

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.

Parameter No.1 – The cause or the circumstances under which the injury has occurred. These are-

Gun Shot Wound/Splinter injuries sustained in action against enemy/militants.

OR

Gun Shot Wound/Splinter injuries sustained accidentally/due to firing by own troops while carrying out operations against enemy/militants.

OR

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

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

OR

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

Parameter No.2 – The injury should at least be of grievous nature. The following will be governing factors –

Emasculation

Permanent privation of the sight of either eye

Permanent privation of hearing of either ear

Privation of any member or joint

Destruction or permanent impairing of the power of any member or joint.

Permanent disfiguration of the head or face

Fracture or dislocation of a bone or tooth

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

It is then contended that Saichen Glacier is a war zone with active hostilities in face of the enemy which was also supported by medical case sheets and accordingly, the above conditions had been met as he had suffered multiple injuries due to sliding on thick ice. It is further contended that as the injuries were sustained in an area of ongoing operations, it should have been classified as a Battle Casualty as defined in Army Order 1/2003.

Aggrieved by not declaring him a battle casualty, the petitioner filed Original Application No.335 of 2010 in the Principal Bench of the Armed Forces Tribunal which was decided in favour of the petitioner on 12.11.2010 (Annexure A-1). The order of the Principal Bench of the Tribunal was forwarded to the respondents and Part-II Order dated 04.04.2011 was published (Annexure A-2). On publication of Part-II Order declaring the petitioner a Battle Casualty, he vide letter dated 09.03.2011 approached the Military Secretary Branch for recording the change in profile and to take necessary action for consideration afresh for promotion to the next rank by the Selection Board (Annexure A-3). That representation remains unanswered. Hence the present petition.

The petitioner further contends that no consideration was given to the fact that he was a Battle Casualty while considering him for promotion. He was also

exposed to 'Command Criteria Reports' from 01.06.2006 to 30.11.2010 although as per policy, Battle Casualties are exempt from 'Command Criteria Reports'. By being put through such criteria appointments he was at a disadvantage in competing with his peers who were not wounded in any war like situation. It is then stated that his case deserves to be considered afresh in terms of policy letter No 02014/Policy/MS Arty dated 13.01.2012 which provides for consideration by promotion board on the basis of command criteria and other reports earned prior to being becoming a battle casualty which he had earned from June 2004 to May 2006.

With the above alleged facts, he prays for directions to the respondents –

- (a) To set aside/quash the assessment of Annual Confidential Reports pertaining to the period 01 Jun 2006 to 30 Nov 2010 being illegal and violative of the policy of the respondents and further direct the respondents to consider the Applicant/Petitioner afresh because of the change in his profile from earlier 'low medical category' to present 'battle casualty.'
- (b) Compensate the Applicant/Petitioner with weightage as he was incapacitated to take the DSSC Exam and other career courses.
- (c) To consider the case of Applicant/Petitioner afresh for further promotion in terms of policy of respondents issued vide letter No.02014/Policy/MS Arty dated 13 Jan 2012.
- (d) Pass further appropriate orders as it may be deemed fit and proper in the facts and circumstances of the case and in the interest of justice.

Written statement has been filed by the respondents and it is stated that vide order dated 12.11.2010 of the Principal Bench of the Tribunal passed in O.A No. 335 of 2010, the petitioner was granted relief for the publication of Part-II Order as a Battle Casualty, which has been done on 04.04.2011 and the order stands complied with. The petitioner was not granted any relief in the Confidential Reports and the same has been taken into account as per Policy. It is then submitted that the petitioner was considered for promotion by the Selection Boards in December 2009, December 2010 and July 2011 and he had not submitted any complaint till date against his non empanelment. The petitioner's letter dated 09.03.2011 merely requests for recording of Battle Casualty in his service documents, which cannot be termed as a representation. The order of the Principal Bench of 12.11.2010 was complied with and no cause of action survives. It also has no connection with his non-empanelment for promotion and his last consideration for empanelment took place in July 2011. Thus, this application challenging no empanelment has been filed beyond the period of limitation provided in Section 22 of the Armed Forces Tribunal Act, 2007 as the petition was filed on 22.11.2012 and no application for condonation of delay has been filed.

