

COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

C..

OA 1048/2019

Ex Sep Arvind Kumar

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Mr. J P Sharma, Advocate

For Respondents : Mr. Prabodh Kumar, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)

HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
22.12.2023

Vide our detailed order of even date, we have allowed the OA 1048/2019. Learned counsel for the respondents makes an oral prayer for grant of leave to appeal in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007 to assail the order before the Hon'ble Supreme Court. After hearing learned counsel for the respondents and on perusal of our order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order to grant leave to appeal. Therefore, prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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ORDER

1. The applicant vide the present O.A 1048/2019 has made the following prayers:-

“(a) To quash and set aside impugned order dated 25.04.2019. and/or

(b) Direct respondents to grant Invaliding Pension to the applicant wef 01.11.2000 in terms of Para 197 & 286(a) of Pension Regulation for the Army Part-I(1961) and law settled by Hon'ble Supreme Court in Civil Appeal No(S) 16438-16440/2017 vide order dated 27.10.2017 titled as Ex Rect Mithilesh Kumar Vs Union of India & Ors alongwith full arrears with 10% an interest.

(c) Issue any other appropriate order or direction which this Hon'ble Tribunal may be deem fit and proper in facts and circumstances of the case.”

2. The applicant Ex Sep Arvind Kumar was enrolled in the Indian Army on 23.06.1995 and whilst on 60 days Annual Leave from

04.05.1997 to 03.07.1997, he met with a road accident near his home town on 31.05.1997 and sustained an injury **"FRACTURE SHAFT FEMUR(RT) AND LACERATED WOUND RIGHT THIGH SEVERE"** as per the Injury Report dated 06.06.1997 and Court of Inquiry dated 16.08.1999 was held at 7 JAT i.e. the unit of the applicant. The said injury was opined to be not connected with military service and was considered as being neither attributable to nor aggravated by military service.

3. The applicant was downgraded to Low Medical Category CEE (Temporary) with effect from 02.12.1997 for the said disability by the "Categorisation Medical Board" held at 185 Military Hospital for subsequent reviews, he was finally placed in CEE(Permanent) for two years with effect from 02.12.1999 for the said disability by the Re-Categorisation Medical Board held at 185 Military Hospital vide AFMSF-15 dated 29.01.2000. As no sheltered appointment commensurate to his medical category was available in the unit, according to the respondents his further retention in service was not considered in the interest of the organisation and he was thus discharged from service with effect from 30.09.2000(AN) under Rule 13(3) III(v) of the Army Rules, 1954. The applicant's disability was assessed by the RMB of **"COMPOUND FRACTURE(RT) FEMUR**

(OPTD) N821, E813" was assessed at 11-14% for two years, apart from opining it to be it be "neither attributable to nor aggravated by military service" vide AFMSF-16 dated 07.08.2000. The applicant's claim for grant of disability pension was rejected vide letter no. G-3/64/261/11-2000 dated 19.03.2001 stating that the disability being neither attributable to nor aggravated by military service did not meet the requisite requirements for grant of disability pension in terms of Regulation-173 of the Pension Regulation for the Army, 1961(Part-I). No first appeal was filed by the applicant within the stipulated period of six months from the date of 19.03.2001 against the rejection of disability claim of applicant. An application dated 24.11.2016 was however filed by the applicant under the RTI Act, 2005 seeking information/photocopies of several documents which were supplied to the applicant vide letter no. 3188525/RTI/JR dated 05.12.2016 by the Records JAT. A Legal Notice dated 25.11.2016 was submitted on behalf of the applicant for grant of disability pension i.e. service element as well as disability element seeking further rounding off @20% to 50% with effect from 01.11.2000 qua which the applicant was informed of the rejection of the disability pension claim vide letter dated 05.12.2016. A Legal Notice dated 18.04.2019 was thereafter sent on behalf of the applicant to the respondents for grant

of Invalid Pension with full arrears alongwith 10% interest, in relation to which the impugned letter dated 25.04.2019 states to the effect:-

"2. It is intimated that your disability pension claim has been rejected by PCDA (P) Allahabad vide their letter No G3/64/261/11-2000 dated 19 Mar 2001 being your disability considered as neither attributable to nor aggravated by military service. The decision was communicated to you vide this office letter No 3188525/DP/JR dated 20 Apr 2001 with an advised to prefer an appeal against rejection of disability pension within 06 months but you failed to do so within the stipulated period.

3. Moreover, as per IHQ MOD (Army) letter No 1(3)2008/D(Per/Pol) dated 17 May 2016 Appellate Committee on First Appeal will not be accepted appeal against rejection of disability pension more than five years old cases. Hence, this office is not in a position to take up your case with higher authorities after lapse of 19 years due to policy constraint."

