

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

A..

OA 1290/2016

Ex Rect Darshan Singh Negi Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Ms. Pallavi Awasthi, 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
22.11.2023

Vide our detailed order of even date we have allowed the OA 1290/2016. 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 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, the prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

AP

COURT NO. 2, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 1290 of 2016

In the matter of :

Ex Recruit Darshan Singh Negi

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Ms. Pallavi Awasthi, Advocate

For Respondents : Shri Prabodh Kumar, Advocate

CORAM :

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

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

ORDER

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

"(a) To direct the respondents to call for the records in respect of the applicant.

(b) To set aside the order dated 23.09.2000 and order dated 24.09.2001 passed by the respondents wherein they have denied the disability pension to the applicant.

- (c) To direct the respondents to grant the disability pension alongwith arrears to the applicant from the date of his discharge from service i.e. 13.01.2000.*
- (d) To direct the respondents to pay the due arrears of disability pension with interest @ 18% p.a. with effect from the date of retirement with all the consequential benefits.*
- (e) To pass such further order or orders, direction/Directions as this Hon'ble Tribunal may deem fit and proper in accordance with law.*

2. Although the applicant, through this OA, sought for the grant of the disability pension, however, during the course of the hearing on 22.09.2023, the learned counsel for the applicant sought to confine the prayer made in the OA for seeking the grant of invalid pension only. Thus, the present case is being considered qua the prayer for the grant of invalid pension alone.

BRIEF FACTS

3. The applicant was enrolled in the Indian Army on 14.07.1998 in the trade of Cook and was invalided out from service in low medical category 'EEE (Psy)' with effect from 12.01.2000 under Rule 13(3)(iv) of the Army Rules, 1954. During the course of training of Cook, on 17.05.1999, the applicant was admitted to Military Hospital, Gaya as a case of psychiatric inv. and thereafter the applicant remained under treatment from 21.05.1999 to 25.10.1999 and was transferred to different Military Hospitals as detailed by the respondents in Para 3 of the counter affidavit. The medical authorities, after treating for the period from 17.05.1999 to 25.10.1999, ultimately placed him in the medical category 'EEE (Psy)' and recommended him to be invalided out of service and accordingly, the applicant was brought before the Invalidating Medical Board (IMB) held on 09.11.1999, which found the applicant suffering from 'SCHIZOPHRENIA' and assessed the same @ 15-19% and considered the same as 'aggravated by stress and strain of training'.

4. The claim for the grant of the disability pension was forwarded to the Controller of Defence Accounts (Pension),

Allahabad for adjudication vide Records, The Garhwal Rifles letter No. 4080102/01/DP dated 04.04.2000. The Controller of Defence Accounts (Pension), Allahabad, the pension sanctioning authority, in consultation with the Medical Advisor, opined that the disease was not attributable to nor aggravated by military service being constitutional in nature and rejected the same vide letter No. G3/68/39/4-2000 dated 04.09.2000 and the said decision was communicated to the applicant vide Records The Garhwal Rifles letter No. 4080102/DP dated 23.09.2000. Against this, the applicant preferred an appeal dated 30.10.2000, which was rejected by the GoI, MoD vide their letter dated 31.08.2001. The applicant was informed vide Records The Garhwal Rifles letter No. 4080102/19/DP dated 24.09.2001 about the rejection of his appeal. Thereafter, the applicant filed a writ petition being CWP No. 1482/2004 before the High Court of Uttaranchal, Nainital for grant of disability pension, which was dismissed by the High Court vide judgment dated 04.12.2006 for non-prosecution. Finally, the applicant filed the present OA. In the interest of justice, in terms of Section



21(2)(b) of the AFT Act, 2007, we take up the same for consideration.

CONTENTION OF THE PARTIES

5. The learned counsel for the applicant submitted that the applicant, at the time of joining the service, was declared fully fit medically and physically and no note has been made in the service documents of the applicant regarding any disease suffered by him at that time. The learned counsel submitted that after joining the service, the applicant was sent for six months' basic training and thereafter was sent to ASC Core, Gaya for training of Cook for six months; during the trade training at Gaya, the applicant was admitted to Military Hospital on 17.05.1999 as a case of Psychiatric Inv. and remained under treatment in various Military Hospitals thrice between the period 21.05.1999 and 25.10.1999 and thereafter the IMB found the applicant suffering from 'Schizophrenia' and thus he was invalided out from service on recommendations of the medical board with effect from 12.01.2000.

