

COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA 1104/2018

Ex Gdr Bhoopender Singh Applicant
Versus
Union of India & Ors. Respondents
For Applicant : Mr. J. P. Sharma, Advocate
For Respondents : Mr. R. S. Chhillar, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

Calling in question tenability of the action undertaken by the respondents by rejecting the claim of the applicant in the matter of treating the injury sustained by the applicant as a 'Battle Casualty', this application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 and the relief claimed in Para 8 of the application reads as under:-

“(a) to quash and set aside the impugned order dated 01.11.2017 as Annexure A-1 Impugned order.

(b) Direct Respondents to treating his disability “ACL TEAR KNEE MEDIAL MENISCUS (OPTD)” as Battle Casualty and grant the consequential benefit of Battle Casualty and pay difference arrear between Battle Casualty Element and Normal Disability Element (@ 20% to @50%) *with effect from 01.09.2016 to for life, in terms of GoI, MoD letter dated 31.01.2001, Appendix 'A' of AO*



01/MP/2003 and Hon'ble Tribunal Chandigarh Bench in OA No 97/2014 titled as Satish Kumar Vs UOI & Ors decided on 10.09.2015 alongwith full arrears with 100% annual interest till payment be made.

(c) Issue any other appropriate order or direction which this Hon'ble Tribunal may be deem fit and proper in facts and circumstances of the case.”

2. The applicant was enrolled into Indian Army (18 Grenadiers) on 07.08.1999 and was discharged from service on 31st August, 2016 under Army Rule 13(3) item III(i) after fulfilling the terms and conditions of his engagement. At the time of discharge he had rendered 17 years and 21 days coloured service in the Army and therefore he was granted service pension and all other post retiral benefit as per applicable rules and regulations.

3. It is the case of the applicant that at the time of discharge the Release Medical Board was carried out in the Military Hospital on 6th August, 2016 and he was classified in A2 (Permanent) category with a disability of 'ACL Tear Knee with Tear Medial Meniscus (OPTD)'. The disability was classified as attributable to military service and the assessment of disability was 20% for life by the medical board as (annexure A-2) and based on the aforesaid assessment of

disability, PCDA (Pension) Allahabad granted disability pension to the applicant on 08.11.2016 @ 20% for life as is evident from the documents filed as annexure A-8.

4. It is the grievance of the applicant that at the time when he sustained this injury on 09.03.2010 he was posted at 'C' Coy 24 Grenadiers and was deployed in Field Area Panzgam, Kupwara, J&K in OP Rakshak/Counter Insurgency Area. On the day when he sustained the injury he was detailed for 'normal patrolling duty' in his unit AOR (Area of Responsibility). While on patrolling duty he slipped and sustained injury on his left knee. He was treated and a Court of Inquiry was conducted on 14.01.2014 to investigate into the circumstances which lead to him sustaining the injury. The inquiry report recommended that the injury was attributable to military service; however, it was not classified as 'Battle Casualty'. It is the case of the applicant that the injury was sustained by him while undertaking patrolling duty in a notified operation area by the Government of India, i.e., 'Op Rakshak' and therefore, the injury should have been classified as a 'Battle Casualty' on account of policies and the circulars available in this regard.

5. It is the case of the applicant that even though the injury is said to have occurred while the applicant was performing bona fide military duty it was not classified as a 'Battle Casualty' and even the benefit of rounding off the disability from 20 % to 50% with effect from 01.09.2016 in accordance to the policies and circulars applicable, particularly, the memorandum of Ministry of Defence dated 31.01.2001 and the policy dated 06.04.2011(annexure A-9) the circumstances enumerated in category (e) of the Ministry of Defence letter dated 31.01.2001 will apply to the applicant. His case would come under clause (d) and (e) of category (E) which reads as under:-

“xxx xxxx

(d) All operational missions undertaken during peace like Special operations Live ORP, Recce, Elint, Survey and Induction trials of new weapons.

(e) Missions undertaken in support of troops and security forces deployed in forward areas.

xxx xxx”

and therefore his claim should have been classified as 'Battle Casualty' and all benefits granted. Learned counsel for the applicant relies upon the judgment of the Regional Bench, Chandigarh in the case of Brig Virpal Singh Vs Union of

India and Ors. (OA 3658/2013) decided on 14.09.2015 where an accidental injury suffered by the applicant in the said case while performing duty in 'OP RAKSHAK' has been classified as a 'Battle Casualty'. Similar reliance is placed on Ex Sep Sukhdev Singh Vs. Union of India and Ors. (OA 715/2016) in said case also the applicant got injured in a insurgency area or in 'OP RAKSHAK' to say that the injury was sustained while performing duties in an operational area as notified by the Government of India and in view of the aforesaid two judgments the applicant is entitled to be classified as 'Battle Casualty'.

