

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

...

**OA No.45 of 2015**

...

**Mohinder Singh**

**...Applicant**

**Versus**

**Union of India & others**

**...Respondent(s)**

...

For the petitioner : Mr.Ravi Badyal, Advocate

For the Respondent(s) : Ms. Renu Bala Sharma, Sr.PC

...

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

...

**ORDER**

**26.05.2017**

...

By means of this O.A., filed under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has prayed for a direction to the respondents to grant War Injury Element, instead of disability element already granted to him, from the date of discharge i.e. 01.07.2012 with a further direction to pay him ex-gratia, as admissible in cases of Battle Casualty, *inter alia* grant of any other relief to which he may be considered entitled to.

2. Facts of the case, in brief, are that the applicant, who was enrolled in the Army on 30.01.1987, was deployed in Leh High Altitude Area during **Operation 'RAKSHAK' (J&K)**. Facing temperature, as low as (-)45 degree C to (-) 49 degree C, he developed frost bite on both feet and was evacuated from the operational area for treatment. Despite the treatment given, the frost bite could not be cured and toe of the left foot was amputated. Thereupon, the applicant continued in service and was, subsequently, discharged from service on completion of term on having completed 25 years and 153 days of service w.e.f. 01.07.2012 due to the disability **'GANGRENE V TOE (OPTD) (L)**

**FROST BITE (ICD- X 31.8)’, assessed as 20% for life long, held to be attributable to military service.**

3. Consequent upon discharge, the applicant was granted service element as well as the disability element @ 20% w.e.f. the date of discharge for life, as per PPOs at Annexures A-3 & A-4. The applicant has averred that since the disability suffered by him originated during duly notified **Operation Rakshak** and was opined to be attributable to military service, it was categorized as a ‘battle casualty’ and Part-II order No.1/0063/2013, dated 04.01.2013, was also published in this regard, he took up the matter with the respondents for grant of War Injury Element instead of disability element. However, PCDA(P), Allahabad, rejected the claim vide letter dated 08.05.2014 (Annexure A-6). Further representation made has also been rejected vide letter dated 29.10.2014 (Annexure A-7).

4. It is pleaded by the applicant that his claim has been rejected despite the fact that it is fully covered under MoD policy circulars, dated 31.01.2001 and 03.02.2011 (Annexures A-8 & A-9). Hence the present O.A.

5. On notice, the respondents have contested the O.A. by filing a written statement. The facts of the case are largely not disputed. It is, however, submitted that *“disability was erroneously intimated as Battle Casualty instead of Physical Casualty as attributable to military service and directed to concile the record accordingly vide their Signals No.350113 dated 24<sup>th</sup> June, 2013. Accordingly, after reviewing the ibid case by Integrated HQ of MoD Army (MP 5 & 6), Part II Order published for Battle Casualty was cancelled with remark as due to wrong classified as Battle casualty instead of Physical Casualty vide Singnals Records Part II Order No.1/1423/0001/2013 dated 25<sup>th</sup> June, 2013”*.

6. Further contention of the respondents is that after a gap of 08 months, Signals Records erroneously took up the case with the Pension Sanctioning Authority for issue of Corrigendum PPO for considering his disability as Battle Casualty vide Signals Records letter, dated 08.02.2014, and after due

examination, the Pension Sanctioning Authority vide letter, dated 21.04.2014, stated as under:-

*“It is found that the individual was deployed in J&K when his injury sustained due to the frost bite. His injury accepted as attributable to military service. In this connection it is stated that OP RAKSHAK notified vide GDI MoD letter dated 07.05.1990 is dealt with accordingly, GoI MoD letter dated 24.02.1972 is all cases of liberalized pensionary awards subject to the conditions laid down in para-1. As per GoI MoD letter dated 24.02.1972, the injury sustained due to frost bite does not fall under the purview of this letter. In view of the above, the above named individual is not entitled for war injury element.. Hence the claim is returned herewith unactioned.”*

7. With regard to the claim for ex gratia lump-sum compensation, it is submitted by the respondents that the applicant is not entitled to this benefit for having been discharged from service on completion of tenure under Army Rule 13(3) Item III(j) and not having been invalided out from service. Reliance is placed upon the Paras 3 & 4 of GoI, MoD letter dated 26.12.2011 (Annexure R-22).

