

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

OA 2551/2021 WITH MA 2696/2021

Ex Nk Sujit Kumar Singh ... Applicant
Versus
Union of India and Ors. ... Respondents

For Applicant : Mr. Mohan Kumar, Advocate
For Respondents : Mr. Rajeev Kumar, Advocate

CORAM

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

ORDER

MA 2696/2021

Keeping in view the averments made in the application and in the light of the decision in Union of India and others Vs. Tarsem Singh (2009(1) AISLJ 371), the delay in filing the OA is condoned.

2. The MA stands disposed of.

OA 2551/2021

3. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, and aggrieved by the non-grant of status of 'Battle Casualty'.

4. The applicant was enrolled in the Indian Army on 06.05.2000 and was posted to 63 Rashtriya Rifles Bn wef 20.12.2007. On 12.12.2009, the applicant along with

three other soldiers was detailed to provide protection to the Commander, 14 Sector, Rashtriya Rifles as a member of the 'Quick Reaction Team' wherein while escorting the Commander, the applicant met with an accident.

5. The applicant suffered severe injury and was diagnosed with 'Fracture C5 with Myelopathy (Optd.)' as per the Injury Report (IAFY-2006) promulgated post the accident, wherein it has been endorsed by the Commanding Officer that the applicant was on bonafide military duty. The CoI was conducted and forwarded to GoC, CI Force, wherein vide his opinion dated 30.07.2010 he directed that the aforesaid injury shall be treated as 'Battle Casualty'.

6. The case of the applicant was forwarded to the Integrated HQ, MoD for further processing for grant of 'Battle Casualty'. However, vide letter no AG/MP5(D) dated 23.09.2010, IHQ, MoD issued directions that the casualty in respect of the applicant was due to road accident while on bonafide military duty in field area in CI OP Rakshak (J&K) and the casualty is attributable to military service but does not merit for Battle Casualty since the injury was not due to any action/actual fighting with enemy/terrorists.

7. 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' by GoC, CI Force but the same has been rejected by IHQ, MoD. In this background, the limited question which comes up for our consideration herein is whether the applicant is entitled for status of 'Battle Casualty' or not ?

8. 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 AO 5/2020/MP which governs the policy guidelines for classification of injury as Battle Casualty is reproduced hereunder:

(a) Army Order 1/2003/MP

Para 1 to 3. x 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"

9. At this point, it is pertinent to refer to Appendix 'A' to AO 1/2003/MP providing for circumstances for classification

of Battle Casualties, which are produced herein as under:

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/electronution.

(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.”

10. On a perusal of the aforesaid ‘Appendix’ to AO 1/2003/MP, we find that the circumstances provided in

clause 'm' clearly provides for grant of 'Battle Casualty' status in cases of vehicular accidents while performing bonafide military duties in counter insurgency operations, with no overriding clause of enemy action.

11. We find that it is not in dispute that the injury of the applicant was designated as 'Battle Casualty' by GoC CI Force and that the injury was suffered during 'OP RAKSHAK'. It is further undisputed that the applicant was posted in CI Ops area while operating with 63 Rashtriya Rifles. The only concern raised by the respondents is that the act during which injury has been suffered by the applicant is not in action with the enemy which we have clearly noted as per the circumstances provided in the AO 1/2003/MP itself that the injury can be held as 'Battle Casualty' even in cases of vehicular accident.

12. 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.

13. It would be appropriate for us to refer to the judgement of Hon'ble Delhi High Court in **WP(C) 4488/2012**

decided 21.02.2013, Maj AK Suhag Vs UOI and others, dealing with the similar facts as in the instant case, wherein the officer was ordered to report for briefing while “OPERATION RAKSHAK-III” was on and 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..."

14. 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, the international border or the CI Ops area 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.

15. 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 'Battle Casualty' is justified, along with all the consequential benefits, for which he is entitled from the date of his retirement.

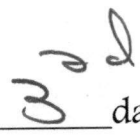
16. However, the arrears of war injury pension in consequence of 'Battle Casualty' shall be restricted to three years prior to the date of filing of OA. [Date of filing of OA: 20.10.2021]. Respondents to give effect to aforesaid order within 4 weeks from the date of receipt of this order.

17. Consequently, the OA 2551/2021 is allowed.

18. Pending miscallenuous application, if any, stands disposed of.

19. No order as to costs.

Pronounced in the open Court on 3rd day of April, 2025.


JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

Akc