6. It is further seen from the record that when the disability of the applicant which was assessed as 20% for life was not rounded off to 50% in accordance to the law laid down by the Hon'ble Supreme Court in the case of Union of India and Ors Vs. Ram Avtar (Civil Appeal No 418/2012) decided on 10.12.2014 based on the Government of India decision dated 31.01.2001. The applicant invoked the jurisdiction of this Tribunal in OA 431/2017 and by an order passed on 17.03.2017, this application of the applicant was allowed and his disability was rounded off to 50% with effect from 01.09.2016 and he was granted the said benefit

with arrears at the rate of 9% per annum and now after the aforesaid decision when the statutory complaint of the applicant said to have been decided vide impugned order rejecting his claim for 'Battle Casualty' he has again invoked the jurisdiction for the relief on the grounds indicated. In the sum and substances, it is the contention of the applicant that as he was posted in an operational area and sustained injury while performing the military duty in an operational area, the disability is liable to be classified as a 'Battle Casualty' and the benefit granted to him.

7. Respondents have refuted the aforesaid contention and raised a preliminary objection to say that the cause of action for claiming the 'Battle Casualty' occurred to the applicant in the year 2010 when he sustained the injury. His injury was classified as an injury sustained on account of performing the military duty and was held attributable to military duty and he was granted disability at the rate 20% by the Pension Payment Authority. The applicant accepted the same and only prayed for grant of rounding off his disability from 20% to 50% while invoking the jurisdiction of this Tribunal in OA 431/2017. The Preliminary objection of the respondents is that cause of action for the claim of 'Battle Casualty' was

available to the applicant when he had approached this Tribunal by filing OA 431/2017 on 05.03.2017 but he did not raise this claim at that point of time and therefore it was argued that the principle of constructive *res judicata* would apply and it would be deemed under rule that the applicant had given up his claim and therefore on this ground application should be dismissed.

8. As far as the merit of the case is concerned, it is the contention of the respondents based on the policy dated 31.01.2001 that the applicant was discharged after fulfilling the terms and conditions of the employment on 31.08.2016. Even though he had sustained the injury in 2010 it did not prevent him from performing his duties. He performed all the duties in accordance with the terms and conditions of the engagement and was granted all service benefits including disability benefit for the disability suffered while performing the military duty. Referring to policy dated 31.01.2001 and the stipulations contained in the categories classified in category (e), it is the case of the respondents that none of the eventualities indicated in clause A to I of the policy dated 31.01.2001 are applicable in this case. He did not suffer the injury while facing enemy action

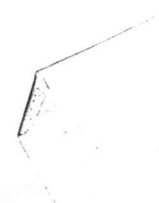
or in performance of service duty while in action, to bring his claim within the purview of any of the category specified in category (e) and therefore, he is not entitled to the benefit. The injury was sustained by him while performing 'normal familiarization patrolling duty' which was not sustained while in action or any other category specified in the policy and therefore claim has been rightly rejected.

9. In support of their contentions, respondents rely upon the judgments of the Hon'ble Supreme Court in the case of Madan Prasad Sinha Alias Sanatan Baba Vs. Union of India and Others (2019) 15 SCC 232 to say that 'War Injury Pension' can only be granted when the individual participates in operation or in active line of duty. Further reliance is placed on two judgments of this Tribunal rendered in the case of Ex Rfn ACP-II Ges Bahadur Thapa Vs. Union of India and Ors (OA 552/2022) decided on 31st May, 2023 and Ex Gdsm Varun Kumar Pandey S/o Late Sri Ram Achal Pandey Vs. Union of India and Ors. (OA 282/2016) decided on 16.01.2018 by Regional Bench, Lucknow, wherein similar claims have been rejected and the relief denied.

10. Having heard learned counsel for the parties at length and on a perusal of the records, we find that only two issues

are to be adjudicated in the matter, the first one is with regard to the preliminary objection raised by the respondents pertaining to maintainability of this application on the ground of constructive *res judicata* and second one is as to whether the injury sustained by the applicant and the disability suffered can be classified as a 'Battle Casualty'.

