

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

11.

O.T. No. 327 of 2010

Ex Sep Roshan Lal

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: S/Sh. M.K. Gaur, and D.S. Yadav, advocates

For respondents: Ms Jagrati Singh, advocate proxy for Sh A.K. Bhardwaj,  
advocate

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.

HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER

02.02.2011

By this petition the petitioner has prayed respondent be directed to grant him invalid pension to the applicant according to Rule 197, 198 of Army Pension Regulation 1961 pt-1 and condone of shortfall of 57 days of service according to the Rule 9 of the Army pension regulation and the Govt. of India Min of Defence letter dated 14.8.2001.

Petitioner was enrolled in the Army on 25.11.1975 after proper medical examination by the recruiting authority. He was invalided out of service on 29.09.1985 being placed in the low medical category due to the disease Personality Disorder after completing the 9 years, 10 months and 03 days of service.

The disability pension claim was sent to the PCDA(P) Allahabad which was rejected on 19.02.1986. thereafter, he made a belated appeal on 19.06.2006 for grant of disability pension which was rejected on 19.2.2006 by Army Hq on 30.8.2007. then he filed a second appeal on 20.11.2007 for disability pension as well as invalid pension saying that he has completed 9 years, 10 months of service, this was also rejected on 17.02.2009 on the same ground that the invaliding disease is neither attributable nor aggravated by military service. Now the petitioner has filed this petition for redress of the grievance that he is entitled to the invalid pension because he has been invalided out of service and disability is not attributable to or aggravated by military service, therefore he is entitled to pension under rule 197 and 198, but it is short by 57 days. Therefore, he has prayed that the delay of 57 days may be condoned and he may be released the invalidated pension.

A reply was filed by the respondent contesting the matter but in the whole strain of the reply there is that total non-application of mind. All the respondents labouring under a impression that petitioner is asking for invalided pension, whereas in this petition filed before this tribunal, his grievance is limited that he is entitled to a disability pension because under rule 197 and 198 and he is only short by 57 days for qualifying service of 10 years, therefore, he prayed that 57 days may be condoned and his invalid pension may be granted to him.

*Rule 197 and 198 reads as under: -*

Invalid Pensions/ Gratuity when admissible

197. Invalid pension/ gratuity shall be admissible in accordance with the Regulations in this chapter to

(a) an individual who is invalided out of service on account of a disability which is neither attributable to nor aggravated by service;

(b) an individual who is though invalided out of service on account of a disability which is attributable to or aggravated service, but the disability is assessed at less than 20% and

(c) a low medical category individual who is retired/ discharged from service for lack of alternative employment compatible with his low medical category.

Minimum Qualifying Service

198. The minimum period of qualifying service actually rendered and required for grant of invalid pension is 10 years. For less than 10 years actual qualifying service invalid gratuity shall be admissible.

But unfortunately, there is no proper application of mind, be that as it may, the fact remains that incumbent has put in 9 years, 10 months and 03 days and is only short by 57 days and power has been given to Army Hq to condone the delay upto one year as per notification dated 14.8.2001 Clause 5 reads:

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

Therefore, this power has already been given to the Army Hq for condoning the shortfall upto 12 months for qualifying service. He is only short by 57 days. Let the 57 days be condoned and petitioner may be released invalided pension in accordance with rules. However, petitioner has been discharged from service way back in 1985 and he did not protest and it is only he became wiser when he filed a belated appeal on 19.6.2006, therefore, he is not entitled to the benefit of invalidating pension from the date of his retirement. But he will be entitled to benefit from three



years preceding to filing of petition before this tribunal i.e. 20.5.2010. Therefore, the arrears may be worked out to that extent with 12% interest within three months.

**A.K. MATHUR**  
**(Chairperson)**

**S.S. DHILLON**  
**(Member)**

**New Delhi**  
**February 02, 2011**