

(2013) 02 DEL CK 0357
In the Delhi High Court
Case No : Writ Petition (C) 4488 of 2012

Arvind Kumar Suhag

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 21-02-2013

Acts Referred:

Citation : (2013) 3 AD 470 : (2013) 4 ILR Delhi 2989

Hon'ble Judges : Sudershan Kumar Misra, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Jyoti Singh, with Ms. Deepali Dwivedi, for the Appellant; Barkha Babbar, Advocate for UOI, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.

"When you go home Tell them, for their Today, we gave our Tomorrow"

1. The petitioner seeks appropriate directions, in these proceedings, to the respondents, to grant him war injury pension, in accordance with the extant guidelines and circulars on the subject. The facts, which are not in controversy, are that the petitioner was working in the Indian Army from 7-6-1997, when he received his permanent commission. In June, 1999, he was posted to 402 Lt. AD Regt, at Batalik sector during "Operation Vijay" at Kargil. As an active participant, he was later awarded Operation Vijay Medal and Operation Vijay Star. On 23-10-2000, whilst on duty, during operational move from Batalik to Leh, his jeep met with an accident. He was unconscious and was moved to the Military hospital. The Court of Inquiry instituted into the incident found that this injury was attributable to military service in Operational/high altitude area. The injury left him with a permanent (100%) disability. After unsuccessful attempts at treatment, he was discharged from service with effect from 19-3-2005. He was, however, given terminal benefits and 100% disability pension, in addition to the other admissible retiral benefits.

2. The petitioner's claim for grant of war injury pension was recommended by his unit, by letters dated 6th July, 2007. His complaint is that even though the Adjutant General's office twice accepted his request, recommending his case for war injury pension, ultimately, after several reminders, the respondents finally rejected it, on the plea that he did not incur disability during war or war like operation, in terms of the applicable guidelines and circulars but that his disability was on account of an accident whilst on duty, for which he was given disability pension.

3. The petitioner relies, in support of his claim for war pension, upon Para 10 of the Central Government, Ministry of Defence's Letter No. 1(2)/97/I/D (Pen-C), dated 31-01-2001, for war injury pension payable to Armed Forces Personnel who are invalidated out of service on account of disability sustained under circumstances enumerated in the relevant category of Para 4.1 of that Letter. The relevant part of the letter reads as follows-

PART II - PENSIONARY BENEFITS ON DEATH/DISABILITY IN ATTRIBUTABLE/AGGRAVATED CASES

4.1 For determining the pensionary benefits for death or disability under different circumstances due to attributable/aggravated causes, the cases will be broadly categorised 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. Diseases 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
- (iii) Mishaps at sea while on duty.
- (iv) Electrocution while on duty, etc.

(v) Accidents during participation in organised 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 minefield laid by the 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.
- (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 Government from time to time.

4. It is contended that the petitioner's claim for war injury pension squarely falls in Category E (f), (i) as well as Category E (j). In this regard, it is submitted that the petitioner was on his way as per orders given by his superior officers, in an operation which had been notified by the Central Government, i.e. "OPERATION RAKSHAK-(III)", during which the armed forces were continuously engaged in flushing out the enemy forces after the Kargil war. Counsel also relied on letters

written by the Commanding Officer of the unit to which the petitioner belonged, outlining this fact and further stating that the injury incurred was classifiable as a battle injury. This was endorsed on two separate occasions by the Adjutant General's office, i.e. on 10-9-2007 and 3-10-2007, and a certificate was even issued in that regard. His claim for war injury pension was rejected, by Army authorities, by letter dated 12-9-2008. He, therefore, approached the Armed Forces Tribunal, by filing application (OA 635/2010) which was rejected by its order dated 3-4-2012.

5. Ms. Jyoti Singh, Learned senior counsel appearing for the petitioner, relies on the letters dated 6-7-2007, issued by the petitioner's unit and his commanding officer, to say that the injuries suffered were battle injuries, as they were during OPERATION RAKSHAK, and therefore, clearly classifiable in category E (j) as "Operations specially notified by the Government from time to time." In this regard, it is submitted that the records clearly reveal that the Adjutant General's determination that the injury was in an operational area, was after taking into account the concerned records; there was no reversal of that determination; the certificate that the injury was a battle injury, dated 1-10-2007 was not withdrawn or cancelled. In these circumstances, the request "sanction" by the Pay and Accounts office, through letter dated 11-10-2007, 17-12-2007 and 28-1-2008 could not have been the occasion for a review of the matter, and rejection of the claim. It was contended that documents sourced later, in the form of a letter issued by Ministry of Defence to the Northern Command of the Indian Army, 20th December, 2001 delineating that the area where the petitioner had been deployed, and in fact where his unit was stationed, had been declared as part of Operation Rakshak. It was argued that in overlooking these material circumstances, and proceeding to accept the contentions of the respondents that the injuries received by the petitioner were on account of accident in high altitude and classifiable under Para 4.1 (C) of the letter/notification of 2001, the Tribunal erred in law.

