

**COURT No.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

OA 35 of 2020

Sub Kunwar Singh	Applicant
Versus		
Union of India and Ors.	Respondents

For Applicant	:	Mr. Manoj Kumar Gupta, Advocate
For Respondents	:	Mr. Avdesh Kumar Singh, Advocate

CORAM

**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN P.M. HARIZ, MEMBER (A)**

ORDER

This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, by a serving Sub of Indian Army. The applicant has made the following prayers:-

- (a) To direct the respondents to declare the injuries sustained by the applicant on 17.05.2015 as Battle Casualty by quashing impugned order;
- (b) To pass such further order or orders, direction/ directions as this Hon'ble Tribunal may deem fit and proper in accordance with law.

Brief Facts of the Case

2. The applicant was enrolled into the Indian Army on 26.02.1996. The applicant was part of a patrol tasked to carry out area domination along the Line of Actual Control (LAC), Northern Borders in Operation FALCON (OP FALCON) notified area. The area being at super high altitude, had heavy snow fall of approximately 10-15 feet. On 17.05.2015, the applicant along with the patrol was moving on foot carrying heavy loads and while crossing Chamrao Nala, the applicant slipped over a thick layer of ice slate and sustained multiple injuries of Poly trauma with hemorrhagic shock, right femur fracture, left fibula fracture and right collar's fracture. An initial report vide signal message was forwarded on 18.05.2015 and subsequently, the unit vide a detailed report dated 19.05.2015 held that the injuries sustained by the applicant are attributable to military service and classified the injury as 'Battle Casualty'. The MP-5 branch vide letter dated 28.07.2015 held the injuries of the applicant as 'Battle Casualty' and forwarded documents of the applicant to the Integrated HQ of Ministry of Defence (Army) (IHQ), for necessary action.

3. The Court of Inquiry (CoI) vide report dated 16.09.2015 held that the applicant was on 'bonafide military duty' and therefore, his injuries are attributable to military service. However, the AG's Branch/ MP-5D, IHQ (Army) vide letter dated 06.10.2015 opined that circumstances leading to injuries are not covered under category 'D' and 'E' of Govt. of India, Ministry of Defence (MoD) letter dated 31.01.2001 and therefore, the unit was advised to process the case for 'Physical Casualty'. The applicant was initially placed in low medical category (LMC)A3 (T-12) for all the disabilities and thereafter was placed in LMC A2 (P) for the disability - *'Fracture Shaft Femur (Rt) Optl'* with effect from 15.11.2017. Subsequently, the applicant preferred a representation for declaration of his injuries as 'battle casualty' which was not satisfactory replied vide letter dated 01.02.2019. Hence, this OA.

Arguments by the Counsel of the Applicant

4. The counsel for the applicant submitted that there is no dispute on the issue that the injuries sustained by the applicant on 17.05.2015 are attributable to military service. In reference to the claim of treating the disabilities as 'Battle Casualty, the counsel submitted that MoD vide letter dated 03.02.2011 issued clarification

to letter dated 31.01.2001, with regard to 'Battle Casualty' under category 'D' and stated that certain circumstances will be covered under 'Category D', which included 'Death or disability arising as a result of accidental death/ injury sustained due to natural calamities such as flood avalanches, cyclone, fire and lightening or drowning in or while performing operational duties/ movement in action against enemy forces and armed hostilities in operational area to include deployment on **international Border or 'Line of Control'**. Thereafter, vide MoD letter dated 07.03.2018, the above para was further modified to - "accidental death/ injury sustained due to natural calamities such as flood avalanches, landslides, cyclone, fire and lightening or drowning in river while performing operational duties/ movement in action against enemy forces and armed hostilities in operational area to include deployment on **international Border or Line of Control or Line of Actual Control**. Therefore, the applicant is covered as a 'Battle Casualty' case on the strength of the letters dated 31.01.2001, 03.02.2011 and 07.03.2018.

5. Further, the counsel submitted that respondents in their signal 18.05.2015 and unit's letter dated 19.05.2015 had held the

injuries as 'Battle Casualty'. Moreover, the (CoI) vide report dated 16.09.2015 held that the injuries sustained by the applicant are attributable to military service. The applicant also relied on orders of AFT, RB, Chandigarh in OA No.1831/2012 titled as **Mahabir Singh Rao** Vs. **Union of India & Ors.** and OA No.240/2012 titled as **Rajesh Kumar** Vs. **Union of India & Ors.**

Arguments by the Counsel of the Respondents

6. The counsel for the respondents took us through the details of the case and submitted that the only reason for not conceding the applicant's case as battle casualty was that the applicant was not covered under Category D and E of MoD letter dated 31.01.2001. The counsel also explained the amendments made to letter dated 31.01.2001 vide letters dated 03.02.2011 and 07.03.2018 in relation to battle casualty. The counsel also pointed out that the description of the area of incident was mentioned as Chamrao Nala (Operation Falcon notified area) in unit's report dated 19.05.2015. It was modified to Chamrao Nala Operational Area along Northern Borders vide letter dated 28.08.2017 and prayed that the present case be decided on the basis of current rules and policies.

