

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

**OA 732/2015 with MA 781/2015**

**Capt Ajay Kumar Gulati (Retd.)** **... Applicant**

**Versus**

**Union of India & Ors.** **... Respondents**

**For Applicant** : Ms. Archana Ramesh, Advocate  
**For Respondents** : Mr. Neeraj, Sr. CGSC for R 1,2 & 4

**CORAM :**

**HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)**  
**HON'BLE MS. RASIKA CHAUBE, MEMBER (A)**

**ORDER**

**MA 781/2015**

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 by the applicant seeking condonation of delay of **1103** days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of ***UoI & Ors vs Tarsem Singh 2009(1)AISLJ 371*** and in ***Ex Sep Chain Singh vs Union of India & Ors (Civil Appeal No. 30073/2017)***, the MA 781/2015 is allowed despite opposition on behalf of the respondents and the delay

in filing the OA 732/2015 is thus condoned. The MA is disposed of accordingly.

**OA 732/2015**

2. The applicant no. SS-39379L 'Capt Ajay Kumar Gulati (Retd.)' vide the present OA makes the following prayers:-

***"8A. Issue directions to modify the PPO issued by the PCDA (P) Allahabad dated 06 Mar 2012 which is placed as Annexure A-1 so as to grant 20% (duly rounded to 50%) War Injury Pension from the date of his release from military service i.e. 31 Aug 2006 for life with arrears and penal interest in the light of Army Order on Battle Casualty of Feb 2003 which is placed as Annexure A-5 as also in the light of the Judgments of the Hon'ble Delhi High Court in Re Rifleman Jagdeep Singh Versus Union of India and the Judgment of the Hon'ble Armed Forces Tribunal in Re Havildar Rajvir Singh Versus Union of India which are placed as Annexure A-7 (Colly).***

***B. Issue directions to grant consequential AGIF benefits to the Applicant in the light of the Hon'ble Punjab and Haryana High Court Judgment in Re Paramjit Singh Versus Union of India dated 12 Feb 2008 which has been upheld by the Hon'ble Supreme Court vide Order dated 04 April 2011 placed as Annexure A9 (Colly).***

***C. Pass such other and further orders/directions to the Respondents for adequate compensation as may be deemed just and proper by the Hon'ble Armed Forces Tribunal in the attendant genuine circumstances of the case."***

3. During the course of submissions made on behalf of the applicant on 23.10.2024, it was submitted that the prayer made by the applicant vide prayer clause at 8B

detailed hereinabove is not pressed. Respondent no 3 was thus vide order dated 23.10.2024 discharged in the matter.

4. The applicant was commissioned in the Indian Army on 01.09.2001 and was released from military service on 31.08.2006 as a short service commissioned officer after completion of contractual period.

5. As averred in the counter affidavit dated 13.07.2016 of the respondent nos 1, 2 and 4 at the time of retirement/release from service, the officer was brought before a duly constituted Release Medical Board held at the Command Hospital (Western Command) on 22 Aug 2006 which opined his ID to be "PIVD L5-S1 (OPTD). The Release Medical Board had assessed the ID as **'aggravated by military service with composite degree of disablement @20% for life'** vide AG's Branch letter. No. 52334/RAJPUT/SS-39379/MP-6 (D)/1349/06/DP/AG/PS-4 (Imp-II) dated 14 Dec 2007.

6. It has been stated both on behalf of the applicant and the respondent nos 1, 2 and 4 that the officer is presently in

receipt of the disability element of disability pension @ 20% for life.

7. The applicant sustained an injury in December 2002 due to a fall from Chandni Top of Pir Panjal Ranges where his unit was deployed in OPERATION PARAKRAM. As per the RMB proceedings confirmed on 29.08.2006, the statement of the Commanding Officer opined it to be an injury sustained whilst performing bona fide military duties. The statement of case in Part IV of the said RMB indicates that the applicant was found to be suffering from the disability of PIVD L5-S1 (OPTD) with its origin on 28.01.2006 at HAA Kargil (J&K), 2 RAJPUT (Att with HQ 'N' Area Chandigarh) which the Medical Board opined to be due to stress and strain of service with a percentage of disablement of 20% for life.

#### **CONTENTIONS OF THE APPLICANT**

8. The applicant has submitted that the disability be classified as a Battle Casualty and that the applicant be thus granted War Injury Pension @ 20% to be rounded off to 50% for life.

9. The applicant has submitted that in as much as he had suffered the disability of PIVD L5-S1 (OPTD) which he suffered in a field area due to a fall from Chandni Top of Pir Panjal Ranges under HQ 123 Infantry Brigade Group, which falls within the Orbat of 27 Mountain Division as a part of the Strike Corps (16 Corps) in 'Operation Parakram' in Jammu and Kashmir, the injury sustained by him has to be classified as a Battle Casualty in terms of the Army Order of Feb 2003 bearing no AO/1/2003, with consequential War Injury Pension@20% to be rounded off to 50% for life being granted to him.

