

**ARMED FORCES TRIBUNAL,
REGIONAL BENCH,
JABALPUR**

AFR

OA/22/2013

Date of Order : 15.03.2018

Hon'ble Mr. Justice Amar Saran, Judicial Member

Hon'ble Lt Gen (Dr) N.B. Singh, Administrative Member

Jitendra Kumar Singh, Lance Naik (L/NK) Personnel No. 15671790N, S/o Shri SKP Singh, R/o 201-E, EM TAIP, Jabalpur (M CORP+OG), Tehsil & District Jabalpur (M.P.). 482005.

..... Applicant

Versus

- 1. Union of India**, through Cabinet Secretary, Government of India, New Delhi.
- 2. Chief of Army Staff**, Integrated Headquarters of Ministry of Defence (Army) DHQ Post Office New Delhi- 110011.
- 3. Additional Directorate of Manpower (Policy and Planning) / MP-5 (d) (Cas Sec)**, Adjutant General's Branch, Integrated Headquarters of Ministry of Defence (Army), West Block-III, RK Puram, New Delhi-110066.
- 4. Lt Colonel, AAG MP-5**, Adjutant General's Branch, West Block-III, RK Puram, New Delhi-110066.

..... Respondents

Ld. Counsel appeared for the Applicant - **Shri KP Singh & Shri Shoeb H Khan**
Advocates.

Ld. Counsel appeared for the Respondents - **Mrs Kanak Gaharwar**,
Central Govt. Counsel.
Along with
Maj Gourav Verma,
OIC Legal Cell.

ORDER

Delivered by Hon'ble Lt Gen (Dr) Narendra Bahadur Singh,
Member (A)

1. This OA has been filed by the applicant Jitendra Kumar Singh, S/o Shri SKP Singh under Section 14 of the Armed Forces Tribunal Act, 2007 assailing the order dated 09.09.2011 issued by respondent No 4 whereby the casualty suffered by the applicant during military duty was classified as being attributable to military service and not as Battle Casualty without any opportunity of hearing given to the applicant. He has stated that the Court of Inquiry (C of I) held in the unit had come to the conclusion that the injuries suffered by the applicant entitled him to a Battle Casualty status and the same was forwarded to respondent No 4 for approval and hence respondent No 4 could not have passed the impugned order without affording any opportunity of hearing to the applicant. He further states that he had preferred a representation before the Chief of the Army Staff (COAS) on 13.05.2012 which was still pending on the date of OA.

2. The brief facts of the case are that the applicant was working as L/NK (TTC) with Personal No. 15671790N. While posted in 20 Mountain Division Signal Regiment on 12.11.2009 the applicant along with another co-driver Shri Jitendra Kumar and the driver SK Singh were de-inducting near Mile Stone 6 from Ex-Chaukas and due to the narrow road the vehicle went 1000 feet down the hill. He states that he was on a bonafide military duty from Chhangu to Cooch Bihar when the accident took place and the driver SK Singh died while Shri Jitendra Kumar and the applicant suffered serious injuries. The C of I was convened to find out the circumstances under which the accident took place. The C of I along with findings and the opinion of the Court has been filed as Annexure 2 to the OA. Thereafter, the Brigade Commander 63 Mountain Brigade recommended the case of the driver, the applicant and the co driver to be treated, as attributable

to military service being on bonafide military duty in an operational area. He has contended that his Unit 20 Mountain Div Signal Regiment wrote to Signal Records on 07.08.2011 stating that Battle Casualty status in respect of the above three individuals had been published vide Part II Order No 0/00/67001-003/2011 dated 18.02.2011. As per the battle accident certificate, the applicant had sustained severe chemical injuries in 'both eyes with corneal opacity (right) phthisis bulbi (left), fracture Patella (Right) and conductive deafness left'. A copy of the battle accident certificate has been filed as Annexure 5 which had been signed by the Commanding Officer. Thereafter, he was given the disability certificate dated 04 Aug 2011 in which the percentage of disability was shown as 60% (permanent) which has been placed as Annexure 6. On 24.08.2011 the Chief Records Officer had written to the Additional Directorate General of Manpower, AG's Branch for publication of Battle Casualty status. However, respondent No. 4 in an arbitrary and illegal manner had passed an order that the casualty suffered by the applicant was not Battle Casualty. He has pointed out that on 18.02.2011 as per Signal Records, his status was classified as Battle Casualty whereas on 25.05.2011 in the Unit the entries were cancelled in an arbitrary manner. He has prayed for issue of orders / directions quashing the impugned order dated 09.09.2011 passed by respondent No 4 and issue of an appropriate order or direction to the respondents not to give further effect to the impugned order besides issue of any other appropriate order which the Hon'ble Tribunal may deem just and necessary in the circumstances of the case. He had also prayed for a stay on the impugned order dated 09.09.2011 during the pendency of the application.

