

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

OA 1233/2016

Ex Nk Zabair Ahmed ... Applicant  
Versus  
Union of India & Ors. ... Respondents  
For Applicant : Mr. V.S. Kadian, Advocate  
For Respondents : Dr. V.S. Mahndiyan, Advocate

CORAM :

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

ORDER

By this application, filed under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has prayed for the following reliefs:-

*(a) Quash and set aside the impugned letter no. 202/A3 dated 08 Jan 2012 and direct respondents to grant War Injury Element to the applicant instead of disability element @50% after granting benefits of rounding off/broad banding. And/or*

*(b) Direct respondents to pay the due arrears of differential amount of War Injury Pension with interest @125 p.a. with effect from the date of retirement with all the consequential benefits.*

*(c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case."*

2. The applicant was enrolled in the Indian Army on 15.12.1995 and was discharged from service on 31.03.2012,

with disability of Sensorineural Hearing Loss (Bilateral) @40% for life, and held as aggravated by military service with the reason for specific condition as 'due to regular exposure of small arms fire'.

3. It is the case of the applicant that the circumstances leading to disability of the applicant were that he was posted in operational area at the time of disability and that the use of arms during exchange of firing with terrorists in operational area is the reason behind the disability and thus, his disability should be categorised as 'Battle Casualty' and grant War Injury Element.

4. Per contra, the learned counsel for the respondents by filing counter affidavit has submitted to the effect that the disability has been treated as aggravated by Military Service and competent authority has classified his disability as only aggravated and not Battle Casualty and based on relevant rules and he is not entitled to claim War Injury Pension.

5. We have heard the contending parties and perused the pleadings and documents submitted by the respondents and the case laws on the subject. Now, the moot issue that needs to be interpreted in the present case is whether the injury of the

applicant is to be classified as Battle Casualty by appropriate interpretation of the impugned policy letter.

6. We consider it appropriate, before proceeding to adjudicate the claim of the applicant, to place the context of rule position on record. Therefore, the relevant extracts of Appendix A to Army Order 1/2003, which governs the policy guidelines for classification of injury as Battle Casualty is reproduced hereunder:

*(a) Army Order 1/2003/MP: Instructions for the management of Physical and Battle Casualties*

*Para 1 to 3. x x x x x x x x*

*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 or wounds or injuries (other than self-inflicted)*

*(c) Wounded or injured (other than self-inflicted)*

*(d) Missing*

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

*Appendix A to AO 1/2003/MP*

*Battle Casualties*

*1. 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 while 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 hostiles 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 defence 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 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 inoculations/training or operationally oriented training in preparation for actual operations due to gunshot wound/explosion of live ammunition/ explosives/mines or by drowning/electrocution.*

*(k) Casualties occurring while carrying out battle inoculation/training or operationally oriented training in preparation for actual operations due to gunshot wound/explosion of live ammunition/Explosives/Mines or by drowning/electrocution.*

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

*(m) Casualties due to vehicle accidents while performing bonafide military duties in war/border skirmishes with neighbouring countries including action on line of control and in counter insurgency operations.*

*(n) Casualties occurring as a result of IED/bomb blasts by saboteurs/ANEs in trains/buses/ships/aircrafts during mobilization or deployment in war/war like operations.*

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

*(p) Accidental death/injuries sustained during the course of move of arms/explosives/ammunition for supply of own forces engaged in active hostilities.*

*(q) Death due to poisoning of water by enemy agents resulting in death/physical disabilities of own troops deployed in operational area in active hostilities.*

*(r) Accidental deaths/injuries sustained due to natural calamities such as floods, avalanches, cyclones, fire and lightening or drowning in river while performing operational duties/movements in action against enemy forces and armed hostilities in operational area to include deployment on international border or line of control.*

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

*(t) Army personnel killed/wounded due to spread of terror during leave/in transit because of their being army personnel.*

*Physical Casualties.*

*2. Deaths caused due to natural causes/illness/accident/suicide/murder due to family disputes in operational and nonoperational areas will be treated as physical casualties.*

7. On a perusal of the aforesaid policy letter, we find that the injury of the applicant does not fall within the conditions laid down herein for specification of injury as 'Battle Casualty' and hence, not eligible for grant of 'War Injury Element'.

8. In light of the above observations, we find that the applicant is not entitled for grant of 'War Injury Element', and hence, this OA deserves to be dismissed being devoid of merit.

9. Consequently, the OA 1233/2016 is dismissed.

10. No order as to costs.

11. Pending miscellaneous application, if any, stand closed.

Pronounced in the open Court on 24 day of July, 2024.

(JUSTICE RAJENDRA MENON)  
CHAIRPERSON

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

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