

Court No.1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 268 of 2017**

Monday, this the 13th day of November, 2017

**“Hon’ble Mr. Justice D.P. Singh, Member (J)
Hon’ble Air Marshal BBP, Sinha, Member (A)”**

No. 14701265 Y Ex Naik Kheem Singh, S/o Late Shri Umed Singh,
R/o Vill: Salar, PO: Pawwadhar, Teh- Gangolighat, Distt- Pithoragarh
(Uttarakhand).**Applicant**

Ld. Counsel for the : **Shri Lalit Kumar, Advocate**
Applicant (Counsel for the applicant)

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi.
2. The Officer in Charge Records The Kumaon Regiment Ranikhet (Uttarakhand).
3. The PCDA (Pensions) Allahabad (U.P.).
4. The Commanding Officer 3 Kumaon C/o 56 APO.

.....**Respondents**

Ld. Counsel for the: **Shri Bhanu Pratap Singh, Advocate,**
Respondents. Addl. Central Govt Standing Counsel.

Assisted by : **Maj Salen Xaxa** , OIC Legal Cell.

ORDER (ORAL)

1. The present Application under section 14 of the Armed Forces Tribunal Act 2007 has been preferred for the relief of grant of war injury/battle casualty pension in terms of para 10 of the Government order dated 31.01.2001 (Annexure 2 to the O.A).

2. The facts of the case draped in brevity as based on pleading on record is that the Applicant was enrolled in the Indian Army as sepoy on 02.11.1983. On completion of basic training, he was posted to 3 Kumaon Battalion in Nov 1984. In the year 1994-95, the applicant was promoted to the rank of Naik by virtue of which he acquired right to serve for 22 years with the colours in the normal circumstances. During the period 1997-98, 3 Kumaon Regiment was deployed in the Kashmir Valley on Counter Insurgency Operations. On 24.02.1998, while the Applicant was performing duties in search operation, he sustained a bullet injury in his neck from a gun fired by the terrorists which resulted in compound fracture in his neck on the right side. The Applicant was immediately evacuated to 92 Base Hospital at Srinagar where he underwent treatment for more than one month. As a consequence, the necessary Part II Order was published by the Unit showing Applicant injury as a Battle Casualty injury. On 03.04.1998, the Applicant was granted 38 days 'sick leave' with the instructions to report to MH Pithoragarh,

which was the nearest MH from his home town/leave station, for medical review. After discharge from M.H. Pithoragarh the Applicant resumed his duties in his Unit at Srinagar in the Kashmir Valley. In June 1998, the applicant's Unit moved from Kashmir Valley to Dehradun. Since the applicant was in agony on account of injuries suffered during Counter Insurgency Operation, an application was moved for premature discharge in Sept 1999. Being convinced with the request for early discharge, the Commanding Officer recommended his case for premature discharge. Pursuant to recommendation, the Record Office sanctioned discharge with effect from 30.04.2000. Before discharge, he was examined by Release Medical Board on 05.02.2000 while looking to the facts of the case, he ought to have been produced and examined by Invalidating Medical Board. The gist of what was observed by the Release Medical Board is reproduced below.

(i) Applicant's injury was termed as Gun Shot wound with compound fracture Clavicle (Rt) with Fracture Neck of Humerus (Rt) (Item No.2 Part 1 of the RMB proceedings).

(ii) The said injury was declared as attributable to military service (Item 2 (a) (i) of Part II of the RMB proceedings).

(iii) The said injury, sustained by the applicant in J & K was termed as battle casualty. (Item 2 (b) of the RMB proceedings).

(iv) The percentage of disability was quantified at 20% for five years. (Item No 4 of Part II of the RMB proceedings).

(v) The applicant was recommended to be granted service pension as well as the disability pension. (Item 21 of Part VI of the RMB proceedings).

(vi) The applicant was recommended to be discharged from service in Category 'CEE' (Permanent). (Item No 6 of Part II of the RMB proceedings).

3. Consequent upon discharge, the applicant applied for disability pension which was rejected by the PCDA (P) Allahabad vide order as contained in the communication dated 18.07.2000 citing the reason that since the Applicant was discharged from service "due to unwillingness to continue in service, he was not entitled for any disability pension. The appeal filed by the Applicant was also rejected by the Record Office relying upon the order of the PCDA (P) Allahabad vide order as contained in the communication dated 04.08.2000. There was a second appeal preferred before the Defence Minister however despite a long time gap in years the outcome is not known. The counter from respondents does not mention anything on the existence of this appeal.

