

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI  
(CIRCUIT BENCH AT GOA)**

**Transferred Application No. 02 of 2022**

**Friday, this the 23<sup>rd</sup> day of December, 2022**

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

IC 46153H Ex Major D Krishna Kumar  
S/o Late VD Rajan  
R/o 16/2 AWHO, Vasant Vihar, Vidya Nagar,  
Bangalore – 562157

..... Petitioner

Ld. Counsel for the Petitioner: **Mr. G.C. Rai**, Advocate

Versus

1. Union of India through the Secretary, Ministry of Defence, DHQ PO, New Delhi-110011.
2. The Chief of Army Staff, Integrated Headquarters of Ministry of Defence (Army), DHQ PO, New Delhi-110011.
3. Additional Director General Personnel Services (PS-4), Integrated Headquarters of Ministry of Defence (Army), DHQ PO, New Delhi-110011.
4. PCDA (Pension), Draupadi Ghat, Allahabad (UP).

..... Respondents

Ld. Counsel for the Respondents : **Mr. B.K. Ashok**,  
Central Govt Counsel

**ORDER (Oral)**

1. The petitioner, being discharged from the Army filed O.A. No. 170 of 2019 before the AFT (PB) New Delhi under Section 14 of the Armed Forces Tribunal Act, 2007, which has been transferred to this Tribunal and has been registered as T.A. No. 02 of 2022, whereby the petitioner has sought following reliefs:-

“(a) Call for the records based on which the respondents have rejected the request of the petitioner for War Injury Pension as against disability pension and quash the same.

- (b) Direct the respondents to pay War Injury Pension alongwith arrears with interest @ 12% per annum from the date of retirement.
- (c) Issue such other order/direction as may be deemed appropriate in the facts and circumstances of the case.”

2. The factual matrix of the case is that petitioner was commissioned in the Indian Army on 05.03.1988 as SCC officer and on 05.03.1993 as Permanent Commissioned (PC) officer. The petitioner prematurely/voluntarily retired from service on 15.10.2010 (AN) after rendering 22 years 7 months of service. At the time of retirement, petitioner was in low medical category and he was brought before RMB on 07.10.2010 in which his disabilities, (i) **“SPRAIN (RT) ANKLE”**, assessed @ 15-19% as attributable to military service, (ii) **“FRACTURE DISTAL END HUMERUS WITH DISLOCATION ELBOR (LT)”**, assessed @ 20% as attributable to military service, (iii) **“CERVICAL SPONDYLOSIS”**, assessed @ 20% as aggravated by military service, (iv) **“FRACTURE DISTAL RADIUS (RT)”**, assessed @ 20% as neither attributable to nor aggravated by military service (NANA), composite assessment for all disabilities was assessed @ 60% for life and net assessment qualifying for disability pension was assessed @ 50% for life. The petitioner is in receipt of disability pension @ 50% for life. Now the petitioner has filed the present Original Application praying that petitioner be granted War Injury Pension and its consequential benefits being disabilities suffered by the petitioner in operational area on duty.

3. Learned counsel for the petitioner submitted that petitioner while posted with 40 Mtn Bde was deployed as Arty OP Officer on the IB in High Altitude Area (HAA). The petitioner suffered injury of twisted ankle when his right leg slipped and was caught between two boulders and later on he was downgraded to A2 (T-24) for the recurrent sprain. The petitioner on 05.06.1999, while taking part in organized games (Basketball) in the regiment, accidentally fell backwards and injured his left elbow and was downgraded to A3 (Permanent). The petitioner retired from service on 15.10.2010 (AN) after rendering 22 years 7 months of service. At the time of retirement, petitioner was in low medical category and he was brought before RMB on 07.10.2010 in which his disabilities, (i) **“SPRAIN (RT) ANKLE”**, assessed @ 15-19% as attributable to military service, (ii) **“FRACTURE DISTAL END HUMERUS WITH DISLOCATION ELBOR (LT)”**, assessed @ 20% as attributable to military service, (iii) **“CERVICAL SPONDYLOSIS”**, assessed @ 20% as aggravated by military service, (iv) **“FRACTURE DISTAL RADIUS (RT)”**, assessed @ 20% as neither attributable to nor aggravated by military service (NANA), composite assessment for all disability was assessed @ 60% for life and net assessment qualifying for disability pension was assessed @ 50% for life.

4. Learned counsel for the petitioner further submitted that Though the petitioner was entitled to War Injury Pension in terms of SAI 8/S/85 and Govt. of India letter dated 31.01.2001, however, ADG PS vide letter dated 19.05.2011 has sanctioned disability pension @ 50% for life from the date of retirement from service. In

this regard, petitioner submitted a representation dated 27.05.2018 to the respondents to grant War Injury Pension against disability pension which was rejected by the respondents vide order dated 08.11.2018 stating that petitioner does not fall in the category of Battle Casualty.

5. Learned counsel for the petitioner also placed reliance on the judgment of the Hon'ble Delhi High Court in the case of **Major Arvind Kumar Suhag vs. Union of India & Ors**, W.P. (C) No. 4488/2012, decided on 21.02.2013 and **J.P. Bhardwaj vs. Union of India & Ors**, W.P. (C) No. 348/2012, decided on 29.05.2013 and pleaded that petitioner's case is squarely covered with aforesaid judgments and accordingly, petitioner should also be granted War Injury Pension.

