

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

**RA 45/2023**

Ex Sep P Benny Augustine

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Jojo Josp with Sunitha John and  
Navneet K K, Proxy for Anitta & Adona  
LLP, Advocate  
For Respondents : Mr. Y. P. Singh, Advocate

**CORAM :**

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)  
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

**ORDER**

**RA 45/2023**

The applicant vide the present RA 45/2023 filed under Rule 18  
of the AFT Procedure Rules, 2008 makes the following prayers :-

*“(i) Review the judgment dated 23.08.2023 passed by  
this Hon’ble Tribunal in OA No. 545/2020 and set  
aside the same thereby allowing the Application filed  
by the Applicant.*

*(ii) Pass such order or orders as this Hon’ble Court  
may deem fit and proper in the facts and  
circumstance of the present case and in the interest of  
justice.”*

2. Vide order dated 23.08.2023 in OA 545/2020 filed by the applicant, the prayers made therein to the effect :-

*“(a) quash and set aside impugned letter No 2593500/CC- Gen/PG(Legal Cell) dated 29.01.2020.*

*And/or*

*(b) direct respondents to treat the injury of the applicant as Battle Casualty and grant him War Injury Pension with all consequential benefits as applicable. and/or*

*(b) direct respondents to pay the due arrears of War Injury pension with interest @12% p.a. with effect from the date of invalid from service with all consequential benefits. And/or (c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case”,*

were considered and the OA was dismissed with observations in Para 24 whereby, to the effect :-

*“24. In as much as the applicant was not deployed in an “Operation specially notified by the Government from time to time as falls within the ambit of category E (i), in terms of the Govt of India, MoD letter no. 1 (2)/97/I/D (Pen-C) dated 31.01.2001, the applicant is not entitled to war injury pension in as much as he cannot be declared to be a “Battle Casualty”. The OA is thus dismissed.”*

3. The records that the respondents produced at the time of consideration of OA 545/2020 were analyzed vide the order dated 23.08.2023 in OA 545/2020 whereby it was observed to the effect :-

*“21. On a consideration of the submissions that have been made on behalf of either side, it is essential to observe that in as much as the records that the respondents have produced depict clearly that the applicant had left OP Rakshak with effect from 29.02.1992 and apparently as per his own application copy of which is placed on record as Exhibit R-2 with the counter affidavit of the respondents, the applicant on 05.01.1993 was in OP Kamiyab which the respondents submit was the Exercise Kamiyab, it is apparent that the applicant was not deployed in OP Rakshak on the date of the accident on 05.01.1993. In as much as the applicant was not deployed in category E that is “operations specially notified by the Government time to time” as per MoD letter dated 31.01.2001, with the applicant having been deployed on the said military duties in a peace station on 05.01.1993 as also indicated by the IMB proceedings dated 09.01.1993 in which as per opinion of the Medical Board in Part III at Para 3(b) it is stated as under :-*

*“(b) In respect of each disability shown as attributable under A, the Board should state fully, the specific condition and period in service which caused the disability. – Sustained in peace in Feb 93 while performing military duty vide IAFY 2006 attached.”,-*

*22. It is apparent that the applicant is not entitled to the grant of war injury pension as the injury sustained by the applicant on 05.01.1993 was in a peace station in Punjab whilst on an Exercise ‘Kamiyab’ in a peace time training for the troops which is not an “Operation specially notified by the Government from time to time” in category E (i).*

*23. Reliance that is placed on behalf of the applicant on the verdict of the Hon'ble High Court of Delhi in W.P(C) 4488/2012 in the case of Major Arvind Kumar Suhag (Supra) as well as reliance placed on behalf of the applicant on the order dated 11.10.2017 in Ex Gore Dattatraya Mhatarji (Supra) and on the order in OA 1133/2017 in that Rupam (Supra) and in OA 209/2015 in the case of Shri. Ombir Singh (Supra), is wholly misplaced as the facts thereof are not in pari materia with the facts of the instant case for the applicant herein had as per the records published in the Part II Orders of the respondents had left OP Rakshak with effect from 29.02.1992 and sustained the accidental injury on 05.01.1993 as deployed in peace station at Punjab.”*

4. The applicant through the present RA seeks to submit that the applicant was part of OP RAKSHAK from 08.12.1991 to 15.12.1993 and that it has been erroneously observed by this Tribunal that the applicant had left OP RAKSHAK with effect from 29.02.1992. The applicant also submits that the respondents had filed a misleading reply to OA 545/2020 stating that the applicant was in a peace time training in Ex KAMIYAB which was for troops and was not an operation specially notified by the Government from time to time. The applicant submits that Bunker construction at LOC was termed as Ex KAMIYAB during that exercise. The applicant submits that they did not take into account the factum that the Part II order of the applicant

is incomplete and does not contain all information for the period from 29.02.1992 to 08.07.1994 which is crucial for the period when the applicant sustained injury.

