

**ARMED FORCES TRIBUNAL, CHANDIGARH REGIONAL
BENCH AT CHANDIMANDIR**

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OA 1144 of 2012

Ravinderpal Singh	Petitioner(s)
Vs		
Union of India and others	Respondent(s)

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For the Petitioner (s) :	Mr Raj Kumar, Advocate
For the Respondent(s) :	Mr. Suveer Sheokand, CGC.

**Coram: Justice Prakash Krishna, Judicial Member.
Air Marshal (Retd) SC Mukul, Administrative Member.**

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**ORDER
13.03.2014**

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1. By this petition the petitioner prays for the following reliefs:

(a) That the impugned Annexure A-6 whereby the claim of the applicant for grant of war injury pension has been rejected by the respondents may kindly be quashed and set aside.

(b) That the applicant was discharged in the year 2008 under LMC clause whereas the same is not applicable for BC and the applicant was discharged after 18 years of service whereas his service was 32 years, hence the respondents may be directed to grant him the pensionary benefit of 32 years to the applicant.

(c) That the respondents be directed to grant war injury pension to the present applicant along with upto date interest.

2. As per the averments of the petitioner he was enrolled in the Army on 26.12.1990 and on completing his basic training at the Punjab Regimental Centre was posted to 18th Punjab in February 1992. During the year 2000 the Unit of the petitioner was deployed in Tangdhar (J&K). On 3.12.2000 during 'OP Rakshak' while performing parameter patrolling on Line of Control, the petitioner slipped down in a deep gorge and sustained PENETRATING INJURY (L) POLITEAL FOSSA WITH VASCULAR INJURY. Due to the said injury, he remained hospitalized at various military hospitals and was placed in Low Medical Category

SIHIA3(T-24) P1E1 w.e.f. 1.2.2011. It is further submitted that in the Medical Board proceedings (AFMF-15), it is clearly mentioned that the petitioner casualty is a battle casualty sustained during patrolling on line of control. The authorities, in spite of being a LMC(P), taking into consideration the battle casualty status, promoted the petitioner to the rank of Naik and then Havaldar. The petitioner submitted representation dated 9.3.2011 apprising the respondents that discharge w.e.f. 31.8.2008 under Army Rule 13(3) Item III(v) through Release Medical Board was totally invalid and incorrect. The petitioner received a letter dated 31.1.2011 vide which he was issued a certificate of Battle Casualty stating that the disability has been assessed by the Medical authority to 20% for life. On 14.5.2011 the petitioner again submitted a representation for grant of legitimate pensionary benefits but vide letter dated 3.6.2011, the respondents rejected the claim for injury pension on the ground that the injury sustained has not been occurred during action/actual fighting with enemy/terrorist and as such the injury of the applicant does not fall under category E vide GOI, MoD letter dated 31.1.2001. Hence the present petition for grant of war injury pension as well as grant of pensionary benefit of 32 years of service.

3. The respondents in their written reply bring out that the petitioner was enrolled in the Army on 26th December, 1990 and discharged from service on 31st August, 2008 under Army Rule 13(3) Item III (v) before completion of service limits being low medical category A(2)(P). While serving with 18 Punjab the petitioner was wounded having slipped and sustained injury on 3.12.2000 which was published as Battle Casualty vide Records Office Part-II Order No.1/001 dated 03 January 2001(Annexure R-1). He was admitted to 168 MH on 4.12.2000 and discharged there from on 18.12.2000 for 'PENETRATING INJURY LT POPLITEAL FOSSA WITH VASCULAR INJURY OPTD'. His retention in Army Service was granted upto 31st August, 2008. Since no further alternative appointment was available with his Unit for him, a show cause notice was issued to him on 26th February, 2008. The petitioner in his reply gave willingness to serve in LMC A2(P). But as no sheltered appointment was available, he was discharged from service on 31.August, 2008. He was granted service pension wef 1st September 2008

for life, the disability element w.e.f. 1st September, 2008 for life for 20% disability duly rounded off to 50%. On examination of the case of the petitioner at Record Office, it was considered that the petitioner is entitled for War Injury Pension. Hence, his case was recommended to PCDA(P) Allahabad for review. In the adjudication the PCDA(P) Allahabad contended that since the individual did not sustain injury during action/actual fighting with the enemy/terrorist, his injury does not fall under category 'E' vide Govt of India, MoD, letter dated 31st January,2001. Accordingly the petitioner is not entitled to War Injury element and returned the case unsanctioned.

4. The petitioner has placed reliance on a judgment of Guwahati Regional Bench of Armed Forces Tribunal in **OA No. 13 of 2013 Ex.Sep Shri Kapthianga v. UOI and others** decided in September 2013 to support his contention.