6. Ms. Barkha Babbar, learned counsel for the respondents, relied on the impugned order of the Tribunal and urged that the classification of the petitioner's injuries as accidental could not be found fault with. It was submitted that though the record revealed that the Adjutant General's office initially concurred with the units interpretation that the petitioner's injuries were battle or war related and therefore classifiable as such, on later scrutiny, the respondents were of the opinion that since they were closer in description to Para 4.1 (C) they had to be treated as such. It was argued that unlike in a war like situation, the petitioner was travelling in his jeep in the course of his duties, in the Kargil sector, when it unfortunately met with an accident. Though the injuries were serious and resulted in his discharge and further led to impairment throughout his life, the authorities could not be asked to pay war injury pension, when clearly his case did not qualify for that relief. She therefore urged that the petition should be dismissed as without merit.

7. The Tribunal's reasoning leading to the rejection of the petitioner's application is as follows:

8. We have bestowed our best of consideration made by the petitioner. In fact, plain reading of the Army notification dated 28.5.1985 and the Govt. notification dated 31.1.2001, indicates that the injury received by the petitioner while travelling from Batalik to Leh does not fall under the category of a war casualty. In fact a close reading of Category "E" clearly entitles person receiving an injury where there is a war like situation and the injury is attributable or aggravated by military service, or when a person falls victim to Extremists Acts, exploding of mines, while on the way to an operational area, during battle inoculation or training exercises or demonstration with live ammunition or kidnapping by extremists while on operational duty etc. and the case of the petitioner does not fall in any of these categories. May be he was in the operational area, but the petitioner is not victim of any of the situations mentioned in the sub-clause "f" of Category "E". Neither does he fall in the category case of Operations specially notified by the Government from time to time. Meaning thereby that when certain operations are undertaken, like clearing of extremists from a particular area, then that particular area is notified and any one falls victim or any other contingency arises then such death or injury could be attributable to that operation. In normal case the petitioner falls in category "C", which clearly says that accident while travelling on duty in govt. vehicle or public/private transport. Therefore, this contingency in which petitioner received the injury falls specifically in Category "C" sub-clause (a). It may be that Leh and Batalik are on the Indo-Pak border but contingency which has been contemplated in the Category "E" does not cover this vehicular accident.

8. Before a discussion on the merits of the case, it would be necessary to extract the relevant correspondence. In response to queries regarding classification of the petitioner's injuries, his unit (402 Lt. AD Regt. at Batalik sector) addressed four letters to the Army Headquarters, on 6-7-2007. Two of these were in response to the Additional Directorate General of Manpower, Headquarter's letter dated 30th May, 2007. The first letter stated that:

402 Lt. AD Regt.(Comp) as part of 611 (I) AD Bde was loc at Leh with Tps dply in 14 Corps Z. The tps of the unit were deply in OP RAKSHAK (J&K) (8 Mtn Div and 2 Inf Div) and OP MEGHDOOT (102 Inf Bde) post OP VIJAY from the period Sep 1999 to 2001...

The second letter, also of the same date, (i.e. 06.07.2007) and by the Officiating Adjutant of 402 Lt. AD Regt, on behalf of the Commanding Officer, elaborate more facts, such as "....2..(a) The officer was stationed at Kargil as part of Tps dply of this unit as the Air Def Artillery Tp. Cdr....(c) The name of the operation as notified by the Govt. of India is OP RAKSHAK-III (J&K)....(e) The offr was move from his operational deployment to the Regimental Headquarters located at Leh as brought out in the Injury Report and Court of Inquiry..."

9. The third letter of 6-7-2007 - by the Major, DAAG, on behalf of the Colonel at the Headquarters, 8th Military Division, stated that "it is evident that the accident of IC-56932Y Maj Arvind Kumar Suhag took place in the qualifying area for declaring the accident as "Battle Accident" as per Paras 5 and 7 of SAO 8/8/85." These letters and other materials were considered by the Additional Directorate General of Manpower (Policy and Planning) Adjutant General's Branch, Integrated HQ, Ministry of Defence; by letter dated 3-10-2007, the pension unit at Allahabad was told that:

4. Based on documents held, the casualty of the above named officer (i.e. the petitioner here) has been classified as Battle Casualty vide letter No. 12812/AG/OW/OPR/MP 5 (D) dated 10th Sep 2007 (photocopy attached).

5. In view of the above classification, you are requested to grant War Injury pension to the above named retd officer and corrigendum PPO may please be released at the earliest.