3. The respondents in their reply have narrated similar facts about the accident and brought out that while Battle Casualty in respect of the applicant was published vide his Unit Part II order dated 18.02.2011, the same was cancelled on 21.05.2011 due to objections raised by the higher headquarters. They have stated that the

applicant was posted at Binnaguri station and not posted in Sikkim. He was detailed for participating in Ex-Chaukas 2009 which was conducted in Sikkim and have brought out that the applicant was on bonafide military duty from Chhangu to Cooch Bihar, when the accident took place. They have also added that as per the instructions of Commander 63 Mountain Brigade, a Court of Inquiry was convened wherein the Commander had concurred with the findings of the C of I and directed that the applicant's injury be considered as attributable to military service being on a bonafide military duty in an operational area. They have clarified that battle casualty in respect of the applicant was published in Unit Part II Order on 18.02.2011 and not by Signal Records and the same was later cancelled on 21.05.2011. They have placed reliance on Army HQ letter No 12822/AG/MP-5 (D) (i) dated 09.09.2011 which gave out the detailed justification for his physical casualty being attributable to military service and not a Battle Casualty. They have concluded by praying for dismissal of the OA.

4. In the rejoinder affidavit the applicant has brought out that the main issue involved in the present case is whether the injuries suffered by him while on bonafide military duty in an operational area could be granted Battle Casualty status. He has referred to a Division Bench Judgment of Delhi High Court in ***WP(C) No 4488 of 2012, Major Arvind Kumar Suhag Vs Union of India & Others, decided on 21.02.2013***, where on similar grounds, as the injuries were not sustained during actual action / fighting, the claim for Battle Casualty status had been rejected. The Hon'ble Court had observed that, **"when individuals placed their lives on peril in the line of duties, 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 the Tribunal"**. They had deplored the text book interpretation of the provisions made, by the respondents while rejecting the claim of the petitioner for war injuries and granted war injury pension to the

petitioner. The applicant has drawn attention to the Additional Directorate General of Manpower, (Policy and Planning) letter dated 09.09.2011 wherein the respondents had ruled out Battle Casualty status since it was not due to any action / actual fighting with enemy / terrorist and placed reliance on para 2 of Appendix 'A' to Army Order No 01/2003 MP and Category 'C' of Government of India, Ministry of Defence letter No 1(2)07/D(Pen-O) dated 31.01.2001. He has stated that the above order has been passed in a cavalier manner without consideration of the records of the case and existing rules and law position on the subject. Reference has been made to Headquarters Northern Command letter dated 02.02.2010 as well as on the judgment in respect of *Maj Arvind Kumar Suhag (supra)*. He has contended that his case falls within para 1 of Appendix 'A' of the Army Order 01/2003/MP and not para 2 and has stated that vide HQ Northern Command letter dated 02.02.2010, it has been clarified that **vehicle accident while performing bonafide military duty in war / borders skirmishes with neighboring countries including action in LOC and in CI ops are classified as Battle Casualty**. A copy of the said letter has been placed as Annexure RJ/6. Moreover, in Major Arvind Kumar Suhag the Court had directed the Tribunal to refrain from a narrow interpretation of the provisions as this would imply that those who are on way in an operational area / 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, perhaps crucial for its success. He has also referred to ***TA No. 318 of 2009 (S.B Writ Petition No 14172 of 2008) of AFT, Regional Bench, Jaipur in case of Smt Indrawati Devi Vs Union of India and Others decided on 11.08.2010***, where the Court had gone to the extent of granting battle casualty status to the widow on grounds of grant of similar benefits to other personnel dying in the same accident. He has referred to the C of I (findings of the Court) specifically para 23 where it was observed that Hav SK Singh, the driver of the vehicle was recommended to be treated as Battle Casualty by the C of I. Therefore he has contended that in all

fairness the applicant is also entitled for similar benefits / status. He has concluded by stating that the impugned order being non speaking and non reasoned, is against the principles of natural justice and stands in violation of Article 21 of the Constitution of India and hence liable to be set aside. He has once again prayed for being granted Battle Casualty status.

