

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
AT NEW DELHI**

TA No. 376/2010

[W.P.(C) No. 8007/05 of Delhi High Court]

J.P. Bhardwaj

.....Petitioner

Versus

Union of India & Others

.....Respondents

For applicant : Sh. Santosh Kumar, Advocate.

For respondents : Ms. Jagriti Singh, Advocate.

CORAM:

**HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.
HON'BLE LT. GEN. M.L. NAIDU, MEMBER.**

**JUDGMENT
30.06.2010**

1. The petitioner had filed this Writ Petition No.8007/2005 in Delhi High Court which was subsequently transferred to this Tribunal on 13.11.2009 for final disposal.

2. The petitioner vide his petition has prayed for quashing Court of Inquiry held consequent to the vehicle accident and letters dated 03.07.1999, 19.08.2000, 24.03.2003 and 30.11.2004 which denied the classification of war injury to the

petitioner. He has also sought release of all benefits which are due to an individual on account of war injury.

4. The brief facts of the case are as follows :-

The petitioner was enrolled in the Corps of EME on 24.12.1980. He was posted to 10, Rashtriya Rifles (Rajput) on 05.06.1994. On 30.10.1996 the petitioner took a truck One Ton from Udhampur to Doda after completion of local repair as per order of his superiors since the driver of the One Ton truck was feeling unwell. On the way the vehicle met with an accident in which he sustained severe commuted fracture paraplegia. Other passengers in the vehicle also suffered injuries. Two of them had severe injury, one had moderate injury and two had superficial trivial injury. Being a case of commuted completely paraplegia, the petitioner was medically discharged from the Army on 09.07.1997 with 100% disability and also granted an attendant allowance. He was shown as Naik instead of paid acting Havildar.

5. The respondents in their reply have stated that the Court of Inquiry was held consequent to the accident in which individual was blamed for the accident. However, because of the

injury that was sustained by the individual, no disciplinary action was taken and his case was classified as physical casualty attributable to Military Service. Consequently, the petitioner was granted service pension along with all other terminal benefits for the services rendered by him along with disability pension @ 1550/- p.m. for 100% disability along with Constant Attendance Allowance @ 600/- per month. Besides these benefits he was also paid all legitimate benefits which were due to him. Details are as under :-

(a)Credit balance in FSA	:	Rs.30,138/-
(b)FPP Fund balance	:	Rs.59,051/-
(c)DAPW & O Fund	:	Rs. 1,000/-
(d)AGI Maturity benefits	:	Rs.31,205/-
(e)Disability benefits under AGIS	:	Rs.82,290/-
(f) Leave encashment	:	Rs. 9,086/-
(g)Arrears of Pay and allowance	:	Rs.11,253/-

6. The injury sustained by the petitioner was considered by the Court of Inquiry is attributable to Military Service which was essential for grant of disability pension, however, the injury was not classified as 'Battle Casualty' as it was simple a road accident. Besides this the Court of Inquiry blamed the individual for rash

and negligent driving. The petitioner also produced a copy of the Special Army Order 8/S/85 – Instructions for the reporting of Physical & Battle Casualties and the submissions of Reports on Accident, Injury and the like. Para 4 of the Section 1 of the said Army Order states :-

“ X X X X

4. **Battle Casualties** : *Battle Casualties are those sustained in action against enemy forces or whilst repelling enemy air tickets. Casualties of this type consist of the following categories :-*

- (a)
- (b)
- (c)
- (d)

NOTES :

- (i)
- (ii)
- (iii)

(iv) *Accidental injuries and deaths which occur in action in an operational area will be treated as battle-casualties.*

(v) *Accidental injuries which are not sustained in action and not in proximity to the enemy, if these have been caused by fixed apparatus (e. Land mines, booby traps, barbed wire or any other obstacle) laid as defences 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 or occurrence or agency*

laying those, viz own troops or enemy; provided the casualties occur within the time limits laid down by the Government.

(vi)

(vii)

(viii) Accidental deaths/injuries sustained due to natural calamities (such as floods, avalanches, land slides and cyclones) or drowning in river crossing at the time of performance of operational duties/movements whilst in action against enemy forces will be treated as battle casualties.

(ix)

(x)

5. Battle Accidents are those which take place in operational areas during the period of active hostilities but not in proximity to the enemy. (If the accident occurs in proximity to the enemy, it is classified as battle casualty)."

7. Though the petitioner claimed that the Court of Inquiry was not held in his presence despite that he was blamed and since he was in the hospital, no court has taken his statement.

8. The original proceedings of the Court of Inquiry were produced by the respondents before us and we verified the genuineness of the statement with the signature of the petitioner. Since the Court of Inquiry which was held to ascertain the cause of vehicle accident which led to injury came to the conclusion that no military operation was involved. It did not consider the noting

of Army Rule 180 in case of the petitioner since inquiry was to ascertain the causes of the accident and attributability of the injuries sustained by all the individuals. We also perused the findings and the recommendations of the Court of Inquiry. The Court of Inquiry contains the opinion given by the Formation Commander which clearly states that though the individual is responsible for the accident, no action need to be taken and the loss is to be borne by the State. It has also been opined by the Formation Commander that the injury sustained by the individuals be treated as attributable to Military Service in the Operational Area. The injury/disability in operational area is attributable to Military Service. This decision of the Formation Commander is final and has been given for all personnel injured in this accident.

9. It is evident from the Special Army Order 8/S/85 and the notes in Section 1 that this vehicle accident cannot be termed as 'Battle Casualty' since the accident took place in Operational Area but did not occur 'in action'. It was also not in close proximity to the enemy or was not caused by the fixed apparatus e.g. landmine, booby traps, barbed wire or any obstacles laid by the enemy nor was it caused by any national calamity. Therefore, it

has been correctly declared as 'Physical Casualty' in the Operational Area. It was further confirmed that all other personnel who was similarly situated in the same vehicle had met with accident and they have also been treated as 'Physical Casualty' in Operational Area and attributable to Military Service.

10. As regards the pension for the petitioner, since he was holding the rank of Havildar at the time of accident on 30.11.1996, the Fifth Pay Commission dispensation which has been made effective from 01.01.1996, will be applicable to the petitioner. Therefore, the petitioner should be given the pension of Havildar and in the relevant group as Group-'A', he should be granted Group 'X' pension because of the applicability of the Fifth Pay Commission which has been made effective from 01.01.1996. In view of the Order dated 03rd February, 1998 which clearly laid down that the Fifth Pay Commission award has been made effective from 01.01.1996, therefore, he will be granted Group-'X'.

11. In view of foregoing, petition is partially upheld whereby the petitioner will be granted the pension of Havildar and will be granted Group-'X' as he is eligible, consequent to the Fifth

Pay Commission award. The Battle Physical Casualty as attributable to Military Service which has been designated to his injury, shall remain. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
June 30, 2010.