11. As far as the first objection, i.e., preliminary objection is concerned even though the cause of action had accrued to the applicant in the year 2010 and he had a right to claim 'Battle Casualty' when he invoked the jurisdiction of this Tribunal on 5th March, 2017 by filing OA 431/2017 but from the records we find that at that point of time his statutory complaint submitted on 26th August, 2016 claiming the relief of 'Battle Casualty' was pending. The statutory complaint was rejected by the Competent Authority on 27th December, 2016. However, intimation about this rejection was only forwarded to the applicant vide annexure A-1 on 1st November, 2017 and, therefore, as the statutory complaint of the applicant was pending when he invoked the jurisdiction of this Tribunal in the matter of rounding off of the disability percentage on 5th March, 2017, decision on the statutory complaint was never communicated, therefore, we



are of the considered view that the cause of action for claiming 'Battle Casualty' arose only on 1st November, 2017 when the communication with regard to the dismissal of the statutory complaint was made and therefore on the first ground of constructive *res judicata* we are not inclined to reject the claim of the applicant, objection raised by the respondents in this regard is therefore rejected.

12. As far as the second issue is concerned, the claim of the applicant is based on the principles laid down in the case of Ex Sep Sukhdev Singh (supra) and Brig Virpal Singh (supra). Facts and circumstances of both these cases are different and we find that in both these cases assessment has been made based on the findings recorded in the Court of Inquiry and it is held that the claim falls in one of the covered category, i.e., category (e) (i) 'Operation specially notified by the Govt. from time to time.' Similarly, in the case of Ex Sep Sukhdev Singh (supra) also the same principle has been followed. However, we find from the records that the findings of the Court of Inquiry recorded in the matter is to the effect that applicant sustained the injury on 9th March, 2010 while he was detailed for 'normal patrolling duty' in his unit AOR while performing his routine patrolling duty, he slipped and

sustained the leg knee injury, in the medical records and documents produced, even though it is held that injury is attributable to military service and it occurred while performing the patrolling duty, it was indicated that it did not aggravate on account of performance of duty and it was not directly connected with the performance of the duty.

13. The Court of Inquiry was conducted on 14.01.2014 as is evident from records (annexure A-3). It consisted of a presiding officer and two other members. The Board examined the three witnesses, (i) L/Nk Bhupender Singh (applicant himself), Sub Bhagirath Singh and CHM Dharmender and submitted his report wherein the applicant admits that he sustained injury while performing patrolling duty in the operational area. The Court of Inquiry analyzed and found that the applicant slipped due to snow in the patrolling area and sustained the injury and therefore it was held to be an injury sustained while on duty attributable to military service. The commanding officer based on the inquiry report submitted his opinion on 24.01.2014 and held that the applicant sustained the injury while on bonafide military duty and the individual is not to be blamed for the same and accordingly treating the injury to be sustained

while on military duty, the benefit of disability has been granted to the applicant. The issue is as to whether the injury can be classified as a War Injury and thereafter the disability as a Battle Casualty.

14. The Ministry of Defence vide memorandum and policy dated 31.01.2001 while implementing the decision of 5th CPC after due sanction of Hon'ble President of India has issued various Regulations in the matter of granting family pension, liberalized family pension etc. to officers of the Armed Forces Personnel who joined in service on or after 01.01.1996. Part II of the aforesaid policy deals with pensionary benefits on death/disability in attributable/aggravated cases and for determining the pensionary benefit different categories have been classified in para 4.1, the categories are category A to E and for the purpose of deciding the claim of the applicant category E of clause 4.1 becomes relevant. Category E reads as under:-

“Category E

Death or disability arising as a result of :-

- (a) enemy action in international war.
- (b) Action during deployment with a peace keeping missing abroad.
- (c) Border skirmishes.

(d) During laying or clearance of mines including enemy mines as also minesweeping operation.

(e) On account of accidental explosions of mines while laying operationally oriented minefield or lifting or negotiating minefield laid by 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. Extremist acts, exploding mines etc. while on way to on way to an operational area.

ii. Battle inoculation training exercises or demonstration with live ammunition.

iii. Kidnapping by extremists while on operation duty.

(g) An act of violence/attack by extremists, anti-social elements, etc.

