

**COURT No.3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

OA No.213/2019 with MA 653/2019

Ex Hav Amar Singh ... **Applicant**
Versus
Union of India and Ors. ... **Respondents**

For Applicant : Mr. Virender Singh Kadian, Advocate
For Respondents : Mr. Neeraj, Sr. CGSC with
Mr. Rudra Paliwal, Advocate

CORAM

HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER

MA 653/2019

Keeping in view the averments made in this application and finding the same to be bonafide, in the light of the decision in the case of **Union of India and Ors.** Vs. **Tarsem Singh** [(2008) 8 SCC 648], the instant application is allowed condoning the delay of 6590 days in filing the OA. MA stands disposed of.

OA 213/2019

2. Being aggrieved by the fact that while the applicant was declared a Battle Casualty in Operation Pawan (Sri Lanka), he has not been given the benefit of War Injury Pension, this

Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007.

BRIEF FACTS

3. The applicant was enrolled in the Indian Army on 31st January, 1981. While serving in 10 PARA (SF), the applicant participated in OP PAWAN (SRI LANKA) and had sustained injury caused due to Gun Shot wound which resulted in "COMPOUND FRACTURE TIBIA (RT) UPPER 1/3rd" on 25.01.1988. He was placed in Low Medical Category CEE (Temporary) wef 08.10.1988 and thereafter remained in the same category upto 22.06.1999. On review of medical category, he was downgraded to CEE (Permanent) for two years wef 22.06.1999 which remained same during his entire service. The applicant was also diagnosed with "Bronchial Asthama-493" during service.

4. On the recommendation of Commanding Officer, shelter appointment provided to the applicant was withdrawn and disposal order of the applicant was issued by the Records, Parachute Regiment vide letter dt. 27.07.2000. Release Medical Board of the applicant held on 24.11.2000 considered the disability of the applicant "Compound Fracture Tibia (RT)

Upper 1/3" in Operation Pawan as a "Battle Casualty" "Attributable to Military Service" and Bronchial Asthama-493 as constitutional disease and assessed both the disabilities compositely @ 40% for two years wef 01.01.2001. The applicant was invalided out from service wef 31.12.2000 under Army Rule 13(3) Item III (V) after putting in 19 years and 11 months of total service. Records, the Parachute Regiment notified him as "Battle Casualty" vide Part II Order dt. 04.02.2001. However, he was only sanctioned Disability Element of Pension instead of War Injury Pension stating that the injury sustained did not fall under category D or E of Government of India, MoD letter No. 1(2)/97/D/(Pen-C) dt. 31.01.2001.

Contentions of the parties

5. It is argued by the counsel for the applicant that consequent to his disability and invalidment, the respondents have sanctioned disability element of pension @ 40% rounding off to 50% whereas, under the relevant provisions, the applicant is entitled for War Injury Pension having sustained injury caused due to Gun Shot Wound which resulted in "Compound Fracture Tibia (RT) Upper 1/3" on 25.01.1988, OP Pawan (Sri Lanka). A representation dt. 09.03.2018 to this

effect was also submitted by the applicant for consideration of his claim for grant of War Injury Element and since no response was given by the respondents, this OA has been filed.

6. In support of his contentions the counsel invites our attention to various policies/circulars applicable in this regard, stating that the case of the applicant is covered in terms of Para 1(i) to Appendix A to AO AO/1/2003 and under para 4.1 Category E(i) of the Integrated HQ of MoD (Army) letter No. 1/(2)/97/D(pen-C) dt. 31.01.2001.

7. Reliance has been placed by the learned counsel for the applicant on the judgment pronounced by Hon'ble Delhi High Court in the case of "**Major Arvind Kumar Suhag v. Union of India and Ors. Delhi High Court in WP (C) 4488/2012** decided on 21.02.2013 and various judgments pronounced by Armed Forces Tribunal, Principal Bench in OA 127/2016 **Ex Gnr Gore Dattatraya Mhatarji v UOI** decided on 11.10.2017, OA 1133/2017 **Smt. Rupam Widow of Swr Jawar Singh v UOI** decided on 07.11.2017 and OA 209/1015 **Shri Ombir Singh v UOI** decided on 02.12.2015.