8. On the above submissions it is prayed that the O.A. being devoid of any merit, may be dismissed with costs.

9. We have heard the ld. Counsel for the parties and have perused the record.

10. The applicant has based his claim for War Injury Element on MoD policy circular, dated 31.01.2001(Annexures A-8 ) and also amended Category ‘D’ (iii) of Annexure A-9. The relevant part(s) of Part 10 of the policy circular, dated 31.01.2001, which deals with War Injury pension, are reproduced below:-

**10.1 Where an Armed Forces Personnel is invalidated 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 XXX

Relevant part Para 4.1 of GoI letter , dated 31.01.2001, including Category 'E' thereof , is also reproduced below for ready reference:-

### Category A

### Category B

### Category C

(i) to (v)                      XXX                      XXX                      XXX

**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 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 of 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.**

As per GoI, MoD letter dated 03..02.2011, the following contingencies have been added to Category 'D', reproduced hereinabove, and the applicant has placed reliance of category (iii) mentioned therein:-

**“Under Category ‘D’**

Death or disability arising as a result of –

- (i) Unintentional killing by own troops during the course of duty in an operational area.
- (ii) Electrocution/ attacks 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 operational area to include deployment on international board of line of control.**

11. We have considered this case in the light of MoD circular dated 31.01.2001(A-8), amended category D(iii) there of as per circular dated 03.02.2011(A-9) and also the judgment of Hon’ble High Court of Delhi dated 21.02.2013 in WP( C ) 4488/2012 in the case titled *Major Arvind Kumar Suhag Vs UOI and Ors.*

12. On going through the provisions of the rules, we find that the case of the applicant is fully covered under sub-clause (i) of Category ‘E’ of para 4.1 of letter dated 31.01.2001 as the disability originated during a duly notified **Operation**

**‘Rakshak’** and was opined to be attributable to military service. It was treated as a **‘battle casualty’** and Part-II order No.1/0063/2013, dated 04.01.2013, was also published in this regard.

13. The plea of the respondents is that the disability was erroneously intimated as ‘Battle Casualty’ instead of ‘Physical Casualty’, attributable to military service. On review of the case by Integrated HQ of MoD Army (MP 5 & 6), Part II Order published for Battle Casualty was cancelled. Such action on the part of the respondents seems to be an afterthought in order to defeat the rightful claim of the applicant for War Injury Element, besides being arbitrary, *ultra vires* the rules and the law, therefore, liable to be set aside. Therefore, the plea raised by the respondents on this basis is not acceptable. Even otherwise, it is accepted by the respondents that **OP ‘RAKSHAK’** was notified vide GoI, MoD letter, dated 07.05.1990 and the disability was sustained by the applicant under circumstances mentioned in category ‘E(i)’ of Para 4.1. Reference to GoI, MoD letter dated 24.02.1972 is uncalled for as the applicant is entitled for war injury element as per the aforesaid provision.

14. The above view of ours is supported by the judgment dated **21.02.2013** of the Hon’ble High Court of Delhi in **W.P.(C)4488/2012** in the case titled **Major Arvind Kumar Suhag vs. Union of India & others** wherein the claim of the petitioner was based upon Para 10 of GoI, MoD letter dated 31.01.2001, as is the case herein, and despite the fact that the injury sustained was classifiable as battle injury and his claim was squarely falling in Category E(f), (i) as well as Category E(j), he was granted Disability pension and his claim for war Injury Pension was

rejected. Thus, in similar facts and circumstances, as emanating from the present O.A., War Injury pension claim of the petitioner therein was allowed with the following observations and by reversing the view taken by the AFT to the contrary, with interest on the differential amount payable as well as costs quantified at Rs.50,000/-:-

*“14. In parting, this Court cannot resist observing that when individuals place their lives on peril in the line of duty, the sacrifices that they are called upon to make cannot ever be lost sight of through a process of abstract rationalization as appears to have prevailed with the respondents and with the Tribunal. This case amply demonstrates how seven years after the conflict-in the thick of which the petitioner was deployed after having participated in the Kargil operation – his injuries were casually classified as those ordinarily suffered whilst proceeding on duty in a government vehicle. He, like any other personnel, operated under extremely trying circumstances unimaginable to those not acquainted with such situations. The cavalier manner in which his claim for war injury pension was rejected by the respondents, who failed to give any explanation except adopt a textual interpretation of Clauses (d) and (E), is deplorable. In these circumstances, the petitioner deserves to succeed.*

Similarly, the applicant herein also deserve to succeed. Reliance in this regard is also placed upon the following judgments:-

- (i) **Union of India vs. Harjinder Singh, Special leave to Appeal (Civil) CC No.19992/2011**, decided on **05.12.2012** vide which the decision dated 12.07.2010 of the AFT, Chandigarh Bench in **OA No.90 of 2010** was upheld;
- (ii) **Manju Tiwari vs. Union of India, WP( C) No.5262/2003**, decided by the High Court of Delhi on **04.03.2005**; and,



- (iii) **Sumitra Devi vs. Union of India & another, CWP No.3810 of 2013**, decided by the Punjab & Haryana High Court on **17.02.2014** (Reported in 2014 **SCC Online P& H 3615**).

