

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No.348/2012**

Date of decision: 29th May, 2013

J.P.BHARDWAJ Petitioner
Through: Mr. S.S. Pandey, Adv.

versus

UOI AND ORS Respondents
Through: Mr. Ankur Chhibber, Adv.

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER
29.05.2013

GITA MITTAL, J (Oral)

1. The petitioner has assailed the order dated 30th June, 2010 passed by the Armed Forces Tribunal rejecting the petitioner's challenge to the action of the respondents in treating the injuries suffered by the petitioner as physical casualty instead of battle casualty in an operational area which had caused 100% disability to the petitioner.

2. The facts giving rise to the present petition are briefly noted hereafter.

The petitioner was enrolled on 24th December, 1980 in the Indian Army in the Corps of EME as Vehicle Mechanic. It is not disputed that the petitioner served various units of the Army with dedication and devotion to duty between 1981 to 1986 and has an exemplary service record. The petitioner was also promoted from time to time till he reached the rank of Havildar. With effect from 5th June, 1994 the petitioner was posted to 10, Rashtriya Rifles Battalion (Rajput) (hereinafter referred to as 10 RR Bn.) which was then deployed in the State of Jammu & Kashmir.

3. We are also informed that operation Rakshak-III (so notified by the Central Government) was in progress during which counter insurgency operations were carried out against active militant activities in area.

4. On 30th October, 1996, the petitioner was given the task by his Commanding Officer to go to Udampur from Doda after taking adequate security protection as certain local repair work of equipments and machinery was required. While returning after completion of the work, the vehicle which the petitioner was driving met with an accident and fell into a deep ditch causing severe injuries to the petitioner. The petitioner was immediately evacuated to the Command Hospital (Northern Command) Udampur in an unconscious state and was later transferred to Command Hospital (Western Command), Chandimandir wherein he remained under treatment for more than 7 months and 10 days (between June, 1996 to February, 1997). As a

result of the severe injuries, the petitioner was completely paralyzed from both his legs.

5. The respondents conducted a Court of Inquiry to ascertain the reasons of the accident. The petitioner denies presence in the Court of Inquiry. There is dispute as to whether the petitioner had actually made statement which has been attributed to him and the petitioner denies his signatures on the statement. However, the petitioner has also challenged the findings of the Court of Inquiry contending that the same was arbitrarily concluded finding the petitioner blameworthy in the said accident.

6. Finally, on account of his medical condition of permanent paralysis and his being confined to the bed, on the night of June 1997 the petitioner was invalidated out of service with 100% disability. The disability of the petitioner was duly evaluated by the Invalidating Medical Board. The respondents however failed to treat the petitioner's injury as a battle casualty even though the accident had occurred in an operational area so notified by the Central Government. The petitioner was aggrieved by the action of the respondents in treating the petitioner's injury as a physical casualty. The same impacts the financial benefits to which he was entitled due to injury having been suffered in an operational area.

7. In this regard the petitioner sent communication dated 24th July, 2000 to the respondents. It was only in the response dated 19th August, 2000

from the 10th, RR Battalion, the respondents first made mention of the Court of Inquiry proceedings.

8. In the meantime, the petitioner made a request dated 19th August, 2000 for the copy of the Court of Inquiry.

9. The petitioner has also submitted that an impression was given to him that his case for grant of war injury pension in terms of para 10 of the Government of India letter dated 31st January, 2001 [No.1(2)/97/I/D (Pen-C)] was under examination inasmuch as by communication dated 28th January, 2002, the petitioner's pension stood enhanced from Rs.450/- to Rs.1500/-. Despite repeated representations, no positive response was received by the petitioner. He was therefore constrained, on 26th August, 2004 to address a communication to the Defence Minister seeking redressal of his grievance. Unfortunately, this communication also met the same fate.

10. Finally, on 19th October, 2004, the petitioner addressed the legal notice to the respondents seeking payment of his legitimate entitlement. By their letter dated 30th November, 2004, the respondents refused to accept such entitlement. Aggrieved by the actions of the respondents, the petitioner filed WP(C) No. 8007/2005 inter alia praying for quashing of the inquiry findings of the inquiry report and seeking a direction to the respondents to release the benefits of war injury pension as well as related benefits. The petitioner had also claimed the benefit of pay and allowances as well as pension as per his

category in view of the recommendations of the 5th Pay Commission which have also been declined to him. Upon the constitution of the Armed Forces Tribunal, WP(C) No. 8007/2005 was transferred from this Court to the Armed Forces Tribunal and came up registered as TA No.376/2010.

11. The same was finally disposed of by a judgment passed on 30th June, 2010 whereby only the claim of the petitioner towards payment of pension as to the recommendations of the 5th Pay Commission was accepted. The Armed Forces Tribunal rejected the petitioner's claim of benefit of war injury or battle casualty which has been specifically claimed by the petitioner. Aggrieved thereby, the present writ petition has been filed by the petitioner assailing the rejection of his prayer for benefits of war injury or battle casualty by the Armed Forces Tribunal.

