

**Court No.1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 231 of 2018**Monday, this the 4<sup>th</sup> day of October, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**No. 4549667M Ex Hav Bhupendar Singh  
(Unit – 13 MAHAR Regt)  
S/o Shri Ram Sanehi Lal  
R/o H. No. 63A/160 Dwarika Kunj  
Defence Colony, Agra Cantt (UP) – 282001

..... Applicant

Ld. Counsel for the Applicant : **Shri Shiv Kumar Saroj &**  
**Shri V.P. Pandey, Advocate**

Versus

1. Union of India, through its Secretary, Government of India, Ministry of Defence, South Block, New Delhi-11.
2. Lt. General/OIC, Director General Manpower and Planning MP-5(d), IHQ of MOD (Army), DHQ PO, New Delhi.
3. (i) Director General of Infantry/Inf-6 (Pers) General Staff Branch, IHQ of MoD (Army) DHQ PO, New Delhi – 110011.  
(ii) General Officer Commanding in Chief, Headquarters Southern Command, Pune (Maharashtra).
4. Officer Incharge Records, The MAHAR Regiment, Pin – 900127, C/o 56 APO.
5. Commanding Officer, 13 MAHAR, Pin-911513, C/o 56 APO.

..... Respondents

Ld. Counsel for the : **Shri Sunil Sharma,**  
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:-

- “(a) Quash/set aside the inter departmental office order dated 17.02.2017 (Para 3 thereof) passed by the Respondent No. 3(i) declaring the case of the applicant as closed despite being wholly arbitrary and contrary to the records.
- (b) Directions are sought against the respondent no. 2 & 3 to furnish the necessary orders notifying the POR (Personal Occurrence Report) in DO Part-II Orders in relation to the applicant declaring the applicant as a ‘Battle Casualty’ case being sustained ‘Gunshot wound left Groin in an Ambush (Op ORCHID)’ on 13.08.1985 as admitted by Respondent No. 5 in his certificate dated 30.03.1996.
- (c) Further also issue/pass suitable appropriate directions/orders directing the Respondent No. 4 to take all necessary steps to initiate and take up the applicant’s claim for grant of battle casualty/war injury pension w.e.f. 01.06.1996 continuously for life and the same could not be sanctioned by the authorities for want of necessary part-II order in the applicant’s service record.
- (d) pass such further order or orders as this Hon’ble Court may deem fit and proper in the facts and circumstances of the case.”

2. The factual matrix of the case is that the applicant was enrolled in the Army on 25.09.1979. While serving with 13 MAHAR, on 13.08.1985, the applicant sustained “**Gun Shot Wound Left Groin in an Ambush**” in ‘OP ORCHID’ and was placed in low medical category CEE (Temporary) and subsequently downgraded to medical category CEE (Permanent) w.e.f. 31.12.1986. However, due to an oversight, the unit of the applicant did not notify ‘Initial Report’ and ‘Detailed Report’ as

per AO 1/2003/MP and therefore, personal occurrence i.e. Part II Order regarding Battle Casualty could not be published. However, 154 General Hospital had initiated an Injury Report and personal occurrence in this regard was published vide Part II Order No. 2/016/0076/85. Later on, applicant was discharged from service on medical ground under Rule 13 (3) III (v) read in conjunction with Army Rule 13 (2A) on 31.05.1996 after rendering of 16 years and 8 months of service. Accordingly, he was granted service pension and disability element @ 50% rounded off to 75%. 13 MAHAR vide their letter dated 30.06.2011 forwarded an application to Records, The Mahar Regiment to publish part II Order pertaining to Battle Casualty of the applicant but same could not be processed due to want of CFA sanction. However, on receipt of a copy of battle casualty certificate dated 30.03.1996 by the unit, a statement of case was prepared for obtaining sanction of competent authority for publication of belated Battle Casualty occurrence and was processed to IHQ of MoD (Army) MP-5(d) vide Records letter dated 16.03.2012 but the same was returned for processing through formation channels. The case was further processed through higher formation headquarters but statement of case could not be processed and was returned by HQ Southern Command and also by HQ Northern Command for want of certain documents. 13 MAHAR vide its letter dated 28.12.2016 intimated that requisite documents not held with the unit. Subsequently, it was examined by IHQ of MoD (Army) Inf-6 (Pers) and vide their letter dated 17.02.2017 intimated that case

may be treated as closed and thus, Part II Order for battle casualty could not be published by the Record Office. The respondents in para 3, page 6 of their counter affidavit has mentioned that *“due to an oversight the unit did not initiate initial and detailed report of battle casualty, thereby Part II Orders of battle casualty could not be published. Moreover, a very lenient view was taken to accommodate the applicant by publishing Personal occurrence as a Battle Casualty. The case was referred to HQ Southern Command, Northern Command as well as Eastern Command however in absence of old documents of 1985, the applicant could not be granted the benefits.”* Aggrieved, the applicant has filed the instant Original Application for grant of Battle Casualty status and War Injury Pension.