5. Heard the learned counsel for the parties and perused the record on file.

6. The learned counsel for the petitioner submits that the stand taken by the PCDA(P) Allahabad in rejection of his claim for grant of war injury pension is incorrect.

7. The learned counsel for the respondents submits that it is not a case of war injury.

8. From the pleadings of the respective arguments, it emerges that there are two basic questions which need to be settled are:

(a) Whether the injury sustained by the petitioner on 03.12.2000 is eligible for grant of War Injury pension as per policy letter No. 1(2)/97/D(Pen-C) dated 31.01.2001.

(b) Whether the discharge of the petitioner, being a Battle Casualty, on grounds of being in LMC (P) with effect from 31.08.2008 is valid.

9. Taking on the first issue, we find that from the record on file it emerges that the petitioner was enrolled in the Army on 26.12.1990. While being deployed in Tangdhar (J&K) during Op Rakshak, on 3.12.2000 while performing parameter patrolling on Line of Control, the petitioner slipped down in a deep gorge and sustained PENETRATING INJURY (L) POLITEAL FOSSA WITH VASCULAR INJURY. For treatment he was admitted to 167 MH on 04.12.2000 and discharged on 18.12.2000. The AFMSF-15 dtd 24.01.2001(placed at A-1), downgraded his medical category to A3(T-24) indicating that the injury was a battle casualty. The injury of the petitioner was published as Battle Casualty vide Records Office Part II Order No 1/001 dtd 01 Jan 2001 (R-1). The details are as under:-

Part II ORDER:

Serial No 1	Army No	Rank	Name	Unit	Type of casualty	Date of Casualty	Date of SOS	Marital status	Class/sub class
1	2483149x	Sr no	RAVINDER PAUL SINGH	18 PUNJAB	BATTLE CASUALTY	03 DEC 2000-04	DEC 2000	MARRIED SMT VEENA DEVI VILL-MAKRARI PO-MAKRARI DISTT-MANDI STATE-HP	HINDU\DOGRA

State / Distt	Name & relationship & address of NOK	Details of children with age	Remarks
HP/Mandi	Smt. Veena Devi vill Makrari, PO. Makrari, Distt.Mandi, State HP	Nikhita Thakur (daughter) 22 Feb 1998	Wounded due to slipped and fell down and sustained injury behind left knee. HQ 104 INF BDE HQ No. 28 INF DIV. HQ No. 15 CORPS. HQ NORTH COM

10. The petitioner, after being categorised as LMC (P) A2 was promoted to the rank of Naik and then to the rank of Havaldar. The petitioner was re-categorised to LMC A2 (P) on 02.01.2008. Keeping his low medical status in mind and with no sheltered appointment available the petitioner was issued a Show Cause Notice dated 24.02.2008 (R-2) for discharge from service. In the reply to the show cause notice, the petitioner gave his willingness to serve further.

11. The individual was discharged from service on 31 Aug 2008 (AN) under Army Rule 13(3) item III (v) read in conjunction with Army Rule 13(2A), AO 46/80, HQ of MOD (Army) letter No B/10122/LMC/MP-

3(PBOR) dated 15 Mar 2000 and B/10122/06-08/Vol-I/MP-3 dated 12 April 2007 being permanent low medical category. The individual was accordingly brought before Release Medical Board on account of PENETRATING INJURY (LT) POPLITEAL FOSSA WITH VASCULAR INJURY (OPTD). Cdr 25 Inf Bde had opined his disability as attributable to military service. Release Medical Board had assessed his disablement at 20% for life. The case was adjudicated by the competent authority under the provisions of Govt of India. Ministry of Defence letter No 1(2)/97/D(Pen-C) dated 01 Sep 2005 as amended vide Corr No 1(2)/2002/D (Ren-C) dated 31 May 2006 and accepted the case as attributable to military service with degree of disablement at 20%, rounded off to 50% being deemed to have been invalided out of service. Accordingly, the individual was granted disability element @ Rs 1163.- PM, Wef 01 Sep 2005 for life for 50% disability.

12. After being discharged on 31.08.2008, finding that he was being paid normal disability pension the petitioner inquired from the Records Punjab Regiment about issuance of "Battle Casualty Certificate. In spite of having published a Battle Casualty Part II Order on 01.01.2001 in respect of his injury, in their reply dated 08.08.2009 at A-2, the Records office replied that since his injury of 03.12.2000 had not been declared a battle casualty, no Part II Order had been promulgated and as a consequent he was not entitled to get a "Battle Casualty Certificate". To clarify the confusion, this issue was taken up afresh by the petitioner vide his letter dated 07.09.2010(A-3) with the Records.

