

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

B.

OA 1227/2022

Ex Sep Shakti Singh

Versus

..... Applicant

Union of India & Ors.

..... Respondents

For Applicant

: Mr. V S Kadian, Advocate

For Respondents

: Mr. Barkha Babbar, Advocate

CORAM

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

ORDER  
25.01.2024

Vide separate detailed order passed today. OA stands allowed.

Learned counsel appearing for the respondents makes an oral prayer for grant of leave to appeal to appeal for impugning the aforesaid order before the Hon'ble Supreme Court. However, there being no point of law, much less any point of law of general public importance involved in the order, which warrants grant of leave to appeal, the oral prayer is declined.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)

/sm/

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

OA 1227/2022

WITH

MA 1652/2022

Ex Sep Shakti Singh ..... Applicant  
VERSUS  
Union of India & Ors ..... Respondents

For Applicant : Mr. V.S. Kadian, Advocate  
For Respondents : Ms. Barkha Babbar, Advocate

Dated: January, 2024

CORAM

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

ORDER

MA 1652/2022

Vide order dated 23<sup>rd</sup> February, 2023, inadvertently this application was allowed condoning the delay in filing the counter affidavit whereas from the record it is revealed that the application is for condonation of delay in filing the OA. Be that as it may, since the application has already been allowed, the delay in filing the OA be taken to have been condoned in terms of the judgment of the Hon'ble Supreme Court in the case of Union of India and Ors. Vs. Tarsem Singh [2009 (1) AISLJ 371].

OA 1227/2022

2. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant claims that the injury sustained by him while on military duty on 16<sup>th</sup> June, 2004 be treated as Battle Casualty and War Injury Pension be granted to him from the due date.

3. Facts necessary for the decision of this OA, in brief, indicate that the applicant was enrolled in the Indian Army on 15<sup>th</sup> September, 2002. While as a Sepoy in 3 Rajput Regiment and during the field firing at CBS Khrew near Sri Nagar (J&K) on 16<sup>th</sup> June, 2004 the applicant sustained a gunshot wound on his left leg with compound comminuted fracture of tibia fibula (LT) OPTD (S81.8). It is the case of the applicant that he sustained the aforesaid gunshot wound at firing range in a counter insurgency area of Operation Rakshak and the disability was required to be treated as Battle Casualty and the applicant was entitled to the benefit of War Injury Pension as he has suffered the injury while performing the military duty in the operational area. As the benefit has been denied to the applicant, he has invoked the jurisdiction of this Tribunal.

4. The applicant invites our attention to the policies/circulars applicable in this regard and placing reliance on the provisions

pertaining to grant of War Injury Pension, as contained in Regulation 99 of the Pension Regulations for the Army Part-I (2008), available on record (Annexure R-8), submits that under Chapter IV, Section 1 from Para 81 onwards, provision for grant of disability pension has been provided and cases for grant of liberalized disability pension or liberalised family pension are stipulated in Category-E of Regulation 82 pertaining to War Injury Pension on retirement/discharge from service. Referring to sub-clause (vi) of Category –E and sub-clause (ix), which are reproduced hereunder, it is the case of the applicant that he suffered the aforesaid injury in a battle inoculation training exercise or demonstration with live ammunition and the Operation Rakshak was notified by the government from time to time.

*“Category –E*

*(vi) War like situations, including cases which are attributable to/aggravated by:-*

- (1) Extremist acts, exploding mines etc. while on way to an operation area*
- (2) Battle inoculation training exercises or demonstration with live ammunition*
- (3) Kidnapping by extremists while on operational duty*

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*(ix) Operations specially notified by the Government from time to time.*

5. Accordingly, inviting our attention to the findings recorded in the Court of Inquiry (CoI) conducted in the matter, learned counsel for the applicant submits that the applicant is entitled to the War



Injury Pension and the same has been denied to him without taking note of the facts and circumstances of the case. In support of his contention, learned counsel for the applicant has placed reliance on the following judgments:

1. Ex Gnr Gore Dattatraya Mhatarji Vs. Union of India and Ors. Armed Forces Tribunal, Principal Bench, New Delhi) order dated 11<sup>th</sup> October, 2017 (OA 127/2016) (Annexure A-7).
2. Major Arvind Kumar Suhag Vs. Union of India and Ors. Delhi High Court in WP (C) 4488/2012 on 21<sup>st</sup> February, 2013 (Annexure A-8)
3. Sumitra Devi Vs. Union of India and Anr. an order passed by Hon'ble Punjab and Haryana High Court in CWP 3810/2013 decided on 17<sup>th</sup> February, 2014
4. Ex Sepoy Shamsher Shahi Vs. Union of India and Ors. Armed Forces Tribunal, Regional Bench Lucknow order dated 8<sup>th</sup> July, 2021 (OA 343/2019).

