

THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHANDIGARH,
AT CHANDIMANDIR.

Original Application (OA) No. 07 of 2014

Tuesday, the 21st day of August, 2018

CORAM:

Hon'ble Shri Justice M.S. Chauhan, Judicial Member.

Hon'ble Shri Lt. Gen. Munish Sibal, Administrative Member.

Ex-Havildar Dilbag Singh

--- Applicant

[By legal practitioner, Shri Surinder Sheoran, Advocate]

Versus

Union of India and others

--- Respondents

[By legal practitioner, Shri Vishal Taneja, Central Government Counsel]

ORDER:

01. Applicant, Ex-Hav Dilbag Singh was enrolled in Indian Army on 03rd April, 1971. On 26th February, 1983, while serving with 15 JAT, he was detailed to explode one TNT slab W/CE to depict any fire in exercise. While attempting to ignite the fuse he sustained traumatic amputation of lower one third of right fore-arm and was admitted in Command Hospital, Central Command, Lucknow from where he was discharged on 20th August, 1983 in low medical category (LMC) "CEE (Temporary)" with effect from 17th August, 1983. Invaliding Medical Board (IMB) held on 05th December, 1983 assessed his disability "**Blast Injury (Rt) Hand Fore-arm**" at 70% attributable to military service. In view of the disability applicant was invalided out of service with effect from 30th December, 1983 in low medical category "EEE" under Rule 13(3) III(iii) of the Army Rules, 1954 (for short, 'the Rules') and was allowed disability pension for 70% disability from 03rd December 1983 to 04th December, 1985 vide Pension Payment Order (PPO) No. D/1714/84. Acting on the recommendations of the

Resurvey Medical Board (RSMB) applicant's disability pension was continued upto 11th December, 1995 vide PPO No. D/RS/3669/86 and consequent to recommendations of RSMB held on 22nd January, 1995 he was allowed disability pension for 70% disability for life vide PPO No. D/RS/3680/96. A Court of Inquiry (COI) held in the matter opined that 'the injuries sustained by No. 3161606 Hav Dilbagh Singh be attributed to military service in peace area'. Opinion of the COI was accepted by the Brigade Commander vide order dated 05th April, 1983.

02. Feeling aggrieved by grant of disability pension instead of War Injury pension (WIP), applicant submitted a representation dated 20th May, 2012, Annexure A3, thereby beseeching the respondents that he be allowed war injury pension with effect from the date of his invalidment taking his disability as 70% together with the benefit of broad-banding from 70 to 75% with effect from 01st January, 1996. The respondents, vide their letter dated 22nd June, 2012, Annexure A4, informed the applicant that case of broad-banding of his disability pension was being forwarded to the quarters concerned but did not state a word about his claim for war injury pension. Having been pushed to the wall, applicant has invoked, by way of the instant OA, provisions of Section 14 of the Armed Forces Tribunal Act, 2005 to seek a direction to the respondents that he be allowed war injury pension with effect from the date of his invalidment taking his disability as 70% together with the benefit of broad-banding from 70 to 75% with effect from 01st January, 1996.

03. Having been put on notice, respondents have submitted their written response wherein, while admitting the factual matrix, to oppose applicant's claim, they have relied upon Note (V) appended to Para 04 of SAO 08/S/85 to say that the injury sustained by the applicant, though attributable to military service, does not entitle the applicant to war injury pension as it was not sustained by the applicant in action or in proximity to the enemy nor was it caused by

fixed apparatus, e.g. land mines, booby trap, barbed wire or any other obstacle laid as defence against the enemy.