5. Vide order dated 18.02.2016 this Bench had directed the COAS, the respondent No 2, to decide the representation of the applicant dated 13.02.2013 within a period of three months by way of a reasoned and speaking order. The same was decided on 17.09.2016 and the petition dated 13.05.2012 was rejected by respondent No 2. In response, the applicant had submitted a rejoinder affidavit dated 13.02.2017 wherein he had contended that the case of the applicant **cannot be considered under para 2 of Appendix 'A' of the Army Order 01/2003 as that covered death due to natural causes / illness / accidents / suicides / murder due to family dispute.** Also in the letter dated 17.09.2016 there was a mention that the applicant's case fell in category 'C' of GoI, MoD letter dated 31.01.2001, an issue which had been amply clarified by the Hon'ble Delhi High Court in the Case of *Maj Arvind Kumar Suhag (Supra)*. He brought out that Ex Chaukas which was an Army / war exercise involved grave risk of death, as the same was conducted on the border areas of Sikkim, in inhospitable terrain and weather conditions He pleaded for a liberal interpretation of the beneficial provisions made by the Government in favour of Army personnel who are working in very primitive conditions in border areas at the peril of their own life.

6. In view of the order passed by the COAS, the applicant had prayed for certain amendments in the facts and grounds of the OA based on the disposal of his petition to the COAS and was allowed to carry out the desired amendments to his OA. The respondents had filed a reply to the rejoinder affidavit in which they had submitted a

copy of Appendix 'A' to Army Order 01/2003 and also in their reply to the amendment application, had again reiterated that the case of the applicant fell under para 2 of Appendix 'A' to the referred Army Order and category 'C' of Government of India, Ministry of Defence letter dated 31.01.2001 and had prayed for dismissal of the OA.

7. Consequent to the orders passed by the Court, the respondents have submitted certain additional inputs pertaining to the conduct of ex Chaukas from the concerned formations along with a copy of an order dated 10.08.2017 issued by the Directorate General of Signals.

Arguments

8. Ld counsel for the applicant Shri KP Singh and Shri Shoeb H Khan, recalled the facts of the case and stated that the applicant had sustained the disability while returning after completion of Ex-Chaukas which is an annual exercise under taken at the border by the Army formations and as per the instructions of Commander 63 Mountain Brigade, it was directed that the said injury be considered as attributable to military service being on a bonafide military duty in an operational area and Unit DO Part – II Order was also published in this regard. It was respondent No. 4 who had passed the order dated 09.09.2011, whereby the applicant was denied the status of Battle Casualty.

9. They also referred to a judgment by the Division Bench of Delhi High Court in *Maj Arvind Kumar Suhag Vs Uol & Ors (supra)* wherein, the Court had observed that:-

“14. When individuals place their lives in 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 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.”

10. They highlighted the fact that the applicant was actually posted to a unit which was located at Binaguri and vide orders issued by the Brigade, he was ordered to move to East Sikkim for the period 19.10.2009 to 14.11.2009 to participate in Ex- Chaukas 2009. As he met with an accident in the area of East Sikkim during the course of Ex-Chaukas his disability should have been treated as a Battle Casualty and he should have been given the benefits of the same. However, for some inexplicable reasons the respondents are making a very narrow interpretation of the provisions of para 10 of MoD letter No. 1(2)/97/I/D (Pen-C) dated 31.01.2001 and categorising him as a non battle casualty. Since, during his normal course of posting he would have remained at Binnaguri and was specifically ordered to move to East Sikkim to participate in the exercise, hence his case had to be differentiated from a normal accident met by a soldier in a peace station in a military vehicle.

