

issue

COURT No.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI
OA 1514/2016 WITH MA 4456/2023

Rfn Jagdish Prasad ... Applicant
Versus
Union of India and Ors. ... Respondents

For Applicant : Mr. Rajesh Nandal, Advocate
For Respondents : Mr. Prabodh Kumar, Sr. CGSC

CORAM

HON'BLE MR.JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C.P.MOHANTY, MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, and aggrieved by the non- grant of Battle Casualty.

2. The applicant was enrolled in the Indian Army on 09.04.2002 and was posted in HAA/Fd/Op Rakshak, J&K under HQ 192 Mtn Bde from 22.12.2011 to 02.05.2013, wherein on 30.04.2013 while performing sentry duties at forward post in proximity of Line of Control in adverse weather conditions, the individual suddenly felt acute pain in lower limb with sensory loss and bluish discoloration of toes of left foot and was immediately evacuated and admitted to Army Hospital (R&R) on 04.05.2013. The individual was diagnosed with Acute Limb Ischemia Left Leg Lower Limb and

Foot with sensory loss, weakness of left ankle and foot. The individual had to undergo emergency Transformal and Trans PTA Thrombectomy and Four Compartment Fasciotomy of Left Leg on 05.05.2013 due to which the individual's case was termed as 'Emasculation' by his unit, wherein the use of left foot and toes has been permanently deprived off. The case of the applicant for grant of 'Battle Casualty' was processed to the IHQ MoD (Army) but the same has been turned down vide their letter No. 2822/AG/Gen/MP(D)-4086399H dated 07.10.2015.

3. We have heard both the parties and on a perusal of records placed on record, we find that it is undisputed that the case of the applicant was taken up for the designation as 'Battle Casualty' and the same has been endorsed by the Commander, 192 Mtn Bde, holding the rank of Brigadier, but the same has been rejected on the ground that the circumstances leading to the same does not fall in the category 'D' and 'E' terms of GoI, MoD letter No. 1/(2)/97/D(Pen-C) dated 31.01.2001. In this background, the limited question which comes up for our consideration herein is whether the applicant is entitled for grant of status of 'Battle Casualty' or not ?

4. We find that the only concern raised by the respondents is that the act during which injury has been suffered by the applicant does not fall within the category 'E' in terms of GoI, MoD Letter no. 1/(2)/97/D(Pen-C) dated 31.01.2001. On a cursory look at category 'E' of the aforesaid letter, we find that the case of the applicant falls within the criteria laid down by category 'E' as under, as he suffered the injury while operating during "OP RAKSHAK" :

"Category E:

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(i) Operations specifically notified by the Govt. from time to time"

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5. It would be appropriate for us to refer to the judgement of Hon'ble Delhi High Court in WP(C) 4488/2012 decided 21.02.2013, Maj AK Suhag Vs. UOI and Others, wherein the officer was ordered to report for briefing while "OPERATION RAKSHAK-III" was on and met with an accident leaving him with 100% disability. He was later discharged from service. The Armed Forces Tribunal rejected his case holding that the petitioner's case falls under category C (accidents while travelling on duty in Government vehicles or public/private transport) and not under category E (operations specially notified by the Government

from time to time). The Hon'ble High Court observed as given below:-

"11. It is apparent from the above materials that the petitioner was deployed in Kargil and, according to his unit's communication dated 6-7-2007, was the Transport commander. He was asked to report for briefing. This was evidently when OPERATION RAKSHAK – III was on. Whilst in transit, his jeep met with an accident, and he suffered serious head injury, besides other injuries. There seems to be no doubt in this Court's mind that the injuries were classifiable as falling under category E(j) i.e during "Operations specially notified by the Government from time to time."

12. What persuaded the Tribunal to hold otherwise is that the petitioner's injuries were not incurred during actual operations. In doing so, the Tribunal restricted the eventualities in category-E (j) to actual operations, i.e. injuries incurred during military combat or such like situations or as a result of explosion of mines etc. This would appear from its observation that only if someone is victim to extremism or any other contingency as a result of injury, would it be attributable to operation. With great respect, such a narrow interpretation of what is otherwise a widely phrased condition, is unwarranted. This would necessarily imply that those who are on the way – like the petitioner, in an operation-notified area and are intrinsically connected with the success of such operations cannot ever receive war-injury pension even though their aid and assistance is essential and perhaps crucial for its success. The classification of the residual head, i.e. "operations specially notified by the government from time to time" has to be read along with the broad objective of the policy, i.e. - those who imperil themselves – either directly or indirectly – and are in the line of fire during the operations, would be covered if the injuries occur in that area or in the notified area of operation..."

