

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

OA No. 1978 /2018

Maj Shantanu Subir kumar Mukerji ... Applicant
Versus

Union of India and Ors. ... Respondents

For Applicant : Mr. Shakti Jaidwal, Advocate with
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- grant of War Injury Pension.

2. The applicant was commissioned in the Indian Army on 01.09.1995 and was posted as RMO of 32 Rashtriya Rifles Bn wef Jan 1996. He was deployed for evacuation of casualties and embalming of fatal casualties, wherein he met with an accident, and was diagnosed as 'Fracture Both Bones Left Forearms (Optd). He was declared as a 'Battle Casualty vide AG's Branch, Army HQ Letter no. 12804/M/Org-3(d) dated 07.07.1997. A Part-II order bearing No.137 was published by the concerned unit vide publication dated 10.09.1997. He was awarded 'Wound Medal' vide Part-II Order No.157 dated 03.11.1997.

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 War Injury Pension or not ?

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 HIFAZAT-II". The only concern raised by the respondents is that the act during which injury has been suffered by the applicant does not fall within the category 'E' in terms of GoI, MoD Letter dated 31.01.2001.

5. On a perusal of category 'E', we find that the case of the applicant falls within the criteria laid down by category 'E' as under, as he suffered the injury while operating during "OP HIFAZAT-II" :

"Category E:

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(i) Operations specifically notified by the Govt. from time to time"

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6. It is important to note that in the case of Lt Col Sunil Datt Vs UoI & Ors OA No. 54/2016, Armed Forces Tribunal, Regional Bench Kolkata had accorded Battle Casualty status to

the applicant who had sustained accidental injuries while he was in the process of performing assigned military duties in an operational area (Op Parakram) which was a near war like situation.

7. It would be appropriate for us to refer to the judgement of Hon'ble Delhi High Court in Maj AK Suhag Vs UOI and others in WP(C) 4488/2012 decided 21.02.2013, wherein the officer was ordered to report for briefing while "OPERATION RAKSHAK-III" was on and he met with an accident leaving him with 100% disability. He was later discharged from service. The Armed Forces Tribunal rejected his case holding that the petitioner's case falls under category C (accidents while travelling on duty in Government vehicles or public/private transport) and not under category E (operations specially notified by the Government from time to time). The Hon'ble High Court observed as given below:-

"11. It is apparent from the above materials that the petitioner was deployed in Kargil and, according to his unit's communication dated 6-7-2007, was the Transport commander. He was asked to report for briefing. This was evidently when OPERATION RAKSHAK – III was on. Whilst in transit, his jeep met with an accident, and he suffered serious head injury, besides other injuries. There seems to be no doubt in this Court's mind that the injuries were classifiable as falling under category E(j) i.e during "Operations specially notified by the Government from time to time."

12. What persuaded the Tribunal to hold otherwise is that the petitioner's injuries were not incurred during actual operations. In doing so, the Tribunal restricted the eventualities in category-E

(j) to actual operations, i.e. injuries incurred during military combat or such like situations or as a result of explosion of mines etc. This would appear from its observation that only if someone is victim to extremism or any other contingency as a result of injury, would it be attributable to operation. With great respect, such a narrow interpretation of what is otherwise a widely phrased condition, is unwarranted. This would necessarily imply that those who are on the way – like the petitioner, in an operation-notified area and are intrinsically connected with the success of such operations cannot ever receive war-injury pension even though their aid and assistance is essential and perhaps crucial for its success. The classification of the residual head, i.e. “operations specially notified by the government from time to time” has to be read along with the broad objective of the policy, i.e. - those who imperil themselves – either directly or indirectly – and are in the line of fire during the operations, would be covered if the injuries occur in that area or in the notified area of operation...”

8. We find resonance in the opinion of the Hon'ble High Court in Maj Suhag (supra) 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. We are of the opinion that soldiers who imperil themselves in border areas in the vicinity of the LC, LoC or the international border have to be treated differentially and merely giving their death/disability attributability to military service is a dis-service to these brave men besides being an inadequate recompense for soldiers who are willing to lay down their life in the service of the nation. Giving mere attributability to military service would be an inadequate recompense in such cases. We,

therefore, opine that a positive interpretation of the existing rules and regulations needs to be taken.

9. In view of the aforesaid analysis, and the facts and circumstances of the case, we frame our opinion based on interpretation of the impugned policy letter which classifies a personnel as Battle Casualty, and therefore, we are of considered opinion that the applicant's prayer to grant him war injury pension is justified, which he is entitled from the date of his retirement.

10. However, the arrears shall be restricted to three years prior to the date of filing of OA. [Date of filing of OA: 29.11.2018]. Respondents are directed to give effect to aforesaid order within four weeks from the date of receipt of this order.

11. Consequently, the O.A. No.1978/2018 is allowed.

12. No order as to costs.

13. Miscellaneous application, if any, pending stands closed.

Pronounced in the open Court on 4 day of October 2024.

(JUSTICE RAJENDRĀ MENON)
CHAIRPERSON

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

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