

Notes of the Registry	Orders of the Tribunal
	<p style="text-align: center;"><b>IN THE ARMED FORCES TRIBUNAL REGIONAL BENCH, GUWAHATI</b></p> <p style="text-align: center;"><u>OA- 34 of 2017</u></p> <p><b>Capt Vyom Kumar</b></p> <p style="text-align: right;">..... <b>Applicant</b> By legal practitioner for Applicant.</p> <p style="text-align: right;"><b>Mr Suman Chetia</b> <b>Mr. Amit Goyal</b></p> <p style="text-align: center;">-Versus-</p> <p><b>UOI &amp; Others.</b></p> <p style="text-align: right;">..... <b>Respondents</b> By legal practitioner for Respondents. <b>Mr. B. Kumar, CGSC</b></p> <p style="text-align: center;"><u><b>PRESENT</b></u></p> <p style="text-align: center;"><b>HON'BLE DR. (MRS) JUSTICE INDIRA SHAH, MEMBER (J)</b></p> <p style="text-align: center;"><u><b>ORDER</b></u></p> <p><u><b>09.08.2019</b></u></p> <ol style="list-style-type: none"> <li>1. The Judgment and Order pronounced in the open Court today sitting singly as authorized by Lt Gen C.A. Krishnan, Hon'ble Member (A) is prepared on separate sheets and placed on record.</li> <li>2. OA is allowed to the extent as indicated in the order with no order as to costs.</li> <li>3. Learned counsel for the respondents has prayed orally to allow him to leave to appeal before the Hon'ble Supreme Court.</li> <li>4. Since the order does not involve any point of general public interest, the prayer stands rejected.</li> </ol> <p style="text-align: right;"><b>MEMBER (J)</b></p> <p><i>Kalita</i></p>

IN THE ARMED FORCES TRIBUNAL REGIONAL BENCH,  
GUWAHATI.

OA 34/2017

P R E S E N T

HON'BLE DR. (MRS) JUSTICE INDIRA SHAH, MEMBER (J)  
HON'BLE LT GEN C.A. KRISHNAN, MEMBER (A)

**Capt Vyom Kumar (Retd)**  
C/O Shri RM Singh IPS  
Flat No. A6, Seniors Officers Flat  
Opp to CID Headquarters  
Ulubari (PO) Guwahati-007

..... **Applicant**  
Legal practitioner for the applicant  
Mr. Suman Chetia  
Mr. Amit Goyal

- Versus -

1. Union of India,  
Represented by the Secretary  
Ministry of Defence,  
Sena Bhawan,  
New Delhi-11
2. The Chief of the Army Staff  
Indian Army,  
IHQ (MoD) (Army)  
L. Block, Church Road, New Delhi-001
3. The Officer Commanding  
66 Amd Regiment  
C/O-56 APO
4. The Officer Commanding,  
HQ 58 armoured Brigade,  
C/O 56 APO
5. The Directorate General of Manpower (P&P), MP-6(B)  
Adjutant General's Branch  
IHQ of MoD (Army)  
West Block-III, RK Puram  
New-Delhi -006

6. Additional Directorate General, Personal service  
Adjutant General's Branch/PS-4 (Imp-I)  
IHQ of MoD (Army)  
Plot No. 108 (West), Church Road,  
Brassey Avenue, New Delhi-001
7. The Principal Controller of Defence  
Accounts (Pension), Allahabad  
PIN-211014, Uttar Pradesh

..... **Respondents**  
Legal practitioner for the  
Respondents  
Mr. B. Kumar, CGSC

Date of Hearing : 06.08.2019  
Date of Judgment & Order : 09.08.2019

## ORDER

Per Lt Gen C.A. Gen Krishnan, Member (A)

1. The applicant has filed this application under Sub Section 2 of the Section 14 of the AFT Act, 2007 praying for : -
  - (i) *To set aside the letter No. 3022/IC-75579M/AC-2/MP-6(B)/294/2017/AG/PS-4 (Imp-I) dated 24.05.2017 issued by the respondent No. 6 rejecting the disability pension of the applicant.*
  - (ii) *To grant the Ex-Serviceman status as well as the Disability pension being a battle casualty due to attributable Military Service.*
  - (iii) *To grant other pensionary benefits like DCRG, Leave Encashment, One time Battle Casualty Grant, arrears of 7<sup>th</sup> Pay Commission, AGIF benefits etc.*
  - (iv) *To grant any other relieves as to this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case of the applicant.*
2. Learned counsel for the applicant submits that the applicant, Capt Vyom Kumar was commissioned as an officer in the Indian Army on 11/06/2011. While in service, on 16.02.2013 he met with a battle accident at Mahajan Field Firing Range and as a result he was injured seriously. The accident occurred while carrying out recce troop training during filed firing. The applicant suffered injury due to Grenade Blast and he sustained serious injury i.e. "GRENADE BLAST INJURY (RT) HAND WITH PROXIMAL