6. Respondents have filed a detailed counter affidavit and it is their case in para 2 of the counter affidavit that in the year 2004 while serving with 3 Rajput Regiment at Jammu and Kashmir in counter insurgency (Operation Rakshak) under the aegis of Northern Command, the applicant suffered injury of severe nature on 16<sup>th</sup> June, 2004 while attending CTC-92 at Corps Battle School (CBS), Khrew, and a CoI was conducted by Lt Col Kulwant Singh, Officiating Commandant of 15 CBS to investigate into the circumstances which led to the applicant suffering gunshot wound while attending CTC 92 at CBS, Khrew. As per the conclusion of the

CoI, it was revealed that the applicant was attending the firing practice at Range-2 and was detailed for the record detail party. He was asked to perform the helper's duty of Nk Anup Singh and detailed to collect the fired cases. The firing commenced at 0710 Hrs. and each firer was given ten rounds to fire from the standing position (rat shoulder). The applicant was standing on the right side of Nk Anup Singh and after three rounds were fired by Nk Anup Singh, the applicant collected the fired cases as per the drill and at that point of time he was hit by a bullet on the left lower leg. The impact of the hit was so hard that the applicant collapsed on the ground.

7. The detailed CoI report has been filed as Annexure A-2 and the respondents have reproduced the same in para 3 of the counter affidavit and admit sustaining of gunshot wound by the applicant in the aforesaid firing at the BMR Range. The CoI found that nobody was to be blamed for the injury and it was an accident. The CoI has also recorded a conclusion that the applicant was on bona fide military duty and the injury was attributable to military service while attending the firing training in a field in operation area. However, having said so, the respondents contend that because of the injury the applicant was downgraded to low medical category S1H1A3(T-24)PIE1 for a period of six months and was finally

diagnosed with gunshot wound and granted discharge as no sheltered appointment was available. The applicant was also granted disability pension on account of the aforesaid injury. The disability was assessed at thirty per cent by the Release Medical Board held on 7<sup>th</sup> July, 2018 and disability pension has been granted to him assessing the disability at thirty per cent rounded off to fifty per cent.

8. According to the respondents, the applicant has been granted the benefit in accordance to Regulation 99 of the Pension Regulations for the Army Part-I, (2008) as the applicant was not invalided out from service on account the disability sustained under circumstances mentioned in Category –E of Regulation 82 of the Pension Regulations for the Army Part-I (2008). Respondents have referred to the regulations in para 12 of their counter affidavit and finally after reproducing the same, it is the case of the respondents that the applicant has not suffered the injury in either of the conditions mentioned in the Regulation, particularly the situations described in Category-E of Regulation 82 and as the applicant has been granted the benefit in accordance to the requirement of the Rule, he is not entitled to any relief. The respondents have further referred to Para 69 (a) and (b) of the Army Order 1/2003 MP, which is quoted herein below, and submit that as the gunshot wound was sustained accidentally, not in any operation carried out

against the enemy or militants, therefore the applicant is not entitled to any benefit claimed.

*“69. Cause and Nature of Injury - The classification of wounded battle casualty will be guided by the parameters of cause/circumstances and the severity of injury sustained. Only when both these parameters are met, the casualty would be classified as a Battle Casualty.*

*(a) Parameter No.1 – The cause or the circumstances under which the injury has occurred. These are :-*

- (i) Gun shot wound/Splinter injuries sustained in action against enemy/militants.*  
*OR*
- (ii) Gun shot wound/splinter injuries sustained accidentally/due to firing by own troops while carrying out operations against enemy/militants.*  
*OR*
- (iii) Mine Blast/IED blast injuries sustained in explosion of mines/IEDs caused by enemy/militants. Mines to include those planted by own troops against enemy.*  
*OR*
- (iv) Injuries sustained due to accidents because of natural/environmental reasons like an avalanche, crevasse, landslides, flash floods etc while in actions against enemy/militants.*  
*OR*
- (v) Injuries sustained during enemy air raids, NBC warfare and hand-to-hand fights which are other than gunshot/splinter injuries must also be included.*