13. On realization of their omission, the authorities confirmed existence of Part II order in respect of the petitioner on 12.11.2010 (Page 90 of paper book) and the Records issued the "Battle Casualty Certificate" on 31.01.2011(A-4) to the petitioner. In addition vide its letter dtd 31.03.2011(R-5) the Records informed the PCDA(P) to review the disability pension in respect of the petitioner in light of policy letter No. 1(2)/97/D(Pen-C) dated 31.01.2001 for grant of war injury pension. The letter reads as under:

RESPECT OF NO 2483149X EX HAV RAVINDER PAUL SINGH

1.XXXX....
2.XXXX....
3. ...XXX...XXXXX
4. On examination of the case it is revealed that the individual is entitled to war injury pension in terms of para 10.1 of Govt of India, MoD letter No. 1(2)/97/D (Pen-C) dated 31. Jan 2001 but he was granted disability element (as entitled to non-battle cases) at the initial stage despite the case confirmed as "Battle Casualty" vide BC Part II Order No.1/001 dated 03 Jan 2001.
5. In view of the foregoing, it is requested to re-view the case in the light of rule position since the case merits re-examination for correct entitlements. The relevant documents in this connection had already been forwarded vide this office letter No referred at Para 1(a) above. As regard his last pay drawn. Please refer to Corr PPO No S/CORR/165595/2009, S/CORR/258977/2010 and endorsement made on Page No 22 of sheet Roll, duly authenticated by PAO(OR) the Punjab Regiment. However, the following documents in his respect are enclosed for re-examination and issuing necessary Corr PPO to this effect:-
 - (a) Sheet Roll & Enrolment Form.
 - (b) Release Medical Board Proceedings.
 - (c) Photocopy of BC Part II Order No.1/001 dated 03 Jan 2001.
 - (d) Photocopy of initial and detailed report of the casualty.

14. The PCDA(P) in its correspondence dated 03.06.2011(R-6), declared that after reviewing the case it had come to the conclusion that the injury sustained by the petitioner on 03.12.2000 did not come under category E and thus was not entitled to grant of war injury pension. The relevant portion of policy letter No. 1(2)/97/D(Pen-C) datd 31.01.2001 reads as under:-

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 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 (Pen/Ser) dated 03 Feb 98 as amended/modified vide Ministry of Defence letter No. 1 (1)/99/D (Pen/Ser) dated 07.06.99.

xxx xxx xxx

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.”

15. To bring the case within the ambit of Category ‘E’, the petitioner contends that he sustained the injury due to blast effect of mines. The recording of the injury at Part II Order dated 01.01.2001 does not specify this aspect, nor is it evident from the specialists report available in the AFMSF 15 dated 24.01.2001 (A-1). However, in the written reply submitted by the respondents, the aspect about the injury being sustained at the line of control is not disputed.

16. In light of above we find that the injury sustained by the petitioner at the line of control on 03.12.2000 does fall under the purview of Category ‘E’ of the policy letter dated 31.01.2001 and the petitioner is entitled to receive war injury pension instead of disability pension w.e.f. 01.09.2008.

17. Now coming to the second issue as to whether the discharge of the petitioner, being a Battle Casualty, on grounds of being in LMC (P) with effect from 31.08.2008 is valid or not. We find that it is not in dispute that the petitioner’s injury was declared a battle casualty in year 2001 vide Records Office Part II Order No 1/001 dated 01 Jan 2001 (R-1). However, from the record it is evident that prior to issuance of a Show Cause Notice to the petitioner on 26.02.2008, the authorities had not kept this aspect in mind as is evident in issuance of discharge Order issued vide 5022/4/M/88/RA-II dated 01.02.2008. This is further strengthened by letter dated 07.09.2010 (A-3) written by the petitioner to the Chief Records Officer, relevant portion reads as under :-

PUBLICATION OF PART-II ORDER FOR BATTLE CASUALTY

1....xxx...

2.....xxxxx....

3....xxxxxx...

4. The facts enumerated at Para of above are enough to prove that I am a battle casualty. However, it was with a great surprise and rather a shock that I received my release orders vide Records The Punjab Regiment letter No. 5022/4/M/88/RA-II dated 1st Feb. 2008 being in permanent low medical category (physical). The date of release from service was fixed as 31st August, 2008. On raising an inquiry with the record office, it was revealed that Part-II order for my being a battle casualty has not been published and I have been

treated as a physical casualty and as such released from service as per the directions from IHQ of MOD (Army).