12. We have heard learned counsel for the parties and also perused the available records. Mr. S.S.Pandey, learned counsel for the petitioner has contended that the issue raised in the present petition is no longer res integra and has been earlier decided by this Court by a judgment dated 21st February, 2013 rendered in WP(C) No. 4488/2012 titled as ***Major Arvind Kumar Suhag vs. Union of India*** and the pronouncement reported as ***2005(3) SCT 458, Mrs. Manju Tewari vs. Union of India & Ors.*** in WP(C) No.5262/2003.

13. So far as Mrs. Manju Tewari (petitioner in WP(C) No.5262/2003) was concerned, she was a widow of Lance Naik Urba Dutt

who had been deployed in Operation Vijay in Kargil War. Thereafter he was deployed on Pakistan Border in Sriganganagar Sector of Rajasthan. During this posting he died a sudden death. The medical certificate had certified that he had expired in action. The discussion of the Court in para 7, 8 and 9 of the pronouncement shall throw light on the issue before us and deserves to be extracted. The same read as follows:-

“7. As noted above, the case of the petitioner is that the death of her husband having occurred as a result of war like situation as also in an operation specifically notified by the Government from time to time her case for liberalised family pension clearly fell within the ambit of category-E (f & i) whereas the stand of the respondents is that it was a case of death which is accepted as attributable to or aggravated by military service and, therefore, covered under Category-B of the said instructions.

8. Having heard learned counsel for the parties and perused the material on record, we are of the view that there is merit in the stand of the petitioner. The parties are at ad idem that deceased's unit was deployed in Operation Vijay as published in Western Command Order and petitioner's husband was posted strength of the unit. Thus, it is not in dispute that the death of petitioner's husband was on account of his participation in an operation in a war like situation, as enumerated in clause (f) of Category-E of the Instructions. The said operation was also notified in terms of Clause (i) in the said category. Thus, from a bare reading of the said instructions, which are binding on the respondents, have no hesitation in coming to the conclusions of the death of petitioner's husband was covered under Category-E of the Instructions and she is entitled liberalised family pension.

9. For the foregoing reasons, the writ petition followed and a mandamus is issued to the respondent to grant liberalised family pension to the petitioner in terms of the Instructions issued on 31st January 2001. The arrears of the pension shall be paid early as practicable and in any case not later four weeks from the date of this order.”

After so observing the court had issued a writ of mandamus to

the respondents to grant liberalized family pension to the petitioner in terms of the instructions issued on 31st January, 2001.

14. The petitioner before us has placed reliance on a circular issued by the Ministry of Central Government, Ministry of Defence vide letter No.1(2)/97/I/D (Pen-C) dated 31st January, 2001 in respect of the war injury pension payable to armed forces personnel who are invalidated from service on account of disability sustained during the circumstances set out in para 4.1. We may usefully reproduce the relevant provisions of this letter dated 31st January, 2001 which 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. 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
- (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 terrorist, 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 – filed 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 situation, including cases which are attributable to/aggravated by:-
 - (i) Extremist acts, exploding mines etc. while on way to on 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.**” (Emphasis supplied)

15. The petitioner before us has contended that so far as his case is concerned, he is squarely covered under Category-E sub-Clause (i) especially notified by the Government from time to time which applies to injury suffered in operations resulting in death or disability.

16. The provisions of para 2 of the above instructions dated 31st January, 2001 issued by the Government of India, Ministry of Defence relating to liberalized family pension have also been dealt with in para 6 of the *Manju Tiwari's (supra)* case .

17. Our attention has also been drawn to the judgment rendered on 21st February, 2013 in WP(C) No.4488/2012 titled as *Major Arvind Kumar Suhag vs. Union of India & Ors.* In this case, Major Arvind Kumar Suhag was posted to 402 Lt. AD Regt, at Batalik sector during Operation Vijay at Kargil. After the Operation Vijay he was awarded Operation Vijay Medal and Operation Vijay Star. On the 23rd October, 2000, whilst on duty, during operational move from Batalik to Leh, his jeep met with an accident in which he was rendered unconscious and was moved to the military hospital. The Court of Inquiry instituted into the incident found that his injury was attributable to military service in Operational/high altitude area which had left

him with 100% permanent disability. Major Arvind Kumar Suhag was discharged from service with effect from 19th March, 2005 and was given only terminal benefits and 100% disability pension apart from admissibility retiral benefits. The petitioner's claim for grant of war injury pension, though recommended by his unit, was rejected on the ground that he had not incurred disability during war or war like operations in terms of the afore-noted guidelines contained in the circular of 31st January, 2001 but that his disability was on account of an accident while on duty, for which disability pension stood granted to him. Major Arvind Kumar Suhag had also placed reliance on the afore-noted circular dated 31st January, 2001 in respect of claim for grant of war injury pension.