04. We have heard learned counsel for the parties.

05. Learned counsel for the applicant has relied upon Government of India, Ministry of Defence letter No. 1(2)/97/D(Pen-C) dated 31st January, 2001 and has argued that case of the applicant for war injury pension is covered under Category E(f)(ii) of Para 4.1 of the said letter as the disability has been caused during battle inoculation training exercises or demonstration with live ammunition. Learned counsel has also relied upon order dated 31st January, 2018 in OA No. 1506 of 2014, Sukh Pal versus Union of India and others (Chandigarh Bench of the Tribunal), to contend that in similar circumstances war injury pension has been allowed to the applicant therein; and order dated 31st March, 2011 of the Hon'ble Supreme Court in Civil Appeal No. 5591 of 2006, KJS Butter versus Union of India and another to contend that irrespective of the date of inception of the policy instructions, benefit accruing there-under has to be allowed to the applicant.

06. Learned counsel for the applicant has also argued that as per Para 11 of Special Army Order 8/S/85 and Para 1(g) Army Order 1/2003 the disability suffered by the applicant is the battle casualty as the disability has been caused during battle inoculation training exercises or demonstration with live ammunition and the applicant is entitled to war injury pension under category E (f)(ii) of Government of India, Ministry of Defence letter dated 31st January, 2001.

07. Almost all the circumstances detailed in SAO 8/S/85 or AO 1/2003 as battle casualties are covered either in category 'D' or 'E' of the Government of India, Ministry of Defence letter dated 31st January, 2001 hence, in all battle casualties cases the individuals are entitled to war injury pension as per letter dated 31st January, 2001.

08. It is seen that the concept of Liberalised Pensionary Awards was introduced vide Government of India, Ministry of Defence letter

No.200847/Pen-C/71, dated 24th February, 1972 and different benefits were admitted to the war widows and war disabled servicemen. This letter provides as to in what type of cases the death or disability will entitle for Liberalised Pensionary Awards. This letter reads as under:

"No.200847/Pen-C/71

Government of India, Bharat Sarkar

Ministry of Defence, Raksha Mantralaya,

New Delhi, the 24th February, 1972.

To,

The Chief of the Army Staff

The Chief of Naval Staff

The Chief of Air Staff

Subject : Liberalised pensionary awards for war widows and war disabled servicemen.

Sir,

In partial modification of the existing rules and orders relating to the grant of special family pensionary awards and disability pension, I am directed to convey the sanction of the President to payments being made , as indicated in Annexures I and II to this letter, in the case of officers and personnel, as well as NCsE of armed forces (including the Army Postal Service and the embodied units of the Territorial Army and officers and personnel of the Defence Security Corps, killed in action or disabled on account of injuries sustained in the recent operations against Pakistan commencing from 3rd December, 1971. The awards sanctioned in this letter will be admissible also in the case of the above

categories of personnel killed in action or disabled on account of injuries sustained –

(i) In the international wars of 1965 (including Kutch and Kargil operations), 1962 and 1947-48 (Kashmir operations), as well as the Goa and Hyderabad operations.

(ii)(a) as a result of fighting in war-like operations or border skirmishes, either with Pakistan on the cease-fire line or any other country.

(b) while fighting against armed hostiles like Nagas and Mizos.

(c) during fighting in service with peace-keeping missions abroad

On or after 15 August 47

(iii) During laying or clearance of mines including enemy mines, as also mine-sweeping operations, between one month before the commencement and three months after the conclusion operations ; as per Ministry of Defence letter No. A/14670/Vii/AG/ PD4(d)/142-S/ Pen-C, dated the 2nd September,1970 and

2. The benefits will be admissible with effect from 1st February,1972 or the date of death or disablement of the serviceman, as the case may be, whichever is later.

3. Payments already made on account of pensionary awards only in respect of any period following the above dates

otherwise than in accordance with this letter will be adjusted against payments admissible here under.

4. The awards sanctioned in this letter are in the nature of a special dispensation and will not be subject to alteration as receipt of any revision of pay and pension structure as may be sanctioned in future. Temporary and/ or ad-hoc increase in addition to these special awards. However, where and for so long as awards admissible under the existing rules and orders happen to be more favourable than those sanctioned hereunder, the higher entitlements will be applicable and no difference will be allowed as ad-hoc grant. Payment of these increase or reliefs were allowed to be admissible w.e.f 1 Jan 81 vide Min of Def letter No .B/39206/AG/PS4(d)/2417/Pen-C dated 23rd April 81.

