

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

Suppl.
A..

OA 1271/2019 with MA 2002/2019 & MA 9/2021
Ex Sep Harvilash Mishra Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Manoj Kumar Gupta, Advocate
For Respondents : Ms. Jyotsna Kaushik, 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 1271/2019. 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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OA No. 1271/2019 with MA No. 2002/2019

Ex Sep Harvilash Mishra

... Applicant

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... Respondents

For Applicant : Mr. Manoj Kumar Gupta, Advocate

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CORAM :

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

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

ORDER

M.A. 2002/2019

This is an application filed under section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 20,110 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of **UoI & Ors. Vs Tarsem Singh** 2009(1) AISLJ 371 and in **Ex Sep Chain Singh Vs Union of India & Ors** (Civil Appeal No. 30073/2017) and the reasons mentioned, the MA 2002/2019 is allowed and the delay of 20,110 days or

55 years in filing the OA 1271/2019 is thus condoned. The MA is disposed of accordingly.

O.A. 1271/2019

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has therefore filed this O.A and the reliefs claimed in Para 8 - read as under:

“

- a) Direct the respondents to issue an order or direction of appropriate nature to the respondents to grant invalid pension and with all consequential benefit considering his invalidment after being found unfit for further service.***
- b) Quash the impugned order denying pension the applicant, which is contradictory in nature.***
- c) Respondents be directed to issue duplicate discharge book since the applicant already submitted original discharge book on 23.02.2018 to record.***
- d) Any other just and equitable order in the interest of justice may kindly be passed.”***

BRIEF FACTS

2. The applicant was enrolled in the Indian Army on 13.09.1962 and was invalided out from service on 07.11.1964, after rendering 2 years 1 month and 24 days of service, having been found medically unfit for further service. The applicant was diagnosed to be suffering from the disability "**Chronic lymphocytic leukemia**" as averred by the applicant in the O.A. The assessment in relation to the disability of the applicant is not brought on record due to the reason that the documents were destroyed after prescribed retention period.

3. The claim for the grant of the disability pension was made on 13.04.2018, which was replied to by the respondents vide ASC Records (South) No. 7301/6610919/Pen/Disb/T-5 dated 21.04.2018 stating that the service document had already been destroyed after the mandatory retention period in terms of Para 595 of Regulation for the Army (Revised) and hence, the case of the applicant could not be verified for action in the absence of Service documents after a lapse of 54 years. Thereafter the applicant served a legal notice dated 01.06.2018, which was replied to by the respondents vide ASC Records (South) letter No. 6702/Gen/LN/Legal Cell dated 13.06.2018, aggrieved by which the applicant has filed the instant O.A. and

thus, in the interest of justice, under Section 21(1) of the AFT, Act, 2007, we take up the same for consideration.

CONTENTIONS OF THE PARTIES

4. The learned counsel for the applicant submitted that the applicant was invalided out from service on 07.11.1964 on completion of 2 years 1` months 24 days of service. The learned counsel for the applicant submitted that the applicant was invalided out of service on medical grounds. The learned counsel for the applicant further submitted that the applicant suffered from the disability 'Chronic lymphocytic leukemia'.

5. The learned counsel for the applicant placing reliance on the verdict of the Hon'ble Supreme Court in ***Dharamvir Singh Vs. UOI & Ors*** [2013 (7) SCC 36], submitted that no note of any disability was recorded in the service documents of the applicant at the time of the entry into the service, and that he served in the Air Force at various places in different environmental and service conditions in his prolonged service and thus thereby, any disability that arose during his service has to be deemed to be attributable to or aggravated by military service.

6. The learned counsel for the applicant placed reliance on the verdict of the Hon'ble Supreme Court in the case of **Sukhvinder Singh Vs. Union of India** (2014 STPL (WEB) 468 SC) decided on 25.06.2014, wherein it was observed as under :

“....

We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Thirdly, there appears to be no provisions authorising the discharge or invaliding out of service where the disability is below twenty per cent and seems to us to be logically so. Fourthly, wherever a member of the Armed Forces is

invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension.

....”

7. Per contra, the learned counsel for the respondents submit that the applicant was invalided out from service on 07.11.1964, after rendering 2 years 1 month and 24 days, having been found medically unfit for further service and the service document in relation to the assessment of the disability of the applicant was destroyed, being the non pensioner, after retention period of 25 years in terms para 595 of Regulations for the Army, 1987 (Revised Edition).

8. The learned counsel for the respondents further submitted that the applicant filed the instant O.A. after much delay, and therefore, the instant O.A. be dismissed on the ground of delays and laches.

