

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

O.A. No. 1203 of 2022

In the matter of :

Ex Sub Gaikwad Sarjerao Namdeo

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri Ajit Kakkar, Advocate

For Respondents : Shri V. Pattabhi Ram, Advocate

CORAM :

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

ORDER

Invoking the jurisdiction of the Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 read as under :

***“(a) To direct the Respondents to bring all
relevant documents on record with
advance copies to the Applicant.*”**

- (b) To direct the Respondents to bring on record relevant documents including the Battle Casualty certificate, Severity Certificate in respect etc. in respect of the Applicant.**
- (c) To set aside the Letter No.1653/BC/7M/Stats dated 09.03.2022.**
- (d) To direct the Respondents to grant Battle Casualty and broad banding of Battle Casualty to the Applicant w.e.f. 01.07.2021.**
- (e) To direct the Respondents to issue a corrigendum PPO pertaining to Battle Casualty and broad banding of the Battle Casualty of the Applicant.**
- (f) To direct the Respondents to pay arrears of Battle Casualty and broad**

banded Battle Casualty along with interest @ 12% from the date of discharge i.e. 01.07.2021.

(g) To grant such other relief appropriate to the facts and circumstances of the case as deemed fit and proper."

BRIEF FACTS

2. The applicant, having been found medically and physically fit (SHAPE 1) after thorough medical examination, was enrolled in the Indian Army on 30.06.1993. It is the case of the applicant that he suffered with the disability 'Ischemic Stroke-Rt MCA Territory' in the year 2019, whilst he was deployed at Zulu Dropping Zone, Siachen Glacier, Ladakh and the applicant was placed in low medical category P2(P) in the categorisation medical board on 06.03.2020. On 02.11.2020, the applicant was issued a certificate declaring his disability as 'Battle Casualty' as per Para 1(z) of Appendix 'A' to Army Order 5/2020/MP and thereafter on 31.12.2020, a Certificate

of Severity was issued to the applicant in respect of the disability suffered by him. The Release Medical Board (RMB) assessed the applicant's disability 'ISCHEMIC STROKE-RT MCA TERRITORY (ICD I 53.41) @ 50% for life and the said disability was conceded as 'Aggravated by military service' by the RMB. Thereafter, on 30.06.2021, the applicant was discharged from service in low medical category S1H1A1P2(P)E1 after serving for more than 28 years. The applicant was granted service pension as admissible.

3. Since the applicant's disability was regarded as 'aggravated by military service' and was assessed @ 50% for life by the medical board and thereafter approved by the competent authority on 13.07.2021, the claim of the applicant for grant of disability pension was forwarded to PCDA (P) Allahabad and he was granted disability element @ 50% with rounding off benefit @ 75% for life w.e.f. 13.07.2021 vide e-PPO No. 172202100501-0201.

4. The applicant then sent a representation/legal notice dated 20.01.2022 to the respondents seeking grant of 'battle casualty' pension. The respondents, vide letter dated

09.03.2022, rejected the request of the applicant for grant of Battle Casualty stating that it does not meet the twin parameters of 'cause/circumstances' and the 'severity of injury sustained' as per Para 69 (a) and (b) of Army Order 1/2003/MP. Aggrieved by this, the applicant has filed the present OA. In the interest of justice in accordance with Section 21 of the AFT Act, we take up the OA for consideration.

CONTENTIONS OF THE PARTIES

5. The learned counsel for the applicant submitted that the applicant, at the time of joining the service, was declared fully fit medically and physically and whilst the applicant was deployed at Zulu Dropping Zone, Siachen Glacier, Ladakh, he suffered with 'Ischemic Stroke-Rt MCA Territory' and his disability was thus conceded as 'aggravated by military service' by the RMB with assessment thereof @ 50% for life. The learned counsel further submitted that the disability of the applicant is well covered under Para 1(z) of Appendix 'A' to Army Order 5/2020/MP as the disability occurred due to environmental reasons i.e. climate and terrain conditions of Siachen Glacier where the applicant was deployed at that

time. The learned counsel for the applicant further referred to Para 1(g) of Appendix 'A' to Army Order 1/2003 providing '*Casualty occurring while operating on the International border or LOC due to natural calamities and illness caused by the climatic conditions*', to submit that the disability of the applicant falls in this provision.

