

Form No. 4  
{See rule 11(1)}  
ORDER SHEET  
ARMED FORCES TRIBUNAL, REGIONAL BENCH, GUWAHATI  
(Sl. No. 20)

O.A. No. 10 of 2022

**Ex. Sep. LH Beloveson Anal** Applicant  
By Legal Practitioner for the Applicant : Shri A.R. Tahbildar, Advocate

Versus

**Union of India & Others** Respondents  
By Legal Practitioner for Respondents : Shri P.J. Barman, Advocate

Notes of the Registry	Orders of the Tribunal
	<p><b><u>05.04.2023</u></b> <b><u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u></b> <b><u>Hon'ble Air Marshal Balakrishnan Suresh, Member (A)</u></b></p> <p style="text-align: center;">Heard Shri A.R. Tahbildar, Ld. Counsel for the applicant and Shri P.J. Barman, Ld. Counsel for the respondents.</p> <p style="text-align: center;">Original Application is <b>dismissed</b>.</p> <p style="text-align: center;">For orders, see our order passed on separate sheets.</p> <p style="text-align: center;">Misc. Application(s), pending if any, shall be treated to have been disposed of.</p> <p style="text-align: center;"><b>(Air Marshal Balakrishnan Suresh)</b>      <b>(Justice Umesh Chandra Srivastava)</b> Member (A)      Member (J)</p> <p>AKD/MCI-</p>

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
GUWAHATI**

**Original Application No. 10 of 2022**

**Wednesday, this the 05<sup>th</sup> day of April, 2023**

**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon'ble Air Marshal Balakrishnan Suresh, Member (A)**

**No. 14700852X Ex. Sep. LH Beloveson Anal**

..... Applicant

Ld. Counsel for the Applicant: **Shri A.R. Tahbildar**, Advocate

Versus

**Union of India through & Others**

..... Respondents

Ld. Counsel for the Respondents : **Shri P.J. Barman**, Advocate  
Central Govt Counsel.

**ORDER**

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

8.1) *To convert the injury sustained by the applicant on 24.09.1981 while carrying out military duty in*

*operational area from Physical Casualty to a Battle Casualty.*

8.2) *To quash and set aside the impugned communications dated 27.03.2021 (Annexure –F) and 23.12.2021 (Annexure –I issued by Record, The Kumaon Regiment rejecting applicant's claim for war injury element.*

8.3) *To pay war injury pension from the date of his release from service with arrear and interest thereon along with the rounding off benefit from 40% to 50% to the applicant.*

*And/or pass such order/orders as to your Lordships may deem fit and proper.*

2. The factual matrix of the case is that applicant was enrolled in the Naga Regiment of Indian Army on 15.12.1979. On 24.09.1981 while serving with the Unit, he sustained '**Blast Injury Both Eyes Effect of N-910, N-919, E-985 (V-67)**' while preparing bunkers at Leh and Ladakh. Subsequently, a Court of Inquiry held on 25.09.1981 which was completed on 12.10.1981 wherein it was opined that the injury is attributable to declaring the applicant as Battle military service but not recommended him as Battle Casualty. The applicant was discharged from service on 06.04.1984 in low medical category after rendering 04 years, 03 months and 21 days of service under Rule 13(3) Item III (v) of the Army Rules, 1954. The

Release Medical Board (RMB) assessed his disability "**BLAST INJURY BOTH EYES EFFECT OF N 910, N919, E985**" @40% for two years as **attributable to military service**. Accordingly, the applicant was granted disability pension for two years. The Re-Survey Medical Board (RSMB) finally assessed the applicant's disability @40% for life. Accordingly, the applicant was granted disability pension @40% for life vide PPO dated 21.01.2004. The benefits for rounding off of disability pension has also been granted to the applicant vide PPO dated 08.02.2021. The applicant preferred an application dated 27.02.2021 for grant of War Injury Pension which was rejected by the respondents vide order dated 27.03.2021 intimating that applicant is not eligible for War Injury pension as disability was not connected/notified as Battle Causality. The applicant preferred applications dated 22.08.2021 and 06.12.2021 which too were rejected vide letter dated 23.12.2021. It is in this perspective that the applicant has preferred the present O.A.

3. Learned counsel for the applicant submitted that applicant on 24.09.1981, while applicant was officially detailed to work with engineers' personnel he sustained multiple blast injury on both eyes while blasting rocks for preparing defences in

operation area of Leh and Ladakh sector and was diagnosed as **“BLAST INJURY BOTH EYES EFFECT OF N 910, N919, E985”** which was assessed @ 40% for two years and injury was considered as attributable to military service as per Court of Inquiry report thereafter, applicant's disability was assessed @40% for life by the final Re-Survey Medical Board. He further submitted that disability of the applicant to be considered as physical Injury instead of Battle Casualty and applicant has been granted 40% disability pension instead of War Injury Pension which is violation of Army Order 8/S/85 and Army Order 1/2003 wherein Battle Casualty and Physical Casualty has been defined. The applicant's case is covered in category E(f)(i) as well as category E (j) and para 4(c) read in conjunction with notes of sub para (4) and (11) of Special Army Order 8/S/85 and accordingly, applicant should be granted War Injury Pension.