6. The learned counsel further submitted that the claim/representations of the applicant for grant of the

disability pension were rejected, however, the applicant is entitled to invalid pension, if not disability pension, as per Regulation 197(b) of the Pension Regulations for the Army, 1961 (Part-I) and also in view of the Govt. of India, Ministry of Defence policy letter dated 16.07.2020, which provides that the armed forces personnel are entitled for invalid pension who are invalided out of service with less than 10 years of qualifying service on account of any bodily or mental infirmity, which is neither attributable to nor aggravated by military service which permanently disables them from military service as well as civil reemployment.

7. *Per contra*, the learned counsel for the respondents submits that the disability suffered by the applicant was assessed to be aggravated by service with disablement @ 15-19% for life. Hence, the applicant is not entitled to disability pension as per Para 173 of the Pension Regulations for the Army, 1961, amendment 2008 (Part-I).

8. The learned counsel for the respondents further submitted that the applicant was invalided out from service on medical grounds with effect from 12.01.2000 in low medical category under Rule 13(3) Item IV of the Army Rules,

1954 after rendering only about 1½ years of service. The learned counsel for the respondents further submitted that the IMB considered the disability of the applicant as 'neither attributable to nor aggravated by military service' and assessed the same at less than 20%, and, therefore, the applicant is not entitled to either disability pension or invalid pension. The learned counsel prays for dismissal of the prayer made by the applicant.

ANALYSIS

9. We have heard the learned counsel for the parties and have perused the record produced before us.

10. During the course of arguments, the applicant, through his counsel, prayed for the grant of invalid pension only. With regard to the grant of invalid pension, Regulation 197 of the Pension Regulations for the Army, 1961 (Part-I), is reproduced below:

"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."*

11. In the present case, it is undisputed that the applicant was enrolled in the Army on 17.07.1998 and suffered from the 'Schizophrenia', his medical condition, which was serious enough to lead to his invalidation from service, much before the term of engagement of service, with effect from 12.01.2000 i.e. after rendering about 1½ years of service only. As per the opinion of the Graded Specialist (Psychiatry), the applicant's response to treatment was very slow and partial and he was unlikely to show any further significant improvement and become a good soldier and, therefore, recommended to be invalided out in medical category 'EEE (Psychological)' Permanent. Regulation 198 of the Pension Regulations for the Army, 1961 (Part-I) stipulates minimum period of qualifying service for grant of invalid pension to be 10 years. Hence, the issue which needs to be considered in this case is as to whether the

applicant, having rendered less than 10 years' service, is entitled to invalid pension or not.

12. As per the GoI, MoD letter dated 16.07.2020, it was provided to the effect 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. However, in Para 4, it was mentioned that the cases of personnel invalided out from service before 04.01.2019 will not be re-opened.

13. The Regional Bench of AFT at Lucknow in the case of ***Ex. Recruit Chhote Lal Vs. Union of India & Ors. [O.A. No. 368 of 2021]***, decided on 11.03.2022, examined the letter dated 16.07.2020 in detail. The said letter is reproduced below :

"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."



14. The RB, Lucknow, while disposing of the O.A. No. 368 of 2021, has examined Para 4 of the GoI, MoD letter dated 16.07.2020, which states that the cases of personnel invalided out from service before 04.01.2019 will not be reopened, and held the said Para 4 of the letter as unconstitutional on the grounds of :

"20. Tested on the aforesaid principle enunciated by the Hon'ble Apex Court, the impugned letter dated 16.07.2020 fails to meet the aforesaid twin test. The letter arbitrarily denies the benefit of invalid pension to those armed forces personnel, who happened to be invalided out from service prior to 04.01.2020. There cannot be any difference on the ground of invalidment as both in the cases of personnel invalided out before and after 04.01.2020, they faced the similar consequences. In fact, the persons who have retired prior to 04.01.2020 have faced more difficulties as compared to the persons invalided out on or after 04.01.2020. The longer period of suffering cannot be a ground to deny the benefit by way of a policy, which is supposed to be beneficial. Such a provision amounts to adding salt to injury.