It is then stated that the petitioner was declared a Battle Casualty and Wound Medal was also granted to him. There was no order for quashing Confidential Reports for the period from June, 2006 to November, 2010. The petitioner being Low Medical Category, A2P3, is not eligible for career protection as a Battle Casualty (War Wounded) and even if he is granted the status of Battle Casualty (War Wounded) as per Policy, all Confidential Reports are to be considered, if available

and the only dispensation is that absence of (adequate exercise) Confidential Reports will not result in non-consideration by the Selection Board. It is further stated that Battle Casualty status neither contributes towards any marks for quantification in the selection process nor has any interior for value judgment by the Selection Board.

The petitioner was considered three times along with his batchmates but was not found fit for empanelment to the rank of Colonel due to being low in quantified merit.

The medical category in the Master Data Sheet for consideration by the Selection Boards is as under:-

Ser No	Look	Month & Year	Medical category SHAPE	Grading
(a)	Fresh 1994	Dec 2009	AA23A	Not empanelled
(b)	First Review 1994	Dec 2010	AA23A	Not empanelled
(c)	Final Review 1994	Jul 2011	AA23A-BC	Not empanelled

It is further stated that only career prospects of such officers with reference to postings, courses, AE and acceptable medical category for promotion are looked after vide Policy letter dated 13.01.2012 and as per Policy dated 17.09.2010, status of a Battle Casualty does not qualify for a special review of the petitioner by the Selection Board. The petitioner himself had claimed to be tendering criteria appointment in his Confidential Reports to complete the adequately exercised period. Adequately exercised reports are to be considered if available. The petitioner had certified and accepted being placed in criteria appointment and the same is reflected and signed in the Confidential Reports. It is further stated that special Confidential Report for Operation Meghdoot was initiated for the period 01.08.1996 to 28.01.1997. However, report for the period 29.01.1997 to 03.10.1997 has not been en faced for Operation Meghdoot by the petitioner or the Initiating Officer. However, Reporting Officers had commented on his performance in Operation Meghdoot in the pen picture. The petitioner was entitled to the Confidential Reports earned and was considered for promotion on the basis of these Confidential Reports and his claim for being considered for promotion without Confidential Reports cannot be considered within the policy frame work.

Rejoinder was filed by the petitioner and it stated that a battle casualty need not be exercised on criteria appointments and he should not have been placed on criteria appointments against his wish / medical advice.

Reliance was placed on the judgment of the Kolkata Bench of this Tribunal in **TA No 14 of 2010, Col Arun Dattaji Potele vs Union of India and others** decided on **28.02.2011**.

We heard the learned counsel for the petitioner at length. The service dossier along with the ACRs was summoned and made available for our perusal.

Before adjudicating on the issue involved, we briefly clarify 'Criteria Appointment' and 'Adequately Exercised' as explained by the learned counsel for the petitioner. Before coming up for consideration by a selection board for the next rank, an individual is required to tenant one of the specified appointments classified as 'Criteria Appointment' so as to assess his performance for suitability for the next rank. This appointment is also required to be tenanted for a minimum specified period and having done so an individual is said to have been 'Adequately Exercised'. In other words he can be said to have been exercised or assessed over a minimum laid down period on one of the specified criteria appointments. Having done so, he can be said to be meeting the criteria for consideration by the selection board.

The claim of the petitioner is that the criteria appointments tenanted by him and the ACRs earned in such appointments prior to being declared a battle casualty should be ignored or set aside and as per policy, as interpreted by him, he should be considered for promotion again by taking into account ACRs other than the criteria reports. In other words the ACRs for the period 01.06.2006 to 30.11.2010 should be excluded while considering him afresh for promotion.

