

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

OA 1556/2020

Maj Gen B K Jain (Retd.) ... Applicant  
Versus  
Union of India and Ors. ... Respondents

For Applicant : Mr. Indra Sen Singh, Advocate  
For Respondents : Mr. Prabodh Kumar, Sr. CGSC

CORAM

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

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, and aggrieved by the non-mentioning of 'Battle Casualty/War Disabled Soldier' in his PPO, the applicant has prayed for following reliefs:

- a) *Call for complete original record of the Applicant's case and after perusal thereof, direct the Respondents including PCDA (Pensions) to issue a fresh PPO mentioning therein the status of the Applicant as a "Battle Casualty/War-Disabled" officer;*
- b) *Direct the Respondent No. 2 and Respondent No. 3 to issue an appropriate certificate to the Applicant, thereby certifying that the Applicant is a "Battle Casualty/War-Disabled" officer having been disabled due to the mine blast injury sustained during OP-PAWAN due to which his right leg was amputated;*
- c) *Direct the Respondents to grant/extend to the Applicant all the benefits and privileges given to a "Battle Casualty/*

*War-Disabled” officer, except ‘War Injury/Disability Pension’ in the same manner as it is given to a “Battle Casualty/ War-Disabled” officer who is in receipt of regular war injury/disability pension post-retirement.*

*d) Direct the Respondents to revisit the Govt Policy of grant of one time lump sum compensation, in lieu of regular post retirement War-Injury Pension, to a Battle-Casualty/ War-Disabled Soldier with a view to restore, after a specified period post-retirement, the regular monthly war-injury/disability pension to a Battle-Casualty War-Disabled Soldier who had opted for grant of one-time lump sum compensation while being in service; and*

*e) Issue such other order(s)/direction(s) as may be deemed appropriate in the facts and circumstances of the case.*

2. The applicant was commissioned in the Indian Army on 16.12.1978 and retired on superannuation from service on 31.07.2016. He was declared as a ‘Battle Casualty’ vide Part-II order bearing no. 128 was published by the concerned unit vide publication dated 09.10.1991. He was awarded ‘Wound Medal’ vide Part-II Order No. 22/89 dated 14.02.1989.

3. We have heard both the parties and on a perusal of records placed on record, we find that it is undisputed that the disability of the applicant has been designated as ‘Battle Casualty’ and he has been awarded with the ‘Wound Medal’ for the same. In this background, the limited question which comes up for our consideration herein is whether the applicant is entitled for grant of certificate certifying him to

be a 'Battle Casualty/War Disabled' Officer, and subsequent benefits except War Injury Element of Pension ?

4. We find that it is not in dispute that the injury of the applicant was designated as 'Battle Casualty' and that the injury was suffered during "OP PAWAN-II". It is also undisputed that the applicant has accepted the one time lump sum compensation at the time of his war injury. The only concern raised by the respondents vide their Counter Affidavit dated 11.08.2021 is that the case was processed to the Competent Authority in accordance with the Regulation 102 of Pension Regulations for the Army, 2008, and it was decided by the Competent Authority that once the compensation in lieu of war injury element due to disability for life has been paid, there shall be no further entitlement on account of such a disability at the time of retirement/discharge.

5. On a perusal of aforesaid Regulation 102 of Pension Regulations for the Army, 2008, we find that wherein one-time lump sum compensation has been granted to the disabled soldier, his entitlement for war injury element of pension post his retirement is waived off. However, in absence of any other restriction imposed by the aforesaid

regulation, and any justification on the part of Respondents, we could not comprehend the reason behind the denial of other entitlements granted to the Battle Casualty soldier, including certificate certifying that he is a 'Battle Casualty'.

6. We find it pertinent to note our disappointment with the fact that the applicant being a highly decorated officer of Indian Army who has given almost 38 years of his life to the unblemished and exemplary service, while leading to a 'Battle Casualty' has to come to this Tribunal for a certification certifying that he is a 'Battle Casualty', and the subsequent benefits, which in ordinary course should have been granted to him at the earliest, and the Respondents have failed in doing so even after 8 years of his retirement.

7. We find resonance in the opinion of the Hon'ble Delhi High Court in the case of Maj AK Suhag Vs UOI and others (WP(C) 4488/2012 decided on 21.02.2013) that 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 rationalisation as appears to have prevailed with the respondents.

8. On a study of medical documents, we find that other

than the Battle Injury, the applicant has been diagnosed with DM-II by the Release Medical Board, which has been assessed @20%. We find that the disability was detected in his last posting in 2015, and notably, the applicant has served in 7 field postings, with the first 4 postings being continuously in field service from Feb 1979 to Feb 1990, for 11 years. We cannot lose sight of the fact that the applicant despite being a 'Battle Casualty' has served for more than 25 years post his 'Mine Blast Injury'.

9. Thus, keeping in view the consistent stand taken by this Tribunal based on the law laid down by the Hon'ble Supreme Court in the case of Dharamvir Singh Vs. Union of India and others [2013 (7) SCC 36] wherein it is clearly spelt out that any disease contracted during service is presumed to be attributable to military service, if there is no record of any ailment at the time of enrolment into the military Service, we see no reason not to grant the benefit of disability pension to the applicant with regard to the aforesaid disability of DM-II.

10. In view of the aforesaid analysis, we are of the opinion that the applicant is entitled to a certification certifying that he is a 'Battle Casualty', and therefore, we direct the Respondents to issue a Fresh PPO mentioning to the effect that

the applicant is a 'Battle Casualty', along with a certificate, duly certifying his 'Battle Casualty' status, and all other benefits, he is entitled to, by virtue of being a 'Battle Casualty' except the War Injury Pension.

11. Additionally, he shall be granted benefit of disability pension for DM-II @20% rounded off to 50% in view of the judgement of Hon'ble Supreme Court in Union of India and others Vs. Ram Avtar (Civil Appeal No. 418/2012) decided on 10.12.2014. However, the arrears of disability pension shall be restricted to three years prior to the date of filing of OA (28.09.2020) keeping in view the law laid down in the case of Union of India and others Vs. Tarsem Singh [2008 (8)SCC 649].

12. The aforesaid directions shall be given effect within a period of 60 days from the date of pronouncement of this order, failing which, the applicant shall be entitled to interest @ 6% per annum till the date of payment in case of grant of disability pension.

13. Consequently, the OA 1556/2020 is allowed in terms of above directions.

14. Pending miscellaneous application if any, stands disposed of.

15. No order as to costs.

Pronounced in the open Court on 18 day of October, 2024.

(JUSTICE RAJENDRA MENON)  
CHAIRPERSON

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

Ps