6. The learned counsel further added that the respondents committed an error in not granting the applicant 'Battle Casualty' pension and denied his rightful claim; that due to the disability suffered by the applicant during service, the applicant has been going through great hardships mentally and physically and his living conditions have deteriorated. The learned counsel placed reliance on the order of the AFT, RB at Chandigarh in the case of Yoginder Singh Rana Vs Union of India & Ors. [O.A. No. 1887/2011] and order of AFT, RB at Lucknow in the case of Sepoy Raghavendra Singh Vs. Union of India & Ors. [O.A. No. 243/2016] wherein holding the disabilities of the applicants in those cases as battle casualty occurred in the operational area, similar reliefs were granted. Therefore, the learned counsel for the applicant prayed that

the applicant may be granted 'Battle Casualty' disability pension instead of normal disability pension.

7. *Per contra*, the learned counsel for the respondents submitted that the applicant is not entitled to the relief claimed since the competent authority has opined that 'for a casualty to be classified as 'Battle Casualty', the casualty should meet the twin parameters of 'Cause/Circumstances' and the 'Severity of injury sustained' as per the provisions of Para 69 (a) and (b) of AO 1/2003/MP; that in the applicant's case, the injury sustained by the applicant is 'Moderate' and 'Not Grievous' as per Severity Certificate dated 09.04.2021 received vide 7 MAHAR letter No. 571138/PC/BC/A2 dated 07.03.2022; and this was duly informed to the applicant vide Records, The Mahar Regiment letter dated 09.03.2022.

8. The learned counsel for the respondents further submitted that since the applicant's disability was conceded by the RMB as 'aggravated by the military service' with assessment @ 50% for life, his case was considered by the competent authority and the applicant was already granted disability pension @ 50% with rounding off benefit @ 75% for

life and, therefore, no further relief is to be granted to the applicant. The learned counsel thus prayed for dismissal of the OA.

ANALYSIS

9. We have heard the learned counsel for the parties and have gone through the records produced before us.

10. It is an undisputed fact that since the applicant's disability was conceded by the RMB as 'aggravated by the military service' with assessment @ 50% for life, respondents have already granted him the disability pension @ 50% with rounded off to 75% for life.

11. With regard to the prayer of the applicant regarding grant of 'Battle Casualty' pension, it is not in dispute that the applicant has suffered the disability 'Ischemic Stroke-Rt MCA Territory' while he was deployed at Zulu Dropping Zone Siachen Glacier, Ladakh (earlier J&K) participating in 'Operation Meghdoot' and a detailed report on 'Battle Casualty (Non Fatal) dated 07.04.2021 has also been placed on record by the applicant. A Certificate of Parameter 1 & 2 of Para 1(z) Appx A to AO 5/2020/MP issued by the unit of the applicant

7 MAHAR dated 02.11.2020 is also available on record certifying that the disability of the applicant has occurred due to environmental i.e. terrain and climatic conditions of Siachen Glacier. The applicant was initially placed in temporary low medical category w.e.f. 14.09.2019 and thereafter converted into medical category P2(P) w.e.f. 06.03.2020 and the unit of the applicant recommended that the applicant is to be treated as 'Battle Casualty' as per the provisions of the aforesaid Army Order. However, the IHQ MoD (Army), after examining the relevant rules/regulations, vide letter dated 17.02.2022 informed that for a casualty to be classified as 'Battle Casualty' it should meet twin parameters as laid down in Para 69(a) and (b) of AO 1/2003/MP and thus the applicant's disability was not declared as 'Battle Casualty'.

12. It would be appropriate to refer to relevant provisions of the Army Order 1/2003/MP, whereby as per the definitions of physical casualties and battle casualties, the following guidelines are given :

"3. Physical Casualties:-

Physical Casualties are those, which occur in non operational areas or in operational where there is no

fighting Casualties of this type consist of the following categories:-

- a) Died or Killed*
- b) Seriously or dangerously ill*
- c) Wounded or injured (including self - inflicted)*
- d) Missing*

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 of wounds or injuries (other than self inflicted)*
- c) Wounded or injured (other than self-inflicted)*
- d) Missing"*

In Para 5 of the said Army Order, it has been provided that in Appendix 'A' to the said Army Order, the circumstances for classification of physical or battle casualties are listed, which are as follows :

Appendix 'A' to AO 1/2003

"1. Battle Casualties

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 which 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 hostilities 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 defences 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 a 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 inoculation/training or operationally oriented training in preparation for actual operations due to gunshot wounds/explosion of live ammunition/explosive/ mines or by deleted vide AO 16/2005/018.