PHALANX (RT) THUMB WITH MID PHALAX FINGER WITH TISSUE LOSS RING FINGER, INDEX FINGER, MID FINGER AND THUMB". The learned counsel submits that as per report 'Accidental and Self Inflicted Injuries-Officers' dated 26.03.2013 in respect of the officer, the injury was declared as attributable to military service (Annexure-R1). In this regard, he further submits that on 26.03.2013, respondent No. 4 had also issued a certificate certifying that the injury of the applicant is attributable to military service (Annexure-R2), subject to approval of the competent authority as mentioned in Govt. of India, Ministry of Defence letter No. 1(2)2002/D/Pen-C) dated 01.09.2005 as amended. Thereafter, the respondent authorities had published Part-II order on 14.07.2013 declaring the nature of casualty of the applicant as attributable to military service in field. Subsequently, vide letter No...022/IC-75579/AC-2/MP-6 (B) dated 21.03.2017, the applicant was directed to submit a certificate of receipt/non-receipt of lump sum compensation in lieu of the disability/disabilities before retirement to the competent authority for finalization of disability pension. Thereafter, the applicant had duly submitted a certificate for non receipt of lump sum compensation in lieu of disability pension vide certificate dated 03.04.2017. The applicant also received a letter bearing letter No. 13022/IC-75579M/AC-2/MP-6(B)/294/2017/AG/PS-4 (Imp-I) dated 24.05.2017 issued by the respondent No. 6 stating inter-alia that the competent authority had accepted the resignation letter of the applicant and consequent to resignation, the applicant is not entitled for grant of disability pension because disability element is admissible in addition to retiring/service pension or retiring service gratuity in terms of MoD letter No. 16(5)/2008/D (Pen/Policy) dated 29.09.2009. The letter further stated that since no pensionary entitlement is admissible on resignation provisions of the Government letter dated 29.09.2009 shall not be extended to those proceeding on resignation. The learned counsel for the applicant further submits that as per the Pension Regulation for the Army, Part-II (2008), the applicant is entitled the disability pension if the disability has

been accepted as attributable or aggravated by military service. In the instant case, he argued that the respondent authorities had declared the applicant's injury as attributable to military service in terms of Rule 12(a) of the Entitlement Rules to Casualty Pensionary Awards to Armed Forces Personnel, 1982 which was also approved by the competent authority vide Part II order dated 14.07.2013. The learned counsel also submits that the applicant received an amount of Rs. 7,40,550/- on 03.04.2017. Thereafter, the applicant again received an amount of Rs. 2,01,824/- from PCDA, Allahabad. But the details of the aforesaid amount was not communicated to the applicant. Subsequently, the applicant has preferred another representation before the Chief of the Army Staff, Indian Army stating his grievances vide letter No. VK/75579/PERS dated May 2017 requesting for disability pension and other pensionary benefits, but without success.

3. Learned counsel for the respondents submits that the injury suffered by the applicant was due to an accident during training and was treated as 'attributable to military service'. He further submits that the applicant did not suffer the injury as a result of any action against the enemy or due to acts of violence by terrorists and so he is not covered under category 'D' and 'E' of the Government of India, Ministry of Defence letter dated 31.01.2001. He argued that the disability suffered by the applicant, therefore, falls under category 'C' and cannot be termed as battle accident. He further submits that applicant resigned from service on his own request which means that he did not want to serve in the Army any more. As per Paragraph 81 of the Pension Regulations for the Army, 2008, Part-I disability pension consisting of service element and disability element may be granted to an officer who is invalided out of service on account of a disability which is either attributable to or aggravated by military service in non-battle casualty cases and the disability is assessed at 20% or more. A low medical category officer who retires on superannuation or on completion of tenure can also be granted disability pension under provision of Regulation 37 of the Pension Regulations for the Army, 2008, if he fulfils

the twin eligibility conditions as stated above provided the percentage of disability is 20% or more. The learned counsel submits that as per policy in vogue, an officer who has resigned from service on his own request is not entitled to disability pension. The applicant was granted release at his own request after serving for only 5 years 7 months and hence he is not entitled to any pensionary benefits. He further submits that as per paragraph 13 of the MS Branch letter No. 04588/MS Policy dated 22.11.2001, "no terminal benefits are permitted to those who resign on commission" and since the applicant was injured while in training, he was not declared as battle casualty by the competent authority. Learned counsel submits that no case for interference by this Tribunal has been made out and nothing has been brought on record to invoke the jurisdiction of this Hon'ble Tribunal and prayed that the Original Application be rejected.

4. Heard Mr. Amit Goyal, learned counsel appearing for the applicant and Mr. B. Kumar, learned CGSC assisted by Capt Nisha Thomas, OIC, AFT Legal Cell, Guwahati appearing for the respondents and perused the documents placed on record.

