

Court No.1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 643 of 2021****Monday, this the 11th day of July, 2022****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

No. 4003249-W Ex Hav (Clk SD) Ajeet Singh Yadav
 S/o Shri Ram Kewal
 R/o Village – Kadanpur, Post – Kadanpur,
 District – Ayodhya (UP) – 224228

..... Applicant

Ld. Counsel for the Applicant: **Shri V.P. Pandey**, Advocate

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi-110011.
2. The Chief of Army Staff, Integrated Headquarters, Ministry of Defence (Army), South Block, New Delhi-110011.
3. Officer in Charge Records, The Dogra Regiment, PIN-900235, C/o 56 APO.
4. PCDA (Pension), Draupadi Ghat, Prayagraj-211014.

..... Respondents

Ld. Counsel for the Respondents : **Shri Asheesh Agnihotri**,
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 for the following reliefs:-

- “(a) To issue/pass an order or direction to the respondents to grant battle Casualty and consequential benefits to the applicant.
- (b) To issue/pass to grant arrears of battle Casualty to the applicant.

(c) Any other relief as considered proper by this Hon'ble Tribunal be awarded in favour of the applicant.

(d) Cost of the O.A. be awarded to the applicant.”

2. The factual matrix of the case is that applicant was enrolled in the Army on 24.07.2001. The applicant while posted with 40 Rashtriya Rifle (DOGRA) Battalion slipped on the way near a post of 'D' Company on 18.12.2008 due to snow and got injured. The applicant was treated in different hospitals and finally at Army Hospital (R&R), New Delhi where he was downgraded to low medical category P3 (T-24) for disability "LOW BACKACHE MYOFASIAL SPRAIN". A Court of Inquiry was held at 40 Rashtriya Rifle Battalion on 16.01.2009 and injury sustained by the applicant was considered as 'Attributable to military service'. Thereafter, applicant was downgraded to P2 (Permanent) for two years w.e.f. 23.07.2010. The applicant being in permanent low medical category, a Show Cause Notice was served by Commanding Officer 4 DOGRA to discharge him from service due to non availability of suitable sheltered appointment in the unit. The discharge of the applicant was approved by the competent authority, i.e. OIC Records and discharge order dated 07.02.2021 was issued for his discharge from service w.e.f. 31.07.2021 due to non availability of sheltered appointment under Army Rule 13 (3) III (a) (i). The applicant is in receipt of service pension and disability element @ 20% duly rounded off to 50% for life for his first disability vide PPO dated 29.10.2021. Now the applicant has filed the present Original Application praying that applicant be

granted Battle Casualty status and its consequential benefits being injury suffered by the applicant in Field Area on patrolling duty.

3. Learned counsel for the applicant submitted that applicant while posted with 40 RR Dogra unit was detailed for patrolling duty on 18.12.2008 and fell down into a ditch and sustained injury 'Contusion Lumbar Spine on Lt Knee'. The applicant was placed in low medical category P3 (T-24) w.e.f. 02.03.2009. The RMB of the applicant was conducted in March 2021 and he was discharged from service in low medical category P2 (P) for "MECHANICAL LOW BACKACHE" and "DIABETES MELLITUS TYPE II" for which he is in receipt of disability pension. The applicant was served Show Cause Notice on 10.11.2020 which was replied by the applicant on 22.11.2020. The respondent No. 3 communicated to the applicant on 11.01.2021 that there being no sheltered appointment in the unit commensurating to his present medical category as such he would stand discharged from service on 31.07.2021. The OIC Records issued discharge order on 07.02.2021 for those persons who were placed in low medical category including the applicant. The Court of Inquiry has considered injury of the applicant as attributable to military service, hence applicant deserves to be considered for award of Battle Casualty as his injury occurred in Field Area during night patrolling duty.

4. Learned counsel for the applicant also placed reliance on the judgment of AFT (RB) Kolkata in O.A. No. 54 of 2016, **Lt Col Sharma Sunil Datta vs. Union of India & Others**, decided on

29.09.2016 and pleaded that applicant's case is squarely covered with this judgment and accordingly, applicant should also be granted status of Battle Casualty and its consequential benefits.