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

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

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

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

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

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

(q) Accident death/injuries sustained due to natural calamities such as floods, avalanches, land slide, cyclones, fire and lightening or drowning in river while performing operational duties/movements in action against enemy forces hostiles in operational area to include deployment on International order or Line of Control.

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

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

"2. Physical Casualties

Death caused due to natural causes/illness/accident/suicide/murder due to family disputes in operational and non- operational area will be treated as Physical Casualties."

13. We may also refer to the provisions contained in Govt of India, Ministry of Defence letter No. 1(2)/97/D/(Pen-C) dated 31.01.2001, which lays down the circumstances for determining the pensionary benefits for death or disability in attributable/aggravated cases, which read as under :

**"1 to 3. xxx xxx
PART II - PENSIONARY BENEFITS ON DEATH/
DISABILITY IN ATTRIBUTABLE/AGGRAVATED
CASES**

4.1 For determining the pensionary benefits for death or disability under different circumstances due to attributable/aggravated causes, the cases will be broadly categorised as follows: -

Category A

Death or disability due to natural causes neither attributable to nor aggravated by military service as determined by the competent medical authorities. Examples would be ailments of nature of constitutional diseases as assessed by medical authorities, chronic ailments like heart and renal diseases, prolonged illness, accidents while not on duty.

Category B

Death or disability due to causes which are accepted as attributable to or aggravated by military service as determined by the competent medical authorities. Diseases contracted because of continued exposure to a hostile work environment, subject to extreme weather conditions or occupational hazards resulting in death or disability would be examples.

Category C

Death or disability due to accidents in the performance of duties such as :

- (i) Accidents while traveling on duty in Government Vehicles or public/private transport
- (ii) Accidents during air journeys
- (iii) Mishaps at sea while on duty
- (iv) Electrocution while on duty, etc.
- (v) Accidents during participation in organised sports events / adventure activities/ expeditions/training

Category D

Death or disability due to acts of violence/attack by terrorists, anti social elements, etc. whether on duty other than operational duty or even when not on duty. Bomb blasts in public places or transport, indiscriminate shooting incidents in public, etc. would be covered under this category, besides death/disability occurring while employed in the aid of civil power in dealing with natural calamities.

Category E

Death or disability arising as a result of :

- (a) enemy action in international war.
- (b) action during deployment with a peace

keeping mission abroad

- (c) *border skirmishes.*
- (d) *during laying or clearance of mines including enemy mines as also minesweeping operation.*
- (e) *on account of accidental explosions of mines while laying operationally oriented mine-field or lifting or negotiating minefield laid by enemy or own forces in operational areas near international borders or the line of control.*
- (f) *War like situations, including cases which are attributable to/aggravated by*
 - (i) *extremist acts, exploding mines etc. while on way to on way to an operational area.*
 - (ii) *battle inoculation training exercises or demonstration with live ammunition.*
 - (iii) *kidnapping by extremists while on operational duty.*
- (g) *An act of violence/attack by extremists, anti-social elements, etc.*
- (h) *Action against extremists, antisocial elements etc. Death/disability while employed in the aid of civil power in quelling agitation, riots or revolt by demonstrators will be covered under this category.*
- (i) *Operations specially notified by the Govt. from time to time."*

xxx

xxx

4.2 Cases covered under category 'A' would be dealt with in accordance with the provisions contained in the Ministry of Defence letter No. 1(6)/98/D(Pen/Services) dated 3.2.98 and cases under category 'B' to 'E' will be dealt with under the provisions of this letter.

xxx

xxx

10 . War Injury Pension on Invalidment

10.1 *Where an Armed Forces Personnel is invalided out of service on account of disabilities sustained under circumstances mentioned in*

category 'E' of Para 4.1 above, he/she shall be entitled to War Injury Pension consisting of Service element and War Injury element as follows :

xxx

xxx

11. War Injury Pension on Retention in Service

11.1 Armed Forces Personnel who are retained in service despite the disability due to war injury sustained under circumstances mentioned in category 'E' of Para 4.1 above, and retire subsequently will have an option as follows to be exercised within a period as prescribed by the Government from time to time.

xxx

xxx

12. Liberalised Disability Pension in respect of Armed Forces Personnel sustaining disability under the circumstances mentioned in Category 'D' of Para 4.1 above.