5. This issues with the concurrence of Ministry of Finance (Defence) vide their u.o.No.563/Addl. FA(D) of 1972.

Yours faithfully;

Sd/

Under Secretary to the Government of India"

09. Annexure I to the above letter deals with special family pensionary awards in death cases of officers/JCOs and Ors. Annexure II to the letter deals with war injury pension to officers and PBORs who were invalided out of service on account of disabilities sustained under the circumstances mentioned in the above letter.

10. It is thus clear from the said letter that the liberalised pensionary awards were admitted to those armed forces personnel who sustained injuries or were killed in action in operations against Pakistan commencing from 3rd December, 1971. The benefits were also extended to those who were killed in action or were disabled on account of injuries sustained:

(a) In international wars of 1965 (including Kutch and Kargil operations), 1962 and 1947-48 (Kashmir operations), as well as the Goa and Hyderabad operations.

(b) As a result of fighting in war like operations or border skirmishes either with Pakistan on the cease-fire line or any other country.

(c) While fighting against armed hostiles like Nagas and Mizos.

(d) During fighting in service with peace keeping missions abroad.

(e) During laying or clearance of mines including enemy mines, as also mine sweeping operations, between certain periods as given in clause (iii) of para 1 of the said letter.

11. The circumstances given in the letter indicate that armed forces personnel were held entitled to liberalised pensionary awards when death or disability took place during fight or war like operations or during the circumstances specifically mentioned in para 1(iii) of the above letter.

12. Heading 'Definitions' of Special Army Order 8/S/85, in Paras 2 to 8 are reproduced as under:

"Definitions"

2. For the purpose of these instructions, definitions of various terms used herein will be as in the succeeding paragraphs.

1. **Physical Casualties** – Physical Casualties are those which occur in non-Operational areas or in operational areas where there is no fighting, or whilst in aid to civil power to maintain internal security. Such casualties fall in to 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 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.

NOTES :

(i) Air raid casualties are those sustained as a direct or indirect result of enemy air raids. These will be treated as Battle Casualties.

(ii) Casualties in fighting against armed hostiles and those whilst in aid of civil power to maintain internal security are classified as 'physical' for statistical purposes, but are treated as battle casualties for financial benefits.

(iii) Casualties due to encounter with troops or armed personnel or border police of a foreign country, or during fighting in service with peace-keeping missions abroad under Government orders, will be classified as battle casualty.

(i) Accidental injuries and deaths which occur in action in an operational area will be treated as battle casualties.

(ii) Accidental injuries which are not sustained in action and not in proximity to the enemy, if these have been caused

by fixed apparatus (eg, 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 or occurrence or agency laying those, viz. Own troops or enemy ; provided the casualties occur within the time limits laid down by the government.

(iii) Saboteurs, even of own country, will be treated as enemy for the purpose of classifying their actions as enemy action, and encounters against them as encounters against the enemy.

(iv) All casualties during peace time as a result of fighting in war like operations, or border skirmishes with a neighbouring country, will be classified as battle casualties.

(v) Accidental deaths/injuries sustained due to natural calamities (such as floods, avalanches, landslides and cyclones) or drowning in river crossing at the time of performance of operational duties/movements whilst in action against enemy forces will be treated as battle casualties.

(vi) Reports regarding personnel wounded or injured in action will specify the nature of the wound or injury and will also state whether the personnel remained on duty.

(vii) Reports on personnel missing in action will indicate, if possible, their likely fate, eg, 'believed killed', 'believed prisoner of war ' or 'believed drowned'.

(viii) Casualties occurring while operating on the international border or line of control due to natural calamities and illness caused by climatic conditions will be treated as physical casualties for statistical purposes and battle casualties for financial purposes.(added vide Corrigendum to SAO 8/S/85 on 15 May 1991).

