

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI
02.

O.A. No. 79 of 2010

Maj. (Retd.) D.P. Singh

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. S.R. Kalkal, Advocate.

For respondents: Mr. Ankur Chhibber, Advocate for R-1 to R-3.
None for R-4.

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.

HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER
25.05.2012

1. Petitioner by this petition has prayed that the order dated 8th January 2008 may be set aside being arbitrary and illegal and the Respondents may be directed to release war injury pension @ 40% and constant attendance allowance with effect from date of invaliding out of service and all other consequential benefits which are declared for war injury persons.

2. Petitioner joined Indian Military Academy Dehradun in July 1969 and was granted permanent commission in the rank of Lt on 6th December 1997. He was posted to Akhnoor Sector in Jammu & Kashmir during Operation Vijay (Kargil) where Petitioner was hit by a mortar fire splinter and sustained following injuries:

“(a) Right leg later got amputate through knee.

- (b) Both ears with partial hearing loss.
- (c) Abdomen resulted partial removal of intestines.
- (d) Left hand elbow fracture.
- (e) Left knee derangement mention in dispatch award by the President of India for his act of bravery during war.”

3. Petitioner was awarded mention in dispatch award of bravery by the President of India on 4th July 2001 and the casualty in the Part-II order was published as case of the battle casualty and then Petitioner was treated at different hospital for his injuries and was placed in Low Medical Category. He was the only earning member in his family and he claimed for disability compensation by the Medical Board for one of the disability for 70% but was released only 60% for the first disability. That based on the policy letter of the Army HQ dated 21st March 2002 circulated on 21st April 2002, Petitioner was brought before an Invaliding Board and Invaliding Board considered the disability of the Petitioner to 100% and also recommended for a constant attendance allowance. Petitioner was shocked to notice that the Respondents have posted a typed chit on the invaliding Medical Board proceeding as printed on page 5 of AFMSF-16 and made the total disability to 90%, whereas actually on original documents it was recommended 100% disability. The Invaliding Board also recommended a constant attendance allowance for life for Petitioner and that during the Kargil war (Operation Vijay) Central Government as well as almost all the States announced certain financial benefit in the form of ex-gratia or some other benefits. He approached the Delhi Government for the benefits which have been announced to those who were affected persons of the Kargil war but his request was rejected by Delhi Government since the Petitioner was a domicile

of UP, he should contact the Government of UP and that application was also rejected. Thereafter Petitioner issued a Section 80 notice and then filed the present petition to seek the benefits. The first and the foremost question before us is that whether the Petitioner was victim of war casualty i.e. Operation Vijay (Kargil) or not.

4. The Respondents have contested by filing their reply and stated that he is not entitled to war injury compensation as according to the Respondents Akhnoor area does not fall in the operation area of the Operation Vijay. In order to find out where Petitioner was posted, we directed the Respondents to file an affidavit and explain but learned counsel for the Respondents submitted that despite his best efforts he could not have laid hands on any notification showing whether any particular place like Akhnoor falls in the operation area of Operation Vijay.

5. We have bestowed our best of consideration and gone through the necessary records. From the records it appears that Akhnoor is covered by Operation Vijay as it is evident from the fact that the President's Secretariat who has issued a commendation certificate dated 1st July 2000 in which they have clearly mentioned "Mention-in-Despatches" received by the Raksha Mantri from the "Chief of the Army Staff" and the "Chief of the Air Staff" in connection with the "Operation Vijay and CI Operations.". Secondly, in Part-II order dated 8th January 2000 also it is clearly mentioned that Petitioner wounded in action in Operation Vijay on 15th July 1999. In the Invaliding Medical Board during 3rd July 2007 it is also mentioned that the Petitioner has received these injuries in a battle casualty in Operation Vijay. Therefore these

three documents put together establish beyond any doubt that the Petitioner is a victim in the Operation Vijay. Since Petitioner was injured in Operation Vijay therefore injuries received by him are all battle casualties. According to the Medical Board his disability is 100%. Since the Petitioner's case is of a battle casualty in Operation Vijay and he has received 100% disability and he has been invalided out of service therefore he is entitled to all the benefits which are applicable to all those who have been invalided out of service on account of the injuries received as war casualties. The Government of India has issued a Notification dated 21st March 2000 whereby certain benefits have been given to all those who fell victim in Operation Vijay. We have been given to understand that the Petitioner has been already paid a lump sum amount in lieu of the disability to the extent of 70% but he has not been given the benefit of constant attendance allowance and other benefits which have been declared by the Government of India by the Notification dated 21st March 2000 or any subsequent Notification on that issue. Since we have found that Petitioner is a victim of Operation Vijay, therefore, he is entitled to all the benefits as a war casualty and in terms of the Government of India Notification dated 21st March 2000 or any subsequent Notification on that issue. Whatever benefits have not been given to the Petitioner should be released to him forthwith. So far as he has already received 70% of the compensation amount the remaining amount of 30% war injury compensation may be released to him and all other benefits which have been declared by the Government of India by the Notification dated 21st March 2000 or any subsequent Notification on that issue may be paid to him after examining his case in detail.

6. With these observations, the petition is disposed of. No costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
May 25, 2012
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