

COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

RA 64/2018 WITH MA 2093/2018
IN OA 718/2015

Maj Raghvendra Singh (Retd.) Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. I. S. Singh, Advocate
For Respondents : Mr. Neeraj, Sr. CGSC
Mr. Rudra, Advocate

Date- 22nd March, 2023

CORAM

HON'BLE MS. JUSTICE ANJANA MISHRA, MEMBER (J)
HON'BLE LT GEN C. P. MOHANTY, MEMBER (A)

ORDER

The present Review application has been filed for review of the order dated 29th August, 2018 by which this Tribunal had partially allowed the applicant's OA by granting him the benefit of broad banding and directing the respondents to pay disability pension at the rate of 50% (20% broad banded to 50%). It has further been directed that the order was to be complied with within three months failing which interest at the rate of 8% was to be paid. However, the applicant's prayer with regard to the war injury pension was rejected on the ground that the applicant's qualifying disability/injury does not fall within the

meaning of Battle Casualty as indicated in para 1 (d) of AO 1/2003 as the same did not occur “in action in operational area.” Para 12 and 13 of the judgment taken by the applicant to be the grounds for the attention of the Court for review of the order are quoted herein below:-

“12. The issue before the court is whether the applicant, who is receiving disability pension @ 20% for life since the date of release from service, i.e. 01.09.2006, should instead be granted war injury pension on account of the fact that he sustained the injury while moving on foot from one post to the other in an operational area on 02.04.2006 during ‘Operation Rakshak’.

13. The applicant has referred to Army Order AO/1/2003 wherein ‘accidental injuries and deaths which occur in action in operational areas’ have been included within the ambit of battle casualties. Hence the question which needs consideration is whether an accidental fall during the act of walking between two military posts in an operational area is deemed to be ‘in action’, as required vide Para 1(d) of Appendix A to AO/1/2003, and thus entitle the applicant to battle casualty status and war injury pension. What is clearly of significance in this case is that, the superior military authorities in this case i.e. the Commanding Officer and Brigade Commander have not found it fit to confer ‘battle casualty’ status on the accidental injury by way of their opinion thereto during the Court of Inquiry and/or by subsequent publishing of Para-II order to this effect. We find it significant that the unit has only ascribed ‘attributability to military service’ and thus, the applicant has been granted disability pension in keeping with extant rules as the degree of disablement was assessed at 20% during the RMB held before his release. The officer’s unit has not certified the injury as a battle casualty and thus Para II order to the effect has not been published. Clearly, the fact that the injury occurred as a consequence of an accidental fall during a routine movement between military posts, when no action against enemy forces, terrorists or insurgents

was underway, would have come in the way of certifying the injury as a battle casualty. The mere fact that the accident occurred in an operational area does not confer it a battle casualty status. To that extent, we find that the respondents were justified in granting only disability pension to the applicant.”

2. Learned counsel for the applicant submitted that para 12 and 13 of the order dated 29th August, 2018 reproduced above do indicate that the cause of rejection of the applicant's prayer for grant of war injury pension is that the applicant's disability does not qualify as a “Battle Casualty” as defined in AO 1/2003. He submitted that the sole ground mentioned therein is with reference to AO 1/2003 but this AO 1/2003 does not deal with entitlement/ground of war injury pension. It only lays down the provision with regard to classification in reporting of casualty suffered by soldiers in different circumstances.

Relevant part of AO 1/2003 reads thus:

“Battle Casualties

1. The circumstances for classifying personnel as battle casualties are as under:
 - a. Casualties due to encounter with troops or armed personnel or Border Police of a foreign country, or during operations while in service with peace keeping mission abroad under Government orders.
 - b. Air raid casualties sustained as a direct or indirect result of enemy air action.
 - c. Casualties during action against armed hostiles and in aid to civil authorities, to maintain internal security and maintenance of essential services.
 - d. Accidental injuries and deaths which occur in action in an operational area.

- e. Accidental injuries which are not sustained in action and not in proximity to the enemy but have been caused by fixed apparatus e.g., land mines, booby traps, barbed wire or any other obstacle land as defences against the enemy, as distinct from those employed for training purposes and if the personnel killed, wounded or injured were on duty and are not to blame, will be classified as battle casualties, notwithstanding the place of occurrence or agency laying those, viz own troops or enemy, provided the casualties occur within the period laid down by the Government.
- f. Casualties during peace time as a result of fighting in war like operations or border skirmishes with a neighbouring country.
- g. Casualties occurring while operating on the International Border or Line of Control due to natural calamities and illness caused by climatic conditions.
- h. Casualties occurring in aid to civil authorities while performing relief operations during natural calamities like flood relief and earthquake.
- j. Casualties occurring while carrying on battle modulation training or operationally oriented training in preparation of actual operations due to gunshot wounds explosion of the ammunition explosives mines or by drowning/electrocution.
- k. Army personnel killed, wounded unintentionally by own troops during course of duty in an operational area.
- l. Casualties due to vehicle accidents while performing Bona fide military duties in war/border skirmishes with neighbouring countries including action on line of control and in counter insurgency operations.
- m. Casualties occurring as a result of IED bomb blast by saboteurs/ANEs in trains/buses/ships/aircrafts during mobilization for deployment in war/war like operations.
- n. Casualties occurring due to electrocution/snakebite/drowning during the course of action in counter insurgency war.
- o. Accidental death/injuries sustained during the course of move of arms/explosives/ammunitions for supply of own forces engaged in active hostilities.
- p. Death due to poisoning of water by enemy agents resulting in death/physical disabilities of own troops deployed in operational area in active hostilities.
- q. Accidental death/injuries sustained due to natural calamities such as floods, avalanches, landslide, cyclones, fire and lightning or drowning in river while performing

operational duties movements of action against enemy forces and armed hostiles in operational area to include deployment on International Border or Line of Control.

