

**ARMED FORCES TRIBUNAL
REGIONAL BENCH
KOLKATA**

(Through Video-Conferencing)

O.A. No. 37 of 2018

Ex Nk Sukanto Dey **... Applicant**
Versus
Union of India & Ors. **... Respondents**

For Applicant : Mr. S.K. Choudhary, Advocate
For Respondents : Mr. Partha Ghosh, Advocate

CORAM:
HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN P.M. HARIZ, MEMBER (A)

ORDER

1. This original application has been filed under Section 14 of the Armed Forces Tribunal Act 2007 by the applicant, a retired Non-commissioned officer of the Army. The applicant is aggrieved by the respondents for not granting him the status of 'Battle Casualty' in spite of his claim that he had suffered the injury whilst on duty in an operational area. The applicant was invalidated out of the service on 21 August 2014 in medical category S1H1A1P5E1 with hundred percent disability being wheelchair-bound for life. The Invalidating Medical Board has conceded that the disability of the applicant is attributable to and aggravated by military service. The applicant is currently in receipt of disability pension and was also granted an *ex-gratia* lump-sum compensation of ₹ 9 lakhs based on the orders of AFT, Regional Bench, Kolkata dated 29.09.2016 in O.A. No. 19 of

2016. Subsequently, a legal notice was submitted to the Chief of the Army staff amongst others with the request that the applicant be declared a 'Battle Casualty' and be granted all consequential benefits. Since the respondents failed to reply to this legal notice the applicant has filed this OA. The applicant has prayed for the following: –

- (a) Issue directions to the Respondent No. 1 to declare the applicant a 'Battle Casualty' and grant all consequential benefits.
- (b) Issue directions to Respondents No. 4 to produce the following records before this Hon'ble Tribunal: –
 - (i) Record of service of the applicant.
 - (ii) Record of all medical documents of the applicant including hospital admission, discharge, categorisation and Invalidating Medical Board proceedings.

Brief Facts of the Case

2. The applicant states that he was enrolled in the Regiment of Artillery on 19.03.2001. Since then, he has served in various peace and field stations for more than 13 years. While serving in 36 RR at Anantnag (counter-insurgency operation area) from January 2004 to January 2006, the applicant whilst performing duty had slipped on hard snow and suffered severe lower back injury. Thereafter the applicant was posted to 619 SATA Battery at Kargil from March 2006 to March 2008. During this period the applicant used to suffer low backache intermittently and had to consume painkillers. Later, the applicant was posted to 625 SATA Battery located at Ranchi from

March 2008 to August 2011 where he continued to suffer intermittent low back pain.

3. During August to September 2011 while serving with 625 SATA Battery at Drugmulla (counter-insurgency operation area) in J&K the applicant underwent the induction training twice. In November 2011 while travelling to his home town on casual leave, the applicant suffered severe backache and was admitted to 92 Base Hospital in Srinagar and was later evacuated to Command Hospital Udhampur. He was discharged from the hospital on 25.11.2011 and granted 15 days sick leave. On return to his unit the applicant had to undertake strenuous duty resulting in serious deterioration of his health.

4. In February 2013, while serving with 129 SATA Regt at Pathankot, the applicant once again suffered severe backache and had to be admitted to 167 Military Hospital at Pathankot. The applicant later had to undergo two spinal surgeries, one at Udhampur and the other at Kolkata, and was finally invalidated out of service on 21.08.2014 in medical category P5 with 100% disability for life, being wheel-chair bound and requiring an attendant round the clock for life. The applicant is in receipt of disability pension and was also granted a lump sum *ex-gratia* payment of ₹ 9 Lakhs by the order of AFT, Regional Bench, Kolkata on 29.09.2016 in O.A. No. 19 of 2016 filed by the applicant. The applicant, through his counsel served a legal notice

dated 01.11.2017 to the Chief of the Army Staff, to declare him as a 'Battle Casualty' with all consequential benefits.