8. Respondents have filed a detailed counter stating that the the claim of the applicant for grant of Disability Element

alongwith Battle Casualty documents was forwarded to PCDA (P), Allahabad. In response, the applicant has been sanctioned Disability Element of pension considering his discharge as a normal discharge and an amount of Rs. 624/- has been sanctioned by PCDA (P), Allahabad as Disability Element vide PPO DE/011335/2001 dt 22.06.2001 for five years which was further revised to Rs. 775/- as per policy by rounding off the disability percentage from 40% to 50% vide corrigendum PPO DE/RA/2292/2003 dt 21.05.2003 and moreover, an amount of Rs. 1,00,000/- from the Army Central Welfare Fund (ACWF) has been paid to the applicant. Further, Re-Assessment Medical Board extended the disability pension benefits to the applicant for life w.e.f 05.09.2005.

9. The objection raised by the respondents was that the applicant has filed this OA without following due office procedures. It is submitted that the applicant was Gun Shot wounded in OP Pawan (Sri Lanka) and diagnosed "COMPOUND FRACTURE TIBIA (RT) UPPER 1/3rd" which is not covered under Category D and Category E of Government of India, MoD (Army) letter No. 1/(2)/97/D(pen-C) dt. 31.01.2001. It is further submitted by the respondents that the applicant

without making any representation enjoyed the benefit of disability pension sanctioned to him for a long period of time and therefore, dismissal of OA was prayed for by the respondents.

Analysis

10. We have heard learned counsel for the parties at length and also perused the records.

11. The basic facts of the individual having sustained injury due to Gun Shot Wound while on duty and being a Battle Casualty are not in issue. The only issue warranting consideration is as to whether the injury/disability sustained by the applicant while performing the duties in Operation Pawan (Sri Lanka) are covered under the category 'E' of Para 4.1 of Government of India, MoD (Army) letter No. 1/(2)/97/D(pen-C) dt. 31.01.2001 and whether Operation Pawan (Sri Lanka) is an operation notified by the Government from time to time.

12. Before dealing with the rival submissions, it would be appropriate to examine the relevant Para 4.1, 10.1, 10.2 and 11.1 of the MoD Policy letter No. 1(2)/97/1/D (Pen-C) dated

31.01.2001 containing various provisions for War Injury Pension on Invalidment and the same are reproduced below:-

“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

Category B

Category C

Category D

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 operations.

(e) On account of accidental explosions of mines laying operationally oriented mine-field or lifting or negotiating mine-field-laid by the enemy or own forces in operational areas near international borders of 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 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. while on operational duty.

(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."

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:-

- (a) **Service Element** :- 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 the date on which he/she would have retired in that rank in normal course including weightage as admissible. Provisions of para 6 of Ministry of Defence letter No. 1(6)/98/D(Pens/Ser) dated 3.2.98 shall apply for calculating Retiring/Service Pension. There shall be no condition of minimum qualifying service for earning this element.
- (b) **War Injury Element**:- Equal to reckonable emoluments last drawn for 100% disablement. However, in No case the aggregate of Service element and War Injury element should exceed last pay drawn. For lower percentage of disablement, War Injury element shall be proportionately reduced as per the applicable provisions of EclSsc.offio whd gther Gulfill cemption ment of uger instry benison

10.2. Provisions contained in para 7.2 shall equally apply to individuals invalided out under the circumstances mentioned in category 'D' and 'E' of para 4.1 above for calculating War Injury element of War Injury Pension.

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 :-

(a) to draw lumpsum compensation in lieu of War Injury element, foregoing war injury element at the time of subsequent retirement/discharge; or

(b) to draw war injury element at the time of retirement in addition to retiring/service pension admissible

13. In the instant case, the individual sustained injuries in Sri Lanka during Operation Pawan, which is covered under clause (i) of Category E of Para 4.1. Further, when the respondents, themselves have classified the individual as "Battle Casualty", nothing further was required except for release of the War Injury Pension to the individual. Instead, the respondents had sanctioned him Disability Element of Pension. The cavalier manner in which the claim of applicant for grant of War Injury Pension was rejected by the respondents, relying on a textual interpretation of clause (E) is deplorable and cannot be sustained. As a result the petition succeeded.

14. The respondents are directed to forthwith process the petitioner's claim for War Injury Pension in terms of the aforesaid letter dt. 31.01.2001 Clause 4.1(E) and pay the War Injury Pension from the date of discharge and also to pay difference admissible to the applicant as per the prevailing guidelines within 8 weeks from today, failing which, it will attract interest @ 6% per annum.

15. OA stands allowed.

16. Pending application(s) also stands closed.

Pronounced in open Court on this day 11th November, 2025.

**(JUSTICE NANDITA DUBEY)
MEMBER (J)**

**(RASIKA CHAUBE)
MEMBER (A)**

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