(h) Action against extremists, antisocial elements, etc. Death/disability while employed in the aid of civil power in quelling agitation, riots or revolt by demonstrators will be covered under this category.

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

The policy has been amended according to the applicant by the Government of India and as far as category “E” is concerned the following amendments have been incorporated:-

“2. The following circumstances inserted 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.

3. The circumstances enumerated under category E (f) (ii) will include-

xxx xxx xxx

xxx xxx xxx

(d) All operational missions undertaken during peace like Special operations, Live ORP, Recce, Elint, Survey and induction trials.

(e) Missions undertaken in support of troops and security forces deployed in forward areas.

(f) Flying missions involving landings on the ALGs.”

According to the applicant his case falls under the sub sub clause (d) and (e) of category E (f) (ii) and therefore he claims the benefit. However, respondents’ contention is that category ‘E’ sub clause ‘f’ becomes relevant and this case will come within the purview of sub clause ‘f’ of Category ‘E’ and there should be a war like situation and the subject categories of “f” relied upon by the applicant should happen in war like situation or specifically some action which is indicated in the different categories.

15. If we see sub clause 'f' of category E, we find that it pertains to case wherein there is a war like situation and also include cases which are attributable to or aggravated by various sub-categories detailed therein. The applicant claims his injury to have been sustained and covered under sub sub clause (d) and (e) of sub clause f (ii) of category "E". The sub sub clause 'd' and 'e' pertains to operational mission undertaken during peace like special operation, live ORP, Recce, ELINT, Survey and induction trials of new weapons etc., or mission undertaken to support troops and security forces deployed in forward area. The case of the applicant in our considered view does not fall in any of these categories. The applicant was not performing any duty which was arising out of any operational measure nor was he on any special operation, live ORP etc, nor was he performing any duty in support of armed troops deployed in the forward area. That apart all these provisions have been subjected to interpretation by the Regional Bench, Chandigarh in the case of *Brig Virpal Singh (Supra)* and *Ex Rfn ACP-II Ges Bahadur Thapa (Supra)*. The Hon'ble Supreme court also in the case of *Madan Prasad Sinha alias Sanatan Baba (Supra)* considered the issue and in Para 3 observed as under:-

“3. The appellant moved the Armed Forces Tribunal (Tribunal) for the grant of war injury pension. The Tribunal declined to accede to the plea for the grant of war injury pension on the ground that it was payable only in respect of participation in operations or in the active line of duty. In the present case, it was the view of the Tribunal that the nature of the disability was not attributable to any such participation in action. This view of the Tribunal is correct.” (Emphasis supplied)

and came to the conclusion that war injury pension was payable only in respect of participation in operation or in active line of duty and the findings of the Tribunal that the nature of injury/disability sustained was not attributed to any participation in action, the Hon’ble Supreme Court upheld the findings of this Tribunal. That being so, in this case also it can be seen that the applicant suffered the injury while performing normal patrolling duty, slipped and at that point of time, he was not performing any duty which can be classified as participating in action in the active line of duty. These clauses have been subjected to analysis by this Tribunal in the case of *Ex Gdsm Varun Kumar Pandey* (Supra) wherein from Para 8 onwards Appendix A classifying the casualties as Battle or Physical casualties have been detailed in Para 19 to 20. The issue has been decided based on the law laid down by the Regional Bench, Chandigarh in the case

of OA 2543/2012 Tejbir Singh vs. Union of India and Ors. wherein Para 45 it has been held that the injury should occur while in action.

16. The issue was again reconsidered in the case of *Ex Rfn ACP-II Ges Bahadur Thapa* (Supra), war injury pension as laid down in the policy dated 31.01.2001 and category 'E' has been meticulously analysed by this Tribunal in detail, in the aforesaid case in Para 25 it was taken note of that the plea of the applicant is to the effect that since the injury was sustained in an operational area and has been attributable to military service, it should fall within the parameters of the policy and declared as battle casualty, from Para 26 onwards after taking note of the law laid down by the Hon'ble Supreme Court in the case of Kanchan Dua Vs. Union of India and Anr. [(2020) 18 SCC 709] the claim is rejected, the findings recorded by the Hon'ble Supreme Court in the case of *Kanchan Dua* (supra) is reproduced as hereunder:-