(ix) Casualties taking place while carrying out battle inoculation/training will be treated as physical casualties for statistical purposes and battle casualties for financial purposes. (Added vide Corrigendum to SAO 8/S/85 on 15 May 1991).

1. **Battle Accidents** – Battle Accidents are those which take place in operational areas during the period of active hostilities but not in proximity to the enemy.) If the accident occurs in proximity to the enemy, it is classified as battle casualty.

2. **Operational Area** – Any geographical area occupied by a field force ordered to participate in specific operations/active hostilities against an enemy or insurgents. It will include all the areas within which operations are intended to be conducted as well as the locations of its integral, logistical and administrative installations providing support to the field force.

3. **Active Hostilities** –Active Hostilities cover actual operations against the enemy, including preparatory activities, eg, reconnaissance and deployment prior to declaration of war, and all military moves and measures subsequent to a case-fire.

4. **Proximity to Enemy** – Any area dominated by enemy by small arms fire or observation coupled with

mortar/artillery shelling or patrolling and ambush or sabotage activities will come within the purview of this term.”

13. From the definitions given above, it is clear that when death or disability occurs in non-operational areas or in operational areas where there is no fighting or whilst in aid to civil power to maintain internal security, such casualties are ‘physical casualties’ (Para 3 above). When death occurs or the disability is sustained in action against enemy forces or whilst repelling enemy air attacks, these casualties have been termed as ‘battle casualties’ (Para 4 above). After defining ‘battle casualties’ there are 12 some Notes given thereafter. In Notes (i) to (v),(vii),(viii) and Notes (xi) and (xii) various other circumstances have been mentioned under which the death or disability may be treated as ‘battle casualties’. Note (iii) needs a mention here. According to this Note accidental injuries which are not sustained in action and not in proximity to the enemy, if these have been caused by fixed apparatus (eg, 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 or occurrence or agency laying those, viz. own troops or enemy ; provided the casualties occur within the time limits laid down by the government.

14. It is abundantly clear from the definitions given above that any injury suffered in an operational area will not necessarily be covered under the definition of ‘battle casualties’ merely because it has been caused in operational area as the definition of ‘physical casualties’ clearly indicates that physical casualties may occur in non-operational area as well as in operational area. In other words, it may be said that any death or disability caused either in non-operational areas or in operational areas where there is no fighting, such death or disability will be covered by the definition of ‘physical casualties’ entitling the individual only to disability pension. For declaring a death or disability

as a battle casualty the case must fall in the definition of 'battle casualty' or in any of the 'Notes' appended below the definition of 'battle casualty'.

15. A perusal of SAO 8/S/85 does not indicate as to what benefits were given to battle casualties cases but subsequently liberalised pensionary awards were granted to all battle casualties cases as per Part 'IV' of Government of India, Ministry of Defence Letter No.1(5)87/D (Pensions/Services) Dated 30th October, 1987. The relevant portion of the said letter is reproduced below:

***"Government of India, Ministry of Defence
Letter No.1(5)87/D (Pensions/Services)
Dated 30th October, 1987.***

Subject : Implementation of the Govt. decisions on the recommendations of the Fourth Central Pay Commission regarding pensionary benefits for the Armed Forces officers and personnel below officer rank retiring or dying in harness on or after 1.1.86

Sir,

I am directed to refer to the Govt. decisions on the recommendations of the Fourth Pay Commission as notified vide Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Pension & Pensioners Welfare Resolution No.2/13/87-PIC dated 18th March 1987 and convey the sanction of the President to the modifications, to the extent specified in this letter, in the rules/regulations concerning pensionary benefits of the commissioned Officers (including MNS and territorial Army Officers) and personnel below officer rank (including NCs (E) of the three services, Defence Security Corps and the territorial Army) (hereinafter collectively referred to as armed Forces personnel).

1.1 The provisions of the Pension Regulations of the three Services and various instructions/ Govt. orders which are not affected by the provisions of this letter, will remain unchanged.