In O.A No. 335 of 2010 filed by the present petitioner before the Principal Bench of this Tribunal, it was prayed that 'the respondents may be directed to condone the delay in publication of Battle Casualty in respect of applicant and that his injury may be declared as a battle casualty'. It was allowed by the Principal bench as under :-

"Therefore, we allow this petition and direct that a sprain of the ankle (Right) received by the petitioner during Siachen posting in the area of "OP Meghdoot" sustained in the 1997 should be construed to be battle injury and should be entered as Battle Casualty in the Part-II of the Order."

The same was accordingly done on 04.04.2011.

Perusal of the ACRs for the period 01.06.2006 to 30.11.2010, which are sought to be ignored or set aside, show the petitioner to have himself claimed and endorsed the appointment tenanted and the period covered as a criteria appointment and the same was signed and submitted to the Initiating Officer for initiation of the Confidential Report. The intent was clearly to fulfil the criteria for consideration by the selection board for promotion to the next rank. There was no claim for any relaxation of criteria. The ACR for the period 28.06.2005 to 31.05.2005 has been similarly endorsed, however, that has not been sought to be ignored or set aside. There is no representation against the ACRs till date. There was also no claim for being declared a battle casualty, and any relaxation of criteria flowing there from, till the

letter dated 12.02.2010 for condoning the delay in publication of Part II Order. Any challenge to the ACRs at this stage is clearly barred by limitation. The remaining question is the validity of these ACRs for consideration by the selection boards.

Vide order dated 05.12.2012 the petitioner was directed to place on record the petition filed before the Principal Bench of the Tribunal in OA No 335 of 2010. The same was placed on record vide MA No 484 of 2013 which was allowed. Perusal of Annexure 5 (Pg 44) of the same, being the medical board proceedings of 30.06.2007, show the petitioner to be low medical category for 'Allergic Rhino sinusitis' and 'Generalised Tonic Clonic Seizure', besides 'Sprain (Rt) Ankle' for which he was declared a battle casualty.

ACRs from 1998 onwards show the medical category as SHAPE1, ie fully fit with no disability, entered as such and signed by the petitioner. They also do not reflect any inability to perform due the injury later claimed and classified as battle casualty from 1997 in 2010. In fact there is no mention of this injury in the medical records or the petitioner being in lower medical category till 07.07.2007 when the petitioner had sought and was placed in lower medical category [Annexure 5 (Pg 44), referred above] for this injury. Notwithstanding the ankle sprain suffered in 1997, and later classified as battle casualty, the petitioner being in acceptable medical category was also sent on an overseas United Nations appointment from May 2003 to June 2004. The 'disability' does not appear to have come in his way in completing that assignment. Perusal of the ACRs also shows consistent complimentary remarks of the petitioner being a good sportsman and having contributed towards the unit / formation sports teams. The 'ankle sprain' does not appear to have hindered his sports performance. We do not see how it could have impeded his performance otherwise.

The pen picture of the ACR for the period 01.06.2010 to 30.11.2010, shown to us by the learned counsel for the petitioner, and also sought to be ignored or set aside reads as under

"Initiating Officer

A smart officer with soldierly bearing who takes necessary and appropriate action in handling unforeseen tasks and situation and does not always wait for instructions to get the work done. He is upright in offering information and advice to superiors. The Offr is a LMC for Generalised Tonic Clonic Seizure disability which has led to poor physical fitness. Intake of seductive drugs restricted his availability in the unit and his responsibilities had to be shared by other officers. When medically stable he can be relied upon to complete assignments with minimal supervision or guidance. He is leading a happily married life.

(a) The offr could not follow basic mil routine due to medical disability nor emp for outdoor Trg/OP task in the corps Z due to med restns. Offr suitable to be posted in staff only."

Here we may note that observations on his performance are related to his medical condition of 'Generalised Tonic Clonic Seizure', and not of the ankle sprain classified as battle casualty.

