IN THE ARMED FORCES TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A No. 2357 of 2021 WITH M.A No. 2461 OF 2021

Rect Kuber Singh (Retd) … Applicant
v.
Union of India and others … Respondents

For Applicant : Mr. Manoj Kumar Gupta, Advocate
For Respondents : Ms. Jyotsana Kaushik, Advocate

CORAM
HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAL ADML. DHIREN VIG, MEMBER (A)

JUDGMENT

M.A No. 2461 of 2021:

In the light of the grounds taken in the affidavit accompanying the delay condonation petition and the decision of the Hon'ble Supreme Court in *Union of India and others v. Tarsem Singh* (2008) 8 SCC 648, the delay of 4650 days in filing the OA is condoned. The M.A thus stands allowed.

O.A No. 2357 of 2021:

2. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed the present application seeking grant of invalid pension. The applicant contends that he was invalidated out of service in a low medical category and his disability was assessed as neither attributable to nor aggravated by military service, resulting in the denial of invalid pension. It is further stated that since he did not complete the minimum qualifying service of ten years, the claim for invalid pension was rejected. However, relying

on various judgments of this Tribunal as well as the Hon'ble Supreme Court, the applicant seeks the benefit of invalid pension.

3. The facts, in short, indicate that the applicant was enrolled in the Indian Army on 02.12.2004 and was declared medically unfit for further service. He was invalided out of service on 26.07.2005 in medical category "EEE" due to the condition **"**Seizure with Infective Healed Granuloma.**"** As the applicant was invalided out of service within a short span of approximately seven months, he was not granted either disability pension or any other service-related benefits. Consequently, his claim for disability pension was rejected by the Principal Controller of Defence Accounts (Pensions), Allahabad, through the impugned order. The rejection was communicated to the applicant on the grounds that the disability was held to be neither attributable to nor aggravated by military service.

4. The learned counsel for the applicant has relied upon various judgments cited in the pleadings to support his contentions. In particular, he emphasizes the applicability of recent decisions, including the judgment of the Armed Forces Tribunal, Lucknow Bench in *Ex Recruit Chhote Lal v. Union of India and Others* (O.A. No. 368 of 2021, decided on 11.03.2022), the judgment of this Tribunal in *Lt. A.K. Thapa v. Union of India and Others* (O.A. No. 2240 of 2019, decided on 07.07.2023), and the judgments of the Punjab and Haryana High Court in *Union of India and Others v. Ex AC/UT Ravinder Kaushik and Another* (CWP No. 21064 of 2024) and *Union of India and Others v. Ex AC/UT Sandeep Kumar and Another* (CWP No. 21052 of 2024). In all these cases, the courts upheld the principle that invalid pension may be granted even to individuals discharged with less than ten years of service, under certain conditions. The learned counsel argues that in the applicant's case, he was diagnosed with "Seizure with Infective

Healed Granuloma", with the disability assessed at 20% for life. However, since the disability was considered neither attributable to nor aggravated by military service, the applicant was denied disability pension. He submits that in light of the above judgments, the applicant is entitled to invalid pension.

5. The respondents have filed a detailed counter affidavit and contend that the claim for disability pension was processed by the PCDA (P), Allahabad, vide Annexures R3 and R4. As per Annexure R5, the claim was rejected on the ground that the primary condition for grant of disability pension, as prescribed under Rule 173 of the Pension Regulations for the Army 1961 (Part I), was not fulfilled. Specifically, the applicant was not invalided out of service due to a disability that was attributable to or aggravated by military service, nor was his disability assessed at more than 20%.

6. We have heard the learned counsel for the parties at length. Upon examining the medical records, particularly the proceedings of the Invaliding Medical Board (Annexure P2), it is noted that the applicant was invalided out of service due to "Seizure with Infective Healed Granuloma". The disability was held to be neither attributable to nor aggravated by military service and was assessed at 20% for life. It was also recorded that the applicant was recently recruited into the Army. Significantly, the Board opined that the disability existed prior to entry into service, as recorded in Paragraph 5 of the Board proceedings held on 04.05.2005.

7. In view of the remark that the disability existed prior to recruitment, we directed the respondents, on 04.03.2025 and again on 15.04.2025, to produce the medical examination report of the applicant conducted at the time of recruitment. This was necessary to ascertain whether any such ailment was noted during the initial medical

examination. The respondents have since produced the preliminary medical examination report dated 16.10.2004. A perusal reveals that under the column for family/past medical history, it is noted that the past history is "appended separately", and the applicant had declared that he had not withheld any relevant information. However, upon scanning the complete set of medical documents produced, we find no separate endorsement or annexure detailing any past medical history. On the contrary, the preliminary medical report clearly indicates that the applicant was found medically fit and categorized under Shape I, with no adverse medical report regarding his mental or physical condition.