10. In support of his contentions to seek the grant of War Injury Pension, reliance was placed on behalf of the applicant on:-

- the order dated 04.04.2013 of the AFT Principal Bench, New Delhi in **Hav Rajvir** versus **Chief of the Army Staff & Ors** and;
- the judgment dated 15.01.2008 of the Hon'ble High Court of Delhi in **Rifleman Jagdeep Singh (Retd.) versus Union of India and others** in WP (C) no. 19002 of 2006;

11. For seeking the grant of the broad banding of the War injury pension from 20% to 50% for life, reliance was placed on behalf of the applicant on:-

- the order dated 27.02.2015 of the AFT Principal Bench New Delhi in OA 419 of 2014 in the case of **Maj Ajit Singh Rathi** versus **Union of India and others** and
- the order dated 06.08.2015 of the AFT Principal Bench New Delhi in OA 234 of 2015 in the case of **Lt Col AK Balyan (Retd)** versus **UOI & Ors,**

*Inter alia*, reliance was also placed on behalf of the applicant on the order dated 12.02.2008 of the Hon'ble High Court of Punjab & Haryana in **Paramjit Singh vs Union of India & Ors.**

#### **CONTENTIONS OF THE RESPONDENT NOS.1,2 AND 4**

12. The respondent nos 1, 2 and 4 vide their counter affidavit have submitted to the effect that the applicant's disability cannot be classified as a battle accident as per clauses/circumstances mentioned in the AO1/2003/MP and that as per Paragraph 69(a) and (b) of the said Army Order, the requirement under Parameter 1 is that the injury should

be sustained while in action against the enemy, and under Parameter 2, the injury should be grievous in nature. The respondent nos 1, 2 and 4 thus submit that in as much as both these parameters have not been met, the casualty in the instant case cannot be classified as a Battle Casualty.

13. The respondents submit that the injury sustained by the applicant in December 2002 was due to his fall from the Chandni Top of Pir Panjal Ranges where his unit was deployed in Operation Parakram but it was not classified as a Battle Casualty by the unit officer nor by the higher Headquarters. It is thus submitted by the respondents that the said injury has been correctly described as a physical casualty with disability attributable to military service, and that the applicant has thus been granted the disability element of disability pension at 20% for life and that in view of the facts qua the injury of the applicant, his casualty status has not been mentioned as a battle accident in his service records.

14. The respondents further submit that in view of the policy of the Govt of India, MoD letter no 1(2)/97/D(Pen-C) dated 31.01.2001, the applicant is not entitled to the broad

banding (rounding off) since he was not a case of invalidation. The respondents have prayed that the OA be thus dismissed.

## **ANALYSIS**

### **BATTLE CASUALTY**

15. As regards the contention of the applicant that the applicant's injury be classified as a Battle Casualty to entitle the applicant to the grant of the War Injury Pension in terms of the Army Order 1/2003, it is essential to observe that as per the definitions in the said Army Order, physical casualties and battle casualties have been defined as under:-

#### **“3. Physical Casualties:-**

*Physical Casualties are those, which occur in non operational areas or in operational where there is no fighting Casualties of this type consist of the following categories:-*

- a) Died or Killed*
- b) Seriously or dangerously ill*
- c) Wounded or injured (including self - inflicted)*
- d) Missing*

#### **4. Battle Casualties:-**

*Battle Casualties are those casualties sustained in action against enemy forces or whilst repelling enemy air attacks. Casualties of this type consist of the following categories:-*

- a) Killed in action*

- b) Died of wounds or injuries (other than self inflicted)
- c) Wounded or injured (other than self-inflicted)
- d) Missing"

16. Furthermore, the circumstances for classification of physical casualties are listed in Appendix A as per para 5 of the said Army Order which reads to the effect:-

*"5. Circumstances for classification of Physical/Battle Casualties are listed in Appendix 'A'.*

17. Appendix A to the said Army Order 1/2003 with reference to Para 5 thereof details the circumstances for classifying casualties as battle or physical and reads in relation thereto as under:-

1. Battle Casualties

*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 which in service with peace keeping missions 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 hostilities 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) laid 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 out battle inoculation/training or operationally oriented training in preparation for actual operations due to gunshot wounds/explosion of live ammunition/ explosive/ mines or by deleted vide AO 16/2005/018.

(k) Army personnel killed/wounded unintentionally by own troops during course of duty in an operational area.

(l) Casualties due to vehicle accident while performing bonafide 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 blasts by saboteurs/ANEs in trains/ buses/ships /aircrafts during mobilization for deployment in war/war like operations.