5. It is not disputed that the applicant was commissioned in the Indian Army on 11.06.2011 and was discharged from service at his own request on 23.01.2017. The respondents have also admitted that the applicant suffered "GRENADE BLAST INJURY (RT) HAND WITH PROXIMAL PHALANX (RT) THUMB WITH MID PHALAX RING FINGER WITH TISSUE LOSS RING FINGER, INDEX FINGER, MID FINGER AND THUMB" on 16.02.2013 due to an accident during training. We also find that the Invaliding Medical Board held on 10.01.2017 in AFC, New Delhi declared the invaliding disease of the applicant "GRANADE BLAST INJURY RIGHT HAND (OPTD) (S61.9)" attributable to military service with the remark that "the injury was sustained during training on explosives and grenades and is attributable to military service as per injury report dated 23.03.2013" and also assessed his disability at 30% for life. The respondents have denied disability pension to the applicant on the grounds that "no terminal

benefits are permitted to those who resign commission." They have also denied the applicant the benefit of 'battle casualty', stating that the applicant was injured while in training and not during any action against the enemy or as a result of any terrorist action.

6. We find that the Pension Regulations for the Army, Part-I, 2008, Reg 99 lays down :-

*"99(a) Where service personnel is invalided from service on account of disabilities sustained under circumstances mentioned in category 'E' of Regulation 82 of these Regulations, he shall be entitled to war-injury pension as enumerated in this Section."*

7. Further, examining Para 82 of the Pension Regulation (Supra), we find that it lays down :

*"82. 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. Example 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 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.

Death or disability arising as a result of:

- (i) Unintentional killing by own troops during the course of duty in an operational area.
- (ii) Electrocution/attacks by wild animals and snake bite/drowning during course of action in counter insurgency/war.
- (iii) Accidental death/injury sustained due to natural calamities such as flood, avalanches, landslides, cyclone, fire and lightening 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 or line of control.

**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 mines weeping 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) Extremists acts, exploding mines etc, while on way to an operational area.
  - (ii) Battle inoculation training exercises or demonstration with live ammunitions.

.....”

(Emphasis supplied by us)

8. From the above, it is evident that the injury “GRENADE BLAST INJURY (RT) HAND WITH PROXIMAL PHALANX (RT) THUMB WITH MID PHALAX FINGER WITH TISSUE LOSS RING FINGER, INDEX FINGER, MID FINGER AND THUMB” suffered by the applicant during training with live explosives is a ‘war injury’ covered under category (E)(f)(ii) of Reg 82 of the Pension Regulations (Supra).

9. Regarding the applicant’s eligibility for war injury pension/war injury element of war injury pension in the light of the fact that he took premature retirement at own request, we find that in its order dated 08.01.2015, in the case of **Singheswar Singh Vs Union of India & Ors** in O.A No. 55 of 2014, the Principal Bench, AFT also held that premature retirement/release at own request is not a disqualifying factor for

entitlement of disability pension and broadbanding benefits by recalling Hon'ble Supreme Court's order in Ram Avtar's case as follows :-

*"5. It will be worthwhile to note that respondents even after Ram Avtar's Case, in other cases, earlier submitted that matters of premature retirees and their claim of rounding off of the disability pension were separated from the bunch of the appeals decided by the Hon'ble Supreme Court which were tagged along with Ram Avtar's case but from the judgment of Ram Avtar's case, it appears that only one Civil Appeal No. D.18257/2014 and another Criminal Appeal No. 645/2013 were separated. Learned counsel for the petitioner submitted that subsequently, on 13.12.2014 itself the Civil Appeal No. D.18257 of 2014 was also dismissed. Therefore, the question of rounding off of the disability pension of persons who sought voluntary retirement also stands concluded as decided by the Hon'ble Supreme Court."*

10. We find that the applicant had not completed 20 years of service which is the minimum service required by an officer to become eligible for service element of pension vide provisions of Regulations 34 of Pension Regulation (Supra). We also find that the applicant was not invalidated out of service but was granted premature retirement at his own request after completing only 5 years 7 months service.

11. In view of the foregoing, we are of the considered opinion that the applicant is eligible for war injury element of war injury pension @ 30% duly broadbanded to 50% for life w.e.f. 23.01.2017 (date of his discharge).

12. Accordingly, the OA is disposed of with the direction to the respondents to issue PPO and also to pay arrears of war injury element of war injury pension to the applicant w.e.f. 23.01.2017 as ordered herein within 3 months from the date of receipt of a copy of this order. Any compensation in lieu of war injury element of war injury pension, if already paid to the applicant, will be adjusted accordingly, after providing the applicant all details of such adjustment by the respondents. In case the

aforesaid order is not complied within the stipulated period, the arrear shall carry interest @8% per annum.

13. No costs.

**MEMBER (A)**

**MEMBER (J)**

*Kalita*