PART-I Date of effect and Definitions

(a) The provisions of this letter shall apply to the Armed Forces personnel who were in service as on 1.1.1986 or joined/join service thereafter.

***"PART IV – Liberalised Pensionary Awards
(Battle Casualty and such other cases as may
be specifically notified by Government)***

War Injury Pension

18.1 War Injury Pay will now be known as War Injury Pension which will henceforth not consist of service element and disability element but will be a consolidated amount. War Injury Pension for 100% disability shall be equal to the reckonable emoluments last drawn, as defined in para 3 above on the date of invalidment.

18.2 Where disability is less than 100% the amount of War Injury Pension as in para 18.1 above shall be proportionately reduced. In no case, however, the amount of War Injury Pension shall be less than 60% of the reckonable emoluments last drawn in the case of officers and 80% of the reckonable emoluments last drawn in the case of personnel below officer rank.

18.3 The minimum amounts of War Injury Pension prescribed in para 18.2 above shall be admissible in case the degree of disability is assessed at below 20% at the time of invalidment or at any subsequent reassessment stage.

18.4 In addition to the War Injury Pension, the individual shall be entitled to retirement Gratuity as per para 12.1. Retirement Gratuity shall be calculated on the basic or reckonable emoluments on the date of invalidment but counting of service upto the date on which he would have normally retired in that rank plus weightage of 5 years (total not exceeding 33 years)

18.5 Separate orders will be issued (i) for regulating communication of War Injury Pension and (ii) regarding the War Injury Pension that would be admissible to Armed Forces personnel who are retained in service in spite of the disability due to war injury and retire subsequently. ”

16. From the Heading of PART IV it is clear that in all battle casualties cases liberalised pensionary Awards have been allowed. In case of disability War Injury Pension is allowed under para 18.1 etc. whereas in death cases liberalised family pension is allowed under para 19.1 onwards.

17. After implementation of 5th Central Pay Commission Army order 1/2003/MP was issued by Adjutant General's Branch. In this Army Order under the Heading 'Definitions' there are 11 paragraphs. The relevant paragraphs 2 to 9 are reproduced as under:

“Definitions

2. For the purpose of these instructions, definitions of various terms used herein will be as in the succeeding paragraphs.

3. **Physical Casualties** – Physical Casualties are those, which occur in non-operational areas or in operational areas 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.

5. Circumstances for classification of Physical/Battle Casualties are listed in Appendix 'A'.

6. **Operational Area** – Any geographical area occupied by a field

force ordered to participate in specific operations/active hostilities against an enemy or insurgents. It will include all the areas within which operations are intended to be conducted as well as the locations of its integral, logistical and administrative installations providing support to the field force.

7. **Battle Accidents** ; Battle accidents are those which take place in operational areas during the period of active hostilities, but not in proximity to the enemy. (If the accident occurs in proximity to the enemy, it is called as battle casualty).

5. **Proximity to Enemy** – Any area dominated by enemy by small arms fire or observation, coupled with mortar/artillery shelling or patrolling and ambush or sabotage activities will come within the purview of this term.

6. **Active Hostilities** –Active Hostilities cover actual operations against the enemy or insurgents, including preparatory activities, e.g, reconnaissance and deployment prior to declaration of war, and all military moves and measures subsequent to a case-fire.

36. Para 5 says that the circumstances for classification of Physical/Battle casualties are listed in Appendix 'A'. This Appendix 'A' is also reproduced as under:

CIRCUMSTANCES FOR CLASSIFYING CASUALTIES AS BATTLE OR PHYSICAL

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 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/explosives/ mines.

(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/aircraft 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/explosive/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 and armed hostilities in operational area to include deployment on 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.

Physical Casualties

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

Miscellaneous Aspects

(a) Saboteurs, even of own country, will be treated as enemy for the purpose of classifying their actions as enemy action and encounters against them as encounters against the enemy.

(b) Report regarding personnel wounded or injured in action will specify the nature of the wound or injury and will also state whether the personnel remained on duty.