“8. The basis of the claim of the Appellant for Liberalised Family Pension flows from the Instructions dated 31.01.2001. There is no doubt that Operation Rakshak is a notified Operation falling under Clause 9 of Category 'E' thereof. There is also no dispute that those covered in Category 'E' are entitled for Liberalised Family Pension. However, the notification

area, injury should be sustained by an action. The dictionary defines action as: Expenditure of energy, deed, operation, gesture, battle lawsuit. In action would mean while engaged in battle. Mere presence in an operational area would not qualify as being in action. We understand that the entire state of Manipur and Nagaland and parts of adjoining states are notified under Operation Hifazzat, Parts of Sikkim, Assam, and J&K are similarly notified as operational areas. A full reading of Government of India letter dated 31.01.2001 relating to War Injury Pension and classification of casualties for pensionary purposes shows that in all circumstances there is a direct and immediate relationship with the enemy or actions related to the enemy. In other words there should be a direct and casual connection between the duties being performed and the cause of accident or death. This letter cannot be read in isolation and need to be read in their full context.”

(Emphasis supplied)

finally the conclusion at Para 31 is to the effect that the applicant therein was not entitled to ‘War Injury Pension’ since the injury sustained by his was not in combat or any other direct action but it was only because of an accident, it was caused because of an accident and had no direct connection with a combat action/military action or war like situation.

17. Moreover category “E” sub clause f (ii) includes the following:-

“(ii) Battle inoculation exercises or demonstration with live ammunition and the circumstances enumerated under this category will include:-

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

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

(c) Valley flying and missions involving operating at Ultra Low Levels.

(d) All operational missions undertaken during peace like Special operations, Live ORP, Recce, Elint, Survey and Induction trials or new weapons.

(e) Missions undertaken in support of troops and security forces deployed in forward areas.

(f) Flying missions involving landings on the ALGs.”

A bare perusal of all the situations covered from (a) to (f) in category “E” f (ii) involves flying missions undertaken by the aircrew of Armed Forces and do not involve mission undertaken by ground troops/airmen/sailors. Therefore, the argument of the applicant that he is covered by sub sub-clause ‘d’ and ‘e’ of category “E” f (ii) is not correct as the applicant was a soldier involved in patrolling duties and was not undertaking any flying mission.

18. Taking note of the issues brought out in Para 17 above and the principles laid down in cases as brought out in Para 15 and 16, we are of the considered view that in the case of the applicant also, he suffered the accident while performing normal patrolling duty, he slipped and holding the disability

issued by the Government extending concessions to the Armed Forces personnel deployed in Operation Rakshak provides that Liberalized Pensionary Awards are extended only to those troops in active Operations against militants in terms of para I of the letter dated 24.02.1972. A bare perusal of para I of letter dated 24.02.1972 would make it clear that only personnel killed or disabled on account of injuries in action are eligible for Liberalized Pensionary Awards.”

and thereafter in Para 28, judgments rendered by the Hon’be Supreme Court in the case of Smt. Radhika Devi vs. Union of India and Ors. [(2020) 18 SCC 715], the judgment of rendered by the Supreme Court in the case of Madan Prasad Sinha Alias Sanatan Baba Vs. Union of India and Ors. [(2019) 15 SCC 232] has been considered and it has been observed by the Hon’ble Supreme Court that as per instructions of the Government of India, liberalized family pension can be granted or payable when the armed forces personnel is on duty in action. The law laid down by the Regional Bench, Lucknow on 05.07.2022 in the case of Ashok Kumar Singh Vs. Union of India and Ors. (OA 64/2022) has also considered all these aspects and findings recorded by the Tribunal in Para 9 is reproduced as hereunder:-

“9. For grant of War Injury Pension, besides the accidental injuries being sustained in an operational

to be attributable to military service, the disability pension has been granted to him. The injury does not fall in any of the categories as claimed by the applicant and in the light of the law laid down by the Coordinate Bench of this Tribunal we have no hesitation in holding that the injury sustained by the applicant did not arise on account of any situation which can be termed as a war like situation, it was neither in any combat action or any other direct military action, nor does it fall in any of the other stipulated categories under category E wherein there was a war like situation or the applicant was performing any operational mission, live ORP etc.

19. Accordingly, in the facts and circumstances of the case we are of the considered view that the claim made by the applicant on the facts of law being unsustainable, the application is rejected.

20. OA stands dismissed.

Pronounced in open Court on this 19th day of November, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL/DHIREN VIG]
MEMBER (A)

Priya