On 1-10-2007, the Petitioner was issued a certificate which stated that he was invalidated out of service with effect from 19-3-2005 due to SEVERE HEAD INJURY AND FRACTURE RIBS (LT) SEVERE,

on bona fide military duty in Kargil (OP RAKSHAK (J&K).

2. The officer's disability has been assessed by the Invalidating Medical Board for 100% for life and the casualty has been classified as Battle Casualty vide letter No. 12812/AG/OW/OPR/MP 5 (D) dated 10th Sep 2007

10. It is apparent from the above materials that the petitioner was deployed in Kargil and, according to his unit's communication dated 6-7-2007, was the Transport commander. He was asked to report for briefing. This was evidently when OPERATION RAKSHAK - III was on. Whilst in transit, his jeep met with an accident, and he suffered serious head injury, besides other injuries. There seems to be no doubt in this Court's mind that the injuries were classifiable as falling under category E (j) i.e. during "Operations specially notified by the Government from time to time."

11. What persuaded the Tribunal to hold otherwise is that the petitioner's injuries were not incurred during actual operations. In doing so, the Tribunal restricted the eventualities in category-E(j) to actual operations, i.e. injuries incurred during military combat or such like situations or as a result of explosion of mines etc. This would appear from its observation that only if someone is victim to extremism or any other contingency as a result of injury, would it be attributable to operation. With great respect, such a narrow interpretation of what is otherwise a widely phrased condition, is unwarranted. This would necessarily imply that those who are on the way - like the petitioner, in an operation-notified area and are intrinsically connected with the success of such operations cannot ever receive war-injury pension even though their aid and assistance is essential and perhaps crucial for its success. The classification of

the residual head, i.e. "operations specially notified by the government from time to time" has to be read along with the broad objective of the policy, i.e. - those who imperil themselves - either directly or indirectly - and are in the line of fire during the operations, would be covered if the injuries occur in that area or in the notified area of operation. This is also apparent from the situations covered in Clause (g) and (h) which nowhere deal with battle or war. In fact, clause (h) even covers injuries and death which occurs while personnel are "employed" in the aid of civil power in quelling agitation, riots or revolt by demonstrators" This means that if someone is travelling in the thick of such unrest and the accident results in death or injury, his next of kin would be entitled to war-pension whereas those who actually suffer similar injuries in an area where operations are notified, would not be entitled to such war injury pension.

12. The materials on record would demonstrate that when the reference - based on the petitioner's representations, (made in 2005), were received, the authorities enquired into the matter closely. During this enquiry, the views of the concerned Military Command HQs as well as the response of the petitioner's units were sought. Uniformly, all of them indicated that the injuries occurred in the area notified as "Operation Rakshak-III" in J&K. This was considered by the concerned Branch, i.e. Additional Directorate (Manpower) of the Adjutant General's Branch which accepted the classification as "Battle Injury" on 10.09.2007 and thereafter issued letter on 03.10.2007. The petitioner was even issued certificate on 01.10.2007 stating that his injuries were during a notified operation and that they were classifiable as "Battle injuries". That in fact was the end of the enquiry and nothing further should have happened except release of the amounts. Instead, the respondents, particularly the Pension Office, appears to have construed three requests made by the Pay and Accounts Office in October-November 2007 and 28.01.2008 requesting for sanction (for release of amounts) as a reason for entirely reviewing the matter. Even as on date, there is nothing forthcoming from the records or in the reply filed by the respondents before the Tribunal (which has been filed during the present proceedings) - to show what persuaded the respondents to reverse the Additional Directorate (Adjutant General's) determinations based upon actual assessment of the area of operation where the petitioner was deployed. It seems that the military bureaucracy in this case or someone within it felt that since injuries were described more specifically as "accidents while travelling on duty in government vehicles" - in category (C) of the letter/policy dated 31.01.2011, the petitioner was disentitled to war injury pension. The Tribunal's bland acceptance of these decisions has regrettably resulted in denial of justice to the petitioner. This Court is, therefore, of the opinion that the impugned order of the Tribunal cannot be sustained. The petitioner's claim for grant of war injury pension in terms of Clause 4-1(E)(j) has to succeed.

13. 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 rationalisation 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 (C) and (E), is deplorable. In these circumstances, the petitioner deserves to succeed. The respondents are hereby directed to forthwith process the petitioner's case for war injury pension in terms of the aforesaid letter dated 31-1-2001, Clause 4.1(E) and pay the differential admissible to him in accordance with the prevailing guidelines and circulars within six weeks from today. This differential shall also carry 12% interest per annum from the date of the recommendation by the Additional Directorate Adjutant General's office, i.e. from 01.10.2007 till the date of payment. The petitioner shall also be entitled to the costs, quantified at Rs. 50,000/-, to be paid within the same period. The writ petition is allowed in the above terms.