

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT
NEW DELHI**

T.A. No.184/09

[W.P. (C) No.9018/2007 of Delhi High Court]

Kulwant Singh Rathee

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Col.S.R. Kalkal(Retd.), Advocate

For respondents: Ms.Kimmi Barara Marwaha, Advocate with
Lt Cdr Varun Singh, Cdr Y.S. Sarawat and
Sh. Pramod Kumar**CORAM:**

**HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.
HON'BLE LT. GEN. M.L. NAIDU, MEMBER.**

**ORDER
11.01.2010**

1. The present petition has been transferred from
Hon'ble Delhi High Court to this Tribunal on its formation.

2. Petitioner by this writ petition has prayed that writ in
the nature of mandamus be issued directing the respondents to
produce the medical board proceedings and after its perusal grant

12

20% disability pension in case disability is assessed at 20% with effect from 18.01.1990 and in case the disability is assessed at less than 20% then pay the service element of pension with effect from 18.01.1990 and also pay the arrears along with interest thereon.

3. Learned counsel for petitioner had moved an application requesting not to consider the other prayers except the prayer for the grant of invalid pension to the petitioner as petitioner has served for 9 years 5 months and 17 days in the Navy and hence, he is deficient of 6 months of service for grant of invalid pension and short fall of 10 months can be condoned in terms of orders dated 14.08.2001.

4. Brief facts which are necessary for disposal of present petition are that petitioner was enrolled in Mechanical Branch of Indian Navy in the rank of ERA-3 on 31.07.1980 after having complete medical and physical examination. The petitioner was attested in the Indian Navy on 01.08.1980 and was in active service for 9 years 5 months and 17 days. Then, petitioner

became sick and his disease was diagnosed a case of generalized seizures in April, 1989. The petitioner was placed in lower medical category CEE. The petitioner was brought before properly constituted medical board at Army Hospital Delhi Cantt in November, 1989. On having the opinion from Neurophysician, a case repeated generalized seizures with congenital arachnoid cycle was established and he was noticed as a sailor/soldier of congenital deformity permanently. Therefore, he was recommended to be placed in lowest medical category and also invalided out of service. The said medical board assessed the percentage of 20% disability which is accepted to be attributable to Naval service. Ultimately, petitioner was invalided out from Naval service on 18.01.1990 with 20% disability. The petitioner case was forwarded to PCD(P) Allahabad for arranging the payment but the petitioner did not received any information regarding payment of disability pension. Ultimately, legal notice was given but that too was not responded. Hence, he was constrained to file the present writ petition before the Hon'ble Delhi High Court which has been transfer to this Tribunal for disposal after formation of Armed Forces Tribunal.

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5. We have heard learned counsel for parties and perused the record.

6. Learned counsel for the petitioner has submitted that for the invaliding pension 10 years service is required and petitioner has put in 9 years 5 months and 17 days and the Government has already issued a Circular dated 14th August, 2001 whereby the Government has given a power to Service Headquarters for condonation of shortfall in qualifying service and grant of pension in respect of PBOR persons below officers rank beyond six months and up to 12 months. Therefore, he has prayed that the period which is short to make 10 years of service may be condoned as there is enough power of Service Headquarter. This has been opposed by respondents by filing a counter and then learned counsel for the respondents has pointed out that as per statutory provision under section 78 the minimum period of service for pension is 15 years. But in case of an invalid pension no period has been prescribed in statute. However, period has been prescribed in para no.9 of Government Notification dated 3rd February 1998 which reads as under:-

16

"Invalid Pension/Gratuity: When an individual is invalided out of service with a disability neither attributable to nor aggravated by service, he/she will be entitled to invalid pension, if the service actually rendered is 10 years or more, and invalid gratuity if it is less than 10 years, at the rates indicated below:-

(a) Invalid pension : Amount equal to the service element of disability pension that would have been admissible in case the causes were attributable to or aggravated by service.

(b) Invalid Gratuity : At half a month's reckonable emoluments as defined in para 3 above for each six monthly period of qualifying service.

7. Learned counsel for petitioner has also pointed out that in Regulation 82(C) of the Navy Pension Regulations, 1954 (hereinafter referred as Regulation) a period of 15 years has been prescribed. Regulation 78 prescribes for 15 years of full service and in 1982 a power of condonation has been given and it clearly says in the Regulation 82 (c) that in case incumbent is invalided out is less than 15 years, deficiency in service qualifying service vis-a-vis on gratuity may be condoned by competent authority upto six months in each case. Regulation 82 (c) reads as under :-

"Regulation 82 (c) who is invalided with less than fifteen years' service, deficiency in the service qualifying for service pension or reservist pension on gratuity may be condoned by competent authority upto to six months in each case."

16

8. Learned counsel for the respondents has strenuously argued before us that this is the only relaxation for making complete service pension for a period six months and not for invalid pension. He has submitted that statutory provision bearing on the subject limited to service pension and there is no provision for invalid pension. Therefore, petitioner is not entitled to condonation of his invalid pension.

9. We have bestowed our best of consideration to rival submissions of the parties. We are of the opinion that the letter dated 14th August, 2001 is a step for bringing a social justice to the armed personnel and in exercise of the power given by the Defence Ministry under Section 153 where Central Government has been given power to relax the Regulation. Section 153 reads as under :-

"Section 153 Relaxation- *Where the Central Government is of the opinion that it is necessary or expedient so to do, it may by order, for reasons to be recorded in writing, relax any of the provisions of these regulations with respect to any class or category of persons."*

10. Section 153 clearly says that the Government has power to relax Regulation for which reasons to be recorded in writing in the Indian Navy. Therefore, in exercise of power under Section 153, order dated 14th August, 2001 purported to have been issued by the Defence Ministry wherein the power has been given to the Service Headquarter to condone the period of shortfall in qualifying service. The Clause (v) of the Order dated 14th August, 2001 reads as under :-

"v) Condonation of Shortfall in Qualifying Service for grant of pension in respect of PBOR beyond six months and upto 12 months"

11. The Clause 2 of the very order says that *the relevant regulations of Pension Regulation for the Army/Navy/Air Force shall stand amended accordingly. Formal amendments to Pension Regulation will, however, be issued in the course of time.*

12. Therefore, the question is whether the qualifying service should here confine it to the service pension or for invalid pension. Since this is a social measure and a general power has been conferred on the Service Headquarter for advancement of

social justice and in Circular dated 14th August, 2001 these are all social measures for the benefit of the service personnel and general expression for 'qualifying service' cannot be confined to service pension as contended by learned counsel for respondents. For 'qualifying service' full power has been given to Service Headquarter and they can even exercise for the Invaliding service pension also. So far as the invaliding service pension is concerned, a period of 10 years has been mentioned that too by statutory order and not by amending the provisions of the Navy Regulations which has not been brought to our notice. Therefore, this order for the invaliding pension requiring 10 years service was only an administrative order and the Order dated 14th August, 2001 is also an administrative order giving it a full power to relax qualifying service of 10 years for invalid pension upto 6 to 12 months. Therefore, this general qualifying power shall equally applicable for the service pension and as well for the invaliding pension. We are of the opinion that incumbent has put in 9 years 5 months and 17 days and he is short of six months and 13 days that is condonable period, hence that is condoned. Petitioner should be given benefit of invalid pension and he may be given arrears of pension from three years preceding the date of filing of

this petition i.e. from the year 2007. This should be worked out and same may be paid to him with 12% interest and his future pension may be worked out and paid regularly. This whole exercise should be completed within three months from today. Petition is accordingly allowed. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
January 11, 2010.