11. Shri Shoeb H Khan, also placed reliance on a judgment of the AFT Regional Bench Kolkata in **OA No. 54/2016 Lt Col Sharma Sunil Datta Vs Uol & Ors delivered on 29.09.2016**, wherein, the Court had observed the following:-

“This case amply demonstrates how for several years after OP Parakram, in the thick of which the applicant was deployed after having participated in a war like operational situation, his injuries was casually classified as those ordinarily suffered whilst proceeding on duty in a government

vehicle. Though he operated under extremely trying circumstances, the respondents in a cavalier manner rejected the applicant's claim for treating him as a Battle Casualty".

12. He also placed reliance on a judgment of the AFT Principal Bench, New Delhi in **OA No. 575/2015 L/Hav NR Bagmare Vs Uol & Ors (2015) SCC online AFT 462**, wherein,

"15. The Court of Inquiry and connecting circumstances have been put through the test of professionalism and wisdom, at the level of a Commanding Officer, Brigade Commander, and General Officer Commanding of the Division. Their recommendations have been clear. In the face of such circumstances, as well as clear recommendations we do not see how a higher Head Quarters has intervened negatively on the issue due, to semantic and pedantic interpretation of para-meters and circumstances, which they themselves have not been able to substantiate in clear legality before this Tribunal."

13. He also referred to the judgment of Principal Bench of AFT in **OA/233/2013 Ravendra Puntambekar Vs Uol & Ors (2014) SCC online AFT 812**, in which a Battle Casualty status had been given to the applicant who was undergoing a Mountain Warfare course at Gulmarg, which admittedly is a training activity most definitely not along the LoC and clearly not directly connected with operations. Winding up their arguments, Ld counsel for the applicant once again brought out that the applicant had suffered the disability while moving in the vehicle very close to the line of control i.e. (LoC). Hence the rejection of the status by the Army Headquarters was a clear case of denial of justice and fair play to the applicant without realising the extremely hazardous conditions in which soldiers had to operate in and around the LoC. They pleaded for grant of Battle Casualty status to the disabled soldier who has been permanently disabled as a consequence of this accident to the extent of near 100%.

14. Mrs Kanak Gaharwar, Ld counsel for the respondents along with Maj Gourav Verma, OIC Legal Cell, brought out that although the disability was attributable to military service, however, it did not merit to be a Battle Casualty since the injury sustained was not due to engagement with enemy/terrorist and the casualty fell under para 2 of Appendix A to Army Order 1/2003/MP and category C of GoI, MoD letter No. 1/(2)/97/D (Pen-C) dated 31.01.2001. They accepted the fact that the applicant was participating in Ex-Chaukas 2009, which was conducted in Sikkim and that on 12.11.2009 the applicant was on a bonafide military duty from Chhangu to Cooch Behar. They amplified that the Battle Casualty status of the applicant was published by his unit vide Part II Order dated 18.02.2001 and not by the Signals Records. Attention of the Court was invited to Additional Directorate General of Manpower (Policy's Planning)/MP-5 letter dated 09.09.2011:-

"Tele : 26195662

*Additional Directorate General of
Manpower (Policy & Planning)/MP 5(a)
(Case Sec) Adjutant General's Branch
Integrated HQs MoD (Army)
West Block III, RK Puram
New Delhi – 110066*

12822/AG/MP 5 (D) (i)

09 Sep 2011

*Signals Records
PIN – 918770
C/o 56 APO*

PUBLICATION OF PT II ORDER : BATTLE CASUALTY

1. Ref your letter No. 3098/BC/CA-8/T-5/11 dated 24 Aug 2011.
2. Death/injuries in respect of the following persons of 20 Mtn Div Sig Regt were occurred due to accidental (MT Accident) while on govt bonafied mil duty. The case is attributable to military service, however does not merit for battle casualty since the death was not due to any action/actual fighting with enemy/terrorists:-
 - (a) No. 153639/1 L Late Hav SK Singh
 - (b) No. 156/1/90N LNK JK Singh
 - (c) No. 1570455/H Sigmn Jitendra Kumar

3. As the casualties clearly falls under para 2 of Appx "A" to AO 1/2003/MP and Category "c" to Govt of India Ministry of Defence letter No. 1(2)07/D (Pen-C) dated 31.01.2001.