(n) Casualties occurring due to electrocution/snake bite/drowning during the course of action in counter insurgency war.

(o) Accidental death/injuries sustained during the course of move of arms/explosives/ammunition 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) Accident death/injuries sustained due to natural calamities such as floods, avalanches, land slide, cyclones, fire and lightening or drowning in river while performing operational duties/movements in action against enemy forces hostiles in operational area to include deployment on International order or Line of Control.

(r) Army personnel killed/wounded by own troops running amok in an operational area.

(s) Army personal killed/wounded due to spread of terror during leave/in transit because of their being Army personnel."

and in relation to physical casualties reads as under:-

## 2. Physical Casualties

Death caused due to natural causes/illness/accident/ suicide/murder due to family disputes in operational and non-operational area will be treated as Physical Casualties.

Thus, in terms of Para 1D of the Circumstances for Classification of Battle Casualties as per Appendix A to Army Order 1 of 2003, it is an accidental injury or death which occurs **in action** in an operational area, which can be classified as a Battle Casualty and not simplicities accidental injury or death in an operational area.

18. The contention raised on behalf of the applicant that merely because of the geographical location of the fall of the applicant from Chandni Top of Pir Panjal Ranges which was at district Udhampur at Jammu and Kashmir and which

injury was sustained by the applicant whilst he was deployed in Operation Parakram, the said injury in terms of para 6 of the Army Order 1/2003 which defines operational area:-

**"6. Operational Area**

*Any geographical area occupied by a field force ordered to participate in specific operations/active hostilities against enemy or insurgents. It will include all the areas within which operations are intended to be conducted as well as the locations of its integral, logistical and administrative installations providing support to the field force."*

be treated as a Battle Casualty,- cannot be accepted.

19. This is so, in as much as, as per the said Army Order in the definition in para 4 reproduced hereinabove, Battle Casualties are those casualties sustained in action against enemy forces, or whilst repelling enemy air attacks and not accidents that take place, and not casualties of any kind that are caused, merely because of an accident, in a geographical area, where, a field force is deployed, in the absence of the injury being sustained in action, in the operational area, in terms of the circumstances for classifying casualties as battle, or physical, as per Appendix A Para 1D thereof.

20. Reliance was placed on behalf of the applicant on the judgment of the Hon'ble High Court of Delhi in **Rifleman**

**Jagdeep Singh** (supra), the facts of which indicate that whereas the injury sustained by the injured Rifleman Jagdeep Singh (Retd) was whilst he and four personnel were traveling in a 3 Ton Lorry carrying Defence Stores in an operational area in the field area, when the vehicle toppled and a serious accident occurred and resulted in the death of one Havildar Vikram Singh, and though Havildar Vikram Singh was treated by the respondents to be a Battle Casualty, that Petitioner Rifleman Jagdeep Singh (Retd) had not been so considered as a Battle Casualty.

21. Vide observations in the judgment dated 15-01-2008 in **Rifleman Jagdeep Singh** (supra), it was observed by the Hon'ble High Court of Delhi to the effect:-

*"4. In the counter affidavit filed by the respondents it is inter alia pleaded that Havildar Vikram Singh, who expired due to the injuries in the said accident was treated as 'Battle Casualty' on the recommendation of Commander. The death of Havildar Vikram Singh was declared as physical casualty and he was treated as Battle Casualty' only for financial purposes because he died and this treatment be made to the petitioner who was retained in service and was getting free medical treatment etc. and is now getting 100% disability benefits. The stand in the counter affidavit that the case of the Havildar Vikram Singh was not treated as 'Battle Casualty' on the recommendations of Commander is not correct and is contrary to the opinion of the court and the noting of the Commander as pointed out above. However, even if it is assumed that Havildar Vikram Singh was*

*treated as 'Battle Casualty' only for financial purposes because he died, we do not understand as to why same treatment be not given to the petitioner, who is rendered 100% disabled and is admittedly boarded out of service. As noted above the only benefit which the petitioner claims is the award of the Battle Casualty Certificate' and 'Railway Concession Certificate'. He may also become entitled to some monetary benefits from the State Govt. In these peculiar circumstances and particularly when Havildar Vikram Singh is treated as 'Battle Casualty', for the purpose of aforesaid limited benefits, we are of the opinion that petitioner be also treated as case of 'Battle Casualty'. We therefore allow this writ petition to the aforesaid extent and direct the respondents to issue 'Battle Casualty' and 'Railway Concession Certificate' and also intimate the State Govt. Needful be done within eight weeks from today. Writ petition stands disposed of.*

*(emphasis supplied)*

Thus, the facts of the case relied upon on behalf of the applicant in **Rifleman Jagdeep Singh** (supra) are not in *pari materia* with the facts of the case of the applicant herein especially as the accident in which **Rifleman Jagdeep Singh (retd)** had been injured, was whilst he and four other personnel were travelling carrying Defence Forces stores in an operational area in a field area, and also as a co-injured who subsequently succumbed to his injuries, **Havildar Vikram Singh** injured in the same accident, had been treated as a 'Battle Casualty'.

