

**COURT NO. 3,
ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

**T.A. No. 597 of 2009
(Delhi High Court W.P (C) No. 7752 of 2009)**

IN THE MATTER OF:

Sepoy Ravidas Laxman KusalkarApplicant
Through Maj (Retd) K Ramesh, counsel for the applicant

Versus

Union of India and OthersRespondents
Through: Mr. Anil Gautam, counsel for respondents

CORAM :

**HON'BLE JUSTICE MANAK MOHTA, JUDICIAL MEMBER,
HON'BLE LT GEN Z.U.SHAH, ADMINISTRATIVE MEMBER**

Order

Date: 3-5-2010

1. The applicant had filed a writ petition (civil) No. 7752 of 2009 in the Hon'ble Delhi High Court requesting to be declared as a "Battle Casualty" for financial purposes. The same was transferred to the Armed Forces Tribunal on 14.10.2009.

2. The applicant was enrolled in the Army on 28.4.1989. He contends that while serving in field area in Kaprol on 16.5.1997, whilst during live mine training, the applicant suffered injury due to accidental mine blast as a result of which his left leg was amputated. The applicant should have been declared as a battle casualty which would have enabled him continue in service and get promotions when due to him. He would also get other benefits from his state of domicile (Maharashtra). The applicant has contended that his orders for discharge would be effective from 30.4.2009.

3. The applicant contends that the court of inquiry held that his injury was attributable to military service (Annexure P-1). Commander 33 Corps Artillery Brigade has held that the injury occurred in field area and is attributable to military service (Annexure P-3). Army Order 1/2003 published in February 2003 on “**circumstances for classifying casualties as battle or physical casualties**” lays down the circumstances for classifying casualties as battle casualties. In the instant case Para (d) and (j) are applicable. They state the following

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

Para 1 (j): Casualties occurring while carrying out battle inoculation/ training or operationally oriented training in preparation for actual operations due to gun shot wounds/ explosion of live ammunition/ explosives/ mines are by drowning / electrocution.

4. The applicant further contends that Army Headquarter Policy letter dated 10.10.1997 (Annexure P-5) shows that person placed in low medical categories C (equivalent to A3) are entitled for promotion. Army Headquarter policy letter dated 12.4.2007 (Annexure P-6) lays down that battle casualties would continue to be retained in service, provided they are able to perform their urine and bowel functions without assistance. The applicant contends that if he is declared a “battle casualty” he would be entitled to all these entitlements. He has prayed that he be declared a battle casualty for financial purposes and be retained in service with all consequential benefits.

5. In counter affidavit the respondents have stated that the applicant sustained injury during conduct of live mine training on 16.5.1997. The court of inquiry opined that the injury was attributable to “military

service” but the applicant was not declared as a “battle casualty”. Due to “amputation sysmes RT” the applicant was down graded to CEE (permanent) with effect 15.10.1997. He was brought before a review medical board after two years but was retained in low medical category A3 (permanent).

6. The applicant was discharged on 30.4.2009 in accordance with Army Headquarter letter dated 20.10.2007 as his documents did not reflect him as a “battle casualty”. He was however re-instated in service on 6.2.2009 consequent to Hon’ble Delhi High Court order. Since the applicant was to complete his normal terms of engagement of 20 years he was discharged on 30.4.2009 under Army Rule 13 (3) Item iii (i). The respondents maintain that Army Order 1/2003 (Annexure P-3) would not be applicable to the applicant as the casualty occurred in May 1997, six years before the Army Order. In case the applicant had been declared a battle casualty he could have been dealt with as per Special Army Order 8/S/85 (Annexure B-2) which states that “*casualties taking place while carrying out battle inoculation/ training will be treated as physical casualties for statistical purposes and battle casualties for financial purposes.*”

7. We have heard the arguments at length and perused the records. The applicant sustained injury during live mine training in field area on 16.5.1997 which was attributable to military service. The injury is not covered under Army Order 1/2003, Para 1 (j) since although it occurred during training (which is invariably operationally oriented training) in field area it was prior to publication of Army Order 1/2003. The Commander, Corps Artillery Brigade had opined that “*the injury occurred in field area and is attributable to military service*” we find no reason why the injury sustained by the applicant not be declared as “battle casualty” for financial purposes as per policy prevailing at that time. The application is partially allowed. The applicant will be entitled to all financial benefits entitled to a “battle casualty” for financial purposes as per SAO 8/S/85 with effect from the date of injury on 16.5.1997. No costs.

MANAK MOHTA
(Judicial Member)

Z.U. SHAH
(Administrative Member)

Announced in the open court
Dated: 3-5-2010