The relevant part of policy letter No 02014/Policy/MS Arty dated 13.01.2012 on the basis of which the petitioner seeks ACRs for the period 01.06.2006 to 30.11.2010 to be ignored reads as under

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Military Secretary's Branch
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04547/MS Policy

13 Jan 2012

Headquarters

Southern Comd (MS)
Eastern Comd (MS)
Western Comd (MS)
Central Comd (MS)
Northern Comd (MS)
ARTRAC (MS)
South Western Comd (MS)
IDS (MS & SD)
ANC (MS & SD)
SFC (MS)

CAREER PROSPECTS: BATTLE CASUALTY (WAR WOUNDED) OFFICERS

1. Refer the following policy letters of MS Branch on the ibid subject:-

- (a) 03974/WW/MS 5 B dated 18 May 82 and 29 Dec 84.
- (b) 00238/MS 9B dated 15 Aug 84
- (c) 04547/MS-9B dated 07 Jan 87, 20 Nov 89 & 31 Mar 99.
- (d) AO 1/2003

General

2. Promotion of Battle Casualty (War Wounded) officers, (to be referred to as BC (WW) hereinafter), is based on their professional competence with due regard to the fact that, but for their disability due to the war injuries, they would have been promoted to higher select ranks. Organisational interests remaining paramount, career interests of BC (WW) officers need to be protected. This is distinct from the benefits accruing to an officer from grant of BC status by AG's Branch.

Battle Casualty (BC)

3. Circumstances for classification as BC are listed in Appendix 'A' of AO 1/2003/MP (as amended). Classification as BC is quite broad based and all BC's will NOT necessarily be identified as BC (WW) officers. Designation of a BC officer as BC (WW) officer will primarily depend upon the circumstances in which an officer has been wounded.

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Guidelines for Grant of BC (WW) Officer Status

6. Basic spirit of this policy is to protect the career interests of officers who have been injured by direct enemy action or action against hostiles or while handling explosives in the course of training.

Xxxx

Posting Management of BC (WW) Officers

11. **Transfer of Young Officers from Arms to Services**. BC (WW) officers will normally be retained in their own Arm/Service. However, depending upon disability, suitability and willingness of officers, they may be considered for transfer to one of the Services.

12. **Criteria/Non-Criteria Appointments**. BC (WW) officers will be managed on criteria/non-criteria appointments as under:-

(a) BC (WW) officers will be managed on appropriate appointments on command/staff/instructor/ERE/deputation based on their medical category/employment management restrictions and physical capability.

(b) BC (WW) officers will be placed on command criteria appointments provided they can function effectively with their medical category and physical limitations.

(c) The BC (WW) officer concerned will be considered for command criteria appointment, subject to his opting for the same.

(d) Placement of BC (WW) officers on command criteria appointments in select ranks will be approved by the COAS.

(e) BC (WW) officers may be removed from command criteria appointments in case of unsatisfactory performance based on MS Branch letter No. 04520/MS Policy dated 14 Feb 91 (as amended) or due to medical grounds as given in MS Branch letter No. 04548/Policy dated 02 Sep 2011 (as amended).

xxxx

Promotion Prospects for BC (WW) Officers

15. BC (WW) officers will be eligible for promotion to select ranks of Colonel and above subject to meeting the following conditions:-

(a) **Adequately Exercised (AE)**

(i) **Command Criteria/Non-Criteria Appointments**

(aa) Service rendered by BC (WW) officers in command criteria appointment(s) prior to their injury/disability or subsequently will be considered along with their performance on non-criteria appointments.

(ab) BC (WW) officers, who have not been assessed on command criteria appointments prior to their injury/disability or subsequently, will be assessed based on their performance on on-criteria appointments.

(ii) **Promotion Prospects of AE Officers**. BC (WW) officers, who have been AE on command criteria appointments in lower rank, will be eligible for placement in higher command appointments.

(iii) **Promotion Prospects of Non AE Officers**. BC (WW) officers, who have not been AE on command criteria appointments in lower rank, will be eligible for placement on staff appointments only. Such officers will be eligible for promotion up to the rank of Major General only.