Consideration of the case

7. The facts germane to the case and are undisputed are that the applicant:

- (a) The applicant was enrolled into the Army on 26.02.1996.
- (b) On 17.05.2015, the applicant was part of a patrol along the Line of Actual Control (LAC) Northern Borders where he slipped over a thick layer of ice slate and sustained multiple injuries.
- (c) Initial report dated 18.05.2015 and unit's letter dated 19.05.2015 held that the injuries as 'Battle Casualty'.
- (d) CoI vide report dated 16.09.2015 held that the injuries sustained by the applicant are attributable to military service.
- (e) The MP-5 branch vide letter dated 28.07.2015 held the injuries of the applicant as 'Battle Casualty' and forwarded his documents of the applicant to the Integrated HQ of Ministry of Defence (Army) (IHQ).
- (f) AG's Branch/ MP-5D, IHQ (Army) vide letter dated 06.10.2015 opined that circumstances leading to injuries are not covered under category 'D' and 'E' of Govt. of India,

Ministry of Defence (MoD) letter dated 31.01.2001 and therefore, held that the injuries as physical casualty.

(g) The applicant was initially placed in low medical category (LMC) A3 (T-12) for all the disabilities and was placed in LMC A2 (P) with effect from 15.11.2017.

(h) The cases of battle casualty are covered by MoD letter dated 31.01.2001, further amended vide letter dated 03.02.2011 and 07.03.2018.

8. Having heard both parties at length, the only issue that is required to be decided is, whether the injuries sustained by the applicant on 17.05.2015 can be declared as battle casualty since the injuries were held as attributable to military service.

9. Before proceeding further we may reproduce Paragraph 4.1 of Government of India, Ministry of Defence letter dated 31.01.2001 which reads as under:-

PART II- PENSIONARY BENEFITS ON DEATH/ DISABILITY IN ATTRIBUTABLE/AGGRAVATED CASES

4.1 For determining the pensionary benefits for death or disability under different circumstances due to attributable/ aggravated causes, the cases will be broadly categorized as follows:-

Category A

Death or disability due to natural causes neither attributable to nor aggravated by military service as determined by the competent medical authorities. Examples would be ailments of nature of constitutional

diseases as assessed by medical authorities chronic ailments like heart and renal diseases, prolonged illness, accidents while not on duty.

Category B

Death or disability due to causes which are accepted as attributable to or aggravated by military service as determined by the competent medical authorities. Disease contracted because of continued exposure to a hostile work environment, subject to extreme weather conditions or occupational hazards resulting in death or disability would be examples.

Category C

Death or disability due to accidents in the performance of duties such as:-

- (i) Accidents while travelling on duty in Government Vehicles or public/private transport;*
- (ii) Accidents during air journeys;*
- (iii) Mishaps at sea while on duty"*
- (iv) Electrocution while on duty, etc.*
- (v) Accidents during participation in organized sports events/ adventure activities/ expeditions/ training.*

Category D

Death or disability due to acts of violence/attack by terrorists, anti-social elements, etc. whether on duty other than operational duty or even when not on duty. Bomb blasts in public places or transport, indiscriminate shooting incidents in public, etc. would be covered under this category, besides death/disability occurring while employed in the aid of civil power in dealing with natural calamities.

Category 'E':

Death or disability arising as a result of:

- (a) Enemy action in international war.*
- (b) Action during deployment with a peace keeping mission abroad.*
- (c) Border skirmishes*
- (d) During laying or clearance of mines including enemy mines as also mines weeping operations.*
- (e) On account of accidental explosions of mines while laying operationally oriented mine field or lifting or negotiating mine field laid by the enemy or own forces in operational areas near international borders or the line of control.*
- (f) War like situations, including cases which are attributable to/aggravated by:*

- (i) Extremists acts, exploding mines etc, while on way to an operational area.
- (ii) Battle inoculation training exercises or demonstration with live ammunitions.
- (iii) Kidnapping by extremists while on operational duty.
- (g) An act of violence/attack by extremists, anti-social elements etc while on operational duty.
- (h) Action against extremists, antisocial elements, etc. Detach/disability while employed in the aid of civil power in quelling agitation, riots or revolt by demonstrators will be covered under this category.
- (j) Operations specially notified by the Govt. from time to time.

