

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

WP(C) No. 265/2024
CM No. 631/2024

Devinder Singh

..... Petitioner(s)

Through :- Mr. Karan Sharma, Advocate.

v/s

Union of India and ors.

.....Respondent(s)

Through :- Mr. Vishal Sharma, DSGI with
Mr. Sumant Sudan, Advocate.

**CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE**

ORDER(ORAL)

(Per:-Sanjeev Kumar-J)

1. Impugned in this petition filed under Article 226 of the Constitution of India is an order and judgment dated 10.04.2023 passed by the Armed Forces Tribunal, Regional Bench Srinagar at Jammu (*hereinafter referred to as, "the Tribunal"*) in OA No. 73/2022 titled, "*Ex Hav. Davinder Singh Vs. Union of India and ors.*", whereby the Tribunal has dismissed the OA of the petitioner, seeking war injury element of disability pension.
2. Before we advert to the grounds of challenge urged by learned counsel for the petitioner, it would be appropriate to take note to few facts, as are relevant to the disposal of this petition.
3. The petitioner was enrolled in the Army, Infantry on 01.05.1991 in medical category SHAPE-I. He was discharged from service on 30.04.2015 being placed in medical category S1H2(P)A1P1E1 due to injury "SENSORINEURAL HEARINGLOSS BIL". The injury was

suffered by the petitioner while he was deployed in Machel Sector (J&K) in Counter Insurgency Area when he was illuminating a post by a Rocket Launcher (RL). The Machel Sector, which is a border area, was at the relevant point of time under operation “RAKSHAK”. The injury/disability suffered by the petitioner was assessed at 20% for life and attributable to army service. The petitioner was, thus, granted disability pension. He represented before the respondents for grant of war injury element of pension on the ground that he suffered the disability while performing his duties in connection with OP RAKSHAK.

4. Having failed to get any response from the respondents, the petitioner filed OA No. 73/2022 claiming, inter-alia, a direction to the respondents to release the war injury pension at 20% instead of disability pension and then, rounding it off to 50%, w.e.f. 01.05.2015 for life. The OA was contested by the respondents. The stand taken by the respondents before the Tribunal was that the petitioner suffered disability while he was deployed in Machel Sector of Jammu and Kashmir in Counter Insurgency Area. The incident occurred when the petitioner fired a Rocket Launcher on 08.06.2011 for providing illumination at a post. It was, thus, contended before the Tribunal that the disability though occurred in operational area, was not sustained in a war like situation and, therefore, the war injury element of pension was not available to the petitioner. Since the disability suffered by the petitioner was attributable to military service, as such, he was held entitled only to the disability pension.
5. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the Tribunal has not

appreciated the detailed provisions contained in the Ministry of Defence (MoD) order dated 31.01.2001.

6. Para-10 of the order deals with war *Injury Pension on Invalidment*, whereas paras-11 & 11.1 deal with *War Injury Pension on Retention in Service*, which are relevant for our purpose and, therefore, are set out as under:-

“ 11. War injury Pension on Retention in Service.

11.1 Armed Forces personnel who are retained in service despite the disability due to war injury sustained under circumstances mentioned in Category 'E' of Para 4,1 above, and retire subsequently will have an option as follows to be exercised within a period as prescribed by the Government from time to time:-

- (a) to draw lump sum compensation in lieu of War injury element foregoing war injury element at the time of subsequent retirement/discharge, or***
- (b) to draw war injury element at the time of retirement in addition to retiring/service pension admissible on retirement/discharged foregoing lump sum compensation.”***

7. The case of the petitioner squarely falls within para-11.1 for the reason that he was retained in service despite having suffered disability to war injury sustained under circumstances mentioned in Category ‘E’ of para-4.1 of the order. At this stage, we would like to set out para-4.1 of the order as well:-

“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*
- (iii) Mishaps at sea while on duty*
- (iv) Electrocution while on duty, etc*
- (v) 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 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 and will cover:-

(a) Flying operation involved in rehearsing of war plans and implementation of OP instructions inclusive of international exercise.

(b) All combat and tactical sorties in preparation of war

(iii) Kidnapping by extremists while on operational duty.

(g) An act of violence/attack by extremists, anti-social elements etc. while on operational duty.

(i) Operations specially notified by the Govt. from time to time.”

8. From reading of para-4.1 of the order, it clearly transpires that the case of the petitioner falls under Category ‘E’ of the said order, i.e., the disability that has arisen is as a result of demonstration with live ammunition.

9. It is not disputed that the disability suffered by the petitioner was on account of firing of Rocket Launcher for the purposes of illuminating a post and, therefore, would squarely fall within the expression “*Demonstration with live ammunition*”. If that be the position emerging from the fact situation obtaining in the case and the provisions of MoD order of 2001, the claim of the petitioner for war injury element of pension cannot be denied.

10. Without going much into the rival contentions of the parties, suffice it to say that the petitioner has succeeded in demonstrating that his case would fall under Category ‘E’ (f) (ii) of Clause 4.1 of the MoD order of 2001 and, therefore, he is entitled to the war injury element of pension.

11. For all those reasons, this petition is allowed. The impugned order and judgment of the Tribunal is set aside. The letters issued to the respondents

dated 18.12.2021 & 31.07.2018 are quashed. The respondents are directed to release the war injury pension in favour of the petitioner instead of disability pension within a period of three months from the date of receipt of a certified copy of this order. The petitioner shall also be entitled to the interest on the arrears @ 6% per annum w.e.f. 01.05.2015.

12. **Disposed of** alongwith connected application.

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

JAMMU
02.04.2026
Ram Krishan

Whether the order is speaking?	Yes/No
Whether the order is reportable?	Yes/No