4. From the facts enumerated above, there is no room for doubt that the Applicant had suffered battle injury but the same was denied to the Applicant on the basis of the order of PCDA (P) Allahabad in the teeth of the opinion of the Release Medical Board. In connection with the above, we feel called

to refer to Regulation 173 (A) of the Pension Regulations for the Army 1961 which being relevant is quoted below.

“Individuals discharged on account of their being permanently in low medical category.

173 A. Individuals who are placed in a lower medical category other than ‘E’ permanently and who are discharged because no alternative employment in their own trade/category suitable to their low medical category could be provided or who are unwilling to accept the alternative employment or who having retained in alternative appointment are discharged before completion of their engagement shall be deemed to have been invalided from service for the purpose of the entitlement rules laid down in Appendix II to these Regulations.

Note: The above provision shall also apply to individuals who are placed in a low medical category while on extended service and are discharged on that account before the completion of the period of their extension.”

5. A plain reading of Regulation 173 crystallizes that if a disabled person expresses his unwillingness to continue in service, he shall be deemed to have been invalided from service for the purpose of the entitlement to disability pension. Thus, it would transpire that the order of the PCDA (P) has been passed in utter disregard and contravention of Regulation 173 . In a catena of decision, the Apex Court has ruled that a person who has suffered disability because of military service and has been invalided out from service and his disability is opined to be attributable to or aggravated by military service even in non battle casualty, the said person

shall be entitled to disability person even if he has opted for premature and voluntary retirement.

6. Thus the PCDA (P) has exceeded its jurisdiction by denying disability pension in the teeth of Regulation 173 A of the Pension Regulations for the Army, to an Army Jawan who is a battle causality.

7. Learned counsel for the Applicant further relied upon Category E of the Order dated 31.01.2001 passed by Government of India, Ministry of Defence. The same being relevant is quoted below.

"Category – E

Death or disability arising as a result of:-

- (a) Enemy action in international war.*
- (b) action during deployment with a peacekeeping 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 the enemy or own forces in operational areas near international border 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.*
- (i) Operations specially notified by the Government 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 (Pens/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, Ordinance Family Pension shall be admissible as specified in Min of Def letter No. 1(6)98/D (Pens/Services) dated 03Feb 98 as modified vide Ministry of Defence letter No.1 (1)99/D (Pen/ser) dated 7.6.99.

(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 Defence letter No.1(6)98/D (Pens/Services) dated 03 Feb 98 as amended/modified vide Ministry of defence letter No.1(1)/99/D (Pens/ser) dated 7.6.99

8. A plain reading of the provisions contained in Order dated 31.01.2001 clearly shows that it shall cover all the previous cases upto 31.12.1995 with regard to payment of war injury/battle injury pension. Further a reading of the category E and Para 9.-2 indicate that in case a person is invalided out from service because of battle injury he shall be entitled to war injury/battle injury pension. Para 9.2 being relevant is quoted below.

"9.2 The provisions contained in para 9.1 above shall be applicable to casualties on or after 01.01.96.

10. War injury pension on Invalidment

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 as follows:-

(a) Service Element:- Equal to retiring/service pension to which he/she would have been entitled on the basis of his/her pay on the date of Invalidment but counting service upto the date on which he/she would have retired in that rank in normal course including weightage as admissible. Provisions of para 6 of Ministry of Defence letter No 1 (6)/98/D (Pens/Ser) dated 3.2.98 shall apply for calculating Retiring/Service pension. There shall be no condition of minimum qualifying service for earning this element.

(b) War Injury Element:- Equal to reckonable emoluments last drawn for 100% disablement. However, in no case the aggregate of service element and War injury element should exceed last pay drawn. For lower percentage of disablement, War Injury element shall be proportionately reduced."

9. In view of the above, we are of the view that the Applicant is entitled for payment of Battle injury pension

from the date of his discharge, as per the provisions of Govt Order dated 31.01.2001.