8. Given the above factual position, the issue now before us is whether the applicant, who rendered only seven months of service, is entitled to invalid pension.

9. Ordinarily, in cases where a disease is pre-existing and is either recorded at the time of recruitment in the medical documents or is of such a nature that it could not have been detected during the initial examination, invalid pension is denied—particularly where the period of service is short, ranging from six months to under a year. However, in the present case, the medical records do not suggest any such ailment was detected or documented at the time of recruitment. The applicant was found fit at the time of induction/recruitment.

10. The issue of granting invalid pension has been considered in recent judgments of this Tribunal, including *Ex Recruit Chhote Lal* and *Lt. A.K. Thapa* (supra), as well as by the Punjab and Haryana High Court in *Ravinder Kaushik* and *Sandeep Kumar* (supra). These judgments, while interpreting Regulations 58 and 59 of Chapter III of the Pension Regulations for the Army 2008, have clarified that invalid pension is admissible to individuals with at least ten years of qualifying

service, whereas those with less than ten years are entitled only to invalid gratuity.

11. Furthermore, in *Ex Sep Deependra Chand v. Union of India and Others* (O.A. No. 624 of 2024, decided on 30.01.2025), a Coordinate Bench of this Tribunal, from Paragraphs 18 to 25 of the judgment, held as follows:

> *18. In line with Regulation 58(a) of the Pension Regulations for the Army, 2008, to be read with Regulation 82 of the aforesaid regulations, while referring to the casualties falling under Category A, we find that any death or disability which is neither attributable to nor aggravated by military service, will make a personnel entitled for grant of Invalid Pension, provided the same has been determined by the competent medical authorities and the disability(ies)/death(s) has happened due to natural causes.*
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> *19. Further explanation notes that ailments like heart and renal diseases, prolonged illness or for that matter accidents which happened when the service personnel was not on duty, as is the circumstances in the instant case, wherein the applicant met with an accident, not in performance of any duty, will entitled a service personnel for grant of invalid pension.*
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> *20. At this point, the limited restriction for such grant of invalid pension is the minimum service of 10 years, and as such the applicant served for only about 7 years in DSC. However, we note that in terms of the Ministry of Defence, Department of Ex-Servicemen Welfare Policy Letter no. 12(06)/2019/D(Pen/Pol) dated 16.07.2020, letter dated 16.07.2020, the grant of Invalid pension to Armed Forces Personnel with less than 10 years of qualifying service in cases where personnel are invalided out of service on account of any bodily or mental infirmity, even where it is Neither Attributable to Nor Aggravated by Military Service has been made admissible.*
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> *21. A simpler understanding of the aforesaid letter means that the mandatory bar of minimum 10 years of service has been removed by this Ministry of Defence, Department of Ex-Servicemen Welfare Policy Letter no. 12(06)/2019/D(Pen/Pol) dated 16.07.2020, which can be ascertained from the excerpts of the letter reproduced herein:*
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> > *Subject: Provision of Invalid Pension to Armed Forces Personnel before completion of 10 years of qualifying service-*
> >
> > *Reg. Sir,*
> >
> > *1. Government of India, Ministry of Personnel, Public Grievances & pensions, Department of Pension & Pensioners' Welfare vide their O.M 21/01/2016-P&PW(F) dated 12th February 2019 has provided*

that a Government servant, who retires from service on account of any bodily or mental infirmity which permanently incapacitates him from the service before completing qualifying service of ten years, may also be granted invalid pension subject to certain conditions. The provisions have been based on Government of India, Gazette Notification No. 21/1/2016- P&PW(F) dated 04.01.2019.

2. The Proposal to extend the provisions of Department of Pension & Pensioners Welfare O.M No. 21/01/2016 –P&OW(F) dated 12.02.2019 to Armed Forces personnel has been under consideration of this Ministry. The undersigned is directed to state that invalid Pension would henceforth also be admissible to Armed Forces Personnel with less than 10 years of qualifying service in cases where personnel are invalided out of service on account of any bodily or mental infirmity which is Neither Attributable to Nor Aggravated by Military Service and which permanently incapacities them from military service as well as civil reemployment.

3. Pension Regulation of the Services will be amended in due course.

4. The provision of this letter shall apply to those Armed Forces Personnel were /are in service on or after 04.01.2019. The Cases in respect of personnel who were invalided out from service before 04.01.2019 will not be re-opened.

