

**ARMED FORCES TRIBUNAL, CHANDIGARH REGIONAL
BENCH AT CHANDIMANDIR**

-:-

MA 1367 of 2014 and OA 24 of 2014

Lakhbir Singh	Petitioner(s)
Vs		
Union of India and others	Respondent(s)

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For the Petitioner (s)	:	Mr GS Ghuman, Advocate
For the Respondent(s)	:	Mr Vishal Taneja CGC

CORAM:

HON'BLE MR JUSTICE BANSI LAL BHAT, MEMBER (J)
HON'BLE LT GEN SANJIV CHACHRA, MEMBER (A)

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ORDER
24.07.2017

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1. By this petition filed under Section 14 of the AFT Act, 2007, the applicant prays for the following reliefs :-

(a) That, Respondent No 1 to 5 be directed, commanded or ordered to set aside/quash the impugned Annexure (A/1) in the interest of justice and equity.

(b) That, Respondents be directed, ordered or commanded to grant War Injury pension, i.e. service element for 17 years of service and War Injury element for 100% disablement for life in terms of Annexure (A/6) and Annexure (A/7) to the applicant from 27.11.1990.

2. Facts of the case are that the applicant was enrolled in the Army on 27.02.1980 in medical category SHAPE-1 and invalided out of service under Army Rule 13 (3) III (iii) on 27.11.1990 in medical category "EEE". While serving in 10 Field Regiment in the Punch Sector in J&K, the applicant was a part of the operational patrol undertaken code named "**Operation Mel Jol Patrol**" from 31.03.1989 to 04.04.1989, he met with an accident on 02.04.1989 when the patrol was in the process of moving from Loren to Sauji, near Village-Khet, and fell down while negotiating a steep bank of nullah. As a result of which, the lower body of the applicant

became numb. The applicant was evacuated to 169 Military Hospital where he was diagnosed as "**Traumatic Paraplegia # 9, 10 Thoracic Vertebra, Right Collar**". Thereafter, he was transferred to Military Hospital Kirkee (Pune) where he underwent a surgery and as per the opinion of the classified specialist, the applicant was declared unfit to continue in service and recommended him to be invalided out in a medical category "EEE" with the recommendation of "**constant attendant allowance and conveyance allowance**" and further recommended that the applicant be brought before the Invaliding Medical Board prior to invalidation. The IMB diagnosed him "**FRACTURE DV9, 10C PARAPLEGIA N 806, E 884, 344**" and assessed the disability of the applicant at 100% for two years. Thereafter, disability pension claim was forwarded to PCDA (P) Allahabad for adjudication which was accepted for disability element of 100% for two years. The War Injury pension claim was rejected by the Artillery Records vide their letter dated 08.11.2013 (Annexure A/1) on the grounds that injury "**FRACTURE DV9, 10c PARAPLEGIA N 806, E 884, 344**" was sustained by the applicant on 02.04.1989 and the "**Operation Rakshak**" was onset from 15 Nov 1989. A Court of Inquiry was convened by the Unit. The Commander 25 Arty Bde held the injury occurred in **field area and is attributable to military service** instructions-449 dated 17 Jun 1989.

3. The applicant avers that the injury "**FRACTURE DV9, 10C PARAPLEGIA N 806, E 884, 344**" was sustained in an accident on 02.04.1989 while performing the duties in operational area of Punch Sector in J&K as a part of the operational patrol undertaken code named "**Operation Mel Jol Patrol**" from 31.03.1989 to 04.04.1989 after which he was placed in low medical category "EEE" and a casualty to this effect was also published by 10 Field Regiment vide their Part-II Order No 02/10 Fd/177/1/89 as "**Non Battle Casualty**". Hence, the present OA.

4. The respondents in their written statement bring out that the War Injury pension of the petitioner was rejected by the Artillery Records vide their letter dated 08.11.2013 Annexure (A/1) stating

that the injury sustained by the applicant occurred while he was carrying out patrolling between Loren and Sauji, slipped and fell down while negotiating a steep bank of nullah on 02.04.1989 in Operational area and did not occur during action/actual fighting with the enemy/terrorists. As this injury does not fall under category 'E' of Govt of India, MoD letter No 1(2)/97/D (Pen-C) dated 31 Jan 2001, thus, he has been granted ordinary disability pension. The applicant was however given terminal benefits and 100% disability pension for life, in addition to the other admissible retiral benefits.

5. Heard the learned counsel both the parties.

The petitioner relies, in support of his claim for War Injury pension, upon Para 4(c) of Special Army Order 8/S/85 which was prevalent at that point of time. The relevant portion of Special Army Order given in Annexure P-11 is reproduced below:

Special Army Order 8/S/85

Casualties occurring between 1985 and 2003 are dealt with by Special Army Order 8/S/85, the relevant extract of which is reproduced hereunder:

Paragraph 4; 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 and injuries (other than self inflicted)
- (c) **Wounded or injuries (other than self inflicted)**
- (d) Missing

Notes

- (1) ...XX...XX...XX
- (2) ..XX....XX...XX
- (3) ...XX...XX...XX
- (4) **Accidental injuries and death occurring in action in an operation area will be treated as battle casualties.**
- (5) to (10) ...XX...XX...XX
- (11) **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)

(12) **Casualties taking place while carrying 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)

From the above, it is clear that the applicant should have been declared a 'battle casualty' as he fulfills the conditions laid down in Para 4(c) read in conjunction with Notes of sub Paras (4) and (11) of Special Army Order 8/S/85. In this regard, it is further clear that the Court of Inquiry was convened by the unit following the injury of the soldier. The Brigade Commander opined that the injury occurred in the field area and is attributable to military service while undertaking "**Operation Mel Jol Patrol**" on 02.04.1989. We are further fortified by the judgement of Punjab & Haryana High Court reported as **State of Punjab Vs Justice SS Dewan, 1977(2)S.C.T 745 : (1997) 4 SCC 569** and the judgement of the Hon'ble Supreme Court in **KJS Buttar Vs Union of India and another 2011(2) SLR 758**.

In the light of the above, the petition is allowed and the impugned order is quashed and set aside. The applicant is entitled to grant of War Injury pension for 100% disability for life w.e.f. 27.11.1990. Since the applicant has approached this Tribunal after a long delay, the arrears are restricted to three years prior to the filing of the petition i.e. 06.01.2014. The respondents are accordingly directed to prepare a due-drawn statement with reference to disability pension being drawn presently with War Injury pension as authorized through this order and release the

same through a Corrigendum PPO within a period of three month from the date of receipt of certified copy of this order.

No order as to costs. The petition is disposed off.

(Sanjiv Chachra)
Member (A)

(Bansi Lal Bhat)
Member (J)

24.07.2017
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