3. Learned Counsel for the applicant submitted that applicant sustained ‘Gunshot Wound Left Groin in an Ambush (Op ORCHID)’ in Manipur/Nagaland area and declaration to this effect was made in the certificate dated 30.03.1996 ‘Battle Casualty Non Commissioned Officer’, issued by the unit, however, the said declaration remained un-notified in the DO Part II Order due to unexplained lapse of almost 11 years for the reasons known to the respondents. The applicant made continuous protected correspondence with the respondents but nothing has been materialized till date. The applicant has also received a copy of communication dated 17.02.2017 indicating that the case of the applicant be treated as closed.

4. Learned counsel for the applicant further submitted that since the incident took place in 'OP ORCHID' and gunshot injury sustained by the applicant during bonafide military duty which was attributable to military service and was considered as Battle Casualty and therefore, war injury pension should be granted to the applicant.

5. Learned Counsel for the respondents submitted that the applicant sustained "**Gun Shot Wound Left Groin in an Ambush**" in 'OP ORCHID' and was placed in low medical category CEE (Temporary) and subsequently downgraded to medical category CEE (Permanent) w.e.f. 31.12.1986. However, due to an oversight, the unit did not notify 'Initial Report' and 'Detailed Report' as per AO 1/2003/MP and therefore, personal occurrence i.e. Part II Order regarding Battle Casualty could not be published. However, 154 General Hospital had initiated an Injury Report and personal occurrence in this regard was published vide Part II Order No. 2/016/0076/85. Later on, applicant was discharged from service on medical ground under Army Rule 13 (3) III (v) read in conjunction with Army Rule 13 (2A) on 31.05.1996 after rendering of 16 years and 8 months of service. Accordingly, he was granted service pension and disability element @ 50% rounded off to 75%.

6. Heard learned Counsel for the parties and perused the record.

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/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**

**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.



*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(l)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 (l)/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 "OP ORCHID" in ManipurNagaland area and sustained gunshot injury during an ambush. The applicant sustained gunshot injury while performing bonafide military duty hence, it is attributable to military service. Due to an oversight, the unit of the applicant (13 MAHAR) did not submit 'Initial Report' and 'Detailed Report' as per AO 1/2003/MP to the higher authorities and therefore, personal occurrence i.e. Part II Order regarding Battle Casualty could not be published. Later on, case was taken up by the unit for declaring the gunshot injury of the applicant as Battle Casualty but could not be processed for want of certain documents which were not held with the unit. The applicant is in receipt of service pension and 75% disability pension for life but he is aggrieved by non grant of War Injury Pension though his gunshot injury was considered as a Battle Casualty but Part II Order to this effect could not be published.

9. The applicant sustained gunshot injury while performing bonafide military duty and an Injury Report was initiated by 154 General Hospital and injury was considered attributable to military

service. In our view, applicant's case 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."*

10. Since "OP ORCHID" is an operation notified by Govt. the case is covered under this policy.

11. An injury/disability is categorised as Battle Casualty in accordance with policy promulgated in Army Order 1/2003/MP. We are of the view that the disability suffered by the applicant is covered by the following clause of this Army Order :-

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

12. Keeping in view the facts and circumstances of the case, various policies and judgements on the subject, we converge to the view that there being no fault on the part of applicant, he cannot be penalised and therefore, applicant is entitled for consideration for award of Battle Casualty status, as such, applicant is entitled for grant of War Injury Pension.

13. Accordingly, Original Application succeeds and is allowed. The impugned Orders passed by the respondents are hereby set aside. The respondents are directed to publish Part II Order with regard to gunshot injury of the applicant as Battle Casualty and

grant Battle Casualty Status and pay War Injury Pension to the applicant from the date of discharge. The respondents are further directed to make necessary calculations with regard to deficiency in pension so accrued on grant of War Injury Pension and pay the same to the applicant within a period of four months from the date of receipt of a certified copy of this order. In case the respondents fail to give effect to this order within the time as stipulated above, the amount accrued to the applicant would start earning interest at the rate of 8% from due date till the date of actual payment.

14. No order as to costs.

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

Dated : October, 2021

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