

COURT NO. 3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA 871/2018 with MA 713/2018

Ex Sep Ukirde Sandip Bajirao Applicant
Versus
Union of India & Ors. Respondents
For Applicant : Mr. Virender Singh Kadian, Advocate
For Respondents : Mr. K K Tyagi, Sr. CGSC

CORAM

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

ORDER

MA 713/2018

Vide this application, the applicant seeks condonation of 120 days' delay in filing the OA. In view of the law laid down by the Hon'ble Supreme Court in the case of *Deokinandan Prasad Vs. State of Bihar* [AIR 1971 SC 1409] and in *Union of India & Ors. Vs. Tarsem Singh* [2009 (1) AISLJ 371], delay in filing the OA is condoned.

2. MA stands disposed of accordingly.

OA 871/2018

3. Invoking jurisdiction of this tribunal under Section 14 of the Armed Force Tribunal Act, 2007 and aggrieved by the non-grant of 'Battle Casualty', the applicant has filed the present OA seeking the following reliefs:-

“(a) Quash and set aside the impugned letter No 12822/AG/MP-5(D)/PC-2008/15418311W dated 02.07.2017. and/ or

(b) Direct respondents to treat the injury of the applicant as Battle Casualty and grant him War Injury Pension with all consequential benefits as applicable. And /or

(c) Direct respondents to pay the dues arrears of War Injury Pension with interest @ 12% p.a. with effect from the date of invalidment from service with all consequential benefits. And/or

(d) Any other relief which the Hon’ble Tribunal may deem fit and proper in the fact and circumstances of the case.”

4. The applicant was enrolled in the Indian Army on 01.08.2003. While posted in Jammu and Kashmir during ‘Operation Rakshak’, he was deployed at the 428 Field Hospital located at Tangdhar. He was accompanying a Quick Reaction Team (QRT) to provide protection to the Deputy Director Medical Services (DDMS), 15 Corps, and the Assistant Director Medical Services (ADMS), 28 Infantry Division, when the vehicle he was travelling in met with an accident. The applicant sustained severe injuries and was diagnosed with a ‘**FRACTURE D-3, D-4 WITH PARAPLEGIA**’, as per the injury report issued after the accident. The Court of Inquiry held that the said injury should be treated as a ‘Battle Casualty’.

5. The case of applicant was forward to integrated HQ, MOD for further processing for grant of ‘Battle Casualty’. However IHQ, MoD issued directions that the casualty in respect of the applicant was due to vehicle accident and hence circumstances leading to injuries are not covered under category D and E of GOI, MOD letter No 1(2)/97/D (Pen-C) 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.

6. Upon consideration of the submissions from both parties and on perusal of the material on record, it is evident that the applicant's disability has been recognized as 'Battle Casualty' by the General Officer Commanding, 28 Infantry Division, however, the same has been rejected by the Integrated Headquarters, Ministry of Defence. Against this background, the principal issue for determination is whether the applicant qualifies for the designation of 'Battle Casualty' or not.

7. 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. XXXXXXXXX*

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".

8. At this juncture, it is apposite to advert to Appendix 'A' of AO 1/2003/MP, which enumerates the circumstances governing the classification of personnel as 'Battle Casualties' for the purposes of entitlement and determination of service-related benefits, 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 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.

(i) 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.

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

(l) 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.

(m) 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.

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

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

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

(q) 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 international border 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.”

(Emphasis supplied)

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

10. We find that it is not in dispute that the injury of the applicant was designated as 'Battle Casualty' by GOC, 28 Infantry Division and that the injury was suffered during 'OP RAKSHAK'. It is further undisputed that the applicant was posted in CI Ops area. 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.

11. Furthermore, the respondent has contended that the applicant's case does not fall under Category D or Category E (j) i.e. operations specifically notified by the Government from time to time. However, it is appropriate to refer to the judgment of the Hon'ble Delhi High Court in *Maj. AK Suhag vs. Union of India and Ors* [WP(C) 4488/2012, decided on 21.02.2013], which dealt with similar facts as those in the present case. In that case, the officer was ordered to report for briefing during 'Operation Rakshak-III' and met with an accident, resulting in 100% disability, after which he was discharged from service. The Armed Forces Tribunal rejected his claim, holding that the petitioner's case fell under Category C (i) i.e. accidents while travelling on duty in Government vehicles or public/private transport) and not under Category E (j) (operations specially notified by

the Government from time to time). The Hon'ble High Court made the following observations:~

"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..."

12. We find ourselves in concurrence with the view expressed by the Hon'ble Delhi High Court in *Maj. Suhag (supra)*. This Court cannot but observe that when individuals place their lives in peril in the line of duty, the sacrifices they are called upon to make must never be disregarded through a process of abstract rationalisation, as appears to have been adopted by the respondents.

13. We are of the considered opinion that soldiers who risk their lives in border areas whether along the LC, LoC, international border, or in counter-insurgency operational zones deserve to be treated distinctively. Merely granting a finding of death or disability being attributable to military service amounts to an inadequate recognition of their valour and sacrifice. Such a limited attribution, in our view, constitutes both a disservice to these brave soldiers and an insufficient recompense for their willingness to lay down their lives in service of the nation. Accordingly, we hold that a purposive and liberal interpretation of the existing rules and regulations is warranted in such cases.

14. In the case of *Ex Nk Sujit Kumar Singh Vs UoI & Ors* (OA No. 2551/2021), a co-ordinate bench of this Tribunal Bench has held that:-

“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.”

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 a ‘Battle Casualty’. Therefore, we are of the considered opinion that the applicant's prayer to grant him ‘Battle Casualty’ status is justified, along with all the consequential benefits.

16. Therefore, we allow this OA and direct that the injury sustained by the applicant be classified as a battle casualty and he be granted war injury pension from due date. The respondents are thus directed to calculate, sanction and issue the necessary PPO to the applicant within a period of three months from the date of receipt of copy of this order, failing which, the applicant will be entitled for interest @ 6% per annum from the date of receipt of copy of the order by the respondents.
17. O.A. 871/2018 stands allowed.
18. Pending miscellaneous application, if any, stands disposed of.
19. No order as to costs.

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

(JUSTICE NANDITA DUBEY)

MEMBER (J)

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(~~RASIKA CHAUBE~~)

MEMBER (A)

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