(c) Reports on personnel missing in action will indicate, if possible, their likely fate, e.g. 'believed killed', 'believed prisoner of war' or 'believed drowned' etc.

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

18. From the definition of 'Physical Casualties' as given above it is clear that if any death or disability occurs either in a non-operational area or in an operational area, where there is no fighting, it is a physical casualty and not a battle casualty. Battle Casualties are those casualties which are sustained in action against enemy forces or whilst repelling enemy air attacks or which are covered in any of the clauses of Appendix 'A' above. **It is seen that in addition to the deaths/injuries occurring during action/operations, 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, are also 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. Similarly, 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/explosives/ mines are also included in the definition of battle casualty.**

19. Paras 68, 69 and 70 of Army Order 1/2003/MP relevant for the present case are as under:

“68. Units have a tendency to classify all wounded casualties as Battle Casualties, even if the case only merits attributability to military service. Attributability is decided by the Formation Commander of the rank of Brigadier. With a view to make the system of classification of wounded casualties more transparent, unit commanders will adhere to certain, parameters given in succeeding paras.

69. **Cause and Nature of Injury** :The classification of wounded battle casualty will be guided by the parameters of cause/circumstances 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 :-

(i) Gun shot wound/splinter injuries sustained in action against enemy/militants. OR

(ii) Gun shot wound/splinter injuries sustained accidentally/due to firing by own troops while carrying out operations against enemy/militants. OR

(iii) Mine Blast/IED blast injuries sustained in explosion of mines/IEDs caused by enemy/militants. Mines to include those planted by own troops against enemy. OR

(iv) Injuries sustained due to accidents because of /environmental reasons like avalanche, crevasse, landslides, flash floods etc. while in action against enemy/militants. OR

(v) Injuries sustained during enemy air raids, NBC warfare and hand-to-hand fights which are other than gunshot/splinter injuries must also be included.

(b) **Parameter No.2.** The injury should at least be of grievous nature. The following will be governing factors:-

(i) Emasculation.

(ii) Permanent privation of the sight of either eye.

(iii) Permanent privation of hearing of either ear.

iv) Privation of any member or joint.

(v) Destruction or permanent impairing of the power of any member or joint.

(vi) Permanent disfiguration of the head or face.

(vii) Fracture or dislocation of bone or tooth.

(viii) Any hurt, which endangers life or which causes the suffer to be during the space of 20 days, in severe bodily pain or unable to follow his ordinary pursuits.

70. It will be apparent that all grievous injuries may not end in permanent low med category. However, during reporting of such injuries the hospital where evacuated and medical diagnosis should be referred to. Only the casualties meeting both the above criteria should be classified as battle casualties. All other injuries/illness (other than self inflicted) that occur while deployed in operational areas should be treated as injuries/illness attributable to military service in field/operational area and processed accordingly.”

20. From the above Paras though it comes out that both-parameter 1 and parameter 2 are required to be fulfilled before a casualty can be classified as battle casualty but paras 4.1,4.2, and

10.1 of Government of India, Ministry of Defence letter No. 1(2)/97/D(Pen-C) dated 31st January, 2001 are as under :-

"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 categorized 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. Disease 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 travelling on duty in Government Vehicles or public/private transport;

- i. Accidents during air journeys;*
- ii. Mishaps at sea while on duty'*
- iii. Electrocution while on duty, etc.*
- iv. Accidents during participation in organized 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.

Following circumstances have been added in Category D vide Government of India, Ministry of Defence, Department of Ex-serviceman Welfare letter No.2(1)/2011-D (Pen/Policy), dated Feb 2011:-

" Death or disability arising as a result of- Unintentional killing by own troops during the course of duty in an operational area.

(ii) *Electrocution/attack by wild animals and snake bite/drowning*

During course of action in counter insurgency/war.

