

Court No. 1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

Original Application No 64 of 2022

Tuesday, this the 05th day of July, 2022

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

Ashok Kumar Singh (No. 14265005M Ex Hav) S/o Shri Mahendra Singh Chauhan, R/o A-105, First Floor, Kaushambhi, Ghaziabad (U.P.), PIN- 201010.

..... **Applicant**

Ld. Counsel for the Applicant: **Shri Ashok Kumar, Advocate**

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, Delhi-110011.
2. Officer Incharge Records Signals, PIN- 908770, C/o 56 APO.
3. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (U.P.).

..... **Respondents**

Ld. Counsel for the Respondents : **Shri Rajiv Pandey,
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 for the following reliefs:-

- (i) *This Hon’ble Tribunal may graciously be pleased to direct the respondents to grant ‘War Injury element/Invalid War Injury Pension’ along with arrears and interest from the date of its entitlement w.e.f. 01.04.2004, towards his disability **‘COMPOUND FRACTURE MIDDLE PHALANK (RT) LITTLE FINGER’** in accordance with law to the applicant.*
- (ii) *This Hon’ble Court may further be pleased to pass such other and/or further order as deem fit, proper and necessary in the circumstances of this case.*
- (iii) *Award costs to the applicant.*

2. Briefly stated facts of the case are that applicant was enrolled in the Indian Army on 18.06.1985 and was discharged from service on 01.04.2004 in low medical category A2 for the

disability '**COMPOUND FRACTURE MIDDLE PHALANK (RT) LITTLE FINGER**' under Rule 13 (3) Item III (v) of Army Rules 1954. At the time of discharge from service, the Release Medical Board (RMB) assessed his disability' @ 11- 14% for life and opined the disability to be attributable to military service. PCDA (P), Allahabad granted disability element to the applicant along with service element for life vide PPO dated 26.08.2004. Applicant preferred a petition dated 21.11.2021 for grant of War Injury Pension which was denied vide letter dated 07.12.2021. Being denied for grant of War Injury Pension, the instant Original Application has been filed.

3. Learned Counsel for the applicant submitted that applicant was enrolled in the army on 18.06.1985 in physically and mentally fit condition and he was invalided out from service on 01.04.2004. The applicant served in High Altitude/ Field Area, Siachin Glacier, Counter Insurgency area and Border line of Pakistan. During posting at Border Line of Pakistan, Operation RAKSHAK- II was organized by Indian Army. On 27.10.1993, at Jammu & Kashmir border area during installation of electricity generator, an incident took place wherein applicant was seriously injured along with others. His right hand little finger was removed. In the opinion of Medical

Board as well as in opinion of Court of Inquiry, the disability of the applicant was considered as attributable to military service and applicant was granted disability pension whereas applicant is entitled to War Injury Pension instead of disability pension.

4. Further contention of learned counsel for the applicant is that the case of the applicant was fully covered under Pension Regulation 2008, Part I, Para 82, Category 'E' Sub Para (i), (vi) and GOI, MoD letter No 1 (2)/97/D(pen-c) dated 31.01.2001. Learned counsel for the applicant submitted that the applicant was on bonafide military duty in Operation Area (J & K) and his disability was considered as attributable to military service, hence War Injury Pension be granted to him.

5. **Per contra**, learned Counsel for the respondents submitted that as per records held with service dossier, the applicant's disability was opined by the, RMB as attributable to military service and connected with service with remarks that 'injury sustained while on duty'. Accordingly, applicant was granted disability pension in terms of Para 7.2 of Govt of India, Ministry of Defence letter dated 31.01.2001 being an invalidment case vide PPO dated 2608.2004. Para 10.1 of the

Government of India, Ministry of Defence letter No. 1(2)/D(Pen-C) dated 31.01.2001 envisages that the provision of War Injury Pension is applicable in the case “where an Armed Forces personnel is invalided out of service on account of disabilities sustained under circumstances mentioned at Category ‘E’ of para 4.1 of Government of India letter dated 31 January, 2001, he shall be entitled to War Injury Pension consisting of service element and War Injury element”. His further submission is that in the instant case, the applicant suffered from injury while serving in operation area which does not cover under category ‘E’ of ibid Government of India, Ministry of Defence letter. Hence, the applicant is not entitled for grant of War Injury element. The injury sustained by the applicant is covered under category ‘B’ of above Govt letter and accordingly, the medical authority had opined the disability as attributable to military service and applicant was granted disability pension being an invalidment case.

6. Heard learned Counsel for the parties and perused the documents available on record. The issue before us to decide is ‘ whether applicant whose disability is considered as attributable to military service is entitled for War Injury Pension’?