5. The reply of the respondents to the present RA vide affidavit dated 20.04.2024 categorically vide Para 12 reads to the effect :-

*“12. That the contents of Para No. D are wrong and denied. It is submitted that as per records of War/Active/Overseas service of the applicant, the applicant entered into OP RAKSHAK with effect from 18 November, 1991 and left OP RAKSHAK with effect from 29 February, 1992 which was published vide 16 MADRAS Part II Order No. 101/25/92(Copy attached as Annexure R-2). Thereafter again he entered into OP RAKSHAK with effect from 10 July 1994 and left OP RAKSHAK with effect from 10 December 1994. In this regard complete copy of Sheet Roll is attached as Annexure R-3 in which the operational service of the applicant is reflected. The averment of the applicant based on Medical Examination Report (AFMSF-81) in which, on a piece of paper details of service were typed and pasted in the Medical Examination Report. In which it has been reflected that the applicant was in OP RAKSHAK with effect from 01 May 1990 to 15 October 1993 (ie, about 03 years, 05 months and 02 weeks), which was erroneously typed and now the applicant taking the advantage and claiming that he had sustained the injury during deployment in OP RAKSHAK. If Battle Casualty occurs the concerned battalion will initiate Initial Report and Detail Report regarding the casualty and informs to all concerned*

*on the basis of Initial and Detail Report, Record Office publishes the occurrence of "Battle Casualty" Part II Order. In this case the injury is not considered as "Battle Casualty" since it happened in peace station, hence the above procedure was not adopted and is accordingly not reflected in the service records of the applicant."*

6. The respondents have also categorically stated that the injury sustained by the applicant was in a peace station whilst on duty and was not in any operations and though it was considered attributable to military service, nevertheless, the said injury to the applicant did not occur during any operation specially notified by the Government at that time. The respondents have reiterated that the applicant's injury does not fall into the circumstances mentioned in category 'E' of Para 4.1 of the Govt. of India, Ministry of Defence letter No. 1(2)/97/D(Pen-C) dated 31.01.2001 to make him eligible for grant of war injury pension.

7. As has been observed by us vide order dated 23.08.2023 in OA 545/2020 of which review is sought by the applicant, the accidental injury sustained by the applicant was on 05.01.1993 which is not refuted by the applicant. The applicant seeks to place on record the Court of Inquiry proceedings as conducted on 10.08.1993 which vide

the findings of the Court of Inquiry dated 31.08.1993 read to the effect:-

“

Finding of the Court

1. No. 2593500W Sep Benny Augustine was in the Ex Kamyab which commended from 02 Jan to 31 Jan 93.
2. On 05 Jan 93 No. 2593500W Sep Benny Augustine was detailed for bunker construction at the Bn HQ.
3. While the construction was in progress the bunker collapsed and one log fell on his right leg and here by sustained injury.
4. The indl No. 2593500W Sep Benny Augustine was evacuated to MH Xxxx Amritsar on 05 Jan 93.
5. The indl was downgraded to med cat CEE(T) for six months.”

8. The same brings forth clearly that the applicant was in the Ex KAMIYAB from 02.01.1993 to 31.01.1993 and that he sustained injury when a log fell on his right leg whilst construction for the bunker was in progress. The injury sustained by the applicant of “**Fracture Tibia Fibula Right**” was held to be attributable to military service.

9. The word LOC on which the applicant relies is found in the deposition of the applicant as witness no. 1 during the Court of Inquiry conducted on 10.08.1993 which reads to the effect :-

“ Witness No. 1

1. No. 2593500W Sep Benny Augustine having been duly warned states.

2. I, No. 2593500W Sep Benny Augustine was participating in the Ex KAMYAB commencing from 02 Jan 93. On 05 Jan 93 I was detailed as part of working party for the construction of Ops room at the Bn HQ. There were four other of the C Coy under the party cdr No. 2583465L Nk P Thomas J. We arrived at the Bn HQ after dinner at 2100H and started putting the ballies on the roof collapsed and the ballies fell on my left leg and fractured. I was rescued by x all pers present in the loc and evacuated by ambulance to MH Amritsar where I was given treatment in the surgical ward.

3. The above statement has been read over to xx the indl in the language and he signs it is correct. He understand.

Sd/- ”

Thus, the word LOC here does not refer to line of control as sought to be submitted by the applicant but refers to 'loc' that is location as rightly submitted by the respondents.

10. As has been observed vide the order dated 23.08.2023 in OA 545/2020, the applicant has since been granted the composite assessment of the disability sustained by him at 30% for life and has been granted the disability pension vide PPO No. D/RA23880/2002.

11. The applicant reiterates that his injury is covered vide Para 4.1 category 'E'(i) of the letter no. 1(2)/97/I/D(Pen-C) dated 31.01.2001 which is as under :-

*“(i) Operations specially notified by the Govt. from time to time.”*

12. That Annexure A/4 submitted by the applicant bears on it a pasted piece of paper with alleged postings of the applicant as submitted by the respondents vide Para 12 of their reply is visibly clear.