21. In the instant case, applicant was diagnosed to be suffering from disability 'SCHIZOAFFECTIVE DISORDER' and was invalided out from service. Applicant was denied disability pension because disability of the applicant was found neither attributable to nor aggravated by military service. Condition of qualifying service of ten years for grant of invalid pension is applicable in the case of an Armed

Forces person who is invalided out on account of any bodily or mental infirmity.

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."*

15. The Tribunal (RB, Lucknow) in reaching such a conclusion with respect to Para 4 of MoD letter No. 12(06)/2019/D(Pen-Pol) dated 16.07.2020 has placed reliance on the following verdicts of the Hon'ble Supreme Court :

- (i) ***D.S. Nakara and others Vs. Union of India [AIR 1983 SC 130];***
- (ii) ***Maneka Gandhi V. Union of India***
- (iii) ***Sriram Krishna Dalmia Vs. Sri Justice S.R. Tendolkar and Others [1958 AIR 538 1959 SCR 279];***
- (iv) ***Ramana Dayaram Shetty Vs. The International Airport Authority of India & Ors. [AIR 1979 SC 1628];***
- (v) ***State of Punjab & Anr. Vs. Iqbal Singh [1991 SCR (2) 790];***
- (vi) ***Jaila Singh & Anr. Vs. State of Rajasthan & Ors. [1976 (1) SCC 602].***

15. The issue of permanent incapacitation from military as well as civil re-employment in the MoD letter dated 16.07.2020 has been examined by the Principal Bench of AFT, New Delhi. To this effect, attention is drawn to Para 27 of the order passed by this Bench in the case of ***Lt. A.K. Thapa Vs. Union of India & Ors. [O.A. No. 2240 of 2019]*** decided on 07.07.2023. The said Para 27 reads as under :-

"27. In view of the law laid down by the Hon'ble Supreme Court in Sukhvinder Singh(Supra) and in Balbir Singh (Supra) on invalidment, the personnel of the Armed Forces who is invalided out is presumed to have been so invalided out with a minimum of twenty percent disability which in terms of the verdict in Sukhvinder Singh (Supra) is to be broadbanded to 50% for life, the incorporation by the respondents vide the MoD letter dated 16.07.2020 of a term of a necessary permanent incapacity for civil re-employment, is an apparent overreach on the verdict of the Hon'ble Supreme Court in Sukhvinder Singh (Supra). Furthermore, the

said clause of a requirement of an Armed Forces Personnel to be permanently incapacitated from Military service as well as Civil re-employment is wholly vague and arbitrary and does not take into account the extent of incapacity for Civil re-employment. This is so for the personnel of the Armed Forces who is invalided out with all limbs incapacitated may still have a functional brain and functional voice, may be able to speak, sing, paint and earn a livelihood. The utilisation of the words 'permanently incapacitates from civil re-employment', apparently requires a permanent brain dead armed forces personnel. We thus hold that the requirement of the Armed Forces Personnel 'to be permanently incapacitated from civilian employment as well' (apart from permanent incapacitation from military service) for the grant of invalid pension in terms of the MoD letter No. 12(06) /2019 /D (Pen/Pol) dated 16.07.2020 to be wholly arbitrary and unconstitutional and violative of Article 14 of the Constitution of India which is in Part-III of the Fundamental Rights with the sub heading thereto of 'Right to Equality', and lays down to the effect:-

"14. Equality before law.—The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 21 of the Constitution of India lays down to the effect:-

"21. Protection of life and personal liberty.—No person shall be deprived of his life or personal liberty except according to procedure established by law."

Article 21 protects the Right to Livelihood as an integral facet of the Right to life as laid down by the Hon'ble Supreme Court in Narender Kumar

Chandla Vs. State of Haryana, 1995 AIR 519 and the right to life is one of the basic human rights which even the State has no authority to violate, except according to procedure established by law....."

CONCLUSION

16. We find no reason to differ from the law laid down in ***Ex Recruit Chhote Lal (supra)*** and ***Lt AK Thapa (supra)***, we are, therefore, of the considered view that the applicant was deemed to be invalided out of service on account of the disability as the applicant's term of engagement was cut short and he was invalided out on 12.01.2000 after rendering about 1½ years of service before completing his term of initial engagement. Therefore, the applicant is held entitled to invalid pension, despite the fact that he had not completed the qualifying length of service of ten years.

17. 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% per annum 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]**, arrears of invalid pension will be restricted to three years prior to the date of filing of OA i.e. 28.09.2016.

18. There is no order as to costs.

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

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

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