*(b) Parameter No.2 – The injuries should at least be of grievous nature. The following will be the governing factors :-*

- (i) Emasculation.*
- (ii) Permanent privation of the sight of either eye.*
- (iii) Permanent privation of hearing of either ear.*
- (iv) Privation of any member or joint.*
- (v) Destruction or permanent impairing of the power of any member or joint.*
- (vi) Permanent disfiguration of the head or face.*
- (vii) Fracture or dislocation of a bone or tooth.*
- (viii) Any hurt which endangers life or which causes the sufferer to be during the space of 20 days, in severe bodily pain or unable to follow his ordinary pursuits.”*

Accordingly, it is the case of the respondents that the applicant's case has been dealt with in accordance to the requirement of the Rules and thus the applicant is not entitled to any benefit.

9. We have heard learned counsel for the parties at length and have also perused the records. As far as the facts of the case with regard to injury caused to the applicant on 16<sup>th</sup> June, 2004 are concerned, the facts, as narrated hereinabove, are admitted. It is a fact, as has been made out from the record, particularly the proceedings of the CoI (Annexure A-2), that the applicant sustained the injury on 16<sup>th</sup> June, 2004 while attending CTC 92 at CBS Kherw along with his unit personnel when he was detailed for firing at BMR Range- 2 and the applicant being hit by a bullet and sustaining injury is proved in the CoI. The final opinion of the CoI reads as under:

- "1. The Court opines that No.3005341Y Sep Shakti Singh of 3 Rajput sustained a GSW on the left leg during firing practice on 16 Jun 2004 at the BMR Rg while attending CTC-92 in CBS Kherw. Nobody is to be blamed for the accident.*
- 2. The also opines that No.3005341 Y Sep Shakti Singh was on bonafide mil duty and the injury is attributable to mil service while attending trg in field (CI Ops).*

*Presiding Offr. Sd/-  
(IC 45465M Maj P Dabholkar)*

*Members: Sd/-*

- 1. (IC 58777F Capt DC  
Pant)*
- 2. Sd/-  
(JC 265570N Nb Sub  
Manjeet Singh)"*



10. From the aforesaid it is clear that the applicant did sustain the injury at a firing practice on 16<sup>th</sup> June, 2004 at BMR Range while attending the CTC-92 CBS Khrew and at that point of time, as per CoI para 2, reproduced hereinabove, he was on bona fide military duty and the injury sustained was said to be attributable to military service while attending a training in the field area in Operation Rakshak.

11. That being so, the only issue warranting consideration is as to whether the said injury can be said to have been sustained by the applicant while performing the duties in an operation notified by the Government in a field area. The operation is notified by the Government and the applicant was working in field area are also admitted positions. That being so, it is now required to be analysed and determined by this Tribunal as to what is the rule position and whether based on the provisions, the applicant is entitled to the benefits claimed.

12. For the sake of determining this issue, this Tribunal is required to take note of the Pension Regulations for the Army Part-I (2008) filed by the respondents as Annexure R-8, Regulation 99(a) of which reads as under:

*“99. (a) Where Service personnel is invalided from service on account of disabilities sanctioned under circumstances mentioned in category ‘E’ of Regulation 82 of*



*these Regulations, he shall be entitled to war-injury pension as enumerated in this Section.”*

Regulation 82 –E, referred to in Regulation 99 (a), reads as under:-

*“82. For determining the pensionary benefits on death or disability which is attributable to or aggravated by Military service under different circumstance, the cases shall be broadly categorized as follows:*

XX                      XX                      XX                      XX

*Category E*

*Death or disability arising as a result of :*

- (i) Enemy action in international war*
- (ii) Action during deployment with a peace keeping mission abroad*
- (iii) Border skirmishes*
- (iv) During laying or clearance of mines including enemy mines as also mine sweeping operations.*
- (v) On account of accidental explosions of mines while laying operationally oriented mine field or lifting or negotiating mine field laid by the enemy or own forces in operational areas near international borders or the line of control.*
- (vi) War like situations, including cases which are attributable to/aggravated by:-*
  - (1) Extremist acts, exploding mines etc. while on way to an operation area*
  - (2) Battle inoculation training exercises or demonstration with live ammunition*
  - (3) Kidnapping by extremists while on operational duty*
- (vii) An act of violence/attack by extremists, antisocial elements etc. while on operational duty.*
- (viii) Action against extremists, antisocial elements etc. death/disability while employed in the aid of civil power in quelling agitation, riots or revolt by demonstrators shall be covered under this category.*
- (ix) Operations specially notified by the Government from time to time.*

