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**COURT NO. 2, ARMED FORCES TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI**

**O.A. No.121 of 2012**

**IN THE MATTER OF:**

**HAV. VISWANATHAN P. ....PETITIONER**

Through: Mr. K. Ramesh, counsel for the applicant

**Vs.**

**UNION OF INDIA AND OTHERS .....RESPONDENTS**

Through: Mr. Anil Gautam, counsel for the respondents

**CORAM:**

**HON'BLE MR. JUSTICE N.P. GUPTA, JUDICIAL MEMBER  
HON'BLE LT. GEN. M.L. NAIDU, ADMINISTRATIVE MEMBER**

**ORDER**

**Date: 08.10.2012**

1. The petitioner, by this petition, seeks a direction to set aside and quash the Army Headquarter letter dated 13.05.2011, and also claims issuance of a direction to the respondents to classify the injury sustained by the petitioner on 11.03.2009 as battle casualty or a battle accident in terms of Army Order 1/2003/MP and that he be officially exempted from qualifying the promotion cadre in terms of Army Order 45/1980. The Army Headquarter letter dated 13.05.2011 has been produced at page 10 of the compilation, whereby the relaxation of physical activities during promotion cadre has not been agreed to by C.O. vide letter dated 05.05.2011. According to this letter exemptions are provided for battle casualty, but there is no provision to relax any of

the physical tests for the persons other than battle casualty. Thus, though the petitioner has prayed for being classified as battle casualty or a battle accident, but then so far as the entitlement for exemption is concerned, according to the letter dated 13.05.2011 it is available only in case of battle casualty, and not for the persons other than battle casualties.

2. The necessary facts, as pleaded by the petitioner, are that while on permanent posting in 36 Sector in an operational duty, he was assigned an immediate operational task, and in performance of his duties he slipped in the staircase on 11.03.2009, and was rushed to military hospital, where after a series of surgical operations, he has become a permanent medical category, in view of the serious injury, the fracture and its after effects, and it has become impossible for him to undertake running in BPET/PPT. It is pleaded that according to Army Order (1/2003/MP) it defines battle accidents as those which take place in operational areas during the period of active hostilities, but not in proximity to the enemy. According to the petitioner, admittedly, 36 Sector is in field high altitude near Pooh, and is an operational area, and in close proximity to China and Tibet line of control, and that this injury can be classified as a battle accident, in performance of his official military operational duty.

3. The respondents, in their reply (counter affidavit) have pleaded that on the fateful day, while the petitioner was serving with

detachment/523 Intelligence and Field Security Unit, he slipped from the stairs and sustained injury. The injury was detected as physical casualty (fall from stairs). The injury report prepared by Command Hospital, Western Command, Chandi Mandir was forwarded to 523 Intelligence and Field Security Unit for completion. A Court of Inquiry was held to investigate the facts of injury sustained by petitioner, which opined the injury to be attributable to military service, and casualty to this effect was published vide Part-II Order No.0/0028/001/2010. After treatment the petitioner was downgraded to medical category P-3 (T) for six months w.e.f. 29.12.2009. Occurrence to this effect has been published vide another Part-II order, and on further review the petitioner was placed in low medical category w.e.f. 14.06.2010, vide yet subsequent Part-II order. According to respondents, as per the parameters mentioned in Appendix-A to Army Order 1/2003 (extract produced as Annexure R-1), the injury of the petitioner does not fulfil the parameters of battle casualty. Accordingly, in terms of para 30 of the said Army Order, though initial/detailed report was initiated by the unit being Physical Casualty. It is also pleaded that as per medical documents of the petitioner also, there is no evidence regarding declaration of battle casualty. Then, it is pleaded that on being downgraded to Permanent Low Medical willingness/unwillingness certificate was asked from the petitioner, so as to consider for sheltered appointment in the event of availability, and based thereon his retention was approved from 16.06.2010 to 15.06.2012. The prayer of the

petitioner for relaxation of physical activities in promotion cadre was rejected vide impugned letter of 13.05.2011

4. Learned counsel for the petitioner invited our attention, and rather laid great stress on para 7 of this Army Order 1/2003, which reads as under: -

**“7. Battle Accidents** 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 called as battle casualty).”

5. Of course on reading of this para 7, it may be said that the petitioner's injury does fall within battle accident, but then, this army order also contains para 12, which reads as under:-

**“12.** Aim of this Army Order is to lay down the procedure for management of Physical and Battle casualties to include reporting by units, formations and hospitals, grant of benefits to the next of kin and maintenance of statistical data.”

6. Thus, a reading of para 12 makes it clear that the aim of this Army Order is to lay down the procedure, for management of physical and battle casualties, to include reporting by units, formations and hospitals, grant of benefits to next of kin, and maintenance of statistical data.

7. Obviously, the classifications mentioned herein are not for any other purpose, and purpose for which the classification is claimed by the petitioner, being seeking entitlement to get exemption from certain exercises in BPET and PPT, obviously, is not included in the purposes detailed in para 12. This is one aspect of the matter.

8. The other aspect of the matter is that even according to this Appendix-A to this Army Order, therein detailed circumstances have been listed for classifying casualties as battle casualties or physical casualties, and after going through that list very closely, in our view, the injuries sustained by the petitioner can at best be treated as physical casualty, in operational area.

9. Classification of a particular injury as battle casualty or battle accident has different purposes, for different benefits, and is not a uniform classification for all purposes. The Army Order, as noticed above, defines battle casualty, battle accident and physical casualties, for the specific purposes mentioned in para 12. So far as reliance on para 5 of Army Order 45/80 is concerned, as sought to be pressed into service by learned counsel for the petitioner, it also only confers a discretion, rather confers authority on the officer commanding to grant partial or total exemption from attending a cadre course on recommendation of the medical officer, in case of war wounded NCOs, who are placed in low medical category. Thus, "War Wounded NCO" is

yet another category, and that does indicate that different categorisations are made for different purposes.

10. We may notice here that learned counsel for the petitioner has also shown us a policy letter dated 12.04.2007, which had been a subject matter of adjudication in Puttan Lal's case, and in para 4 thereof, the policy was reviewed regarding management of LMC personnel, so far as the cases of battle categories and physical casualties were concerned, and therein provision was made regarding battle casualties only, and was provided, that all battle casualties, irrespective of their medical categories, would continue to be retained in service till they voluntarily seek discharge, provided they are able to perform their bowel and urine functions without assistance. The battle casualties, who are unable to perform their bowel and urine functions, without assistance will be invalided out of service. Obviously, in this case also battle casualties have been contemplated to be conferred limited favour only.

11. Thus, in our view, until and unless there is anything to show, that the benefit sought to be claimed by the petitioner has been provided to be made available, to the categories of injuries sustained by the persons like the petitioner, in the circumstances in which it was sustained by the petitioner, no relief can be granted to the petitioner, and the learned counsel for the petitioner has not been able to point out any such policy decision.

12. Of course, a submission was made by learned counsel for the petitioner that the policy, as framed, does required to be interfered with on the anvil of Article 14 of the Constitution. Having heard learned counsel for the petitioner on that aspect also, we do not find any sufficient ground to interfere with the validity of the policy either.

13. The petition, thus, has no force and is, accordingly, dismissed.

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

**N.P. GUPTA**  
(Judicial Member)

**Dated: 08.10.2012**  
rsk