10. Government of India, Ministry of Defence letter dated 03.02.2011 is reproduced below:-

No. 2(1)/2011-D(Pen/Policy)
Government of India
Ministry of Defence
Department of Ex-servicemen Welfare

New Delhi Dated 3 Feb 2011

Subject: Implementation of the Government decision on the Recommendations of Fifth CPC regarding disability pension/war injury pension/special family pension/liberalized family pension/dependent pension/ liberalized dependent pension for the Armed Forces Officers and Personnel Below Officer Rank

Sir,

The under signed is directed to refer to this Ministry's letter No. 1(2)/97/D(Pen C) dated 31-1-2001, in terms of Para 4.1 of which various categories have been enumerated for determining the pensionary benefits for death or disability under different circumstances due to attributable or aggravated causes. Certain references were received in this Ministry from Services HQrs and Pension Sanctioning Agencies for clarifying various circumstances required to be covered under category 'D' & 'E' of Para 4.1 of this Ministry's letter dated 31.1.2001. The matter has been examined in this Ministry and it has been decided to cover following circumstances under category 'D' and 'E' of Para 4.1 of this Ministry's letter dated 31.1.2001, as mentioned below-

Under Category 'D'

Death or disability arising as a result of-

- (i) *Unintentional killing by own troops during the course of duty in an operational area.*
- (ii) *Electrocution/attacks by wild animals and snake bite/drowning during course of action in counter insurgency/war.*
- (iii) *Accidental death/injury sustained due to natural calamities such as flood, avalanches, landslides, cyclone, fire and lightening or drowning in river while performing operational duties/movement in action against enemy forces and armed hostilities in operational area to include deployment on international border of line of control*

Under Category 'E'

- (i) *Death or disability arising as a result of poisoning of water by enemy agents while deployed in operational area in active hostilities.*
2. *Cases already settled prior to the date of issue of this letter will not be reopened.*
3. *This issues with the concurrence of Finance Division of this Ministry vide UO No.107/F/P/10 dated 28.1.11.*
4. *Hindi version will follow.*

Sd/-

11. The above letter dated 03.02.2011 was subsequently amended by MoD letter dated 07.03.2018 which is reproduced below:-

*No. 2(3)/2012/D(Pen/Policy)Vol. II
Government of India
Ministry of Defence
Department of Ex-Servicemen Welfare,*

New Delhi, 7th March, 2018

To

*The Chief of the Army Staff
The Chief of the Naval Staff
The Chief of the Air Staff*

Sub: Inclusion of accidental death/injury due to natural calamities while performing in operational duties/movements during deployment on Line of Actual Control (LAC) under Category D of Para 1 Clause (iii) of Ministry of Defence letter No. 2(1)/2011/D(Pen/Policy) dated 3rd February 2011.

Sir,

The undersigned is directed to refer to this Ministry's letter No.2(1)/2011/D(Pen/Policy) dated 03.02.2011 vide which it was inter-alia decided to cover three new circumstances under category D of Para 4.1 of this Ministry's letter No. 1(2)/97/D(Pen-C) dated 31.01.2001.

2. Following amendments are carried out under category 'D' of Para 1 Clause (iii) of Ministry of Defence letter No. 2(1)/2011/D(Pen/Policy) dated 3rd February 2011

For - Accidental death/injury sustained due to natural calamities such as flood, avalanches, landslides, cyclone, fire and lightening or drowning in river while performing operational duties/movement in action against enemy forces and armed hostilities in operational area to include deployment on international border of line of control.

Read - Accidental death/injury sustained due to natural calamities such as flood, avalanches, landslides, cyclone, fire and lightening or drowning in river while performing operational duties/movement in action against enemy forces and armed hostilities in operational area to include deployment on International Border or Line of Control or Line of Actual Control.

3. Cases already settled prior to the date of issue of this letter will not be reopened.

4. This issues with the concurrence of Finance Division of this Ministry vide their ID No. 10(4)/2010/Fin/Pen dated 01.03.2018.