4. Case file received vide your letter under ref is returned herewith.

(Sd x-x-x-x)
Lt Col
AAG MP 5
For Adjutant General

Copy to:-

20 Mtn Div Sig Regt
PIN 917820
C/o 99 APO."

15. They once again reiterated that as the applicant had suffered the disability during the course of a road accident, his case could not be considered as a Battle Casualty since the policy for the same did not permit this classification. It was a case of casualty due to vehicle accident while performing bonafide military duties for which attributability had already been granted to the applicant. They concluded by praying for dismissal of the OA.

16. We have heard the contending parties and perused the pleadings and additional documents submitted by the respondents and the case laws on the subject. The moot issue that needs to be interpreted in the present case, pertains to the nature of the activities associated with Ex-Chaukas i.e. whether Ex-Chaukas had an operational context, was it being conducted in an area that was notified as an area of active service, and whether the risks / degree of difficulty being encountered by soldiers in the area of conduct of Ex-Chaukas could be considered as being similar to war like / near war like conditions. In this regard reference is made to Headquarters 20 Mountain Division letter dated 10.08.2009 pertaining to Ex-Chaukas, reproduced below:-

HQ 20 Mtn Div

Pin – 908420
C/o 99 APO

xxxxxxxxxxxxx

10 Aug 09

HQ xx Corps Q(Ops & Maint)

HQ xx Mtn Div (Q)

HQ xx Mtn Div (Q)

EX CHAUKAS- 2009

1. Ref HQ xx Corps letter No 122358/EC/GS (Ops) dt 09 Jun 09.
2. Ex CHAUKAS-2009 in r/o this fmn is being conducted as under:-

Ser No	Fmn	Dates (incl indn & de indn)	Str	Remarks
(a)	Mtn Bde Gp (North Sikkim)	18 Sep – 26 Sep	250	Recce and familiarisation
(b)	Mtn Bde Gp (NE Sikkim)	05 Oct – 13 Oct	250	-do-
(c)	Mtn Bde Gp (East Sikkim)	19 Oct – 14 Nov	1150	Op alert and offn ex
3	(d) Mtn Div Tac (East Sikkim)	04 Nov – 11 Nov	30	-

Various adm & lgs reqmts for the ex are given at Appces att as under :-

- (a) Reqmt of tpt, stg A and accn/camping area - Appx A.
- (b) Adm dependency of units – Appx B.
- (c) Adm Reqmt – Appx C.
- (d) Reqmt of bks / Shelters – Appx D.
- (e) Addl Reqmt – Appx E.
- (f) Reqmt of mountaineering eqpt – Appx F.

sd/-xxxx

Encls : (As Above)

AQMG

Copy to :-

List A

List B

Internal

17. From the above mentioned letter it is evident that the formation in which the applicant was serving was ordered to move to East Sikkim for the period 19.10.2009 to 14.11.2009 to participate in Ex-Chaukas. Reliance is also placed on notification issued by the formation HQ in respect of their subordinate formations / units / sub-unit located in high altitude and uncongenial climate area, field area and modified field area in which at serial 133 the unit of the applicant i.e. detachment 66 Mountain Brigade Signal Company was shown to be located at Chhangu w.e.f. 10.10.2009 to 12.11.2009 (located at height of 14,000 to 19,000 feet). It is also seen that in the remarks column at para 2(c) of the aforesaid letter dated 10 Aug 2009, the purpose of conduct of the exercise wrt to the formation / unit of the applicant was:- **“Op Alert & Offn ex”**.

18. In the Joint Services Glossary of Military Terms (2005) the above mentioned terms have been defined as under:-

(a) **Alert**

- (i) To forewarn; to prepare for action, defence or protection.
- (ii) A warning signal of a real or threatened danger such as an air attack.
- (iii) The period of time during which troops stand by in response to an alarm.

(b) **Offensive Defence**

The employment of limited offensive action and counter attacks to deny a contested area or position to the enemy.

