

E-Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 471 of 2018**

Thursday, this the 22nd day of July, 2021

**“Hon’ble Mr. Justice Umesh Chandra Srivastava (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Sunil Kumar Singh (Ex No. 1486594L), S/o Nandan Singh Sajwan,
252CEDU Army, R/o H. No- 3, Durga Colony, Roorkee Near Dogra
Line, District – Haridwar, Uttrakhand.

..... **Applicant**

Ld. Counsel for the applicant : **Shri Gyan Singh Chauhan and
Shri Kunwar Bahadur Singh,
Advocate**

Versus

1. Union of India, through Chief of the Army Staff, Army Headquarters, Ministry of Defence, New Delhi.
2. Record Officer, OIC Records Bengal Engineer Group Records, PIN- 908779, C/O 56 APO.

..... **Respondents**

Ld. Counsel for the Respondents : **Ms Appoli Srivastava,
Central Govt. Counsel**

ORDER

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

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 :-

“(a) To squash the impugned order dated 22.02.2018 passed by respondent No. 2 contained as Annexure No. 1 of the present applicant in the interest of justice.

“(b) Direct Respondents to consider the case of applicant case under battle casualty and provide entire compensation or welfare schemes and all benefits arises/ attached to the battle casualty throughout the service to the applicant, in the interest of justice.

“(c) Costs and expenses of the application in favour of the applicant against all the opposite parties.

“(d) Any other relief or reliefs which this Hon’ble Tribunal deems fit and proper in the circumstances of the case may also be granted.

2. The factual matrix of the case is that the applicant was enrolled in the Army on 06.02.1992. While practicing correct procedure of lobbing and firing at Pokharan, Rajasthan, a grenade (no. 9 Mark iii) blasted off in the right hand of applicant and as a result right hand of the applicant critically wounded and tympanic membrane of both ears get perforated. Applicant was operated and his three fingers got partially imputed, thumb was deformed and he lost his hearing capacity to some extent and he was placed in low medical category A3H2 (Permanent) with 50% disability. A court of inquiry was held and his injury was considered as physical casualty in peace and found attributable to military service. Applicant was discharged from

service on 28.02.2014. Applicant is getting service pension and disability pension for his services rendered in the army. Applicant submitted representation to the competent authority for re-consideration for grant of 'Battle Casualty' status but the same was rejected vide letter dated 22.02.2018 stating that death of the deceased soldier cannot be classified as 'Battle Casualty' as per the rules in vogue. Aggrieved, the applicant has filed the instant Original Application for grant of Battle Casualty status and provide entire compensation.

3. Learned counsel for the applicant submitted that on 05.02.2010 in firing range Sector A, Pokharan, Rajasthan while practicing correct procedure of lobbing and firing grenade, a grenade blasted off in the right hand of applicant, as a result applicant was injured and placed in low medical category A3H2 (Permanent) with 50% disability. On the day applicant suffered from injury, he was participating in annual field firing operation. His disability was considered as physical casualty in peace and found attributable to military service. Applicant was discharged from service on 28.02.2014. Applicant is getting service pension and disability pension for his services rendered in the army. Applicant submitted representation to the competent authority for re-consideration for grant of 'Battle Casualty' status but the same was rejected vide letter dated 22.02.2018 stating that death of the deceased soldier cannot be classified as 'Battle Casualty' as per the rules in vogue.

4. Learned counsel for the applicant further submitted that as per AO February 2003, it is clearly mentioned under clause 1 (i) that “casualties occurring while carrying out battle inoculation/ training or operationally oriented training in preparation for actual operation due to gunshot wounds/explosion of live ammunition/ explosives/ mines” shall be considered as battle casualty but respondents treated his case as physical casualty in peace and applicant was deprived of all compensation or welfare schemes applicable to the battle casualty. Applicant submitted representation to the competent authority for re-consideration for grant of ‘Battle Casualty’ status but the same was rejected stating that injury of the applicant cannot be classified as ‘Battle Casualty’ as per the rules in vogue. Ld. Counsel for the applicant placed reliance on the following judgments and submitted that his case is squarely covered by these judgments which entitles the applicant for grant of Battle Casualty status and payment of Ex-gratia amount on that count :-

(a) Armed Forces Tribunal, Regional Bench, Chandigarh judgment in O.A. No 305 of 2014, Kameshwar Gautama Vs. Union of India & Ors decided on 15.12.2015.

(b) Armed Forces Tribunal, Regional Bench, Lucknow judgment in O.A. No. 174 of 2014, Balbir Singh Vs. Union of India decided on 31.05.2016.

(c) Armed Forces Tribunal, Regional Bench, Lucknow judgment in O.A. No 117 of 2016, Smt Rekha Nagarkoti, Vs. Union of India & Ors decided on 12.09.2017.