18. In this background, the court had held that so far as Major Arvind Kumar Suhag was concerned, he had also approached the Armed Forces Tribunal which had rejected his claim that it was covered under Para 4.1 Category-E (i) (wrongly typed as (j) in the judgment). The observations of this court while disagreeing with a view taken by the Armed Forces Tribunal and granting relief to the Major Arvind Kumar Suhag which would guide adjudication of the present case before us reads as under:-

“12. 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.

13. 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.

14. 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.”

19. In the case in hand as well, the writ petitioner J.P.Bhardwaj has been denied battle injury pension placing reliance on the proceedings of the Court of Inquiry wherein it was clearly stated that though the individual was responsible for the accident, no action need to be taken and the loss is to be borne by the State. The Armed Forces Tribunal placed reliance on Special Army Order 8/S/85 and the notes in Section 1 that the vehicle accident could not be termed as battle casualty since the accident took place in an operational

area but did not occur in action; that it was not in close proximity to the enemy, or was not caused by the fixed apparatus for example Land mines, booby traps, barbed wire or any other obstacles led by the enemy nor was it caused by any national calamity.

20. As noted above, there is serious doubt with regard to the presence of the petitioner during the Court of Inquiry, the petitioner has stated on affidavit that he has not attended the Court of Inquiry.

21. A copy of the Court of Inquiry proceedings has been produced before us today which contains some signatures attributed by the respondents of the as being of the petitioner. We have carefully compared the same with the admitted signatures of the petitioner as well as his available signatures on the Court record, including the one on the affidavit and his Vakalatnama. The signatures on the statement attributed to the petitioner in the Court of Inquiry do not even remotely resemble his admitted signatures or the signatures on Court Record. In this background, we have serious doubts with regard to the presence of the petitioner before the Court of Inquiry. The Court of Inquiry has in fact proceeded to return findings which effect the character and reputation of the petitioner and hold that the petitioner was responsible for the injuries sustained such court of Inquiry could not have been legally held in the absence of the petitioner who had to be given an opportunity to challenge the statements of witnesses, if any, against him as well as the record of the

findings against him. Despite requests, the proceedings of the Court of Inquiry have not been made available to the petitioner. The Court of Inquiry conducted in the case is contrary to the provisions of Army Regulations Rule 520 and cannot be relied upon for any purpose.

22. So far as the findings that the injury did not occur in action is concerned, as has been held in the case of *Major Arvind Kumar Suhag (supra)*, such finding is totally beyond the spirit, intendment and object of the policy declaration made by the respondents in the communication dated 31st January, 2001. The observations of the Court made in paras 12 to 14 of the pronouncement in *Major Suhag (supra)* squarely apply to the instant case.

23. As a result the observations of the Armed Forces Tribunal in para 9 of the order to the effect that the vehicle accident cannot be termed as battle casualty for the reasons noted above are legally untenable.

24. There is no dispute at all that the petitioner was discharging duty while participating in operation Rakshak in Kargil area which operation had been specially notified by the Government of India in terms of Clause (i) of Category E in para 4.1 of the circular dated 31st January, 2001. This aspect has not been noted by the Armed Forces Tribunal in its judgment dated 30th June, 2010 as a result it has to be held that the petitioner is entitled to all benefits including the monetary benefits.

25. It is also not disputed that the petitioner has suffered 100%

disability which fact has been accepted by the Invalidating Medical Board while discharging the petitioner. There is no evidence at all that the condition of the petitioner has improved in any manner. Therefore petitioner's disability as on date continued to remain as 100%.

26. In view of the above, we hereby direct as follows:-

- i) It is held that the order dated 30th June, 2010 of the Armed Forced Tribunal is contrary to the well settled principles in law and is hereby set aside and quashed.
- ii) A writ of mandamus to the respondents to forthwith process the petitioner's case for war injury pension in terms of Clause 4.1 Category E (i) of the instructions/Circular dated 31st January, 2001 and pass appropriate orders in respect of consequential benefits to which the petitioner will be entitled in accordance with law. Such consideration shall be completed and orders passed within a period of 6 weeks from today. The order as and when passed shall be communicated to the petitioner as well as to learned counsel representing him in this court.
- iii) The petitioner shall be entitled to interest at the rate of 12% per annum or the amounts found due and payable with effect from the date of entitlement of war injury pension.
- iv) The petitioner shall be entitled to litigation costs which are

assessed at Rs.50,000/-. The costs shall be paid within 4 weeks from today.

The writ petition is disposed of in terms of the above.

GITA MITTAL, J

DEEPA SHARMA, J

MAY 29, 2013
ak