Further the Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare, after taking note of the aforesaid Regulations, vide letter dated 8<sup>th</sup> September, 2009 has issued directions in the form of Implementation of Government decision on

recommendations of the 5<sup>th</sup> CPC in the matter of payment of disability pension, war injury pension, special family pension liberalized family pension etc. (Annexure A-6) which reads as under:

“The undersigned is directed to refer to this Ministry’s letter No.1(2)/97/D (Pen-C) dated 31.1.2001 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’ (i) (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 implementations of OP instructions inclusive of international exercises.
- (b) All combat and Tactical Sorties in preparation of war.”

13. As already discussed hereinabove the fact of the applicant having sustained the gunshot injury while posted in a field area notified as an operational area by the Government and while participating in a military operation (Operation Rakshak) in a firing training having been admitted, the only question is as to whether for such an injury sustained while in a training exercise, the applicant is entitled to claim the benefit of war injury pension treating the aforesaid injury to have been sustained as a battle casualty.

14. A perusal of Regulation 99(a), quoted herein above, would show that when a service personnel is invalided out from service on

account of disability sustained under the circumstances mentioned in Category-E of Regulation 82, he shall be entitled to war injury pension as provided in Regulation 99 (a). Further on a perusal of Category-E of Regulation 82, we find that Category –E details various eventualities like enemy action in international war, action during deployment with peace keeping mission abroad on account of which death or disability has resulted. Category-E, sub-clause (vi) records instances which would have to be treated as war injury or which include action classified as war like situation including cases which are attributable to or aggravated by battle inoculation training exercise or demonstration with live ammunition and further sub-clause (ix) of Category-E stipulates that this pertains to operations specially notified by the Government from time to time.

15. In our considered view, if we analyse the case in hand based on the facts that have come on record, it is clear that the applicant sustained the injury on 16<sup>th</sup> June, 2004 when he was detailed for firing exercise at BMR Range 2 while attending CTC-92 at CBS Khrew which commenced from 4<sup>th</sup> June, 2004. The exercise was undertaken under Operation Rakshak was nothing but a battle inoculation training exercise and a demonstration with live ammunition carried out in a notified Government area and in the Implementation Instructions issued by the Government

on 8<sup>th</sup> September, 2009, as quoted hereinabove, it has been stipulated that battle inoculation training exercise will cover operations as detailed hereinabove including flying operation involved in rehearsing of war plans and implementations of OPs instructions inclusive of international exercises as also all combat and tactical sorties in preparation of war. When the provisions of Category-E of Regulation 82 is read along with Implementation Instructions dated 8<sup>th</sup> September, 2009, it is clear that even if the injury is sustained in a battle inoculation training exercise or demonstration with live ammunition in an operation notified in an area by the Government, the same would qualify to be treated as a battle casualty and liable to be paid war injury pension in accordance to the Rules. In the case of Ex Gnr Gore Dattatraya Mahatarji (supra), decided by this Tribunal, similar considerations have been made and injury sustained by falling down from a post at a height in a CT environment was held to be covered under the provisions of Category-E. The Bench has dealt with the issue in paras 15 and 16 of the judgment in the following manner:-

*“15. In this particular case, when examining category ‘E’ specifically sub para (i) specifies ‘operations specially notified by the Government from time to time’ undoubtedly, ‘Operation Rakshak’ is one such operation. Further where the individual himself has been classified as a Battle Casualty in a CI/CT environment, an issue which is not in contest, the question of the casualty and consequent injury not falling under category ‘E(i)’ does not arise. Additionally, while considering AO-1 of 2003, which is the extant AO, related to battle casualties, the appendix to this has listed from clearly at para 1(d) ‘accidental*

*injuries and deaths which occur in action in an operational area.” It is evident from the AO as well as the specific policy letter of 31.01.2001 that the intention is to give benefit to personnel engaged in operations in CI/CT areas. It is painful for this Court to engage in the description of how critical sentries and sentry duty is in CI/CT operation. The entire response and security of units and establishments, depends upon the vigilance, surveillance, re-action/capability and indeed dedicated duties of sentries. The arguments alluded to by the respondents that a sentry in fact is not conducting meaningful/active duty, while in a CI/CT environment or indeed if we were to stretch this to a war like situation does not stand to any reason. Even in the most intense war like circumstances, there is overwhelming dependence on sentries and sentry duty. This brief discussion apart, there is no doubt in the mind of the Tribunal that a sentry on sentry duty in a CI/CT environment, having sustained an injury as a battle casualty would, indeed, be squarely covered by the provisions of the policy letter dated 31.01.2001.*