Armed Forces personnel sustaining disability under the circumstances mentioned in Category 'D' of Para 4.1 above shall be entitled to same pensionary benefits as admissible to war injury cases on invalidment/retirement/discharge including lump sum compensation in lieu of disability, as mentioned in Paras 10 and 11 above. However, on invalidment they shall be entitled to disability element instead of war injury element in addition to service element. The service element will be equal to retiring/service pension to which he/she would have been entitled on the basis of his/her pay on the date of invalidment but counting service upto that date on which he would have retired in that rank in the normal course including weightage as admissible. Provisions of Para 6 of Ministry of Defence letter No. 1(6)/98/D(Pen/Services) dated 03.02.98 shall apply for calculating retiring/ service pension. There shall be no condition of minimum qualifying service of earning this element. This disability element would be admissible as laid down in para 7.1 (ii)(a) above. For lower percentage of disablement, this amount shall be proportionately reduced. However, in no case aggregate of service element and disability element shall be less than 80% of reckonable emoluments last drawn.

Note: Armed Forces personnel sustaining disability under the circumstances mentioned in Category 'D' of Para 4.1 above shall not be treated as War Disabled. Hence, they will not be entitled to any special concession/dispensation otherwise available to war disabled."

[Emphasis supplied]

14. In the present case, the applicant suffered with the disability 'Ischemic Stroke-Rt MCA Territory' while he was deployed in at Zulu Dropping Zone, Siachen Glacier, Ladakh. As mentioned in the Battle Casualty (Non Fatal) : Detailed Report (72 Hours) dated 07.04.2021, the applicant was deployed in Siachen Glacier while participating in 'Operation Meghdoot' and the cause for the casualty was indicated as 'Bad Weather Condition'.

15. Therefore, in terms of the circumstances for classification of 'Battle Casualties' as per Appendix 'A' to Army Order 1/2003/MP, the injury or death which occurs in action in an operational area, which can be classified as a 'Battle Casualty' and not accidental injury or death in an operational area. With regard to the contention made by the learned counsel for the applicant that the disability occurred due to climatic condition when he was deployed in operational area at Zulu Dropping Zone, Siachen Glacier, Ladakh, we may refer to

the Battle Casualty (Non Fatal) detailed report (72 hours) if 7 MAHAR, C/o 56 APO dated 07.04.2021, relevant extracts read as under :

"b) Casualty Details

- (i) **Operation** - **Operation Meghdoot**
(ii) **BC/PC** - **Battle Casualty**
(iii) **Nature of Casualty** - **Non Fatal**
(iv) **Cause** - **Bad Weather Condition**
(v) **Description**
(vi) **Brief Description** - **On 26th February 2019 at 15 hours. While individual deployed Zulu Dropping Zone at height of 18360 feet, Central Glacier [(Jammu & Kashmir (Now Union Territory Ladakh) complain lower limb pain, severe headache and weakness. Medical Officer of Zulu Dropping Zone given First Aid and declared Priority-I with Diagnosis-QUERY DVT at 1715 hrs on the same day and further evacuated to 403 Field Hospital (Siachen by helicopter at 1757h hours on 26 Feb 2019. On 27 Feb 2019, Individual further evacuated to Command Hospital, Western Command Chandimandir at 0700hours and reached at Command Hospital at 1400h on the same day and placed on Dangerously III List in Intensive Care Unit and was operated for Multi infarct Dementia. Cerebral infarction, unspecified and Stroke, not specified as hemorrhage or Infarction. Present Diagnosis - ISCHEMIC STROKE-RT MCA TERRIROT.**

16. The above facts have also been admitted by the respondents and therefore it is evident that when the casualty

occurred, the applicant was immediately evacuated to 403 Field Hospital (Siachen) and then on the next day itself he was evacuated to Command Hospital, Chandimandir where he was placed in Dangerously III List in ICU and was operated for multi infarct, Dementia, Cerebral infarction, unspecified and Stroke, not specified as hemorrhage or Infarction (later diagnosed as Ischemic Stroke RT MCA Territory). From 29.02.2019, the applicant was under treatment for the said disability which eventually declared him to be in permanent low medical category P2(P) in March, 2020.

17. We find it appropriate to examine the relevant extracts of AO 5/2020/MP which provides the policy guidelines for classification of injury as Battle Casualty, which is reproduced hereunder :

“Causes and Nature of Injury. The classification of wounded battle casualty will be guided by the parameters of cause/circumstance 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 given at Appendix 'A'

xxx

xxx

"1(z). Casualties due to illness caused by terrain/climatic conditions while operating along (B)/LC/LAC and CI/CT operations."

xxx

xxx

3(d) Any casualty occurring during deployment/mobilization of troops, for taking part in war or war like operations, will be treated as battle casualty."