5. On reaching at the Punjab Regimental Centre for release drill, I visited the Record Office (through proper channel) and found that my name existed in the Battle Casualty Register (Wounded). There being hardly any time left for any release, I could not pursue the matter. Despite my name found recorded in the Battle Casualty Register. I failed to understand as to how the Part-II order could not be published. Since, the BCR has also been initiated; the omission of non-publication of the Part-II order can only be attributed to a clerical slip-up.

6. From the date of my being injured till the date I received my release orders, I remained under the impression that I am a Battle Casualty. I was being afforded all the privileges of a Battle Casualty case in the unit including regular promotions, therefore never bothered to find out as to whether my Part-II order for being BC has been published. However, a small error on the part of the dealing staff has completely rescind my service career and the future prospects.

18. The authorities checked the relevant records and arranged for publication of Part II Orders in respect of his injury being declared a Battle Casualty. On rechecking the authorities admitted on 12.11.2010 of existence of the Part II Order of the injury and subsequently issued "Battle Casualty Certificate" dated 31.01.2011(A-4) to the petitioner.

19. After receipt of the Battle Casualty Certificate the issue of incorrect discharge of petitioner under Army Rule 13 (3) ITEM III (v) was raised by the petitioner vide his letter dated 09.03.2011. This was replied by the Records Punjab Regiment vide their letter dated 28.04.20011(R-9) which reads as under:-

REQUEST FOR GRANT OF FULL PENSIONARY BENEFITS

1.XXXXX....
2.XXXXXX...
3.XXXXX....
4.XXXXXX...
5. **In view of above, an option letter to rejoin service was issued to you vide this office letter No 2483149/SR/R&D dated 16 Dec 2008 but you failed to rejoin service within stipulated time frame which resulted to be presumed that you have accepted discharge.**

20. A look at the petitioner's reply to above letter wherein the authorities have indicated that petitioner had failed to rejoin service in

time, shows that this aspect was not disputed. The letter dated 14.05.2011 reads as under:-

REQUEST FOR GRANT OF FULL PENSIONARY BENEFITS

1. Please refer to:

- (a) My petition No. 2483149/RPS/Pers dt 09 March.2011.
- (b) IHQ of Mod (Army) letter No. 12822/Gen./AG/MP 5(D) dated 21 March 2011.
- (c) Records the Punjab Regiments letter No. 2483149/DP/Pen dated 31 March 2011.
Addressed to PCDA (P), Allahabad with copy to me
- (d) Records the Punjab Regiment letter No. 2483149/SR/R&D/Pen Dated 28th April 2011.

2.....XXXXX...

3.....XXXXXX...

4.....XXXXX...

5.. May I, therefore, request you again to kindly take up my case for grant of legitimate pensionary benefits to me as requested vide my petition dt. 09 March 2011.

6.....XXXX....

21. From above it is clear that the petitioner did receive letter dated 28.04.2011 and had taken no objection to para 5 wherein he had been given an option to rejoin the service vide letter No. 2483149/SR/R&D dated 16 Dec 2008 and failed to rejoin. This is the end of the matter.

22. The petitioner has failed to disclose the letter dated 28.04.2011 either in the OA or in the written reply of the respondents. The said letter is appended in the rejoinder filed by the petitioner, and he has taken no objection to the stand of the respondents.

23. In spite of being aware about discrepancy in his categorization of injury and consequential effect on his discharge on 01.02.2008, the petitioner continued his discharge drill and was discharged w.e.f. 31.08.2008. He further failed to rejoin duties in spite of having been recalled vide letter dated 16.12.2008.

24. Thus in light of above we find that the petitioner was given an option to rejoin service on 16.12.2008 but he failed to do so.

25. The judgment of Guwahati Regional Bench of Armed Forces Tribunal in **OA No. 13 of 2013 Ex.Sep Shri Kapthianga v. UOI and others** decided in September 2013 quoted by the learned counsel for the petitioner is of no help as it deals with question of grant of disability pension to the petitioner when he sustained the injury while proceeding to his home town. The question of onus of proof and benefit of reasonable doubt does not arise in the present case.

26. In the light of above, we find that the petitioner is entitled to grant of War Injury Pension instead of disability pension i.e. w.e.f. 01.09.2008. Since the petition was filed on 17.04.2012, the arrears will be restricted from 17.04.2009 onwards. The petition is allowed in part.

27. The respondents are directed to calculate the amount due within a period of three months from the date of receipt of certified copy of this order, failing which the amount shall carry interest at the rate of 10% per annum from the date of order.

(Justice Prakash Krishna)

(Air Marshal (Retd) SC Mukul)

13.03.2014

raghav

Whether the judgment for reference is to be put on internet? Yes