Arguments by the Counsel for the Applicant

5. The Learned Counsel for the applicant explained the sequence of events leading to the applicant being finally invalidated out of service in medical category P5 with 100% disability for life. The Counsel elaborated the posting profile of the applicant and explained that the applicant had done three near consecutive tenures in operational areas. First in 36 RR from 03.01.2004 to 06.01.2006, second in the SATA Battery at Kargil from 04.03.2006 to 10.03.2008 and the third in another SATA Battery at Drugmulla from 26.08.2011 to 20.04.2012. He further explained that the applicant while serving with 36 RR and performing RP Duty at the unit main gate in 2005, had slipped on hard snow, suffered a low back injury and was detained in the Unit MI Room for two days. This then got aggravated during his subsequent tenures, two of which were again in operational areas in field. He continued to suffer from low back-ache intermittently and during his third tenure he had to be hospitalized, first in Base Hospital Srinagar and was later transferred to Command Hospital Udhampur. His condition deteriorated in Feb 2013 and had to undergo surgery in Command Hospital Udhampur on 16.03.2013 for PIVD L-5/S-1 with Cauda Equina Syndrome.

6. Following this, whilst on sick leave back at his native place, his condition deteriorated further and he had to be admitted to

Command Hospital Kolkata on 18.05.2014 where he underwent a second surgery on 06.07.2014 for PIVD L-4/5. His condition continued to be bad and the applicant remained bed ridden. He was then transferred to Army Hospital (R&R) for opinion, management and to undergo his Invalidation Medical Board (IMB).

7. The IMB placed the applicant in medical category P5 and recommended that he be invalidated. Being wheel chair bound, the IMB assessed his disability as 100% for life and also endorsed the requirement of an attendant for life. Considering his disability, the IMB also declared him UNFIT for civil employment. He was invalidated out of service on 21.08.2014 as a case of Prolapsed Disc L-4/5 and L-5/S-1 with Cauda Equina Syndrome.

8. Relying on the following, the leaned counsel stated that in all these cases, where the injury/ fatality took place in an operational area, they were all granted 'Battle Casualty' status with consequential benefits, and where applicable, granted liberalized family pension.

- (a) *Major Arvind Kumar Suhag Vs. Union of India and Ors.* [W.P. (C) 4488/2012] dated 21.02.2013 of the Delhi High Court
- (b) *J.P. Bhardwaj Vs. Union of India and Ors.,* [W.P. (C) 348/2012] dated 29.05.2013 of the Delhi High Court
- (c) *Lt Col SD Sharma Vs Union of India* [O.A. No. 54 of 2016] dated 29.09.2016 of AFT, Regional Bench, Kolkata.
- (d) *Balbir Singh Vs Union of India* [O.A. No. 174 of 2014] dated 31.05.2016 of AFT, Regional Bench Kolkata.
- (e) *Smt Rekha Vs Union of India* [O.A. No. 117 of 2016] dated 12.09.2017 of AFT, Regional Bench, Lucknow.

(f) *Sep Raghavendra Singh Vs Union of India* [O.A. No. 243 of 2016] dated 09.11.2016 of AFT, Regional Bench, Lucknow.

9. The Counsel concluded his arguments by reiterating the fact that the applicant, while serving with 36 RR in a counter-insurgency operational area, had suffered a back injury from a fall on hard snow whilst on duty in 2005. At that time, the applicant was treated in the Unit MI room for two days and he returned to his duties. The applicant had been deployed in operational areas for near consecutive three tenures and that his condition progressively deteriorated and finally in 2011, while posted at Drugmulla, the back ache and associated pain in the limbs increased and had to be hospitalized. Subsequently in 2013, the situation deteriorated further and the applicant had to undergo surgery. And whilst on sick leave after this surgery, he became serious and had to undergo a second surgery within a span of three and half months. The applicant remained bed-ridden, and was later shifted to Army Hospital (R&R) for opinion and invalidation.