(iii) *Accidental death/injury sustained due to natural calamities such as flood avalanches, landslides, cyclone, fire and lightening or drowning in river while performing operational duties/movement in action against enemy forces and armed hostilities in operation area to include deployment on international border or line of control. “*

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 while laying operationally oriented mine-field or lifting or negotiating mine-field 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 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.*

Following circumstance has been added in Category E vide Government of India, Ministry of Defence, Department of Ex-serviceman Welfare letter No.2(1)/2011-D (Pen/Policy),dated Feb 2011:-

“(i) Death or disability arising as a result of poisoning of water by enemy agents while deployed in operational area in active hostilities.”

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.

Notes:-

(i) The illustrations given in each category are not exhaustive. Cases not covered under these categories will be dealt with as per Entitlement Rules to casualty pensionary awards in vogue.

(ii) The question whether a death/disability is attributable to or aggravated by military service will be determined as per provisions of the Pension Regulations for the Armed Forces and the Entitlement Rules in vogue as amended from time to time.

(iii) In case of death while in service which is not accepted as attributable to or aggravated by Military Service or death after retirement/ discharge/ invalidment, Ordinary Family Pension shall be admissible as specified in Min of Def letter No 1 (6)/98/D (Pen/Ser) dated 03 Feb 98 as modified vide Ministry of Defence letter No. 1(1)/99/D (Pen/Ser) dated 7.6.99.

(iv) Where an Armed Forces personnel is invalided out of service due to non-attributable/non-aggravated causes, Invalid pension/gratuity shall be paid in terms of Para 9 of Ministry of Defence letter No 1 (6)/98/D (Pen/Ser) dated 03 Feb 98 as amended/modified vide Ministry of Defence letter No. 1 (1)/99/D (Pen/Ser) dated 07.06.99.

xxx 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.

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

2. 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. 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 Nop.1(6)/98/D(Pen/Services) dated 3.2.98 shall apply for calculating retiring/service pension. There shall be no condition of minimum qualifying service for earning this element. This disability element would be admissible as laid down in Para 7.1 (II)(a). 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 emolument last drawn."

21. It may be noted that letter dated 31st January, 2001 while bringing in certain modifications in the existing policy instructions, it is clearly mentioned therein that 'the provisions of the Pension Regulations of the three Services and various service

instructions/Government orders which are not affected by provisions of this letter, will remain unchanged'. Thus definition of 'Battle Casualty' as given in Appendix A to Army order 1/2003/MP continues to include 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, 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. Battle inoculation training exercises or demonstration with live ammunition is also included in the definition of Battle Casualty.

22. As regards the stipulation regarding "period laid down by the Government", it has been held to be illegal by the Hon'ble Supreme Court in the case of KJS Butter (supra) by holding as under:

"11. In our opinion, the restriction of the benefit to only officers who were invalided out of service after 1.1.1996 is violative of Article 14 of the Constitution and is hence illegal. We are fortified by the view as taken by the decision of this Court in Union of India & Anr. vs. Deoki Nandan Aggarwal 1992 Suppl.(1) SCC 323, where it was held that the benefit of the Amending Act 38 of 1986 cannot be restricted only to those High Court Judges who retired after 1986."

23. Reverting to the case on hand, it is admitted by the respondents that while serving with 15 JAT, applicant was detailed to explode one TNT slab W/CE to depict any fire in exercise. While attempting to ignite the fuse he sustained traumatic amputation of lower one third of right fore-arm and was admitted in Command Hospital, Central Command, Lucknow from where he was discharged on 20th August, 1983 in low medical category (LMC) "CEE (Temporary)" with effect from 17th August, 1983. Invaliding Medical Board (IMB) held on 05th December, 1983 assessed his disability "Blast Injury (Rt) Hand

Fore-arm” at 70% attributable to military service. In view of the disability applicant was invalided out of service with effect from 30th December, 1983 in low medical category “EEE” under Rule 13(3) III(iii) of the Army Rules. Court of Inquiry convened to ascertain the circumstances in which injury was received by the applicant, after examining the evidence, had opined as under:

“1. The court is of the opinion that the injuries sustained by No. 3161607 Hav Dilbagh Singh of 15 JAT are as a direct result of an error of judgment on his part. However, considering the attending circumstances this error of judgment has not been brought about through an act of carelessness, incompetence, or failure to observe the laid down safety precautions by the individual or his unit. Hence No. 3161607 Hav Dilbagh Singh & 15 JAT are not blamed for the occurrence of the accident.