7. Before proceeding further we may reproduce Paragraph 4.1 of Government of India, Ministry of Defence letter dated 31.01.2001 (Annexure A-24) which reads as under:-

**PART II- PENSIONARY BENEFITS ON DEATH/ DISABILITY IN
ATTRIBUTABLE/AGGRAVATED CASES**

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) Electrocutation 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. Death/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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8. We have gone through the policy on grant of War Injury Pension and we are of the view that the applicant's case is not covered under War Injury Pension category i.e. Category E of the above policy letter. Further, the applicant has been granted disability element as per rule position.

9. For grant of War Injury Pension, besides the accidental injuries being sustained in an operational area, injury should be sustained by an action. The dictionary defines action as: Expenditure of energy, deed, operation, gesture, battle lawsuit. In action would mean while engaged in battle. Mere presence in an operational area would not qualify as being in action. We understand that the entire state of Manipur and Nagaland and parts of adjoining states are notified under Operation Hifazzat, Parts of Sikkim, Assam, and J&K are similarly notified as operational areas. A full reading of Government of India letter dated 31.01.2001 relating to War Injury Pension and classification of casualties for pensionary purposes shows that in all circumstances there is a direct and immediate relationship with the enemy or actions related to the enemy. In other words there should be a direct and casual connection between the duties being performed and the cause of accident or death. This letter cannot be read in isolation and need to be read in their full context.

10. Here we may refer to a few judgments which clarify the scope and interpretation of statutes. As said by Lord Davey: "Every clause of a statute should be construed with reference to the context and other clauses of the Act, so as, as far as

possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject matter. To ascertain the meaning of a clause in a statute the court must look at the whole statute, at what precedes and at when succeeds and not merely at the clause itself. As stated by **Sinha, CJI**, “The court must ascertain the intention of the Legislature by directing its attention not merely to the clauses to be construed but to the entire statute, it must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs. It is also apt to take note of few decisions of the Apex Court with regard to interpretation of Statutes.

11. In **CIT vs Mcdowell & Co Ltd (2009) 10 SCC 755 (Para 20)**, it has been held that when particular words pertaining to a class or genus are followed by general words, the general words are construed as limited to things of the same kind as those specified.

12. The Apex Court in **Union of India and others vs. Brig PS Gill, (2012) 4 SCC 463** had an occasion to interpret Sections 30 and 31 of the Armed Forces Tribunal Act 2007. The question which was up before the court was as to whether against a decision by the Armed Forces Tribunal, an appeal

can be filed as a matter of right under Section 30 of the said Act which is subject to the provision of Section 31. The Court examined the scope of Sections 30 to 31 and while doing so it had held that ‘it is one of the settled canons of interpretation of statutes that every clause of the statute should be construed with respect to the context and the other clauses of the Act, so far as possible to make a consistent enactment of the whole statute or series relating the subject’. Reference to the decisions of this Court in ***M Pentiah v. Muddala Veeramallapa, AIR 1961 SC 1107*** and ***Gammon India Ltd v. Union of India (1974), SCC 596***, should in this regard suffice. In ***Gammon India Ltd***, this Court observed “19....*Every clause of a statute is to be construed with reference to the context and other provisions of the Act to make a consistent and harmonious meaning of the statute relating to the subject matter. The interpretation of the words will be by looking that the context, the collocation of the words and the object of the words relating to the matters.*”

13. We may also gainfully extract the following passage from ***V. Tulasamma V. Sesha Reddy (1977) 3 SCC 99*** wherein this Court observed “69... *It is an elementary rule of construction that no provisions of a statute should be*

construed in isolation but it should be construed with reference to the context and in the light of other provisions of the statute so as, as far as possible, to make a consistent enactment of the whole statute”.

14. In ***Raheja Universal Ltd Vs NRC Ltd (2012) 4 SCC 148***, it has been held that statute should be construed in its entirety any section or sub section should not be construed and read in isolation.

15. Having considered the facts and circumstances of the case, the rules and policy governing such accidents and the above principles of interpretation, we are of the view that the applicant did not qualify for being declared for grant of War Injury Pension. Applicant has not produced any document which can ascertain that disability suffered by the applicant was due to participation in war. For grant of war injury pension there are some parameters i.e. matter should be reported to Army Headquarters within 24 hours of the accident and same should have been processed accordingly. In the instant case nothing was done. His disability was appropriately held to be attributable to military service, hence as per policy applicant was granted disability pension in accordance with the normal rules. In this

view of the matter, we are of the opinion that the applicant has failed to prove his case that he is entitled for War Injury Pension.

16. In view of the above, the Original Application is devoid of merit and deserves to be dismissed. It is accordingly **dismissed.**

17. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 05 July, 2022
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