Arguments by the Counsel for the Respondents

10. The learned counsel for the Respondents reiterated the facts of the case and that the applicant had been invalidated out from service on 21.08.2014 under Army Rule 13 (3) III (iii) due to disability PIVD L-4/5 and L-5/S-1 with Cauda Equina Syndrome with Discitis (Operated). The IMB had assessed his disability as 100% for life and

the applicant has since been granted disability pension at 100% for life vide PCDA (P) Allahabad PPO No. D/10479/2015 dated 02.03.15. Through this OA, the applicant is now seeking that his status be declared as a battle casualty and be granted war injury pension.

11. The Counsel then took us through Army Order 1/2003/MP which lays down the parameters for classifying an individual as a battle casualty. He elaborated that the classification of a case as battle casualty will be guided by the parameters of cause/ circumstances and the severity of the injury sustained. The parameters are given at Paragraph 69 of Army Order 1/2003/MP and is reproduced as under:-

“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.

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

(i) Gun Shot Wound/ Splinter injuries sustained in action against enemy / militants. OR

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

(iii) 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

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

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

(b) Parameter No. 2 - The injury should at least be of grievous nature. The following will be governing factors :-

(i) Emasculation.

(ii) Permanent privation of the sight of either eye.

(iii) Permanent privation of hearing of either ear.

(iv) Privation of any member or joint.

(v) Destruction or permanent impairing of the power of any member of joint.

(vi) Permanent disfiguration of the head or face.

(vii) Fracture or dislocation of a bone or tooth.

(viii) 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.”

12. The Counsel went on to state that all grievous injuries may not end as a permanent low medical category and that while reporting such injuries, the hospital to which the patient has been evacuated and medical diagnosis must be referred to. Only casualties that meet both the criteria as mentioned in Para 69 of AO 1/2003/MP be classified as 'Battle Casualty'. All other injuries/illness (other than self-inflicted) that occur while deployed in operational area should be treated as injuries/illness attributable to military service in field/operational area and processed accordingly.

13. The Counsel further said that on scrutiny of the service documents of the applicant no injury report was initiated on him at any juncture. Neither was an initial/detailed report, nor a Part II Order declaring the applicant as a 'Battle Casualty' initiated; all of

which are mandatory requirements in such cases. The Counsel, highlighting the opinion of the neuro-surgeon dated 20.06.2014, said that the applicant had complained of pain in the lumbo-sacral region since 2005. That the applicant had reported to Army medical authorities for necessary treatment which indicates that he had not sustained any injury in any war/counter insurgency operation. In consideration of all these issues the applicant is not entitled to war injury pension.

14. As regards the legal notice sent by the applicant through his advocate for grant of 'Battle Casualty' status, the Counsel said, it had been examined by the competent authority and replied vide Artillery Records letter no 15148029F/LC/xx/NE-5(C) dated 26.05.2018. The Records had intimated that the applicant was not entitled to be classified as 'Battle Casualty' as there was no record of his injury, or hospitalization on account of the stated injury.

15. Relying on the following cases, the Counsel said that the Tribunal had dismissed the case on the grounds that the case had been filed at a belated stage after delay. In the light of this, the applicant's OA too is not maintainable due to the delay.

- (a) *Ex Sub Basti Ram Vs Union of India & Ors.* [O.A. No. 160 of 2011] dated 12.05.2011 of AFT, Principal Bench, New Delhi.
- (b) *Munshi Singh Vs Union of India* [TA 112 of 2009] of AFT, Regional Bench, Jaipur.

Consideration of the Case

16. Having heard counsel for both parties, the main issue to be decided is whether the injury sustained by the applicant consequent to a fall on hard snow, whilst on duty in 36 RR, which was deployed in a counter insurgency operational area qualifies him to be classified as a 'Battle Casualty'.

17. Army Order 1/2003/MP-'Instructions for the Management of Physical and Battle Casualties' lays down the policy on the subject. Paragraph 69 lays down the twin parameters that must be met to declare a case as Battle Casualty and Appendix A to the Army order elaborates on the circumstances for classifying a case as battle or physical casualty. The Army Order also lays down the staff procedure for reporting a Battle Casualty and the necessity, initiation and disposal of an Injury Report when applicable. Relevant extracts are reproduced below:-

"Definitions

2. For the purpose of these instructions, definitions of various terms used herein will be as in the succeeding paragraphs.