ANALYSIS

9. On the careful perusal of the material available on record and also the submissions made on behalf of the parties,

we are of the view that it is not in dispute that the applicant was invalided out on medical ground from service on 07.11.1964, after rendering 2 year 1 month and 24 days of service. However, the attributability/ aggravation and assessment of the said disability could not be brought on record due to the fact that the applicant was a non pensioner and service records to that effect were destroyed after the retention period of 25 years as per Para 592 to 596 of the Pension Regulation for the Army, 1987 (Revised Edition).

10. After perusal of the records produced before us and arguments advanced by either side, we hold that the applicant is entitled to invalid pension, as the applicant was enrolled in the Air Force on 13.09.1962 and was invalided out from service on medical grounds on 07.11.1964 i.e. after rendering 2 year, 1 month and 24 days days of service.

11. The respondents had withdrawn the condition of service for a particular number of years by a soldier with effect from 01.01.1973 for soldiers retired prior to 01.01.1973 as per MoD

letter No. 12 (28)/2010-D(Pen/Pol) dated 10.02.2014 which, as scanned, reads as under:-

“

12(28)/2010-D (Pen/Pol)
Government of India
Ministry of Defence
Department of Ex-servicemen Welfare

Dated: 10th February 2014

To

The Chief of Army Staff
The Chief of Naval Staff
The Chief of Air Staff

Subject:- Grant of Service element of disability pension to pre 1.1.1973 Invalided out JCOs, ORs and NCs(E)/Sailor/Airmen when the accepted degree of disablement re-assessed as less than 20% - reg.

Sir,

The undersigned is directed to refer to Regulation 186 of Pension Regulations for the Army Part-I (1961) and equivalent provisions in the Pension Regulations for the Navy & Air Force, which provides that in case of personnel below officer rank granted disability pension on invalidment due to disabilities attributable to or aggravated by military service but whose accepted degree of disability subsequently falls below 20%, the service element of disability pension was made permanent provided the qualifying service rendered by the individual was 10 years or more (15 years in case of NCs(E)). The requirement of rendering stipulated qualifying service for continuance of service element was further relaxed to 5 years for the individuals who were Invalided out of service on or after 1.3.1968 vide this Ministry's letter No.1(4)/68/1035-A/S/D (Pension / Services) dated 30.10.1968. In Implementation of the Government decisions on the recommendations of Third Pay Commission vide SAI 4/S/75, the condition of having minimum service for continuance of service element, when disability was re-assessed as less than 20% was abolished in those cases where the invalidment occurred on or after 1.1.1973. Due to the above said stipulation of having prescribed service for continuation of service element, pre-1.1.1973 Invalided out cases erstwhile in receipt of disability pension, were disallowed service element of disability pension and subsequently family pension also, where the disability was accepted as less than 20% in subsequent re-assessment(s).

2. Based on various representations from such personnel and their families for continuance of service element of disability pension and/or grant of family pension, the matter has been considered by the Government. The President is now pleased to decide that condition prescribed prior to 1.1.1973 for continuance of service element with reference to minimum stipulated qualifying service, in cases where the accepted degree of disability subsequently fell below 20%, shall be dispensed with from 1.1.1973 or the date from which the accepted degree of disability fell below 20%, whichever is later. The NOK of such Invalided out

personnel who at the time of invalidment were in receipt of disability pension and subsequently died, shall also be entitled for family pension from the date following the date of death of individual.

3. The service element of disability pension /family pension in terms of these orders shall accordingly be notified by the Pr. CDA (Pensions), Allahabad. For this purpose, each affected personnel below officer rank who was invalided out prior to 1.1.1973 and initially granted disability pension but the same discontinued as their accepted degree of disability fell below 20% at the time of re-assessment, shall submit an application in the format enclosed as Annexure to this letter to the PSAs concerned through their Pension Disbursing Agencies and Record Office. In cases where the pensioner was alive as on 1.1.1973 or date of discontinuance of disability pension which is later and died subsequently, his heir(s) shall be paid life time arrears on account of service element of disability pension accrued in terms of these orders as per the prevailing instructions on the subject. For this purpose, eligible heir(s) of the deceased pensioner may also apply to the Pension Disbursing Agencies of the deceased pensioner.

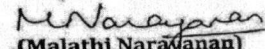
4. The Record Offices may, however, also identify the affected cases and take necessary action after obtaining relevant information required from the pensioners for notification of their awards.

5. Further implementation instructions to all concerned will be issued by Pr. CDA (Pensions), Allahabad, immediately on receipt of these orders.

6. This issues with the approval of Ministry of Defence (Finance) vide their I.D.No.10(4)/2012/FIN/PEN dated 16.01.2014.

7. Hindi version will follow.

Yours faithfully,


(Malathi Narayanan)

Under Secretary to the Govt. of India

Copy to:-
As per standard distribution list.