4. On behalf of the applicant it has been submitted that he had completed his five years of service and could have been retained by the respondents till completion of the Pensionary service, but the respondents had invalided him out from service for his terms of engagement as per Para-197 of Pension Regulations for the Army, Part-I (1961) and thus he is entitled to the grant of invalid pension even though the findings of the Court of Inquiry dated 16.08.1999 were to the effect that he was not on military duty when he injured himself, which injury had been caused when a truck of UPPAC tried to overtake the applicant who was on his bike and the said truck hit on

the left side of the bike and as a consequence of which he lost his balance and fell down with the bike and sustained an injury, with the said Court of Inquiry having also given its findings to the effect that the injury was not attributable to military service. The applicant submits that the injury he sustained was a natural tragedy which could happen to anyone and that even his Commanding Officer has stated that he was not to be blamed for the injury and that the applicant is entitled to the grant of invalid pension.

5. Inter alia, the applicant submits that in terms of Para-286(a) of the Pension Regulation for the Army, 1961(Part-I), Invalid Pension/Gratuity is admissible in accordance with the Regulations in this section to:-

“(a) an individual who is invalided out of service on account of a disability, which is neither attributable to nor aggravated by military service.”

6. Reliance was also placed on behalf of the applicant on Para-197 of Pension Regulations for the Army, Part-I(1961) which is to the effect:-

“Invalid Pension Gratuity when admissible:-
197. The 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 military 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 LMC individual who is retired/discharged from service for lack of alternative employment compatible with his LMC."

to submit to the effect that the Court of Inquiry had opined that there was no foul play and nobody was to be blamed and once the Court of Inquiry declared that there was no fault of the applicant in sustaining the injury and his injury has to be considered as being attributable to military service.

7. The applicant placed reliance on the verdict of the Hon'ble Supreme Court in Civil Appeal no.(S) 16438-16440/2017 in the case of *Ex Rect Mithlesh Kumar vs UOI & Ors.*, in which case the applicant who had been invalided out from service after 10 months and 10 days of service was held entitled to the grant of invalid pension in terms of Regulation-197 of the Pension Regulations for the Army-1961(Part-I).

8. The respondents have contended to the effect that in as much as the disability that the applicant suffers from was neither attributable to nor aggravated by military service in terms of Regulation-197 of the Pension Regulations for the Army, 1961(Part-I), the applicant is only entitled to the invalid gratuity and not for invalid pension in as much as he had not rendered a period of 10 years service. The

respondents have further submitted in terms of Regulation-132 of the Pension Regulation for the Army, 1961 that the minimum period of qualifying service (without weightage) actually rendered and required for service pension is 15 years as the applicant was invalided out of service after having rendered five years, three months and seven days qualifying service, he is not eligible for the grant of service pension.

9. Reliance was placed on behalf of the respondents on the verdict of the Hon'ble Supreme Court in Civil Appeal No. 6583/2015 in the case of *UOI & Ors. Vs Ex NK Vijay Kumar* and on the judgment of the Hon'ble Supreme Court in *UOI & Ors. Vs Jujhar Singh*, dated 15.07.2011 to contend to the effect that disability that the applicant suffers from was neither attributable to nor aggravated by military service and that the OA be dismissed.

10. The applicant has further placed reliance on the Govt. of India, Ministry of Defence letter no. 12(06)/2019/D(Pen/Pol) dated 16.07.2020, to submit to the effect that thereby personnel of the Armed Forces with less than 10 years of qualifying service who had been invalided out of service on account of any bodily or mental infirmity which was neither attributable to nor aggravated by military service and which permanently incapacitates them from military

service as well as civil re-employment, are entitled to the grant of the Invalid Pension.

11. The respondents have submitted to the effect that the instant OA has been filed after much delay and ought to be dismissed on the grounds of delay and laches. Inter alia, the respondents submit that as per the Govt. of India, Ministry of Defence letter dated 16.07.2020, as per provisions of the said letter in relation to the grant of the Invalid Pension to Armed Forces Personnel invalided out with less than 10 years of qualifying service on the ground of invalid pension even where his disabilities both bodily and mental were Neither Attributable to Nor Aggravated by military service, takes the effect from 04.01.2019 and is applicable only where the disability for which the Armed Forces Personnel has been invalided out of military service, which permanently incapacitates the Armed Forces Personnel from military service as well as civil re-employment and that the provisions of the said letter apply to Armed Forces who were in service on or after 04.01.2019. The respondents thus submit that reliance placed on behalf of the applicant on the letter no. 12(06)/2019/D(Pen/Pol) dated 16.07.2020 issued by the Ministry of Defence, does not in any manner aid the applicant.