10. The learned counsel for respondents at this stage, broached the issue of belated approach to this Tribunal and prayed that the Battle injury pension if any may be granted from the date he invoked the jurisdiction of this Tribunal. In this connection, we may mention that to start with the rejection of the Applicants claim for Battle injury was wrong and not because of any fault of the applicant. Besides he has been making several efforts, in terms of representations, Appeals, attending in Pension Adalat etc before his approach to the Armed Forces Tribunal in March 2017. Thus it is evident that the Applicant has been continuously pursuing the matter for war injury pension and there is no break in his pursuing the relief for which he has approached the Tribunal. The continuity of the Applicant approach for war injury pension makes out a case to grant the relief from the date of his discharge.

11. Accordingly O.A is allowed and impugned order dated 04.08.2000 is set aside. The respondents are directed to grant war/battle injury pension to the applicant in accordance with Govt order dated 31.01.2001. The respondents are directed to calculate the battle injury pension from the date of discharge and shall ensure that the entire arrears are paid within four months from the date of

submission of a certified copy of this order. In case, the respondents fail to comply with the order within the aforesaid period, the applicant shall be entitled to interest at the rate of 10%. It is further directed that the Applicant shall be entitled to disability pension from the date of discharge. The disability on account of battle injury which was assessed 20% for five years shall stand rounded off to 50% for five years in terms of decision of the Apex Court in Sukhvinder Singh vs Union of India (2014) STPL (WEF) 468 SC. The further payment of disability on account of battle injury pension shall be subject to assessment to be made by Resurvey Medical Board which shall be convened within four months from today. The Applicant after assessment shall simply apply for disability pension on the count of battle injury before the authority concerned and the authorities concerned shall pass appropriate orders thereon respecting the medical opinion of the Resurvey Medical Board.

12. Before parting with the case, we voice our anguish that it was the PCDA (P) which operated as stumbling block in the way of payment of disability pension of a battle casualty which took place at Srinagar in Gun battle with militants and extremists. The PCDA (P) Allahabad has passed the order rejecting the claim for disability pension/War injury pension/battle injury pension in the teeth of Regulation 173 A of Pension Regulations for the Army on account of which

the Applicant has suffered for more than 16 years, wearing out his shoes at every possible forum. Our soldiers fighting Militants and extremists and facing Bullets surely deserve a better deal by an agency which is Authorised as the "Pension Sanctioning Authority" for the Armed forces. The mental and physical pain and agony suffered by the Applicant need to be compensated in terms of the various decisions of the Apex Court on this point the substance of which is that, in case litigant is compelled to approach the Court, it is must to award the cost to such person to compensate him for the trouble he suffered. Hon'ble Supreme Court in the case of **Ramrameshwari Devi and others V. Nirmala Devi and others**, (2011) 8 SCC 249 has given emphasis to compensate the litigants who have been forced to enter litigation. This view has further been rendered by Hon'ble Supreme Court in the case reported in **A. Shanmugam V. Ariya Kshetriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam represented by its President and others**, (2012) 6 SCC 430. In the case of **A. Shanmugam** (supra) Hon'ble the Supreme considered a catena of earlier judgments for forming opinion with regard to payment of cost; these are:

1. **Indian Council for Enviro-Legal Action V. Union of India**, (2011) 8 SCC 161;
2. **Ram Krishna Verma V. State of U.P.**, (1992) 2 SCC 620;
3. **Kavita Trehan V. Balsara Hygiene Products Ltd.** (1994) 5 SCC 380;

4. **Marshall Sons & CO. (I) Ltd. V. Sahi Oretrans (P) Ltd.**, (1999) 2 SCC 325;
5. **Padmawati V. Harijan Sewak Sangh**, (2008) 154 DLT 411;
6. **South Eastern Coalfields Ltd. V. State of M.P.**, (2003) 8 SCC 648;
7. **Safar Khan V. Board of Revenue**, 1984 (supp) SCC 505;
8. **Ramrameshwari Devi and others** (supra).

13. In the case of **South Eastern Coalfields Ltd** (supra), the apex Court while dealing with the question held as under :

"28. ...Litigation may turn into a fruitful industry. Though litigation is not gambling yet there is an element of chance in every litigation. Unscrupulous litigants may feel encouraged to interlocutory orders favourable to them by making out a prima facie case when the issues are yet to be heard and determined on merits and if the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order even though the battle has been lost at the end. This cannot be countenanced. We are, therefore, of the opinion that the successful party finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated by award of interest at a suitable reasonable rate for the period for which the interim order of the court withholding the release of money had remained in operation".