- r. Army personnel killed/wounded by own troops running a mock in an operational area.
- s. Army personnel killed/wounded due to spread of terror during leave/in transit because of their being army personnel."

3. Similarly, entitlement/grant of war injury pension does not necessarily depend upon qualifying injury/disability being categorized as "Battle Casualty". He further submitted that the Govt of India, Ministry of Defence has issued separate and specific notification bearing letter No. 1(2)/97/D (Pen-C) dated 31st January, 2001 laying down the qualifying requirement for grant of various types of pensions including war injury pension and his case is squarely covered by specific provision laid under the said Govt. notification and it is this notification, referred to hereinabove, which is relevant for the purpose of grant of war injury pension which has not been considered by this Tribunal while passing the judgment dated 29th August, 2018.

4. He accordingly, submitted that the judgment dated 29th August, 2018 thus suffers from an error apparent on the face of record inasmuch as it is based on a wrong provision and his claim for grant of war injury pension was not

considered in the light of the correct circular. This having been considered under a wrong provision which is neither relevant nor germane to the issue involved, the judgment suffers from a patent error apparent on the face of record and thus it is a fit case for this Tribunal to interfere under Section 14 (a) (b) of the Armed Forces Tribunal Act, 2007 read with Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008.

5. In the counter affidavit filed in this case it has clearly been stated that the consideration given by the Tribunal in OA 718/2015 is based on an extant policy and there is no error apparent on the face of record. It is submitted that AO 1/2003 clearly establishes a co-relation for grant of war injury pension and to earn war injury element of war injury pension, the disability/injury sustained by the individual should be declared as a "Battle Casualty". The respondents have also brought on record a copy of the letter dated 31st January, 2001 which refers to the category 'E' of para 4 (4.1) of the *ibid* policy for determining pensionary benefits.

6. Reverting back to AO 1/2003, they submitted that the war injury disability should also be substantiated by other casualties. However, the applicant could not produce any of the

aforementioned documents to prove that his disability falls under the category "Battle Casualty" nor has the case of the applicant being processed by the Commanding officer or the Brigade Commander as a Battle Casualty so as to entitle him to the said benefit. It is further submitted that there being absence of any other documentary evidence, the applicant's case is squarely covered under the policy aforementioned and there is no apparent error on the face of record calling for review of the matter.

7. Without going into the details of the merits of the averments made before us, we find that the Court has passed a reasoned order in the light of the provisions of the policy which was produced before it on the earlier occasion. Furthermore, the Government of India, Ministry of Defence notification dated 31st January, 2001 also was not available on record having not been produced at the time of hearing of the OA by either of the parties and, therefore, it cannot be said that the matter has been decided on the basis of a wrong notification. It is well settled that an error apparent on the face of record should be manifest from a plain reading of the order under review but whenever there arises any occasion to go into

indepth reasoning, it cannot be said that there is an error apparent on the face of record. The said issue has been settled in a catena of judgments of the Apex Court. The judgment in the case of Manju Tiwari Vs. Union of India [W.P.(C) No. 5262/2003] referred to by learned counsel for the applicant would not fall within the ratio as is existent in the present case. Furthermore the recent judgment of the Hon'ble Supreme Court in, Pancham Lal Pandey Vs. Neeraj Kumar Mishra and Ors [Special Leave Petition (C) No. 3329 of 2021] in para 15 and 16, it is held as under:

“15. The provision of review is not to scrutinize the correctness of the decision rendered rather to correct the error, if any, which is visible on the face of the order/record without going into as to whether there is a possibility of another opinion different from the one expressed.

16. The Division Bench in allowing the review petition has dealt with the matter as it is seized of the special appeal itself and has virtually reversed the decision by taking a completely new stand for the payment of salary to teachers' subject-wise. It amounts to rehearing and rewriting the judgment in appeal without there being any error apparent on the face in the earlier order. The Division Bench thus clearly exceeded its review jurisdiction in passing the impugned order.”

8. Since any interference in the matter will amount to taking completely a new stand and modifying substantially the relief granted earlier which can only be done in an appeal, we are of

the considered opinion that there being no error apparent on the face of the record nor there being any occasion to interfere on merit for introduction of a new document which with due diligence could have been produced by the parties earlier, we are inclined to be guided by the ratio of the decision in the case of Pancham Lal Pandey (supra). There is also a delay of 40 days in filing the review application for which there is no satisfactory explanation. In view of the above, the Review Application is dismissed both on the ground of delay and merit.

9. Pronounced in open Court on this 22 day of March, 2023.

(ANJANA MISHRA)
MEMBER (J)

(C. P. MOHANTY)
MEMBER (A)

/vks/