6. **Per contra**, Learned Counsel for the respondents submitted that injuries suffered by the petitioner while taking part in organized games in the regiment and performing other duties were neither considered as battle casualty by the competent authority nor any Part II Order in this regard was published. The petitioner prematurely retired from service on 15.10.2010 (AN) after rendering 22 years 7 months of service. At the time of retirement, petitioner was in low medical category and he was brought before RMB on 07.10.2010 in which his disabilities, (i) **"SPRAIN (RT) ANKLE"**, assessed @ 15-19% as attributable to military service, (ii) **"FRACTURE DISTAL END HUMERUS WITH DISLOCATION ELBOR (LT)"**, assessed @ 20% as attributable to military service, (iii) **"CERVICAL SPONDYLOSIS"**, assessed @ 20% as

aggravated by military service, (iv) **“FRACTURE DISTAL RADIUS (RT)”**, assessed @ 20% as neither attributable to nor aggravated by military service (NANA), composite assessment for all disability was assessed @ 60% for life and net assessment qualifying for disability pension was assessed @ 50% for life and accordingly, petitioner has been sanctioned disability pension @ 50% for life by the competent authority.

7. Learned counsel for the respondents further submitted that as per para 69 & 70 of AO 1/2003/MP, 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. In the instant case, cause/circumstances of the injury sustained by the petitioner does not attack to declare the injury as Battle Casualty under the provisions of AO 1/2003/MP. Hence, petitioner's case does not fall under the category of 'Battle Casualties' as per para 4 & 5 of AO 1/2003/MP and therefore, petitioner is not entitled to Battle Casualty status and War Injury Pension.

8. Heard learned counsel for the parties and perused the record.

9. Before adverting to rival submissions of learned counsel of both sides, it is pertinent to mention that judgments relied upon by the petitioner in Para 5 referred above are not relevant in the present case and therefore, petitioner's injuries/disabilities cannot

be treated as Battle Casualty being not similar in nature on the points of facts and circumstances of the case.

10. Before dealing with the rival submissions, it would be appropriate to examine the relevant Rules and Regulations on the subject matter which are reproduced as under :-

(a) **Army Order 1/2003/MP**

**Physical/Battle Casualties**

Para 1 to 3.                      x x x                      x x x                      x x x

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'*

**Appendix A to AO 1/2003/MP**

**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 defence 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 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.
- (i) Casualties occurring while carrying out battle inoculation/training or operationally oriented training in preparation for actual operations due to gunshot wound/explosion of live ammunition/explosives/mines or by drowning/electrocution.
- (j) Casualties occurring while carrying out battle inoculations/training or operationally oriented training in preparation for actual operations due to gunshot wound/explosion of live ammunition/ explosives/mines or by drowning/electrocution.
- (k) Army personnel killed/wounded unintentionally by own troops during course of duty in an operational area.
- (l) Casualties due to vehicle accidents 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/aircrafts during mobilization or deployment in war/war like operations.
- (n) Casualties occurring due to electrocution/snake bite/drowning during course of action in counter insurgency/war.
- (o) Accidental death/injuries sustained during the course of move of arms/explosives/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) Accidental deaths/injuries sustained due to natural calamities such as floods, avalanches, 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. Deaths 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, eg, 'believed killed'. 'believed prisoner of war', of 'believed drowned' etc.

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

**(b) Govt of India, Ministry of Defence letter No. 1(2)/97/D/(Pen-C) dated 31.01.2001**

1. to 3.      xxx                      xxxxx                      xxxxx

*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;
- (ii) 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.*



### **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.*
- (j) *Operations specially notified by the Govt. from time to time.*

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 Defense letter No.1(I)99/D(Pen/Ser) dated 7.7.99.*
- (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 Defense letter No 1 (6)/98/D (Pen/Ser) dated 03 Feb 98 as amended/modified vide Ministry of Defense letter No. 1 (I)/99/D(Pen/Ser) dated 07.06.99.*

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*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."*

11. In the instant case petitioner suffered injuries of twisted ankle in Nov. 1989 while posted with 40 Mtn Bde and second time, he suffered injuries in June 1999 in organized games (Basketball) in the regiment. Hence, the injuries/disabilities suffered by the petitioner do not fall in the category of Battle Casualty as per Army Order 1/2003/MP as per classification of battle casualty which will be guided by the parameters of cause/circumstances and the severity of injury sustained. Since, the petitioner is already in receipt of disability pension @ 50% for life due to his disabilities and his case does not fall under any Category which entitles him to grant Battle Casualty status/War Injury Pension as per rules, the T.A. is liable to be dismissed.

12. Keeping in view the facts and circumstances of the case and various policies and Army Orders, we converge to the view that petitioner is not entitled for consideration for award of Battle Casualty status and War Injury Pension, as such, he is not entitled for consequential benefits of Battle Casualty. Resultantly, Transferred Application is **dismissed**.

13. No order as to costs.

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

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)  
Member (A) Member (J)

Dated: 23 December, 2022  
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