19. Vide letter dated 10.08.2017 Directorate General of Signals have intimated the following:-

*“2. It is intimated that case file in respect of the above named petitioner was processed with Competent Authority i.e. MO-1 to clarify whether Ex-Chaukas 2009 conducted by HQ 20 Mtn Div from 04 Nov 2009 to 11 Nov 2009 was a notified operation or otherwise. However, the same has been returned vide their Note 25 dated 04 Aug 2017 (copy att) with intimation that **“Ex-Chaukas is an annual ex undertaken by fmns of Eastern Comd to validate their Op Plans. The ex is coord at Army HQ Level and is not a notified operation by the Gol”**.” (emphasis added)*

From the aforesaid documents, it is evident that the applicant was participating in an annual exercise in the actual area of operations which was undertaken by his unit as well as other formations of Eastern Command to validate their operational plans and was been coordinated at the level of the Army Headquarters. However, it was not a notified exercise by Govt. Read conjointly, it is apparent that the purpose of Ex-Chaukas 2009 was to validate the operational plans and rehearse alerts and offensive/defensive actions, as contemplated in actual combat operations. It stands established that the principal aim of Ex-Chaukas was to validate the existing operational plans in the designated area of operations of units/formations, as in actual war, besides coordinating other issues of logistic support etc. in the area of East Sikkim. We will also like to reproduce relevant extracts of Appendix A to Army Order 1/2003, wherein at para 1-(g) under Battle Casualty the following has been stated:-

“1(g): Casualty occurring while operating on the international border or LoC due to natural calamities and illness caused by climatic conditions.”

20. Furthermore, at para 3(d) following is mentioned under the head Miscellaneous Aspects:-

“3(d): Any casualty occurring during deployment/mobilization of

*troops, for taking part in war or **war like operations**, will be treated as battle casualty.”*

21. It is seen that the MoD letter No. 1(2)/97/D (Pen-C) dated 31.01.2001, states that liberalised family pension will be eligible to members of the family of soldiers in case of death of the Armed Forces Personnel under circumstances mentioned in category D & E of the aforesaid letter. The contents of category D & E are mentioned below :-

“Category D

Death or disability due to acts of violence/attack by terrorists, anti social elements, etc whether on duty other than operational duty 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 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 person 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 operationary oriented mine-field or lifting or negotiating mine field laid by the enemy or own forces in operational areas 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 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.”*

22. Under category E subject sub para (f) there is a mention of war like situations. It is noted that while a soldier who is a victim of a bomb blast in a public place or transport or indiscriminate shooting incident in public is covered under these provisions, along with soldiers who are disabled or who die when employed in aid to civil power in dealing with natural calamities (category D), soldiers associated with preparation for war who happen to die or get disabled during such an operational activity are being discriminated against by the respondents. Despite the fact that such casualties are occurring either while operating in the harsh conditions prevailing on the international border or LoC on account of extreme environmental conditions or natural calamities. Such discrimination is against the provisions of Article 14 of the Constitution. It is difficult to comprehend that while a soldier who is a victim of extremism in a public place or transport or gets disabled on account of natural calamities while involved in aid to civil power, is eligible for grant of Battle Casualty status making him entitled to liberalised family pension, a soldier suffering serious disabilities / dying on / near the LoC due to a natural calamity while participating in war like activities is not entitled for the same. In case of *Maj Arvind Kumar Suhag Vs UoI & Ors (supra)* it was observed by the Hon'ble High Court :-

*“ 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)”*

23. Hence, a disability suffered in a notified area of operation would be covered under Battle Casualty. In OA 575 /2015 decided by the **Armed Forces Tribunal Principle Bench New Delhi on 30.10.2015, L/Hv NR Bagmare Vs Uol & Ors**, had accorded battle casualty status from the date of occurrence of injury to the applicant who was similarly situated, having met with a vehicle accident in an operational area which led to a permanent disability of 80%. The Court had observed :-

“14. The respondents and indeed all concerned must be aware of the privations under which units along LoC function. Shortage of officers, extreme pressure on time, a slew of conflicting priorities, urgency in dealing with operational commitments, all are juggled together by units in such circumstances. Under such conditions the sincere efforts by a young Captain who is the presiding officer of this Court of Inquiry, cannot be debunked due to the nature of language that he has used. Secondly, the nature of language in no way has taken away from the facts that have been established and brought out in Court of Inquiry. It is completely probable that building the obstacle system was an ongoing task, for an Engineer unit, deployed along the LoC. As such it is repeated tasking of manpower and resources, for a fixed duration of time, that determines a routine. It is therefore, clear that even operational tasks if not precipitated, follow distinct routines. A routine duty is not a derogatory term nor is it intended in this context to take away from the facts of the case. It is clear when reading the opinion of the court that the officer has stressed that it was a routine duty, as a positive aspect, to clarify that it was not something outside the domain of the operational duty of the unit. This is qualified by the next sentence whereby he has stressed again that he was injured while performing his duty.”

