

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI**

**Original Application No. 88 of 2016**

Wednesday, this the 24<sup>th</sup> day of August, 2022

**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

No. 15145832P Gnr Irrappa Basappa Heggannwar  
 Unit : 1542/154 Medium Regiment (SP)  
 Presently R/o H. No. 734, Ward No. 08, Shanti Nagar,  
 Inchalkaraji, Tal. Hatkalangle,  
 Dist – Kolhapur, Maharashtra – 416115

..... Applicant

Ld. Counsel for the Applicant : **Mr. A. Ojha**, Advocate

Versus

1. Union of India, through Ministry of Defence, New Delhi.
2. Chief of the Army Staff, Army Headquarters, New Delhi-11.
3. Records A.D. Regiment, Nasik Raod, Nasik, Maharashtra.

..... Respondents

Ld. Counsel for the Respondents : **Mr. A.J. Mishra**,  
 Central Govt Counsel

**ORDER**

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- “(a) The applicant may please sanctioned war injury pension from date of dismissal.
- (b) The applicant's dismissal may please be set aside being unjust and against the provisions of natural justice.
- (c) Any other relief deemed fit by the Hon'ble Tribunal.”

2. Brief facts of the case giving rise to this application are that applicant was enrolled in the Indian Army on 02.01.2001. The applicant sustained injury “Compound Comminuted Fracture Tibia’ on

28.12.2001 due to accidental fire from INSAS Rifle when his unit was deployed in Counter Insurgency Area in OP PARAKRAM and his injury was considered as Battle Casualty by the Army authorities and Part II Order to this effect was also published showing injury as 'Battle Casualty' sustained in OP PARAKRAM. The Medical Board has assessed disability of the applicant @ 30% as attributable to military service being Battle Casualty. The applicant overstayed the leave granted to him by one year and 235 days. Thereafter, applicant voluntarily rejoined duties on 12.03.2007 but he was dismissed from service after a trial by SCM on 29.05.2007. It is in this perspective that applicant) has filed this O.A for grant of war injury pension and setting aside order of dismissal.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Indian Army on 02.01.2001. The applicant while posted with 154 Field Regiment in counter insurgency area sustained injury due to accidental discharge of firearm by a fellow colleague and his injury was classified as 'Battle Casualty'. The applicant overstayed the leave granted to him by one year and 235 days. Thereafter, applicant voluntarily rejoined duties on 12.03.2007 but he was sent home by a movement order dated 12.03.2007 after a quick trial by SCM on 29.05.2007.

4. Learned counsel for the applicant further submitted that when applicant was dismissed from service, he was in low medical category due to 'Battle Casualty' and he should have been treated as invalidated out of service as per entitlement rules of Pension

Regulations, 1961. He further submitted that sentence of dismissal is too severe as it has deprived the applicant of his disability pension which he had already earned being a case of Battle Casualty. The petition of the applicant was also rejected by the chief of the Army Staff without giving due consideration to his case of Battle Casualty. He pleaded that applicant is entitled to 30% war injury pension as assessed by the Medical Board being Battle Casualty under the provisions of Para 173 of Pension Regulations for the Army, 1961 (part-1) and his dismissal be set aside being unjust and against the provisions of natural justice.

5. On the other hand, learned counsel for the respondents submitted that as per entry recorded in service records of the applicant, he sustained injury 'Compound Comminuted Fracture Tibia' on 28.12.2001 due to accidental fire from 5.56 INSAS Rifle when his unit was deployed in Counter Insurgency Area in Op SANGRAM (Later OP PARAKRAM). The applicant proceeded on 42 days Sick Leave from Military Hospital, Kirkee, however, he failed to rejoin duty on due date, i.e. 24.05.2002. He reported back on 25.05.2002 for which he was awarded punishment of 07 days pay fine. Thereafter, applicant again overstayed leave and failed to rejoin duty on due date. He was declared as a deserter w.e.f. 21.07.2005. Thereafter, applicant voluntarily rejoined at Artillery Centre on 12.03.2007 after 01 years and 235 days. The applicant was tried by a Summary Court Martial on 29.05.2007 under Army Act Section 38(1) and was dismissed from service w.e.f. 29.05.2007.

6. Learned counsel for the respondents further submitted that an individual who is dismissed from service under the provision of the Army Act is ineligible for pension or gratuity in respect of all his previous service in terms of Regulation 113 (a) of Pension Regulations for the Army, 1961, (Part-1). Therefore, applicant is not eligible for neither service pension nor disability pension in terms of paras 113 (a), 123 and 132 of of Pension Regulations for the Army 1961 (Part-1).

7. We have heard learned counsel for the parties and perused the material placed on record. We have also gone through the Medical Board proceedings filed alongwith Original Application.

8. We find that applicant sustained injury "Compound Comminuted Fracture Tibia' on 28.12.2001 due to accidental fire from INSAS Rifle when his unit was deployed in Counter Insurgency Area in OP PARAKRAM and his injury was considered as Battle Casualty by the Army authorities and a Part II Order to this regard has also been published showing injury as 'Battle Casualty' sustained in OP PARAKRAM. The Medical Board has assessed disability of the applicant @ 30% as attributable to military service being Battle Casualty, therefore, we are of the view that applicant is held entitled to War Injury Element of War Injury Pension being a Battle Casualty from the next date of dismissal from service (29.05.2007), duly rounded off from 30% to 50% in view of Govt. of India, Ministry of Defence letter dated 31.01.2001.

9. Since the applicant was dismissed from service w.e.f. 29.05.2007 after being tried by SCM for an offence under Section 38(1) of Army Act as per Army Act and Army Rules, his prayer to set aside dismissal order is rejected.

10. In the result, the Original Application is **partly allowed**. The disability of the applicant assessed @ 30% is rounded off to 50% for life from the next date of dismissal from service. The respondents are directed to grant only War Injury Element of War Injury Pension @ 50% for life from the next date of dismissal from service. However, due to law of limitations settled by the Hon'ble Supreme Court in the case of ***Shiv Dass v. Union of India and others*** (2007 (3) SLR 445), the arrears of War Injury Element of War Injury Pension will be restricted to three years preceding the date of filing of the instant O.A. The date of filing of this O.A is 01.07.2016. The respondents are directed to give effect to this order within a period of four months from the date of receipt of copy of this order. Default will invite interest @ 8% per annum till actual payment.

11. No order as to costs.

12. Pending Misc. Application(s), if any, shall be treated to have been disposed off.

<p>(Vice Admiral Abhay Raghunath Karve) Member (A) Dated: 24 August, 2022 SB</p>	<p>(Justice Umesh Chandra Srivastava) Member (J)</p>
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