3. *Physical Casualties* – Physical Casualties are those which occur in non-operational areas or in operational areas where there is no fighting. Casualties of this type consist of the following categories :-

- (a) Died or killed.
- (b) Seriously or dangerously ill.
- (c) Wounded or injured (including self-inflicted).
- (d) Missing.

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.

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ACCIDENTS AND INJURIES

Instructions on Wounded Battle Casualties

68. Units have a tendency to classify or wounded casualties as battle casualties, even if the case only merits attribute ability to military service. Attribute ability was decided by the formation commander of the rank of brigadier. With a view to make the system of wounded casualties more transparent, unit commanders to certain parameters given in succeeding paragraphs

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.

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

(i) Gun Shot Wound/ Splinter injuries sustained in action against enemy/militants. OR

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

(iii) 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

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

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

(b) Parameter No. 2 - The injury should at least be of grievous nature. The following will be governing factors :-

- (i) *Emasculation.*
- (ii) *Permanent privation of the sight of either eye.*
- (iii) *Permanent privation of hearing of either ear.*
- (iv) *Privation of any member or joint.*
- (v) *Destruction or permanent impairing of the power of any member of joint.*
- (vi) *Permanent disfiguration of the head or face.*
- (vii) *Fracture or dislocation of a bone or tooth.*
- (viii) *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.”*

70. *It will be apparent that all reviews injuries may not end in prominent medical category. However during reporting of such injuries the hospital were evacuated and medical diagnosis should be referred to. Only the casualties meeting both the above criteria should be classified as battle casualties. All other injuries/illness(other than self-inflicted) that occur while deployed in operational areas should be treated as injuries/ illness attributable to military service in field/operational areas and processed accordingly.*

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Appendix A to the Army order

CIRCUMSTANCES FOR CLASSIFYING CASUALTIES AS BATTLE OR PHYSICAL

Battle Casualties

1. *The circumstances for classifying personal 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 peacekeeping 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 hostilities and 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 defences 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 occurred within the period laid down by the government.*

(f) *Casualties during peace time as a result of fighting in war like operations, or border skirmishes with the 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.*

(j) *Casualties occurring while carrying out battle inoculation/training or operationally oriented training in preparation for actual operations due to gunshot wounds/ explosion of live ammunition/ explosives/ mines or by drowning/ electrocution.*

(k) *Army personnel killed/wounded unintentionally by own troops during the course of duty in an operational area.*

(l) *Casualties due to vehicle accidents while performing bona fide military duties in war/ border skirmishes with neighbouring countries including action on line of control and in counterinsurgency operations.*

(m) *Casualties occurring as a result of IED/bomb blasts by saboteurs/ANEs in trains/ buses/ ships/ aircrafts during mobilisation for deployment in war/ walk like operations.*

(n) Casualties occurring due to electrocution/ snakebite/ drowning during the course of action in counterinsurgency 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 areas in active hostilities.

(q) Accident death/ injuries sustained due to natural calamities such as floods, avalanches, landslide, cyclones, fire and lightning 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 border/ 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. Death caused due to natural causes/ illness/ accident/ suicide/ murder due to family disputes in operational and non-operational area will be treated as physical casualties.

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18. It is pertinent to review the sector profile of the applicant, in that, he had done near consecutive tenures in field/ operational areas. His first tenure was in 36 RR from 03.01.2004 to 06.01.2006. After a short spell of only two months, he was posted back to the SATA Bty at Kargil from 04.03.2006 to 10.03.2008. On completion of this tenure he was posted to Ranchi where he did almost three and

half year tenure in peace and the whole unit moved to Drugmulla, another field/ operational station.