5. Hindi version will follow.

Sd/-

12. It is pertinent to note that in 2015, the Raksha Mantri's Committee of Experts in its report on 'Review of service and pension matters including potential disputes, minimizing litigation and strengthening institutional mechanisms related to redressal of grievances' in relation to award of war injury or liberalised benefits or declaration of battle casualty occurring in operation FALCON observed that – "Another flaw that we have noticed in the system of award of war injury and liberalized benefits or declaration of 'battle casualties' is that disabilities and deaths occurring in Operation

Falcon are not being included for grant of said benefits or declaration of battle casualty status and consequential benefits since the said Operation has not been officially notified ostensibly due to diplomatic reasons. We are constrained to say that such a situation is extremely unfortunate since benefits to similarly placed Individuals in parallel on-ground situations cannot be held back due to such hyper- technical reasons or lack of paper formalities. In case there is any genuine reason for not notifying the operation, then at least it could be provided that deaths and disabilities in Operation Falcon would be treated as battle casualties for financial purposes but physical casualties for statistical purposes. It may be pointed out here that such a system was in vogue for casualties under SAO 8/5/85 (See Notes 11 and 12 under Para 4 of SAO 8/5/85 added vide corrigendum dated 15-05-1991)."

13. The said committee concluded – *'The Committee thus recommends that in terms of the very liberal nature of applicable policy and decisions of Constitutional Courts, the deaths and disabilities arising in notified operations may continue to be granted disability and liberalized pensionary awards without hyper-technically insisting on hairsplitting requirements that do not*

actually exist in the rules. It is further recommended that the Services HQ may continue awarding battle casualty status to their personnel under their own Instructions since the status of 'battle casualty' is not just restricted to pensionary awards but encompasses many other issues such benefits and grants on welfare funds, ex-gratia by States, posting and cadre management etc. The Committee also recommends that all such cases taken up by the Services HQ and pending with the Defence Accounts Department for release of benefits may be cleared within a period of four months by intervention of the MoD so as not to prolong the agony of the affected disabled soldiers or the affected military widows and all necessary amendments in service record and pensionary documents be carried out consequently. Deaths and disabilities occurring in Operation Falcon must also be covered under the same terms and conditions as under other notified operations and if need be, the said operation may be declared as equal to other notified operations for financial benefits.

14. Thus while the unit had initially reflected the operational area as 'OP FALCON (Northern Borders)' vide letter dated 19.05.2015 (Annexure R-2). Subsequently, they amended the operational

area to 'Operational Area along Norther Borders' vide letter dated 28.08.2017 (Annexuere R-17).

15. There is no dispute in the fact that the injuries suffered by the applicant on 17.05.2015 were held attributable to military service vide detailed report submitted by the unit on 19.05.2015. Moreover, the CoI vide report dated 16.09.2015 held that the injuries sustained by the applicant are attributable to military service. The stance of the respondents that the high altitude field area where the applicant got injured is not officially classified/considered as operational area is misplaced. While the Govt may have declared certain policies in pursuant of its foreign policy along the Northern Borders, such a policy cannot be the reason for denying a soldier his legitimate due when injured in such areas.

16. While the Army HQ/MS Branch letter dated 10.12.2013 (Annexure R-15) only lays down the policy of enfacing CRs for operational service along the Northern Borders, the letter does not address other administrative issues. MoD vide letter dated 07.03.2018 clarified that – *"Accidental death/injury sustained due to natural calamities such as flood, avalanches, landslides, cyclone, fire and lightening or drowning in river while performing*

operational duties/movement in action against enemy forces and armed hostilities in operational area to include deployment on International Border or Line of Control or Line of Actual Control."

This letter does not implicitly include Northern Borders/OP FALCON area.

17. We, therefore, direct that in a similar manner, suitable orders be issued regarding declaration of battle casualty status with consequential financial benefits to cases of death/disabilities in the operational areas of OP FALCON along the Northern Borders.

18. In view of the above consideration and the facts and circumstances of the present case, in the interest of justice, the OA is allowed and we direct the following:

(a) The applicant be declared as a 'Battle Casualty' for the injuries sustained on 17.05.2015 while carrying out operational duties along the Northern Borders whilst deployed in OP FALCON.

(b) Respondents to review MoD letter No. 2(3)/2012/D(Pen/Policy) Vol II dated 07.03.2018 and issue necessary amendments to include death and disabilities occurring in Operation Falcon to be covered under the same terms and

conditions as notified for deployment on International Borders,
Line of Control and Line of Actual Control.

19. No order as to costs.

20. Pending miscellaneous application(s), if any, stands closed.

Pronounced in open Court on this 12th day of December, 2023.

(RAJENDRA MENON)
CHAIRPERSON

(P.M. HARIZ)
MEMBER (A)

Neha