5. All other terms and conditions shall remain unchanged.

6. This issues with the concurrence of Finance Division of this Ministry vide their U.O No. 10(08)/2016/FIN/PEN dated 29.06.2020.

7. Hindi version will follow

22. A perusal of aforesaid policy letter shows that the invalid pension has been made admissible to the individuals invalided out of service on medical grounds with two specific restrictions, first being, that where the said disability which permanently incapacitates the Armed Forces Personnel from military service as well as from civil re-employment, and the second being, that the provisions of the said letter apply to Armed Forces Personnel who were/are in service on or after 04.01.2019.

23. In relation to the second restriction of cut off date as enshrined in Para 4 of the aforesaid policy letter, it is essential to observe that, in the case of Ex Recruit Chhote Lal Vs UOI & Ors., [OA 368/2021; Date of Decision: 11.03.2022], Regional Bench, Lucknow of this Tribunal, while quashing Para 4 of the aforesaid policy letter and declaring it unconstitutional, held, vide paragraphs-22 and 23 thereof to the effect:-

> *"22. As per policy letter of Govt of India, Ministry of Def dated 16.07.2020, there is a cut of date for grant of invalid pension. As per para 4 of policy letter, "provision of this letter shall apply to those Armed Forces Personnel who were/ are in service on or after 04.01.2019". Para 4 of impugned policy letter dated 16.07.2020 is thus liable to be quashed being against principles of natural justice as such discrimination has been held to be ultra virus by the Hon'ble Apex Court because the introduction of such cut of date fails the test of reasonableness of classification prescribed by the Hon'ble Apex Court viz (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group, and (ii) that differentia must have a rational relation to the objects sought to be achieved by the statute in question".*
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> *23. From the foregoing discussions, it may be concluded that the policy pertaining to invalid pension vide letter date 16.07.2020 will be applicable in the case of the applicant also as para 4 of the letter cannot discriminate against the petitioner based on a cut of date."*

12. We find that the aforesaid judgment of the Regional Bench, Lucknow, finds its resonance in the subsequent judgment of this Bench of the Tribunal in *Lt. A.K. Thapa (Released) v. Union of India & Others* [O.A. No. 2240 of 2019; decided on 07.07.2023], wherein it was held that the Tribunal finds no reason to differ from the observations made by the Regional Bench, Lucknow in *Ex Recruit Chhote Lal* (supra), particularly on the aspect that the policy regarding invalid pension as per the Government of India, Ministry of Defence letter dated 16.07.2020, cannot discriminate against Armed Forces personnel based on the cut-off date of 04.01.2019.

13. Regarding the first restriction stipulated in Para 2 of the aforesaid policy letter—namely, that the individual must be permanently unfit for both military and civil re-employment—it was further held by this Bench in *Lt. A.K. Thapa (Released)* (supra) that this requirement is wholly arbitrary, unconstitutional, and violative of Articles 14 and 16 of the Constitution of India. Accordingly, the stipulation requiring permanent incapacitation from civil employment, in addition to military service, for eligibility to invalid pension under the said policy has been struck down.

14. Finally, in Para 26 of the said order, the Bench observed that a perusal of the policy letters makes it clear that invalid pension is admissible to

individuals who are invalided out of service on medical grounds. After analyzing the matter and taking into account the law laid down in *Chhote Lal* and *Thapa* (supra), as well as the judgments of the Punjab and Haryana High Court in *Ravinder Kaushik* and *Sandeep Kumar* (supra), the Coordinate Bench held that, in light of the policy of the Ministry of Defence as set forth in the letter dated 16.07.2020, the previously mandatory requirements for grant of invalid pension have been diluted. A principle has now been established that even where a person is invalided out of service on account of a medical condition that is neither attributable to nor aggravated by military service, he may still be entitled to invalid pension.

15. In view of the foregoing discussion, we allow the instant Original Application and direct the respondents to grant invalid pension to the applicant with effect from the date of invalidment, i.e., 26.07.2005. However, arrears shall be limited to a period of three years prior to the date of filing of the present O.A., i.e., 20.10.2021. The respondents are further directed to calculate, sanction, and issue the necessary Pension Payment Order (PPO) to the applicant within a period of four months from the date of receipt of a copy of this order, failing which the applicant shall be entitled to interest at the rate of 6% per annum from the date of default until the date of actual payment.

16. No order as to costs.

Pending miscellaneous application(s), if any, stands closed.

Pronounced in open Court on this the 14th day of May, 2025.

Sd/-
(**Justice Rajendra Menon**)
Chairperson

Sd/-
(**Rear Adml. Dhiren Vig**)
Member (A)

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