant him the disability pension from 50% to 75% w.e.f. 30.06.2007.

(ii) Pass any other order or direction which this Hon'ble Tribunal may deem fit and proper under the circumstances of the case.”

2. The factual matrix of the case is that the applicant was enrolled in the Army on 31.12.2001. While serving with 17 JAK RIF Battalion in Siachen Glacier in 'OP MEGHDOOT', applicant sustained injury "LOW BACKACHE" of severe nature on 15.02.2004 while performing the bonafide military duty. Later, applicant was downgraded to low medical category P2 (T-24) for six months w.e.f. 08.08.2006 and thereafter, on subsequent review at Military Hospital, Gwalior, applicant was placed in low medical category P2 (Permanent) for two years w.e.f 22.01.2007. A court of Inquiry was ordered by Commanding Officer on 26.08.2006 to investigate the circumstances under which the applicant had sustained the said injury. The Court of Inquiry opined that injury sustained by the applicant while he was on bonafide military duty and injury was declared as attributable to military service by Commander 72 Infantry Brigade. Meanwhile the applicant was admitted to Military Hospital, Jodhpur on 27.01.2006 wherein he was diagnosed as "MIXED ANXIETY AND DEPRESSIVE DISORDER" and downgraded to low medical category S3 (T-24) for six months w.e.f 20.03.2006. Later on subsequent review at Military Hospital, Gwalior, applicant was placed in low medical category S2 (Permanent) for two years w.e.f. 05.09.2006 for "MIXED ANXIETY AND DEPRESSION". As per Army Order 46/80, employment of permanent low medical category personnel, at all times, is subject to availability of suitable sheltered appointment commensurate to their medical category and their retention which should not exceed the sanctioned LMC strength of the

Regiment/Corps. Though the applicant was willing to continue in service but sheltered appointment was not available in the unit, therefore, he was discharged from service on 30.06.2007 under Rule 13 (3) (III) (v) of Army Rules 1954 in low medical category S2 (Permanent) and P2 (Permanent) after rendering 05 years, 06 months and 01 day of service. His disabilities (i) MIXED ANXIETY AND DEPRESSION" was assessed @ 11-14% for five years as NANA and (ii) "LOW BACKACHE" was assessed @ 20% for life, attributable to military service. Accordingly, disability pension of the applicant was preferred to PCDA (P) Allahabad and second disability of the applicant was accepted and applicant was granted service element and disability element vide PPO dated 28.09.2007. The applicant was also paid all retiral dues. The applicant served a petition dated 04.07.2007 to declare his disability as battle casualty which was rejected by Records JAK RIF vide letter dated 23.07.2007. After implementation of 6th CPC, disability pension of the applicant was revised duly rounded off from 20% to 50% for life vide PPO dated 25.09.2009. Thereafter, applicant submitted an application dated 18.07.2013 for re-computation of disability element which was suitably replied by the respondents vide letter dated 31.07.2014 stating that disability pension of the applicant has already been rounded off to 50% vide PPO dated 25.09.2009. Aggrieved, the applicant has filed the instant Original Application for grant of Battle Casualty status, with all consequential benefits.

3. Heard learned Counsel for the parties and perused the record.
4. Learned Counsel for the applicant submitted that since the incident took place in 'OP MEGHDOOT' when unit was deployed in Siachen Glacier, the injury sustained by the applicant during bonafide military duty should be considered as war injury and he should be considered as Battle Casualty and accordingly war injury pension should be granted to the applicant.
5. Ld. Counsel for the applicant further submitted that applicant's case is similar to judgment passed by AFT (RB), Kolkata in O.A. No. 113 of 2013, **Ex Nb Sub Sachidanand Singh vs. Union of India & Ors**, decided on 07.08.2015 on the basis of many judgments passed by the Hon'ble Apex Court on the subject.
6. Learned Counsel for the respondents submitted that the applicant sustained injury in Siachen Glacier in "OP MEGHDOOT" on 15.02.2004 while performing the duty of delivering ration stores on a link patrolling from DZ Post to Darshak Post by a snow scooter as pillion rider where his vehicle entered a small crevasse and threw applicant away resulting severe injury. The injury of the applicant does not fall under category 'E' of Para 4.1 of Govt. of India, Ministry of Defence letter No. 2(i)/2011-D (Pen/Policy) dated 03.02.2011 and therefore, applicant is not entitled for War Injury Element. The Court of Inquiry investigating into the circumstances opined that the injury sustained by the applicant is attributable to military

service as the applicant was on bonafide military duty. In his remarks Commanding Officer of the applicant has also given the same recommendation. The applicant was brought before a Medical Board which regarded the disability as attributable to military service and assessed the disablement @ 20% for life for second disability "LOW BACKACHE". Accordingly, disability pension of the applicant was preferred to PCDA (P) Allahabad and second disability of the applicant was accepted attributable to military service and applicant was granted service element and disability element vide PPO dated 28.09.2007. The applicant was also paid all retiral dues. Presently, applicant is getting 50% disability pension duly rounded off.

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

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*

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.

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.*

(i) *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 the applicant while serving in the unit which was deployed in Siachen Glacier in "OP MEGHDOOT" in Jammu and Kashmir sustained injury while travelling in a snow scooter detailed to deliver ration to a patrolling post and the vehicle overturned. The Court of Inquiry convened to investigate into the circumstances of the accident opined that the applicant

sustained injury while performing bonafide military duty hence, it is attributable to military service and the Medical Board has assessed his second disability as 20% for life and the applicant is in receipt of 50% disability pension for life duly rounded off. No case was taken up by the unit for declaring the applicant as Battle Casualty though injury sustained during bonafide military duty. The court of inquiry attributed the injuries to military service, but erroneously omitted the classification of the injured soldier as a Battle Casualty.

9. The applicant is in receipt of 50% disability pension for life. He is aggrieved by non grant of War Injury Pension as has been considered as a Physical Casualty and not as a Battle Casualty. It is not disputed that the applicant was injured while serving in the unit deployed in "OP MEGHDOOT" in Siachen Glacier in Jammu and Kashmir.

10. In order to decide the case two questions need to be addressed :-

(a) Was the disability attributable/aggravated by military service?

(b) Can the disability be categorised as Battle Casualty (and not merely physical casualty).

11. With respect to the first question the Court of Inquiry convened to investigate into the circumstances of the accident has opined that the applicant sustained injury while performing bonafide military duty and hence it is attributable to military

service. Further we have also gone through the policy letter underlying concept and spirit for declaring death or disability as a attributable/aggravated by military service. The applicant was travelling in a military vehicle (snow Scooter) detailed to deliver ration from one post to another post in “OP MEGHDOOT” in Siachen Glacier in Jammu and Kashmir at the time of sustaining injury, which, in our view, is covered by Serial (i) of category ‘E’ of Para 4.1 of Govt. of India, Ministry of Defence letter No. 2(i)/2011-D (Pen/Policy) dated 03.02.2011, which reads as under :-

“Category E

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

12. Since “OP MEGHDOOT” is an operation notified by Govt. the case is covered under this policy.

13. A disability is categorised as Battle Casualty in accordance with policy promulgated in Army order 01/2003. We are of the view that the disability suffered by the applicant is covered by the following clauses of this Army Order :-

(a) Para 1(d) - Accidental injuries and deaths which occur in action in an operational area.

(b) Para 1(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.