13. The documents that the respondents have placed alongwith their reply categorically bring forth that the applicant left OP RAKSHAK from 29.02.1992 and that he entered OP RAKSHAK thereafter on 08.07.1994.

14. The applicant submits that in as much as it is not reflected as to where he was thereafter, the contention of the applicant that he continued in OP RAKSHAK has to be accepted. The said submission cannot be accepted in view of the Part II orders that the respondents have placed on record of the OA 545/2020 which categorically indicate that the applicant left OP RAKSHAK on 29.02.1992.

15. The reliance that the applicant places on the policy letter no. 1(11)/2006-D(Pen-C)/PC Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare dated 08.09.2009 which reads to the effect:-

*“The undersigned is directed to refer to this Ministry’s letter No. 1(2)/97/D(Pen-C) dated 31.01.2001 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. One of the circumstances enumerated under Category 'E' (f)(ii) of the said para is 'Battle inoculation training exercises or demonstration with live ammunition.' However, a doubt has been raised in regard to the nature of cases to be covered under battle inoculation training exercises. The matter has been examined in this Ministry and it has been decided that the term "Battle Inoculation Training Exercises" will cover the following two categories:-*

*(a) Flying operation involved in rehearsing of war plans and implementation of OP instructions inclusive of international exercises.*

*(b) All combat and Tactical Sorties in preparation of war.*

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

*3. This issues with the concurrence of Defence (Finance) vide U.O. No. 2360/Pin(Pen) dated 07.09.2009.*

*4. Hindi version will follow."*

does not aid the applicant in any manner, in as much as, it is the Battle

inoculation training exercises which fall within the categories :-

*"(a) Flying operation involved in rehearsing of war plans and implementation of OP instructions inclusive of international exercises.*

*(b) All combat and Tactical Sorties in preparation of war."*

which have been elaborated to be included into the category for grant of pensionary benefits under Category 'E'(f)(ii). **These categories relate to flying operations involved in rehearsing of war plans and implementations of OP instructions inclusive of international exercises and all combat and tactical sorties in preparation of war.** Apparently, the bunker construction in a peace area does not fall within the ambit of a flying operation involved in rehearsing of war plans and implementations of OP Instructions nor does it fall within the category of combat and tactical sorties in preparation of war.

16. Section-14(4)(f) of the AFT Act, 2007 provides to the effect :-

*“(4) For the purpose of adjudicating an application, the Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely—  
(f) reviewing its decisions;”*

17. Rule-18 of the AFT (Procedure) Rules, 2008 provides to the effect :-

*“18. Application for review- (1) No application for review shall be entertained unless it is filed within thirty days from the date of receipt of copy of the order sought to be reviewed.*

*(2) An application for review shall ordinarily be heard by the same Bench which has passed the order, unless the Chairperson may, for reasons to be*

*recorded in writing, direct it to be heard by any other Bench.*

*(3) Unless otherwise ordered by the Bench concerned, an application for review shall be disposed of by circulation where the Bench may either dismiss the application or direct notice to be issued to the opposite party.*

*(4) Where an application for review of any judgment or order has been disposed of, thereafter no application for further review shall lie.*

*(5) No application for review shall be entertained unless it is supported by a duly sworn affidavit indicating therein the source of knowledge, personal or otherwise. The counter-affidavit in review application will also be a duly sworn affidavit wherever any averment of fact is disputed.”*

18. In view of Section-14(4) of the AFT Act, 2007 referred to hereinabove, it is essential to advert to Order XLVII of the CPC, 1908 as amended, which reads to the effect :-

*“1. Application for review of judgment.—(1) Any person considering himself aggrieved— (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred, (b) by a decree or order from which no appeal is allowed, or (c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to*

*obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.*

*(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applied for the review."*

19. Thus in terms of Section-14(4)(F) of the AFT Act, 2007 read with Rule-18 of the AFT(Procedure) Rules, 2008, it is the principles of review legislated by Order XLVII of the CPC, 1908 as amended which govern the consideration of an application for review of the orders of this Tribunal. The requisite parameters for grant of review of an orders of this Tribunal thus are :-

- The discovery of new and important matter or evidence;
- which, after the exercise of due diligence was not within the person's knowledge or could not be produced by him at the time when the decree was passed or order made; or,-
- on account of some mistake or error apparent on the face of the record or for any other sufficient reason.

20. The applicant has not brought forth nor placed on record any new or important matter of evidence nor has he brought on account

that there is a mistake or error apparent on the face of the record nor is there any other sufficient ground brought forth by the applicant to give grounds for review of the order in RA 45/2023 dated 25.09.2023 to fall within the ambit of Section 14(4) of the AFT Act, 2007 read with rule 18 of the AFT (Procedure) Rules 2008 read with order XLVII of the Code of Civil Procedure, 1908 as amended.

21. The RA is thus dismissed.

22. Pronounced in the Open Court on <sup>4</sup>..... day of October, 2024.

[REAR ADMIRAL ~~DEJREN~~/VIG]  
MEMBER (A)

[JUSTICE ANU MALHOTRA]  
MEMBER (J)

/yogita/