ANALYSIS

12. In as much as that the applicant seeks only grant of invalid pension which is based on a continuing wrong as laid down by the Hon'ble Supreme Court in *UOI & Ors. Vs. Tarsem Singh* reported in 2008(8) SCC 648, despite the long delay in seeking the remedy with reference to the date on which the continuing wrong commenced, which if such wrong creates a continuing source of injury, and where the relief sought does not affect the rights of the third parties, the delay in seeking such relief in relation to a continuing wrong may be granted, though the courts are to restrict the consequential relief relating to arrears normally for a period of three years, prior to the date of the filing of the application,- which cannot be overlooked. Para-6 of the Counter Affidavit filed by the respondents dated 15.10.2019, makes it apparent that the applicant was invalided out from service after rendering five years, three months and seven days of qualifying service.

13. In terms of Regulation 197 of the Pension Regulations for the Army, 1961, the person invalided out on medical grounds is entitled to the grant of Invalid pension, as has been observed in the case of *Ex Sep Bhagat Singh*(supra) in OA 1051/2016 in relation to Armed Forces Personnel who had been invalided out prior to 1973 with less

than qualifying service of 10 years, the benefit of service element to all pre-1973 w.e.f. 01.01.1973, has been accorded. Furthermore, in terms of the Govt. of India, Ministry of Defence letter no. 12(06)/2019/D(Pen/Pol) dated 16.07.2020, it is provided to the effect:-

"2. The proposal to extend the provisions of Department of Pension & Pensioners Welfare O.M. No. 21/01/2016-P&PW(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 incapacitates them from military service as well as civil re-employment."

14. In terms of the said 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, though it has been made admissible where the said disability which permanently incapacitates the Armed Forces Personnel from military service also permanently incapacitates the said armed forces personnel as well from civil re-employment, and the provisions of the said letter apply to Armed Forces Personnel who

were/are in service on or after 04.01.2019. In relation to the said aspect, it is essential to observe that, vide order dated 11.03.2022 of the AFT(RB), Lucknow in OA 368/2021 in the case of **Ex Recruit Chhote Lal Vs UOI & Ors.**, it has been 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".

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."

It has already been observed, by this Tribunal vide order dated 07.07.2023 in OA 2240/2019 in the case of **Lt AK Thapa(Released) vs UOI & Ors.**, that we find no reason to differ from the observations in the order dated 11.03.2022 in OA 368/2021 in **Ex Rect Chhote Lal**

(supra) in relation to the aspect that the policy pertaining to invalid pension vide letter date 16.07.2020 cannot discriminate against the personnel of the Armed Forces based on a cut of date of having been in service on or after 04.01.2019.

15. It has also been held by this Tribunal in OA 2240/2019 in *Lt AK Thapa(Released) vs UOI & Ors.* vide order dated 07.07.2023, that the requirement of the Armed Forces Personnel to be permanently incapacitated from civil re-employment **as well**(apart from permanent incapacitation from military service) for the grant of the Invalid pension in terms of the Govt. of India, Ministry of Defence letter no. 12(06)/2019/D(Pen/Pol) dated 16.07.2020, is wholly arbitrary and unconstitutional and violative of Article 14 and Article 16 of the Constitution of India and the said requirement has thus been set aside thereby.

16. In these circumstances, the applicant who was invalided out of service on 01.11.2000 due to the disability of **FRACTURE SHAFT FEMUR(RT) AND LACERATED WOUND RIGHT THIGH SEVERE** after rendering service in the Indian Army for period of 05 years, 04 months and 09 days is held entitled to the grant of Invalid pension for life from the date of invalidment from service.

CONCLUSION

17. The applicant is thus entitled to the grant of Invalid pension with effect from the date of invalidment from the service, in view of the verdict of the Hon'ble Supreme Court in **Balbir Singh & Ors.** in Civil Appeal No. 3086/2012 vide verdict dated 08.03.2016, however the arrears in the circumstance of the instant case, shall be confined to commence for a period of three years prior to the institution of the present OA i.e. 21.11.2019, in view of the verdict of the Hon'ble Supreme Court in the case of **Tarsem Singh** (Supra)

18. The respondents are thus directed to calculate, sanction and issue the necessary PPO to the applicant for grant of invalid pension as directed herein above, within a period of three months from the date of receipt of copy of this order, to commence from the period of three years prior to the institution of the OA and the amount of arrears shall be paid by the respondents accordingly, failing which the applicant will be entitled to interest @6% p.a. from the date of receipt of a copy of the order by the respondents.

Pronounced in the Open Court on the 22 day of December, 2023.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/TS/