

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

B..
OA 1442/2018

Sep/NA Puran Singh Seni Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. RK Rastogi, Advocate
For Respondents : Mr. Satya Ranjan Swain, Advocate

CORAM
HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
19.12.2023

Vide our detailed order of even date; we have allowed the OA 1442/2018. 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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O R D E R

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) Declare Army Medical Corps Record letter No. T/13926282/DPT (C) dated 10.11.2006 placed as Annexure A-1 and marked as the impugned order null and void.

b) Direct the respondents to declare the assigned 40% or whatsoever

percentage of disability assigned to the applicant by invaliding board on his invalidment from service as attributable to and /or aggravated by service .

- c) Direct the respondents to round up the assigned disability pension by invaliding board to 50% in accordance with broad band or roundup policy issued vide para 7.2 of the Government of India, Ministry of Defence letter No. 1(2)/97/D (Pen-C) dated 31.01.2001.**
- d) Direct the respondents to pay the applicants arrears of disability pension from the date of his invalidment from service on 22.11.1969/22.1.1970 till the payment is made along with interest @18% per annum.**
- e) Direct the respondents to compensate the applicant for the harassment and mental agony due to denial of his rightful entitlement.**
- f) Award cost of petition.**
- g) Pass such and further order or orders, as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case in favour of the petitioner and against the respondents."**

BRIEF FACTS

2. The applicant was enrolled in the Army Medical Corps as Sepoy/Nursing Assistant on 23.07.1964 and was invalidated

out from service on 22.01.1970 under Rule 13 (3) III (iii) of the Army Rule, 1954 after rendering 5 year 6 months of service. The applicant was placed in low medical category 'EEE' for the disability "Idiopathic Epilepsy" which was assessed at 20%. Neither the applicant nor the respondent were able to bring on record any documentary evidence to show the attributability and aggravation for the said disability or the percentage of disability assessed by the IMB. However, the respondents through their counter affidavit stated that the disability of the applicant was neither attributable to nor aggravated by service.

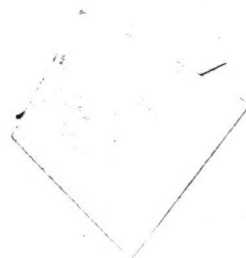
3. The claim for the grant of the disability pension for the said disability was processed by the PCDA (P), Allahabad for the adjudication by the Army Medical Corps Record Office and rejected the same vide letter G3/CA/70/73997/V dated 06.03.1970. Thereafter, the applicant preferred an application dated 12.03.2004 for the grant of disability pension. The AMC Record Office had examined the case and the same was replied vide letter No. C/13926282/DPT (c) on 31.08.2004 stating that the applicant's claim for the grant of disability pension was rejected by the PCDA (P) Allahabad on 06.03.1970 as the

disability was considered to be NANA by military service. the same had already been communicated to the applicant vide office letter dated 25.03.1970.

4. The applicant thereafter preferred applications dated 07.03.2006 and 02.08.2006 for the grant of disability pension and the same were replied to vide letters dated 20.04.2006 and 10.11.2006 respectively, 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

5. The learned counsel for the applicant submitted that the applicant was invalided out from service on 22.01.1970 on medical grounds due to permanent low medical category "EEE" for the disability 'Idiopathic Epilepsy'. The learned counsel for the applicant submitted that the IMB considered it to be NANA and assessed it @20%.



6. The learned counsel for the applicant submitted that the disability of the applicant occurred due to stress and strain of service.

7. The learned counsel for the applicant placed reliance on the verdict of the Hon'ble Supreme Court in the case of **Deokinandan Prasad Vs. State of Bihar** AIR 1971 SC page 1409 wherein it was held as under :

“ ... that pension is not a bounty payable on the sweet will and pleasure of the Government and that on the other hand, the right to pension is a valuable Right vesting with a Government servant....”