22. Reliance that has been placed on behalf of the applicant on the order dated 04-04-2013 of the AFT Principal Bench New Delhi in **Hav Rajvir** versus **Chief of the Army Staff & Ors** (supra) is equally misplaced in as much as that petitioner had been injured whilst transporting casualties from Pimple Complex, Mashkoh Valley during the Operation Vijay, i.e. the Kargil operation. **In the instant case, it is merely brought forth on record that the injury sustained by the applicant was by falling down from the Chandni Top of Pir Panjal Ranges, without it being brought forth on record, even remotely, that it was due to any activity in action in an operational area. Thus, the applicant is not entitled to War Injury Pension in the circumstances of the instant case.**

#### **ROUNDING OFF**

23. As regards, the contention of the applicant that he is entitled to the rounding off of the disability element of pension from 20% for life to 50% for life, in view of the Govt of India MoD letter no 1(2)/97/D(Pen-C) dated 31.01.2001 with specific reference to Para 7.2 thereof, which reads to the effect:-

"7.2. Where an Armed Forces personnel is invalidated out under circumstances mentioned in Para 4.1 above, the extent of disability or functional Incapacity shall be determined in the following manner for the purposes of computing the disability element:-

<u>Percentage of disability as assessed by invaliding medical board</u>	<u>Percentage to be reckoned for computing of disability element</u>
less than 50	50
between 50 and 75	75
between 76 and 100	100",

with the submission on behalf of the respondents that it is only those who have been invalidated out from service before terms of engagement / service related on medical grounds who are entitled to the rounding off of the benefit of the disability element of pension, it is essential to observe that the said issue is no longer *res integra*, in view of the verdict of the Hon'ble Supreme Court in **Union of India and Others vs Ram Avtar** decided on 10.12.2014 in Civil Appeal no. 418 of 2012 vide paras 4, 5, 6 and 7 whereby it has been directed to the effect:-

**"4. By the present set of appeals the Appellant(s) raise the question, whether or not, an individual, who has retired on attaining the age of superannuation or on completion of his tenure of engagement, if found to be suffering from some disability which is attributable to or aggravated by the military service, is entitled to be granted the benefit of rounding-off of disability pension. The appellant(s) herein would contend that, on the basis of Circular No.**

**1(2)/97/D(Pen-C) issued by the Ministry of Defence, Government of India, dated 31.01.2001, the aforesaid benefit is made available only to an Armed Forces Personnel who is invalidated out of service, and not to any other category of Armed Forces Personnel mentioned hereinabove.**

5. We have heard learned counsel for the parties to the lis.

6. We do not see any error in the impugned judgment(s) and order(s) and therefore all the appeals which pertain to the concept of rounding-off of the disability pension are dismissed, with no order as to costs.

7. The dismissal of these matters will be taken note of by the High Courts as well as by the Tribunals in granting appropriate relief to the pensioners before them, if any, who are getting or are entitled to the disability pension."

Thus, the applicant is clearly entitled to the rounding off of the disability element of pension from 20% to 50% for life.

### CONCLUSION

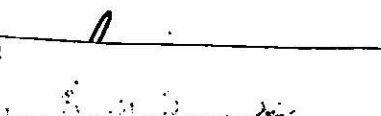
24. The OA is thus disposed of with directions to the effect that the prayer made by the applicant seeking the grant of the War Injury Pension cannot be granted.

25. However, the applicant is held entitled to the grant of the disability element of pension qua the disability of "**PIVD L5-S1 (OPTD)**" that he has suffered due to fall from Chandni Top of Pir Panjal Ranges in December 2000 assessed at 20% for life which is directed to be broad banded to 50% for life in

terms of the verdict of the Hon'ble Supreme Court in **Union of India vs Ram Avtar** (supra), which however in terms of the verdict of the Hon'ble Supreme Court in **UOI Vs. Tarsem Singh** (supra) are directed to be confined to commence from three years prior to the filing of the OA.

26. The respondent nos. 1, 2 and 4 are directed to issue the corrigendum PPO with directions to the respondent nos. 1, 2 and 4 to pay the arrears within a period of three months from the date of receipt of a copy of this order, *failing which*, the respondent nos. 1, 2 and 4 would be liable to pay interest @6% p.a. on the arrears due from the date of this order.

Pronounced in the open Court on 12 day of November, 2024.

  
[RASIKA CHAUBE]  
MEMBER (A)

[JUSTICE ANU MALHOTRA]  
MEMBER (J)

AP