(b) Parameter No 2 The injury should be of grievous nature. The following will be governing factor:-

xxx

xxx

(iii) Privation of any member or joint."

18. We have perused the relevant medical documents of the applicant and also the initial recommendations of the authority of the Unit of the applicant to attribute the disability or injury of the applicant as Battle Casualty. For classifying the case of injury/illness into battle casualty or physical casualty, the following clause also needs to be considered. The relevant provision of the AO 5/2020/MP is reproduced below :

"1(z) Casualties due to illness caused by terrain/climatic conditions while operating along (B)/LC/LAC and /CT operations."

19. In view of the aforesaid consideration and the facts and circumstances of the case, based on the interpretation of the

policy letter which classifies the casualty of an employee as 'battle casualty and criteria 1 regarding cause of the injury/ailment, we are of the considered opinion, that the applicant's ailment/casualty should be classified as 'Battle Casualty' as it happened due to climatic conditions in Siachen. Parameter 2 of AO 5/2020/MP takes into consideration nature/grievousness of the injury/ailment which is not specific and leaves the field open for subjective interpretation. During the course of arguments also, the learned counsel for respondents were not able to specify the issue regarding grievousness of the disability. We have also noted that after prolonged medical treatment the applicant has been awarded medical category P2 (P) and given a disability of 50% which was conceded to be aggravated by military service.

20. It is also evident that the unit of the applicant has also issued a severity certificate and giving every detail therein, recommended that the casualty of the applicant be considered as a battle casualty. However, the respondents rejected the claim of the applicant based on the parameters provided in the AO/2001/MP to be met, however, while doing so the

respondents failed to give any reason or ground as to how the severity of the disability suffered by the applicant whilst participating in 'Operation Meghdoot' was moderate and not grievous one. While making decision, the respondents should ensure fairness in the decision and avoid being influenced by the hyper-technicalities of the case. As we can see that even at the time of RMB, the applicant's disablement was at 50% on account of the disability in question and it is also to be noted that the medical category of the applicant was also assessed as P2(P) i.e. permanent low medical category. The applicant has suffered 50% of the disablement while serving in an operational area. The scientific articles available on the open domain also shows that the MCA stroke occurs when blood from the MCA suddenly interrupted or stopped and this loss of blood flow causes tissue death leading to serious and potentially permanent brain injury (article at *verywell health updated 19.10.2023 refers*).

21. The learned counsel for the applicant has made an averment in the OA that the applicant is paralysed and unable to carry out his day to day routine work properly. Although no documentary evidence has been filed by the applicant,

taking into consideration the above scientific paper, we are of the view that 50% disablement of the applicant caused by the disability suffered by him at Zulu Dropping Zone, Ladakh, above 18360 feet sea level, cannot be considered as moderate or non-grievous and thus the same deserves to be classified grievous ailment to be considered as 'battle casualty'. Thus in our opinion the disability is impairing and serious in nature, we find the prayer made by the applicant to consider classification of his casualty/ailment as a 'Battle Casualty' as reasonable. Accordingly, the applicant's disability/illness is regarded as a 'Battle Casualty (Non-fatal)' setting aside the impugned order dated 09.03.2022 issued by the respondents.

CONCLUSION

22. In view of the aforesaid consideration, the O.A. No. 1203 of 2022 is allowed to the extent that the casualty suffered due to the disability of the applicant is directed to be conceded as 'Battle Casualty (Non-Fatal)' and all consequential/pensionary benefits be granted to the applicant. The respondents are directed to comply with the above directions within a period of two months from the date of receipt of a copy of this order,

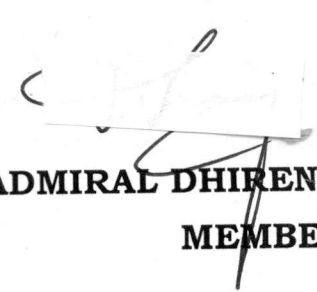
failing which, the applicant will be entitled to interest @ 8% per annum on the payments to be made.

23. Pending miscellaneous applications, if any, stand closed.

24. There is no order as to costs.

Pronounced in open Court on this 22nd day of September, 2025.


[JUSTICE RAJENDRA MENON]
CHAIRPERSON


[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

/ng/