8. The learned counsel for the applicant placed reliance on the verdicts of Hon'ble Supreme Court in:-

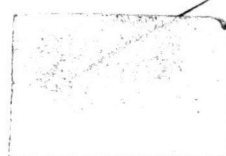
- **Union of India & Ors. Vs. Angad Singh Titaria** (Civil Appeal No. 11208 of 2011 delivered 24.02.2015);
- **Satwinder Singh Vs. Union of India & Ors.** (Civil Appeal No. 11208 of 2011 in SLP No. (C) No. 22765/2011
- **Ex Hav Mani Ram Bhaira Vs. Union of India & Ors.** (SLP (C) No. 22765/2011) dated 11.02.2016)

- ***Union of India Vs. Rajbir Singh*** 2015 (12) SCC 264
(Civil Appeal No. 2904 of 2011)

to contend to the effect that, that if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service.

9. The learned counsel for the applicant submitted that the applicant is entitled to invalid pension, if not disability pension, as per regulation 198 of the Pension Regulation for Army 1961, Part I and during the course of submissions made on 01.11.2023, confined the prayer made through the present OA to the grant of invalid pension alone.

10. Per contra, the learned counsel for the respondent submits that the applicant was invalided out from service on 22.01.1970, after rendering 5 year 6 months, under Rule 12 (3) (III) (iii) as the applicant was in low medical category 'EEE' due to the disability "Idiopathic Epilepsy" and assessed it @20%.



11. The learned counsel for the respondents further submitted that the claim for the disability pension was rejected on 03.04.1968 and the first appeal of the applicant was rejected in the year 1969. The learned counsel for the respondents further submitted that the applicant filed the instant O.A. with much delay after the rejection for the grant of disability pension, and therefore, on the sole ground of limitation, the instant O.A. be dismissed on the ground of delays and laches.

12. The learned counsel for the respondents placed reliance on the verdict of the Hon'ble Supreme Court in the case of **C.Jacob Vs. Director of Geology and Mining and Anr.** (2008) 10 SCC 115, wherein it was held that "the dead and stale claim is not permitted to be revived and the person who sleeps over his right is not entitled for any indulgence." The learned counsel for the respondents submitted that the applicant made an application before the respondents in August, 2006 i.e. after 36 years of invalidment.

ANALYSIS

13. 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 22.01.1970, after rendering 5 year 6 months of service, in low medical category 'EEE' due to the disability 'Idiopathic Epilepsy' which was assessed @20% and consequently considered it to be neither attributable to nor aggravated by service as adverted by the respondents through their counter affidavit filed on 16.01.2019. However, the attributability/ aggaravation of the said disability could not be brought on record in the medical board proceeding 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).

14. As already observed herein above during the course of arguments, the applicant, through his counsel, prayed only for the grant of invalid pension and did not press for the disability pension with regards to the disability of the applicant.

15. 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 Army Medical Corps on 23.07.1964 and was invalided out from service on medical grounds on 22.01.1970 i.e. after rendering 5 year and 6 months of service.

16. 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 invalidated 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.

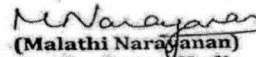
4. The Record Offices may, however, also identify the affected cases and take necessary action after obtaining relevant information required from the pensioners for notification of their awards.

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 L.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.

”

17. 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."

18. It is essential to advert to 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.

....”


CONCLUSION

19. In view of law laid down by 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.

20. 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.

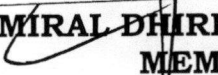


from the date of receipt of copy of the order by the respondents.
However, as the applicant has approached the Tribunal after
a considerable delay, in view of the law laid down in **Union of
India & Ors. Vs. Tarsem Singh 2009 (1) AISLJ 371**, the
arrears of invalid pension are restricted to commence to run
from three years prior to the date of the filing of O.A.

552/2016. 1442/2018 

21. The OA 1442/2018 is disposed of accordingly.

Pronounced in the open Court on this day of 19 December,
2023.



[REAR ADMIRAL DHIREN VIG]
MEMBER (A)



[JUSTICE ANU MALHOTRA]
MEMBER(J)

/pranav/