15. The other claim of the applicant for consideration by this Tribunal is regarding *ex-gratia* payment to him, as admissible in Battle Casualty cases. In this connection we find that the applicant has placed on record no rules, regulations or instructions in support of this claim. The respondents have, however, objected to it on the basis of MoD letter dated 26.12.2011, the contents of which are reproduced below *in extensor*:-

“No.2(2)2011/(Pen/Pol)  
Government of India  
Ministry of Defence  
Department of Ex-Servicemen Welfare

New Delhi  
Dated 26<sup>th</sup> December, 2011

To  
The Chief of the Army Staff  
The Chief of the Naval Staff  
The chief of the Air Staff

*Subject: Payment of Ex-Gratia lump-sum to Defence Service Officers and Personnel Below Officer Rank who are invalided out of service on account of disability attributable to or aggravated by military service – regarding.*

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*The undersigned is directed to say that families of the Defence Service personnel, who die in performance of their bonafide duties and the Armed Forces personnel who sustain injuries and are disabled or incapacitated on account of causes which are accepted as attributable to or aggravated by military service, are eligible for pensionary benefits under the Casualty Pensionary Awards notified vide the Ministry's letter No.1(20/97-D(Pen C) dated 31.01.2001 read with letter No.6(6)2008(2)D(Pen/Pol) dated 5<sup>th</sup> May, 2009. Further, in terms of this Ministry's letter No.20(5)/2009/D(Pay/Service) dated 4<sup>th</sup> June, 2010 and dated 17<sup>th</sup> August, 2010, families of Defence Service personnel who dies in harness in the performance of their bonafide official duties under various circumstances are eligible for an Ex-gratia lump sum compensation.*

2. Considering the hardship being faced by the disabled Defence Service personnel, **the question of grant of Ex-gratia lump sum**

***compensation to the Defence Service personnel who are invalided out of service on account of disability attributable to or aggravated by military service, has been under consideration of the Government.***

***3. The President is pleased to decide that such Defence Service personnel, who are disabled, incapacitated in the performance of their bonafide official duties under various circumstances and are boarded out from service on account of disability/ war injury attributable to or aggravated by military service, shall be paid Ex-gratia lump sum compensation amounting to Rs. 9 lakhs for 100% disability. For disability/ war injury less than 100% but not less than 20%, the amount of Ex-gratia compensation shall be proportionately reduced. No Ex-gratia compensation shall be payable for disability/ war injury less than 20%. The proportionate compensation would be based on actual percentage of disability as certified by the Invaliding Medical Board, without applying broad-banding provisions as contained in Para 7.2 of this Ministry's above mentioned letter dated 31.01.2004.***

***4. The other terms and conditions for admissibility of Ex-gratia lump sum compensation pertaining to the circumstances, specified in this Ministry's letter No.20(1)/98/D(Pay/Services), dated 22<sup>nd</sup> September, 1998 and letter No.20(5)/2009/D(Pay/Services) dated 4<sup>th</sup> June, 2010 will be applicable to decide each individual case by the Pension Sanctioning Authorities concerned.***

***5. The provisions of this letter shall apply to all the eligible Defence Service personnel who are invalided out of service on or after 1.4.2011 i.e. the date from which similar benefits are allowed to the personnel of central armed Police Forces (CAPF).***

***6. This issues with the concurrence of Finance Division of the Ministry vide their UO No.4143/Fin/Pen/2011 dated 24.10.2011.***

*Hindi version will follow.*

*Yours faithfully,*

*Sd/-*

*(Malathi Narayanan)*

*Under Secretary to the Government of India"*

16. A perusal of the above circular makes it abundantly clear that grant of ex-gratia lump sum compensation to the Defence Service personnel who are invalided out of service on account of disability attributable to or aggravated by military service. The own case of the applicant is that he was discharged from service on completion of term on having completed 25 years and 153 days of

service w.e.f. 01.07.2012, and had not been invalidated out. Hence, this claim is not made out and is liable to be rejected.

17. Consequently, this O.A. is allowed in part by passing the following orders/ directions:-

- (a) A direction is issued to the respondents to grant War Injury Element to the applicant, held admissible to him in terms of sub-clause (b) of Para 10.1 of GoI, MoD policy circular dated 31.01.2001 with effect from 01.07.2012;
- (b) The concerned authorities are further directed to issue an amended PPO with entitlement as aforesaid from the due date and, then, by drawing due-drawn-statement, make payment of the monetary benefits becoming due to the applicant by virtue of the present order within a period of three months from the date of receipt of certified copy of this order, failing, which, the amount shall carry interest @ 8% per annum from the due date, till actual payment thereof. Any other benefits, becoming due to the applicant under Government of India, MoD orders/ instructions on the subject are also ordered to be released to the applicant, as aforesaid.
- (c) The relief for grant/ payment of ex-gratia amount is rejected and the O.A. stands dismissed *qua* this relief.

18. No orders as to costs.

**(Sanjiv Chachra)**  
**Member A**

**(Bansi Lal Bhat)**  
**Member (J)**

**Chandigarh**

**Dated: 26.05.2017**  
**`bss'**

Whether the judgment for reference to be put on internet – Yes/ No

