

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 1066 of 2022

Wednesday, this the 10th day of May, 2023

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Atul Kumar Jain, Member (A)

JC-377745M Ex Sub Maj & Hony Lt Devi Singh
S/o Late Shri Data Ram
C/o Yamuna Sankar Trivedi
Suryalaya New Shubham City, Lucknow (UP) - 226008

..... Applicant

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

Versus

1. Union of India, through the Secretary, Ministry of Defence, DHQ PO, New Delhi-110011.
2. The Chief of Army Staff, IHQ of MoD (Army), DHQ PO New Delhi-110011.
3. Additional Director General Personnel Services (PS-4), Integrated HQ of Ministry of Defence (Army), DHQ PO, New Delhi – 110011.
4. The Records Signals, PIN-908770, C/o 56 APO.
5. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad-211014.

..... Respondents

Ld. Counsel for the Respondents : **Dr. Shailendra Sharma Atal,**
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 for the following reliefs:-

“(a) Call for the records including the RMB proceedings dated 23.09.2018, as well as the finding and opinion as approved by the competent authority based on which the respondents in most illegal manner rejected the claim of the applicant in respect of injury of Gun Shot Wound (Lt) with Femoral Vein Injury (S71.10) and has also rejected War Injury pension claim of the applicant vide their order dated 20.01.2022, 22.10.2022 and thereafter quash all such orders.

(b) Direct the respondents to process the claim of the applicant in respect of War Injury pension after issuing Battle Casualty Certificate along with arrears with an interest @ 18% as expeditiously as possible.

(c) Further, direct the respondents to extend the benefit broad banding in respect of applicant’s War Injury claim alongwith the arrears of the disability pension with interest @ 12% pa to be compounded quarterly with exemplary cost from the date of retirement till date of payment.

(d) Issue such other order/direction as may be deemed appropriate in the facts and circumstances of the case.”

2. The factual matrix of the case is that applicant was enrolled in the Army on 24.06.1985 and was discharged from service on 31.03.2009 (AN) under Army Rule 13 (3) I (i) (a) after rendering 33 years and 281 days of service. The applicant while posted with 31 Sub Area Signal Company sustained bullet injury on 07.08.2002, due to accidental discharge from his weapon while on duty in the unit area. The casualty was published as Battle Casualty vide Records Part II Order No. BC-59 dated 16.12.2002. The Release Medical Board assessed his disability, “**GSW (LT) THIGH WITH**

FEMORAL VEIN INJURY” @ 40% for life and opined as attributable to military service and connected with service. The applicant has been granted service pension and disability element of pension @ 40% duly rounded off to 50% for life w.e.f. 01.04.2019. The applicant submitted so many applications and RTI for grant of War Injury Pension being his injury Battle Casualty as per Part II Order published by the Signals Records but the same was denied by the respondents. It is in this perspective that the applicant has preferred the present Original Application for grant of War Injury Pension.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Indian Army on 24.06.1985 and discharged from service on 31.03.2019 after rendering more than 33 years of unblemished service. The applicant while serving in HQ 31 Sub Are Sig Coy was injured on 07.08.2002 while on duty and his injury was declared as Battle Casualty with disability **‘GSW (LT) THIGH WITH FEMORAL VEIN INJURY’** vide Signals Record Part II Order No. BC-59 dated 16.12.2002. On receipt of PPO, the applicant noticed that in PPO dated 26.03.2019, disability element was given/mentioned in place of War Injury Element of pension which is arbitrary and illegal action on the part of the respondents as applicant’s injury was declared as Battle Casualty which was published by the Signals Records vide Part II Order dated 16.12.2002.

4. Learned counsel for the applicant further submitted that applicant sent an application on 01.04.2019 to the respondent No. 4 for issue of Battle Casualty Certificate but the same was not issued, however, case was processed on a Statement of Case and later on it was held up for want of Severity Certificate. When 31 Sub Area Sig coy was approached, it was replied vide letter dated 20.08.2022 stating that 'all the documents of the Coy including Part II Orders were lost in Flash Floods in Sep. 2014, when the entire 31 Sub Area Sig Coy was submerged under water for 14 days, therefore, no documents of the JCO are available with the Coy'. The applicant filed an RTI on 04.10.2022 seeking information that who was authorised to issue Battle Casualty Certificate in the year 2002 and other information regarding War Injury pension but the respondents have not given any reply till filing of the case in this AFT. He pleaded that action of the respondents rejecting claim of the applicant is illegal, unreasonable and in violation of the fundamental rights granted to him under Articles 14, 15 16 and 21 of the Constitution of India. The applicant has been denied War Injury Pension illegally and therefore, respondents be directed to pay War Injury Pension to the applicant from the date of discharge from service alongwith arrears.