Ser	From	To	Field/ Peace	Place	Unit
(a)	19.03.2001	22.01.2002	Peace	Hyderabad	Arty Center
(b)	23.01.2002	02.01.2004	Peace	Jalandhar	21 SATA Regt
(c)	03.01.2004	06.01.2006	Field	J&K	36 RR
(d)	07.01.2006	03.03.2006	Peace	Jalandhar	21 SATA Regt
(e)	04.03.2006	10.03.2008	Field	Kargil	619 SATA Bty
(f)	11.03.2008	24.08.2011	Peace	Ranchi	625 SATA Bty
(g)	25.08.2011	20.04.2012	Field	Drugmulla	625 SATA Bty
(h)	21.04.2012	19.08.2014	Modified Field	Pathankot	129 SATA Regt

19. The opinion of the specialist as given in the AFMSF-16 when the applicant underwent his IMB, are relevant as it explains the onset and aggravation of his medical condition. The opinion is reproduced below:-

He is an old case of Prolapsed Disc L-4/5 & L-5/S-1 with Cauda Equina Syndrome (operated) and Discitis for opinion

He presented with complaints of pain in the lumbo-sacral region since 2005. Onset occurred while serving in CI ops area in J&K sector. He was managed with analgesics and physiotherapy. Pain worsened and he developed radiation of pain to the right lower limb in 2011 following CBS Trg in Srinagar. He was evaluated in CHNC and was managed non operatively. Symptoms worsened further in Feb 13 and later he developed bowel and bladder symptoms. He was readmitted in CHNC Udhampur on 15 Mar 13. He was diagnosed as a case of PIVD L-5/S-1 with Cauda Equina Syndrome and on 16 Mar 13, Micro-discectomy L-5/S-1 was carried out. Symptoms improved following surgery but he developed recurrent pain about 20 days later while on sick leave. He was admitted in CHEC Kolkata on 18 May 14. Re-evaluation revealed PIVD L-4/5. He underwent Re-exploration with Laminectomy L-4 & L-5 with Adhesionolysis and Discectomy L-4/5 on 06 Jul 14. Post operatively he developed fever and severe back pain. He was treated with IV antibiotics and analgesics as a case of discitis. thereafter, despite all treatment, his symptoms persisted and he remained bed bound.

20. The onset of pain in the lumbo-sacral region commenced in 2005 while he was serving with 36 RR. The applicant actually did almost four years of continuous tour of duty in operational area with only a two month break. It is on his third tour of duty in operational area in 2011 that the pain worsened and radiated to his lower limb. As mentioned, during the initial stages in 2005, the applicant's medical condition was managed with analgesics and physiotherapy. Also during his first hospitalisation in 2011, he was managed non-operatively. Clearly, the applicant had a medical condition resulting in pain in his lumbar-sacral region, which later permeated to his lower limbs and finally left him bed-ridden, in spite of two surgeries. It is the onset in 2005 which the applicant now attributes to a fall on hard snow while on duty in 36 RR.

21. The cases relied upon by the Learned Counsel for the applicant are different from the applicant's case, in that in all those cases, there was a verifiable physical incident, with requisite documentation, where circumstances and injury qualified to be interpreted as 'Battle Casualty'. In the case of the applicant herein, the incident which occurred almost 15 years ago is exclusively based on the statement of the individual and remains unverifiable. As mentioned in Army Order 1/2003/MP, there are certain prerequisites for a case to qualify as a 'Battle Casualty'; it has to meet the twin parameters given at Paragraph 69 thereof, and should fall into one of the circumstances

as given in Appendix A to the Army Order. Notwithstanding the difficult terminal condition of the applicant, the reason advanced by the applicant does not qualify his fall on hard snow whilst on RP duty in the unit area to accord him the status of Battle Casualty. Sadly, neither is there any documentation of his fall and the incident in the form of an Injury Report or Court of Inquiry.

22. Considering all aspects of the case, in the absence of any corroborating evidence of the incident in which the applicant has stated that he was injured, and the fact that the incident does not itself to be categorized as 'Battle Casualty', we do not find any merit in the OA and accordingly the same stands dismissed. There is no order as to costs.

Pronounced in open court on this 08th day of March, 2021.

Sd/-
[JUSTICE RAJENDRA MENON]
CHAIRPERSON

Sd/-
[LT GEN P.M. HARIZ]
MEMBER (A)

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