

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

T.A. No.691/2009

[W.P. (C) No. 9924/2009 of Delhi High Court]

Hav M.K. Sharma

.....Petitioner

Versus

Union of India & Others

.....Respondents

For petitioner: Col.S.R. Kalkal(Retd.), Advocate

For respondents: Sh.Rajinder Nischal, Advocate

**CORAM:**

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

**ORDER**  
**01.02.2010**

1. The present petition has been transferred from Hon'ble Delhi High Court to this Tribunal on its formation.

2. Petitioner was enrolled in the regular Army on 18.02.1987 after having been found physically and medically fit. He was posted to 25 Rajput Regiment. In the year 1997-98 he was detailed for operation Rakshak and he was order to remain

with convoy. Petitioner had to stay back and on 10.05.1997, he suffered injury due to ID blast. As per Government of India, Ministry of Defence notification dated 31.01.2001, the disability of the petitioner is covered under category E para 4.1 (f) & (g) and same has to be treated as battle casualty for the purpose of war injury pension and petitioner is entitled for battle casualty/war injury benefits and petitioner claimed the same. Petitioner was admitted and treated in command hospital and was placed in low medical category. Petitioner was served with discharge letter dated 30.08.2008. Though petitioner was willing to serve but his services were cut short because of low medical category. Resurvey medical board assessed 15 to 19% disability. He filed a writ petition bearing no.7093/2008 before the Hon'ble Delhi High Court wherein Hon'ble Delhi High Court passed interim order that petitioner will not be discharged unless his case for war injury is not decided. However, for one reason or other petitioner was discharged and interim order passed by the Hon'ble Delhi High Court seems to have not been followed. Be that as it may be, now question before us is with regard to benefit of battle injury whether petitioner is entitled to get a medical disability as a war injury. Petitioner though prayed for grant of re-employment also

but this prayer has become infructuous with passage of time. The matter was argued for sometime and we directed the respondents on 11.01.2010 to produce the report of court of inquiry, injury report dated 23.05.1997 duly signed by Commander of 56 Mountain Battalion and all medical documents. The respondents have expressed their inability to produce the court of inquiry. However, petitioner has produced before us the findings of the court of inquiry and in that court of inquiry a categorical finding has been given that *“injury sustained by No. 14603603P Cfn MK Sharma while on military duty. No one is to be blamed. Injury sustained by No. 14603603P is attributable to military service in field area.”* A copy of signal has also been produced before us which was sent by 25, Rajput to Legal Cell, HQ Delhi (HC) in which it has been clearly mentioned that *“Injury report (IAFY-2006) dt 23 May, 97 duly signed by Cdr 56 Mtn. Bde and photocopy of all medical documents under which it is clear that the injury occurred in operational area (OP RAKSHAK) (J&K) and is attributable to military service have already been forwarded to Integrated HQ of MoD (Army) MP-5 vide this unit Sig. No. A-0348 dt 17 Sep. 08. On scrutiny of our records no other document pertaining to the individual held with unit, request asked for the*

*same from EME Records.*” These two documents speak volume that the court of inquiry has recorded a finding that petitioner received this injury during the Operation Rakshak which has been confirmed by Signal sent to Legal Cell by 25, Rajput. Therefore, in these circumstances, we are of the opinion that petitioner is entitled to the benefits of war injury as he has received this injury during the operation Rakshak which is also considered to be a battle injury. It is needless to say that the operation Rakshak has also been notified by the Government as an operational area as per the Clause 1 of the Notification dated 31.01.2001. Consequently, pension should be revised in the light of the aforesaid observations i.e. it is a battle injury and he is entitled to get the disability pension as the battle injury and consequent benefits flowing therefrom should be given to him. He will be entitled to the interest on the arrears worked out at 12%. Petition is allowed accordingly. No order as to costs.

**A.K. MATHUR**  
**(Chairperson)**

**M.L. NAIDU**  
**(Member)**

**New Delhi**  
**February 01, 2010.**