4. **Per contra**, Learned Counsel for the respondents submitted that on 24.09.1981 while serving with the Unit, he sustained **‘Blast Injury Both Eyes Effect of N-910, N-919, E-985 (V-67)’** while preparing bunkers at Leh and Ladakh. Subsequently, a Court of Inquiry held in the unit on

25.09.1981 which was completed on 12.10.1981 to investigate the circumstances under which the applicant sustained injury. The opinion of the Court of Inquiry is that *"the injury is attributable to declaring the applicant as Battle military service but not recommended him as Battle Casualty"*. The applicant was discharged from service on 06.04.1984 in low medical category after rendering 04 years, 03 months and 21 days of service under Rule 13(3) Item III (v) of the Army Rules, 1954. The Release Medical Board (RMB) assessed his disability **"BLAST INJURY BOTH EYES EFFECT OF N 910, N919, E985"** @40% for two years as **attributable to military service**. Accordingly, the applicant was granted disability pension for two years. The Re-Survey Medical Board (RSMB) finally assessed the applicant's disability @40% for life. Accordingly, the applicant was granted disability pension @40% for life vide PPO dated 21.01.2004. The benefits for rounding off of disability pension has also been granted to the applicant vide PPO dated 08.02.2021. He pleaded that O.A. may be dismissed.

5. Heard learned counsel for the parties and perused the record.

6. Before dealing with the rival submissions, it would be appropriate to examine the relevant Rules and Regulations on the subject matter which are reproduced as under :-

- (a) **Army Order 1/2003/MP**  
**Physical/Battle Casualties**  
 Para 1 to 3.                    X X X                    X X X                    X X X

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*

5. *Circumstances for classification of Physical/Battle Casualties are listed in Appendix 'A'*

**Appendix A to AO 1/2003/MP**

**Battle Casualties**

1. *The circumstances for classifying personnel 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 peace keeping 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 hostiles and in 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 defence 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 occur within the period laid down by the government.

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

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

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

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

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

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

(n) Casualties occurring due to electrocution/snake bite/drowning during course of action in counter insurgency/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 area in active hostilities.





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;
- (ii) Mishaps at sea while on duty'
- (iii) Electrocution while on duty, etc.
- (iv) 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-filed or lifting or

*negotiating mine-field laid by 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 while on operational duty.*

(h) *Action against extremists, antisocial elements, etc. Detach/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 Govt. from time to time.*

4.2 *Cases covered under category 'A' would be dealt with in accordance with the provisions contained in the Ministry of Defence letter No. 1(6)/98/D(Pen/Services) dated 3.2.98 and cases under category 'B' to 'E' will be dealt with under the provisions of this letter.*

Notes:-

(i) *The illustrations given in each category are not exhaustive. Cases not covered under these categories will be dealt with as per Entitlement Rules to casualty pensionary awards in vogue.*

(ii) *The question whether a death/disability is attributable to or aggravated by military service will be determined as per provisions of the Pension Regulations for the Armed Forces and the Entitlement Rules in vogue as amended from time to time.*

(iii) *In case of death while in service which is not accepted as attributable to or aggravated by Military Service or death after retirement/discharge/invalidment, Ordinary Family Pension shall be admissible as specified in Min of Def letter No. 1 (6)/98/D(Pen/Ser) dated 03 Feb 98*

as modified vide Ministry of Defense letter No.1(I)99/D(Pen/Ser) dated 7.7.99.

(iv) Where an Armed Forces personnel is invalided out of service due to non-attributable/non-aggravated causes, Invalid pension/gratuity shall be paid in terms of Para 9 of Ministry of Defense letter No 1 (6)/98/D (Pen/Ser) dated 03 Feb 98 as amended/modified vide Ministry of Defense letter No. 1 (I)/99/D(Pen/Ser) dated 07.06.99.

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10.1. Where an Armed Forces Personnel is invalided out of service on account of disabilities sustained under circumstances mentioned in Category "E" of Para 4.1 above, he/she shall be entitled to War Injury Pension consisting of Service element and War Injury element."

7. In the instant case the disability of the applicant i.e. **"BLAST INJURY BOTH EYES EFFECT OF N 910, N919, E985"** caused while preparing bunkers due to accident in the performance of duties which comes under Category 'C' as per Govt. of India, Ministry of Defence letter dated 31.01.2001 and all his disabilities are not connected/notified as 'Battle Casualty/Battle Accident' by the competent authorities. Since, the applicant is already in receipt of 40% rounded off to 50% disability pension for life due to his disability and his case does not fall under any Category which entitles him to grant War Injury Pension as per rules, the O.A. is liable to be dismissed.

8. Keeping in view the facts and circumstances of the case and various policies and Army Orders, we converge to the view

that applicant is not entitled for consideration for award of Battle Casualty status, as such, he is not entitled for War Injury Pension. Resultantly, Original Application is **dismissed**.

9. No order as to cost.

(Air Marshal Balakrishnan Suresh) (Justice Umesh Chandra Srivastava)  
Member (A) Member (J)

Dated: 05 April, 2023

AKD/MC/-