5. **Per contra**, Learned Counsel for the respondents submitted that applicant was enrolled in the Army on 24.06.1985 and was discharged from service on 31.03.2009 (AN) under Army Rule 13

(3) I (i) (a) on completion of terms of service after rendering 33 years and 281 days of service. The applicant while in service with 31 Sub Area Signal Company sustained bullet injury on 07.08.2002, due to accidental discharge from his weapon while on duty in the unit area. The casualty was published as Battle Casualty vide Records Part II Order No. BC-59 dated 16.12.2002. The Release Medical Board assessed his disability, **“GSW (LT) THIGH WITH FEMORAL VEIN INJURY”** @ 40% for life and opined as attributable to military service and connected with service. The applicant has been granted service pension and disability element of pension @ 40% duly rounded off to 50% for life w.e.f. 01.04.2019. The applicant preferred an application dated 23.06.2020 for issue of Battle Casualty Certificate which was replied by the Records vide letter dated 17.08.2020 stating that AG's Branch, IHQ of MoD (Army) is sole authority for classification/declaration of 'Battle Casualty' and issued an Attributability Certificate to the applicant. Thereafter, applicant preferred a personal application dated 08.07.2020 directly to IHQ of MOD (Army) for issue of Battle Casualty Certificate which was replied by Signals Records stating that his case will be processed through 31 Sub Area Sig Coy on a Statement of Case mentioning the list of documents to be enclosed. However, 31 Sub Area Sig Coy vide letter dated 08.06.2021 intimated that entire 31 Sub Area Sig Coy was submerged under water due to flash floods on 07.09.2014 for 14 days and all documents of the unit have been

lost in flash flood, therefore, there is no record of any documents held with the Company with reference to the casualty of the applicant. Thus, applicant's case could not be processed further. Thereafter, applicant preferred an appeal dated 03.10.2022 for grant of War Injury Pension which was replied by Signals Records vide letter dated 22.10.2022 stating that "*Battle Casualty Certificate*' is must required for grant of War Injury Pension but the same is not held with this office. However, case has already been taken up with Competent Authority, i.e. IHQ of MoD (Army)/ADGMP (P&PIg)/MP-5(D) vide Signals Records letter No. 2098/CA-8/BC/T-5 dated 05 September 2022. On receipt of the same from Competent Authority, your case will be processed to PCDA (P), Prayagraj for notification of Corrigendum PPO for grant of War Injury Pension (WIP)". Thereafter, applicant was advised to submit Certificate on Severity of Injury to process his case but the same was not received from the applicant and thus, his case for issue of Battle Casualty Certificate was not further processed to the competent authority and held up for want of Certificate on Severity of Injury. However, AG's Branch/MP-5, IHQ of MoD (Army) is the final competent authority to issue Battle Casualty Certificate.

6. Learned counsel for the respondents further submitted that injury sustained by the applicant does not fall under the ambit of Army Order 1/2003/MP to be declared as 'Battle Casualty'. Battle Casualties consist 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.

7. Learned counsel for the respondents further submitted that applicant does not fulfill conditions for grant of War Injury pension as per Regulation 103 of Pension Regulations for the Army (Part-1), 2008 which denotes that *“where service personnel is retained in service despite war injury/disability sustained under the circumstances mentioned in Category ‘E’ of Regulation 82 and does not opt for lump sum compensation in lieu of war injury, he shall be entitled to the payment of war injury element on a monthly basis at the rates prescribed under Regulation 102 above on subsequent retirement/discharge or on completion of the terms of engagement in addition to retiring pension/service pension as admissible under normal rules”*.

8. Heard learned counsel for the parties and perused the record.

9. 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 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/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 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**

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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;
- (ii) Mishaps at sea while on duty'
- (iii) Electrocution while on duty, etc.
- (iv) 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."*

10. In the instant case, the applicant sustained bullet injury on 07.08.2002 and his disability, "**GSW (LT) THIGH WITH FEMORAL VEIN INJURY**", was caused due to accidental

discharge from his weapon while on duty. The casualty was published as Battle Casualty vide Records Part II Order dated 16.12.2002, however, the same was not confirmed/approved by the competent authority at IHQ of MoD (Army). The Release Medical Board assessed his disability, "**GSW (LT) THIGH WITH FEMORAL VEIN INJURY**" @ 40% for life and opined as attributable to military service and connected with service, and accordingly, applicant has been granted disability element of pension duly rounded off to 50% for life. The injury sustained by the applicant does not come under Category 'E' of Govt. of India, Ministry of Defence letter dated 31.01.2001 and his disability is not notified as 'Battle Casualty' by the competent authority. Since, the applicant is already in receipt of 40% disability element for life duly rounded off to 50% for life due to his disability and his case does not fall under any Category which entitles him to grant War Injury Pension as per rules.

11. We observe that applicant cannot be held entitled to war injury element merely on the basis of casualty being published as Battle Casualty vide Records Part II Order No. BC-59 dated 16.12.2002 unless the same is approved by AG's Branch, IHQ of MoD (Army). In the instant case, there is nothing on record to indicate that disability suffered by the applicant was classified as Battle Casualty by the competent authority, i.e. AG's Branch, IHQ of MoD (Army).

12. In view of above, we are of the opinion that applicant does not fulfill conditions for grant of War Injury pension as per Regulation 103 of Pension Regulations for the Army (Part-1), 2008. The injury sustained by the applicant also does not fall under the ambit of Army Order 1/2003/MP to be declared as 'Battle Casualty' as the same has not been finally approved by the competent authority, i.e. AG's Branch, IHQ of MoD (Army), New Delhi. The injury of the applicant is also not covered under Category 'E' of Govt. of India, Ministry of Defence letter dated 31.01.2001, therefore, applicant is not entitled for war injury element.

13. Keeping in view the facts and circumstances of the case and various Govt. policies/rules and Army Orders, we converge to the view that applicant is not entitled for consideration for award of Battle Casualty status, as such, he is not entitled for War Injury Element. Resultantly, Original Application is **dismissed**.

14. No order as to costs.

15. Pending Misc. Application(s), if any, shall stand disposed off.

(Vice Admiral Atul Kumar Jain) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 10 May, 2023

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