(iv) **Approval by Appropriate Selection Board**. BC (WW) officers will be considered by Selection Boards at par with other officers based on their performance in criteria/non-criteria appointments, honours/awards and course reports.

Perusal of the policy shows that it is intended to protect the career interests of officers who have been injured by direct enemy action or action against hostiles or while handling explosives in the course of training. Battle Casualty officers are to be managed on criteria / non criteria appointments based on their medical category and employment restrictions. It does not mandate total exemption to battle casualties from holding criteria appointments. In fact it provides for accommodation to allow such officers to hold criteria command appointments to enable them to be

considered for further promotion in higher command appointments. The disability classified as battle casualty (ankle sprain) did not debar the petitioner from holding a criteria appointment or ACRs being initiated in such appointments. It also did not debar the petitioner from serving in a UN assignment abroad. Such a disability does not impair an individual's performance in command of troops, management, administration, planning, ingenuity and initiative, professional knowledge and so on which, besides other attributes, form the basis of assessment in the ACR. Perusal of the policy also shows that being adequately exercised in a criteria command appointment is a prerequisite for promotion to command ranks / appointments and the policy aims to provide relaxation to battle casualties for holding command criteria appointments, notwithstanding their disability. In the absence of having held command criteria appointments, such individuals are eligible for ranks / appointment on staff only. It was thus in the career interest of the petitioner that he had been placed on and had tenanted command criteria appointments. As noted above, the petitioner had also claimed and tenanted the criteria appointments, as certified in his ACRs. The policy also does not provide for any weightage for any purpose. Such officers are to be considered by Selection Boards at par with other officers based on their performance in criteria/non-criteria appointments, honours/awards and course reports.

The policy for promotion boards states that besides being indicated as a battle casualty in the information provided to the selection board, there is no additional benefit or relaxation in the merit for battle casualties.

In the case of **Col Arun Dattaji Potele(supra)**, the petitioner had been declared a battle casualty. On coming up for promotion from Colonel to Brigadier he had been deferred by the selection boards as he was lacking 'command criteria reports' which amounted to being 'not adequately exercised'. However, this was not communicated to the petitioner. It was also not mandatory for him to tenant a criteria appointment, being a battle casualty. The fact of being a battle casualty was also not endorsed on the selection board documents. It was accordingly directed that the petitioner be placed before a selection board afresh. It was not the case of the petitioner that he could not be placed in a criteria appointment, but that it was not mandatory. The classification of the petitioner as a battle casualty also existed in the records. In the present case the petitioner having been 'adequately exercised' in a 'command criteria appointment' seeks ignoring or setting aside the ACRs for that period. There was also no endorsement in the service record of the petitioner when the first two selection boards were held as this endorsement came about after the order of the Principal Bench of the Tribunal and thereafter it was duly indicated in the selection board documents. That case cannot be said to be similar to that of the petitioner.

In view of the foregoing we find no grounds for interfering in the ACRs of the petitioner on record and the ACRs cannot be said to be illegal. However, we find that the petitioner had sought declaration as a Battle Casualty by publication of Part II Order on 12.02.2010. Consequent to that being done on 04.04.2011 it was indicated in the selection board of Jul 2011. To that extent we find some merit in the argument

that he was not indicated as a Battle Casualty in the selection board held in Dec 2010 ie after he had sought publication of Part II Order. We therefore consider it appropriate to set aside the recommendations of the selection board held in Dec 2010. The same is accordingly set aside. As the petitioner has thus been considered twice by the selection board, he is entitled to be considered for the third time. The respondents are therefore directed to consider the petitioner by a selection board after indicating his status as a Battle Casualty. However, there shall be no change in the other inputs before the selection board.

The petition is partly allowed with the above directions.

The Service Dossier is returned to the respondents in sealed cover.

[Justice Prakash Krishna]

[Lt Gen (Retd) NS Brar]

27.02.2014

RS

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