14. In the case of **Amarjeet Singh V. Devi Ratan**, (2010) 1 SCC 417 the Supreme Court held as under :-

"17. No litigant can derive any benefit from mere pendency of case in a court of law, as the interim order always merges in the final order to be passed in the case and if the writ petition is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of its own wrongs by getting an interim order and thereafter blame the court. The fact that the writ is found, ultimately, devoid of any merit, shows that a frivolous writ petition had been filed. The maxim actus curiae neminem gravabit, which means the act of the court shall prejudice no one, becomes applicable in such a case. In such a fact situation the court is under an obligation to undo the wrong done to a party by the act of the court. Thus, any undeserved or unfair advantage gained by a party involving the jurisdiction of the court must be neutralised, as the institution of litigation cannot be permitted to confer any advantage on a suitor from delayed action by the act of the court".

15. The question of award of cost is meant to compensate a party, who has been compelled to enter litigation unnecessarily for no fault on its part. The purpose is not only to compensate a litigant but also to administer caution to the authorities to work in a just and fair manner in accordance to law. The case of Ramrameshwari **Devi and others** (supra) rules that if the party, who is litigating, is to be compensated.

16. In the case of **Centre for Public Interest Litigation and others V. Union of India and others**, (2012) 3 SCC 1, the Hon'ble Supreme Court after reckoning with the entire

facts and circumstances and keeping in view the public interest, while allowing the petition, directed the respondents No 2, 3 and 9 to pay a cost of Rs. 5 crores each and further directed respondents No 4, 6, 7 and 10 to pay a cost of Rs. 50 lakhs each, out of which 50% was payable to the Supreme Court Legal Services Committee for being used for providing legal aid to poor and indigent litigants and the remaining 50% was directed to be deposited in the funds created for Resettlement and Welfare Schemes of the Ministry of Defence.

17. In the case reported in ***National Textile Corporation (Uttar Pradesh) Limited V. Bhim Sen Gupta and others***, (2013) 7 SCC 416 the Hon'ble Supreme Court took note of the fact that the Textile Corporation has not placed the correct facts before the Court and so the contempt petition was dismissed and the cost was quantified at Rs 50,000/-.

18. We feel constrained to say that the role of Record Office of the applicant in this case appears to stand reduced to that of a post office. The Record office is euphemistically a place which holds the records of its soldiers from "womb to Tomb". The record office plays a significant role in correctly advising the soldiers in getting benefits as authorised by the Govt. In this particular case, the Record office has not taken up the case again with Pension Sanctioning Authority for reconsideration of Battle injury pension of the applicant in

light of Regulation 173-A of Pension Regulations for the Army. It is painful to notice that even after the announcement of VI CPC in 2008 where after Premature retirees became eligible for Disability pension w.e.f 01-01-2006 and based on Apex court judgment pre 01-01-2006, Premature retirees also became eligible for similar benefits, the record office has given no meaningful reply/advice to the applicant. To our utter consternation, we find that the Record Office has been regularly advising the applicant till 2012 that he is not eligible for Disability pension. We feel called to say that nobody can be more loyal than the king. We expect uniformed organizations like Record offices to be more proactive in enhancing the welfare of its soldiers in general and Battle/war casualties in particular.

19. We would like the Chief of Army Staff to consider taking steps to improve the functional efficiency of Record offices in Army. It is advisable that the steps like introducing six monthly capsule courses for key appointments initially posted to Record offices and holding a two day annual conference of all key appointments of record offices centrally could go a long way to help significantly.

20. In the present case, there is no doubt that it was because of the erroneous order of the PCDA (P) Allahabad in violation of Regulation 173 A of the Pension Regulations for the Army that the Applicant has suffered unimaginable pain

and agony for the last 16 years. Thus, it is a fit case in which exemplary cost should be awarded. Looking to the facts and circumstances of the case, we quantify the cost at Rs two lakhs which shall be deposited with the Registry of this Tribunal within two months and the same shall be released in favour of the Applicant by the Registry through cheque issued in the name of the Applicant .

21. No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice D.P. Singh)
Member (J)

Dated: 13 November, 2017

MH/-