2. The court recommends that the injuries sustained by No. 3161607 Hav Dilbagh Singh be attributed to military service in peace area.”

24. Opinion/recommendation of the Court of Inquiry was accepted/approved by the Brigade Commander vide order dated 05th April, 1983.

25. From the above injury sustained by the applicant is found to be covered by the definition of ‘Battle Casualty’. It would be of benefit to refer here to Ex Sepoy Sukh Pal (*supra*). In this case the applicant had sustained injuries as a hand grenade had burst during field firing owing to wrong judgment. Disability so suffered by him was assessed as 30% which led to his discharge from service with effect from 24th November, 1981. As in the instant case, the applicant therein was allowed disability pension and responding to his notice dated 26th July, 2014 claiming war injury pension, the respondents kept quite with regard to his claim for war injury pension and replied the notice saying that he was eligible for rounding off benefits of disability pension. However, this Tribunal held him entitled to war injury pension and restricted payment of arrears to three years besides directing adjustment of the amount of disability pension received by the applicant therein.

26. In the instant case also the applicant submitted to the respondents a representation dated 20th May, 2012, Annexure A3, thereby beseeching the respondents that he be allowed war injury pension with effect from the date of his invalidment taking his disability as 70%, together with the benefit of broad-banding from 70 to 75% with effect from 01st January, 1996. The respondents, vide their letter dated 22nd June, 2012, Annexure A4, informed the applicant that case of broad-banding of his disability pension was being forwarded to the quarters concerned but shied away from disposing of his claim for war injury pension.

27. At this stage learned Government counsel has ferociously contended that applicant's claim cannot be entertained because he has approached this Tribunal after more than thirty years from the date of accrual of cause of action, if any, in his favour. He has also relied upon order dated 02nd May, 2014 passed by this Tribunal in OA No. 2543 of 2012, Tejbir Singh versus Union of India and others to show that in similar circumstances case of the applicant therein was dismissed being barred by time. The submission, in our view, is not available to the respondents firstly because applicant's plea in para (03) of the OA that it being a pensionary matter involving a continuing/recurring cause of action and representation of the applicant having been replied to on 22nd June, 2012, bar of limitation does come in his way, has not been denied by the respondents; secondly because in Tejbir Singh's case (supra) applicant was held not entitled to war injury pension and bar of limitation was used against him as an additional ground; thirdly because order in Ex Sepoy Sukh Pal (supra), wherein arrears have been restricted to three years in view of the delay, is not shown to be taken in appeal; and finally because respondents' concern with regard to delay can be well addressed by restricting payment of arrears to three years.

28. In the consequence, we hold that the "Blast Injury (Rt) Hand Fore-arm" sustained by the applicant while attempting to ignite the

fuse of TNT slab W/CE falls within the definition of “Battle Casualty”. We, therefore, direct the respondents that the applicant be allowed war injury pension with effect from the date of his invalidment taking his disability as 70%, together with the benefit of broad-banding from 70 to 75% with effect from 01st January, 1996 and release the same together with arrears restricted to three years immediately preceding filing of this OA (on 06th January, 2014), as expeditiously as possible but not later than four months from the date of receipt of a copy of this order by the learned Government Counsel/representative failing which the arrears shall carry interest @8% per annum from the date of accrual thereof till the date of actual payment. However, amount received by the applicant by way of disability pension shall be set off against the arrears/war injury pension.

29. In the peculiar facts and circumstances of the case parties are left to bear their own costs.

(Lt. Gen. Munish Sibal)
Administrative Member

(Justice M.S. Chauhan)
Judicial Member

Chandimandir
21st August, 2018
'RR'