5. **Per contra**, learned Counsel for the respondents submitted that injury of the applicant had occurred while on duty

and participating in annual field firing operation and his injury has been treated as attributable to military service. His case for grant of 'Battle Casualty' status was submitted to concerned authorities. He was informed vide letter dated 22.02.2018 that "injury sustained on 05.Feb 2010 during demonstration on correct lobbing technique does not come under the provision of para "D" & "E" of Govt of India, Ministry of Defence, New Delhi letter dated 31 Jan 2001, hence it was considered as 'Physical Casualty'. He submitted that the conditions to declare any casualty leading to death or disability have been defined at Para 4 of OA 1/2003/MP and circumstances for classifying casualty as Battle Casualty has been prescribed at Para 1 of Appendix "A" to AO 1/2003/MP. It is seen that the casualty leading to injury of the applicant is not covered under the circumstances given at Para 1 of Appendix 'A' to AO 1/2003/MP. However, the injury of the applicant is covered under the circumstances prescribed at Para 2 of Appendix 'A' to AO 1/2003/MP for classification of casualty as physical casualty. AG's Branch, Integrated Headquarters of Ministry of Defence (Army) is the authority for classification/declaration of 'Battle Casualty'. He further submitted that initially the applicant's case was recommended as 'Battle Casualty', but it was found that as per rule in vogue, injury of the applicant cannot be classified as 'Battle Casualty' and it has been correctly classified as a 'Physical Casualty' attributable to military service. The injury sustained by the applicant did not occur in action against acts of violence by

terrorists, anti-social elements etc nor resulted in enemy action in international war or border skirmishes and warlike situations.

6. Learned counsel for the respondents also submitted that the judgments relied upon by the applicant in the instant case, as per their facts and circumstances given in the judgments are not similar to that of the present case and the case of the applicant is not covered by these judgments.

7. Heard Learned Counsel for the parties and perused the record.

8. For deciding the present controversy, it is important to ascertain whether the injury sustained by the applicant is a 'physical casualty', as pleaded by the respondents or it is a 'battle casualty' as claimed by the applicant. 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/MP**
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 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/MP

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 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.*

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

(k) *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.*

(l) 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.

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

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

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

(p) 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.

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

(r) 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**

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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."

9. A detailed reading of the aforesaid orders brings out that the underlying concept and spirit for declaring death or disability as a battle casualty is related to the casualty occurring due to direct hostile enemy action or accidents occurring while engaged in undertaking such actions or in handling ammunitions and explosives related to such activities or such direct hostile actions. Accidents while not carrying out any such actions are specifically excluded and are to be treated as physical casualties though attributable to military service. In our view the applicant at the time of sustaining injury due to grenade blast was participating in annual field firing operation. This in our view, is covered under Para 1 (i) to Appendix A to AO 1/2003.

10. In addition, case of the applicant is covered for grant of battle casualty status under Category E (f) (ii) of policy letter No 1 (2)/97/D(Pen-C) dated 31.01.2001 which reads as under:-

(f) War like situations, including cases which are attributable to/aggravated by :-

(i) X x x x

(ii) Battle inoculation training exercises or demonstration with live ammunition.

(iii) X x x x x.

11. In the instant case, the applicant was participating in annual field firing operation with live ammunition and his injury was declared as attributable to military service.

12. Keeping in view the facts and circumstances of the case, various policies and judgements in similar cases, we converge to the view that the applicant is in receipt of service pension and disability pension. The Court of Inquiry clearly attribute the incident to an accidental injury occurred while participating in annual field firing operation with live ammunition. Therefore, we are of the considered view that the applicant is entitled to battle casualty status and is further covered under Cat E (i) to Gol letter dated 31.01.2001.

13. It is also observed that claim for pension is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. In the case of **Shiv Dass vs. Union of India**, reported in 2007 (3) SLR 445, Hon'ble Apex Court has observed:

“In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”

14. As such, in view of the decision of Hon'ble Supreme Court in the case of ***Shiv Dass (supra)***, we are of the considered view that battle casualty status may be extended to the applicant from three preceding years from the date of filing of the Original Application.

15. Having regard to the facts and circumstances of the case, the application is allowed and the order dated 22.02.2018 is hereby quashed and set aside and the applicant is granted battle casualty status from three preceding years from the date of filing of the Original Application. Original application was filed on 19.09.2018.

16. Accordingly, Original Application 471 of 2018 succeeds and is allowed. The respondents are directed to make necessary calculations and the difference of arrears so accrued on account of battle casualty status from three preceding years from the date of filing of the Original Application be paid to the applicant within a period of four months from the date of receipt of certified copy of this order by the respondents, failing which the amount shall carry interest @ 8% per annum till the date of actual payment.

17. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 22 July, 2021
Ukt/-