”

12. We are fortified in our view in view of the verdict of the Hon'ble Supreme Court in **Union of India Vs. Sinchetty Satyanarayan**, SLP(Civil) No. 20868 of 2009, wherein it was observed as under:-

“ ...

Learned counsel for the respondent submits that the respondent Gauri Shankar has already received the disability pension with effect from 1.11.1964 to 4.1.1976. Now, in view of the order which has been placed on record in which it has been decided by the Government that the benefit of service element would be granted to all similarly placed persons with effect from 1.1.1973, no further directions are necessary. The special leave petition is disposed of.

IN ALL OTHER REMAINING SLPs AND CIVIL APPEALS:

Delay condoned.

Learned counsel appearing for Union of India has drawn our attention to the order dated 22.2.2012 passed by the Ministry of Defence which reads as under:

"MINISTRY OF DEFENCE

Department of Ex-Servicemen Welfare

Subject: SLP No.20868/2009 titled UOI Vs Ex

Gnr Sinchetty Satyanarayan & 42 Others

The issue regarding grant of service element to those invalided out prior to 1973 with less than

minimum qualifying service for pension as prescribed from time to time, has been considered in the Ministry and with the approval of Hon'ble RM it has been decided to grant the benefit of service element to all pre 1973 cases w.e.f. 1.1.1973.

2. OIC Legal Cell (Supreme Court) may take appropriate action to file the reply affidavit in the matter in the Hon'ble Supreme Court.

Sd/

(Ajay Saxena)

Under Secretary/ D(Pen/ Legal)

Tele: 23015021"

Learned counsel appearing for Union of India submits that now the Government of India has taken a decision that the respondents and other similarly placed persons would be entitled to the benefit of service element of pension with effect from 1.1.1973. No further directions are necessary.

All the special leave petitions and civil appeals are disposed of accordingly.”

13. We are conscious of OA 1419/2018 filed on behalf of the applicant seeking grant of disability pension having been dismissed vide order dated 27.08.2018. Likewise we take into account also the dismissal of RA 21/2019 with MA 1659/2019 having been filed by the applicant seeking the grant of invalid pension having not prayed for the same in OA 1051/2016. It cannot be overlooked however that RA 21/2019 was dismissed with the observation :-

“...

3. If, in some other cases, the applicant therein was granted invalided pension that does not ipso entitle the applicant to the grant of said relief, especially when no such relief was claimed in the OA.

....”

It cannot be however be overlooked that Section 23 of the Armed Forces Tribunal Act, 2007 provides as under :-

“23. Procedure and powers of the Tribunal.—(1) The Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice and subject

to the other provisions of this Act and any rules made thereunder, the Tribunal shall have the power to lay down and regulate its own procedure including the fixing of place and time of its inquiry and deciding whether to sit in public or in camera.

(2) The Tribunal shall decide every application made to it as expeditiously as possible after a perusal of documents, affidavits and written representations and after hearing such oral arguments as may be advanced: Provided that where the Tribunal deems it necessary, for reasons to be recorded in writing, it may allow oral evidence to be adduced.

(3) No adjournment shall be granted by the Tribunal without recording the reasons justifying the grant of such adjournment and cost shall be awarded, if a party requests for adjournment more than twice."

The same makes it apparent that the Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice. Thus, we hold that the applicant is entitled to the grant of invalid pension in view of the admitted factum of his invalidation on 07.11.1964, we hold that the provision of Order 2 Rule 2 of the Code of Civil Procedure, 1908 shall

not amount to any embargo to the grant of invalid pension in the facts and circumstance of the instant case.

CONCLUSION

14. In view of law laid down by the Hon'ble Supreme Court of India in **Union of India Vs. Sinchetty Satyanarayan (supra)**, and the MoD policy dated 10.02.2014, we hold that, the applicant is entitled to invalid pension from the date of invalidment.

15. The respondents are thus directed to calculate, sanction and issue the necessary PPO to the applicant within a period of three months from the date of receipt of copy of this order and the amount of arrears shall be paid by the respondents, failing which the applicant will be entitled for interest @6% p.a. from the date of receipt of copy of the order by the respondents. However, as the applicant has approached the Tribunal after a considerable delay, in view of the law laid down in **Union of India & Ors. Vs. Tarsem Singh 2009 (1) AISLJ 371**, the arrears of invalid pension are restricted to commence to run

from three years prior to the date of the filing of O.A.
1271/2019.

16. The OA 1271/2019 is disposed of accordingly.

Pronounced in the open Court on this day of 22nd December,
2023.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER(J)

/pranav/