6. We find resonance in the opinion of the Hon'ble High Court in Maj Suhag (supra) that this Court cannot resist observing that when individuals place their lives on peril in the line of duty, the sacrifices that they are called upon to make cannot ever be lost sight of through a process of abstract rationalisation as appears to have prevailed with the

respondents. We are of the opinion that soldiers who imperil themselves in border areas in the vicinity of the LC, LoC or the international border have to be treated differentially and merely giving their death/disability attributability to military service is a dis-service to these brave men besides being an inadequate recompense for soldiers who are willing to lay down their life in the service of the nation. Giving mere attributability to military service would be an inadequate recompense in such cases. We, therefore, opine that a positive interpretation of the existing rules and regulations needs to be taken.

7. We should be failing in our duty if we do not refer to a very recent judgment passed by a coordinate Bench of this Tribunal referred in the case of Ex Gdr Bhoopender Singh Vs. Union of India and Ors. (OA No.1104/2018 decided on 19.11.2024) wherein one of us (Justice Rajendra Menon, Chairperson) was also a Member. In that case a claim for grant of 'Battle Casualty' was rejected by this Tribunal. However, on a perusal of the records, we find that the facts of both the cases are different and even the disability suffered and the accident that took place are entirely different on both facts and circumstances. In the case of Ex Gdr Bhoopender Singh (supra), the applicant suffered a disability i.e. ACL Tear

Knee Medical Meniscus (OPTD) which was classified to military service and the disability was assessed as 20%. However, the disability was suffered by the applicant while performing normal routine patrolling duty in a field area in Panzgam, Kupwara, J&K, where he incidentally slipped and sustained injury on his left knee. Even though he claimed battle casualty on the ground that he is deployed in a field area in OP Rakshak which was a Counter Insurgency Area, while analysing the matter, the co-ordinate bench, based on the policies and guidelines contained in the Ministry of Defence communication dated 31.01.2001 and the policy dated 06.04.2011, was of the view that the injury sustained by the applicant did not fall within the circumstances as are explained in the policy. The issue has been dealt with in extenso by the Bench from Para 14 onwards and the final conclusion arrived at is to the effect that the applicant's claim that his case falls under Sub Clause (d) and (e) of Category E(f)(ii) of the policy was not found to be unsustainable in law as there was no war like situation or any action which was the result of the accident. It was a normal patrolling duty and, therefore, after taking note of various factors as detailed in Para 14, 15 and 16 of the Order, the relief was not granted to the applicant. In this case, the situation is

completely different. The applicant was performing sentry duties at the forward post in the proximity of Line of Control in adverse weather conditions and on account of sudden acute pain in the lower limb with sensory loss and bluish discoloration of toes of left foot and was evacuated and suffered the ailment. He was put to various emergency treatments and a perusal of the facts in this case goes to show that he was classified as a case of battle causality only because of the nature of duties performed by him and the manner in which the injury was sustained while performing operational duties as a Sentry in a forward area. Under these circumstances, we feel that the facts and circumstances of the present case are entirely different from that in the case of Ex Gdr Bhoopender Singh (supra) decided by a coordinate Bench and the principles laid down therein cannot be *ipso facto* applied to the present case for dismissing the claim of the applicant.

8. In view of the aforesaid analysis, and the facts and circumstances of the case, we frame our opinion based on interpretation of the impugned policy letter which classifies a personnel as Battle Casualty, and therefore, we are of considered opinion that the impugned order deserves to be quashed and applicant's prayer to grant him the status of

'Battle Casualty' is justified, along with all consequential benefits. Respondents to give effect to aforesaid order within four weeks from the date of receipt of this order.

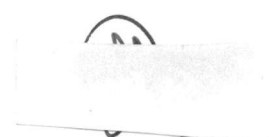
9. Consequently, the OA 1514/2016 is allowed.

10. Pending application(s), if any, also stand disposed of.

11. No order as to costs.

Pronounced in the open Court on 9 day of December, 2024.


(JUSTICE RAJENDRA MENON)
CHAIRPERSON


(LT GEN C.P. MOHANTY)
MEMBER (A)

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