24. In the case of **Lt Col Sunil Datt Vs Uol & Ors OA No. 54/2016, Armed Forces Tribunal, Regional Bench Kolkata**, the Court had also accorded Battle Casualty status to the applicant who had sustained accidental injuries while he was in the process of performing assigned military duties in an operational area (Op Parakram) which was a near war like situation.

25. In the case of ***Ravender Puntambekar Vs Uol & Ors OA 233/2013 decided on 06.05.2014*** by Armed Forces Tribunal Principal Bench, New Delhi the Hon'ble Tribunal had granted liberalised family pension to the applicant who had died while he was undergoing special training in winter warfare basic course at High Altitude Warfare School, Gulmarg observing **that a soldier who has sacrificed his life in the process of preparation for national security deserves more priority**. From the aforesaid case laws, it is evident that it is not only acts of war (actual fighting with enemy/terrorists) but also all actions contiguous to the international border/LC where soldiers are associated in activities like preparation of defences, validation of operational plans, rehearsing offensive / defensive actions, logistic support, training for combat and other activities that are performed in near war like conditions, that come under clause (f) of category E. The provisions given out in the rules and regulations need to be given a liberal interpretation in such cases **as the harsh conditions prevailing at our borders (LC/LoC) are unparalleled anywhere in the world**. As brought out earlier, these units/formations were based at altitude of 14,000 to 19,000 feet above mean sea level. Both men and machine suffer severe degradation in capabilities at these altitudes. One has to physically go to these areas to experience the primitive living conditions, inhospitable terrain, the harsh weather, landslides, avalanches, driving through blinding fog and rain on unmetalled, narrow & winding roads, where a minor slip could take one thousands of feet down the mountain side. It needs to be remembered that it is through painstaking effort and hard training for war that an Army prepares for actual combat. Hence, any disability/death occurring to a soldier due to natural calamities in areas contiguous to our borders has to be differentiated from such disabilities occurring in a peace area like Jabalpur or any other location.

26. We will also like to place reliance on a Ministry of Defence notification with regard to the contention of the respondents that Ex-

Chaukas was not a notified exercise. We reproduce below Ministry of Defence notification No. SRO 17/E dated 05.09.1977:-

ACTIVE SERVICE

(Ministry of Defence Notification No S.R.O. 17-E, Dated 5 Sept, 1977)

SRO 17(E) – *In exercise of the powers conferred by section 9 of the Army Act, 1950 (46 of 1950) and in supersession of the notification of the Government of India in the Ministry of Defence No. S.R.O. 6-E, dated the 28th November 1962, the Central Government hereby declares that all persons subject to that Act who are not on active service under clause (i) of section 3 thereof shall, while serving in the areas specified below, be deemed to be on active service within the meaning of that Act for the purpose of the said Act or any other law for the time being in force-*

- (1) *The States of –*
 - (a) *Jammu and Kashmir*
 - (b) *Manipour*
 - (c) *Nagaland*
 - (d) *Tripura*
 - (e) *Sikkim,*
 - (2) *The Union Territories of –*
 - (a) *The Andaman and Nicobar Islands*
 - (b) *Arunachal Pradesh*
 - (c) *Mizoram*
 - (3) *The District of –*
 - (a) *Uttarkashi, Chamoli and Pithoragarh in the State of Uttar Pradesh,*
 - (b) *Lahaul and Spiti, Kinnaur and Kulu in the State of Himachal Pradesh*
 - (4) *Lakshadweep*
- (Ministry of Defence, Extraordinary Gazette Notification No. SRO 1-E, dated 17 Jan, 1992)*