16. In furtherance of this, we also place on record the statement of the respondents in their counter affidavit, wherein they have stated as under:-

*“It is observed from the BC Part II Order that the individual sustained injury due to fell down from the post from a height of approx ten to fifteen feet during OP Rakshak and this injury did not occur during action/actual fighting with enemy/terrorism, hence this injury does not fall under Category “E” of Govt. of India Ministry of Defence letter No.1(2)/97/D(Pen-C) dated 31 Jan, 01.”*

*This opinion has once again not taken any cognizance of the fact that the individual was on sentry duty and suffered injury during the commission of such duties, in a CI/CT environment.”*

16. From the aforesaid, it is clear that in the case of the applicant also the situation is identical in nature and there is no reason as to why we should take a different view and deny benefit to the applicant. Similar provision pertaining to Category –C and E of Regulation 82 has been subject matter of discussion by the Hon’ble Delhi High Court in the case of *Major Arvind Kumar Suhag* (supra)



and after recording somewhat similar findings in paras 14 and 15 the High Court holds as under:

*“14. In parting, 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 rationalization as appears to have prevailed with the respondents and with the Tribunal. This case amply demonstrates how seven years after the conflict – in the thick of which the petitioner was deployed after having participated in the Kargil operation – his injuries were casually classified as those ordinarily suffered whilst proceeding on duty in a government vehicle. He, like any other personnel, operated under extremely trying circumstances unimaginable to those not acquainted with such situations. The cavalier manner in which his claim for war injury pension was rejected by the respondents, who failed to give any explanation except adopt a textual interpretation of Clauses (C) and (E), is deplorable. In these circumstances, the petitioner deserves to succeed.*

*15. The respondents are hereby directed to forthwith process the petitioner's case for war injury pension in terms of the aforesaid letter dated 31.1.2001, Clause 4.1(E) and pay the differential admissible to him in accordance with the prevailing guidelines and circulars within six weeks from today. This differential shall also carry 12% interest per annum from the date of the recommendation by the Additional Directorate Adjutant General's office, i.e., from 01.10.2007 till the date of payment. The petitioner shall also be entitled to the costs, quantified at Rs.50,000/-, to be paid within the same period. The writ petition is allowed in the above terms.”*

17. In the case of *Sumitra Devi* (supra), the Hon'ble High Court for the States of Punjab and Haryana has also interpreted and reproduced various circumstances classified in Category-E of Regulation 82 and after taking note of various eventualities classified in Category-E, in the matter of granting of liberalized family pension to a widow of a personnel deployed in Operation Vijay who was participating in an actual practice camp, collapsed and died, after he complained of chest pain while undergoing training. In the said



case also death was treated as an injury sustained while in training on account of stress and strain and the same was treated as a battle casualty. Even in the case of *Sep Shamsheer Shahi* (supra) who was posted in Operation Meghdoot and sustained low back injury while he was in training in the Operational Area has been granted war injury pension based on the Army Orders and the provisions of Category-E of Regulation 82, as discussed hereinabove.

18. Taking note of all these circumstances and the fact that have come on record, we are of the considered view that in the case of the present applicant also there is not an iota of doubt in our mind that once the injury sustained by the applicant is seem to have been caused while he was posted in a notified operational area and the injury is seem to have been sustained by him while participating in a battle inoculation training exercise which involved demonstration with live ammunition, there is no reason why the benefit of war injury pension should not be granted to the applicant.

19. Keeping in view the aforesaid, we allow this OA and direct that the injury sustained by the applicant be classified as a battle casualty and he be granted war injury pension from due date. However, the arrears shall be restricted to three years prior to the filing of this OA to be paid within three months of the passing of this

order failing which these shall carry interest at the rate of six per cent per annum.

20. QA stands allowed. Pending application(s) also stands closed.

Pronounced in open Court on this <sup>25<sup>th</sup></sup> day of January, 2024.

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(JUSTICE RAJENDRA MENON)  
CHAIRPERSON

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(REAR ADMIRAL DHIREN VIG)  
MEMBER (A)

/vks/