5. **Per contra**, Learned Counsel for the respondents submitted that applicant while posted with 40 Rashtriya Rifle (DOGRA) Battalion went to 'D' Company of the Battalion for some documentation purpose of the personnel deployed at Company. The applicant slipped on the way near a post of 'D' Company on 18.12.2008 due to snow and got injured. The applicant was evacuated and attended by Regimental Medical Officer (RMO). From there he was referred to 425 Field Hospital, further to Command Hospital, Udhampur and finally to Army Hospital (R&R), New Delhi on 28.01.2009 where he was treated was downgraded to low medical category P3 (T-24) for disability "LOW BACKACHE MYOFASIAL SPRAIN". A Court of Inquiry was held at 40 Rashtriya Rifle Battalion on 16.01.2009 and Court opined that "*the injury sustained by the applicant is purely accidental and no one to be blamed and the injury is attributable to military service*". Thereafter, applicant was downgraded to P2 (Permanent) for two years w.e.f. 23.07.2010. The applicant was retained in service in public interest despite his permanent low medical category w.e.f. 23.07.2010. A Show Cause Notice was served to the applicant by Commanding Officer 4 DOGRA vide letter dated 10.11.2020 to discharge him from service due to non availability of suitable sheltered appointment in the unit. The reply of the applicant was not considered sufficient and hence,

his case was processed for discharge from service. The discharge of the applicant was approved by the competent authority, i.e. OIC Records, The Dogra Regiment on 02.02.2021. The discharge order dated 07.02.2021 was issued for his discharge from service w.e.f. 31.07.2021 due to non availability of sheltered appointment under Army Rule 13 (3) III (a) (i). The applicant was brought before RMB on 20.03.2021 and his disabilities (i) "MECHANICAL LOW BACKACHE", assessed @ 20% for life and regarded as attributable to military service and (ii) "DIABETES MELLITUS TYPE II", assessed @ 20% for life and regarded as NANA. Thereafter, applicant was discharged from service on 31.07.2021 (AN) after rendering more than 20 years of service. The applicant is in receipt of service pension and disability element @ 20% duly rounded off to 50% for life for his first disability vide PPO dated 29.10.2021.

6. Learned counsel for the respondents further submitted that as per para 69 & 70 of AO 1/2003/MP, classification of wounded battle casualty will be guided by the parameters of cause/circumstances and the severity of injury sustained; only when both these parameters are met, the casualty would be classified as a battle Casualty. In the instant case, cause/circumstances of the injury sustained by the applicant does not attack to declare the injury as Battle Casualty under the provisions of AO 1/2003/MP. Hence, applicant's case does not fall under the category of 'Battle Casualties' as per para 4 & 5 of AO 1/2003/MP and therefore, applicant is not entitled to Battle

Casualty status and its consequential benefits. The Original Application is bereft of merit and is liable to be dismissed.

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

8. Before advertng to rival submissions of learned counsel of both sides, it is pertinent to mention that judgment relied upon by the applicant in Para 4 referred above is not relevant in the present case being based on different facts and circumstances and therefore, applicant cannot be given the benefit of aforesaid judgment. In the case of **Lt Col Sharma Sunil Datta** (supra) relied by the applicant, applicant was injured in operational area (Op PARAKRAM) while shifting ammunition in a war like operational situation, hence benefit of Battle Casualty was extended to the applicant by the Tribunal but in the present case, applicant was injured while collecting data for documentation of soldiers deployed in 'D' Company of the unit which was not a war like operational situation, hence, applicant's injury/disability cannot be treated as Battle Casualty being not similar in nature on the points of facts and circumstances of the case.

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

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 applicant slipped on the way due to snow near a post of 'D' Company on 18.12.2008 while collecting data of personnel deployed in 'D' Company of the Battalion for documentation purpose and got injured. Hence, the injury/disability suffered by the applicant does not fall in the category of Battle Casualty as per Army Order 1/2003/MP as per

classification of battle casualty which will be guided by the parameters of cause/circumstances and the severity of injury sustained. Since, the applicant is already in receipt of 50% disability element for life due to his disability and his case does not fall under any Category which entitles him to grant Battle Casualty status/War Injury Pension as per rules, the O.A. is liable to be dismissed.

11. Keeping in view the facts and circumstances of the case and various policies 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 consequential benefits of Battle Casualty. Resultantly, O.A. is **dismissed**.

12. No order as to costs.

13. Pending Misc. Application(s), if any, shall be treated to have been disposed off.

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

Dated: July, 2022

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