27. It is evident that as per this notification, soldiers serving in Sikkim will be deemed to be on active service within the meaning of the Army Act and other regulations and hence, in the present case the disability suffered by the applicant will be deemed to have occurred while on active service in the area of operations in the vicinity of LoC and as such it is appropriately covered under para 1(g) and 3 (d) of Army Order 1/2003 as far as classification as Battle Casualty is concerned. It also falls under category E sub para (f) and (j) of the Govt letter dated 31.01.2001, having occurred during an Operational Alert in a near war like situation in a notified area. It is also brought out that a similar stance was taken by the unit as well as

the OIC Records, Signals, but the same was turned down at the level of the Army Headquarters. It is enigmatic why Army Headquarters have sought to negate these recommendations, by adopting a cut and dry interpretation of the provisions, that death was not due to actual fighting with enemy / terrorists. With this logic, no fatalities/injuries on the northern borders (LoC) could ever be classified as Battle Casualty, not being a perennially hot border (sporadic border incursions / violations) where not a single shot yet posing a serious long term threat to national security.

28. In conclusion, we would like to summarise that the applicant who was posted in the vicinity of Binnaguri, a peace station was ordered to move to East Sikkim, a notified active service area for participating in Ex-Chaukas which was an annual operational activity under taken by formations of Eastern Command at altitudes of 14,000-19,000 feet to validate their operational plans and was being coordinated at the Army Headquarters level. During the course of this exercise while moving in a Govt vehicle from Chhangu to Cooch Behar the applicant suffered the disability, when the vehicle toppled down the mountains and went approximate a thousand feet down near Mile 6. On account of this accident he became permanently disabled to the tune of 60%. The present rules (Army Order 1/2003 as well as the Govt notification dated 31.01.2001) permit his classification as a Battle Casualty thereby entitling him to liberalised family pension. The law in such cases has been very clearly interpreted by various Courts and Tribunals in favour of soldiers. We are of the opinion that soldiers who imperil themselves in border areas in the vicinity of the LC, LoC or the international border have to be treated differentially and merely giving their death/disability attributability to military service is a dis-service to these brave men besides being an inadequate recompense for soldiers who are willing to lay down their life in the service of the nation. All preparatory actions that are carried out in border areas to meet impending threats are akin to war like situation (category E, sub para (f)), since, these

actions are being performed in the interest of national security in extremely uncongenial environment, in high altitude areas and in very hazardous living conditions. Giving mere attributability to military service would be an inadequate recompense in such cases. We, therefore, opine that a positive interpretation of the existing rules and regulations needs to be taken to enable soldiers, who have suffered a high degree of disability (near 100%) to lead a simple life of dignity with minimum financial stress, as they are in no position to seek an alternate employment being bed ridden or confined to their homes. In the instant case, the soldier was performing an Operational task as a part of Ex-Chaukas, an operational Alert activity undertaken near the LoC in East Sikkim, a notified active service area, when he met with an accident that disabled him permanently.

29. The OA is **allowed** and the impugned order dated 09.09.2011 is set aside. The applicant shall be granted Battle Casualty status along with all consequential benefits from the date of accident. No order as to costs.

(Lt Gen NB Singh)
Member (A)

(Justice Amar Saran)
Member (J)

Sarkar / 15.03.2018

**ARMED FORCES TRIBUNAL,
REGIONAL BENCH,
JABALPUR**

OA/22/2013

Date of Order : 15.03.2018

Jitendra Kumar Singh

.....Applicant

Versus

Union of India and others

....Respondents

Ld. Counsel appeared for the Applicant -

**Shri KP Singh
& Shri Shoeb H Khan
Advocates.**

Ld. Counsel appeared for the Respondents -

**Mrs Kanak Gaharwar,
Central Govt. Counsel.
along with
Maj Gourav Verma,
OIC Legal Cell.**

Hon'ble Mr. Justice Amar Saran, Judicial Member

Hon'ble Lt Gen (Dr) N.B. Singh, Administrative Member

ORDER

At the time of pronouncement of judgment today, Ld counsel for the respondents and OIC Legal Cell have orally prayed for Leave to Appeal to the Apex Court under section 31(2) of the Armed Forces Tribunal Act, 2007. As no point of law of general public importance is involved in this case, the prayer is declined.

**(Lt Gen NB Singh)
Member (A)**

**(Justice Amar Saran)
Member (J)**

Sarkar/ 15.03.2018