

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

SUPPLEMENTARY

1.

OA 250/2020

Ex Spr A Rajendran
VERSUS

..... Applicant

Union of India and Ors.

..... Respondents

For Applicant : Mr. Aditya Bari, Proxy counsel for
Mr. Indra Sen Singh, Advocate
For Respondents : Mr. Shyam Narayan, Advocate

CORAM

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

ORDER
31.08.2023

Vide our detailed order of even date; we have allowed the OA 250/2020. Learned counsel for the respondents makes an oral prayer for the 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.

2. 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, the prayer for the grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

COURT NO. 3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA No. 250/2020

Ex-Spr A Rajendran

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Indra Sen/Abhishek Singh, Advocate

For Respondents : Mr. Shyam Narayan, 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 therefore filed this O.A and the reliefs claimed in Para 8 - read as under:

“

a) Direct the respondents to treat the invaliding of disability, namely “Reactive Psychosis” with which the Applicant is suffering as either

Attributable to or Aggravated by military service;

- b) Direct the respondents to grant disability pension to the applicant wef 26.06.1993 when he was released/invalided out from the service on account of ID "Reactive Psychosis";*
- c) Direct the respondents to pay disability pension to the Applicant @75% (50% rounded off to 75%) wef 26.06.1993 by rounding off the applicant's disability from 50% to 75%;*
- d) Direct the respondents to pay 10% interest on the arrears of disability pension wef 26.06.1993 until the arrears are paid; and*
- e) Issue such other order/direction as may be deemed appropriate in the facts and circumstances of the case."*

BRIEF FACTS

2. The applicant was enrolled in the Indian Army on 22.05.1984 and was invalided out of service w.e.f 25.06.1993 having been found medically unfit for further service after rendering 9 years and 6 months of military service. The applicant was invalided from service in medical category EEE due to the disability of '**Reactive Psychosis**' which was assessed as neither attributable to nor aggravated by military service.

3. The claim for the grant of the disability pension for the said disability was forwarded to the PCDA (P), Allahabad which was rejected vide letter No. G-3/54/15/2/94 on 15.08.1994 on the ground that the disability of the applicant is not attributable to military service. However, a sum of Rs. 17,200 on account of invalid gratuity was paid to the applicant vide PCDA(P), Allahabad letter *ibid*. Aggrieved by the said rejection, for the grant of disability pension, the applicant preferred an appeal dated 08.10.1994 which was rejected by the Government of India, Ministry of Defence vide letter No. 7(78)/95/D (Pen-C) and AC dated 11.03.1998.

4. The applicant, thereafter, sent a letter on 07.11.2017 addressed to the First Appellate Committee on disability pension in regard to the reply received in lieu of applicant's first appeal dated 19.06.2017. The Record Officer , Madras Engineer Group stated that they were not in receipt of the said representation by the applicant dated 19.06.2017. However, the applicant was replied to vide letter No. 1381785 F/Pen (D) dated 10.01.2018 about the rejection of his first appeal on 11.03.1998. The applicant has therefore filed the instant O.A.

and thus, in the interest of justice, 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 25.06.1993 in low medical category EEE.

6. The learned counsel for the applicant submitted that the action of the respondents for not treating the disability of the applicant as attributable to /aggravated by service is contrary to guidelines laid down by the Hon'ble Supreme Court in the verdict of ***Dharamvir Singh Vs. Union of India & Ors. 2013 (7) SCC 316 and K Srinivasa Reddy Vs. Union of India & Ors. (Mil LJ 2014 SC 20).***

7. 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.

....”

8. The learned counsel for the applicant submitted that the applicant is entitled to invalid pension, if not disability pension as per regulation 197 of the Army Pension Regulation 1961 and during the course of submissions made on 09.08.2023, confined the prayer made therein in the present OA to the grant of invalid pension alone and to that effect reliance was placed by the learned counsel for the applicant of the order passed by the Armed Forces Tribunal, Principal Bench, New Delhi in O.A. 2240/2019 titled as **Lt. AK Thapa Vs. Union of India & Ors.**

9. Per contra, the learned counsel for the respondent submit that the applicant was invalided out from service on 25.06.1993, after rendering 9 years and 6 months, having been found medically unfit for further service since as the applicant was in low medical category 'EEE' due to the disability "Reactive Psychosis".

10. The learned counsel for the respondents, during oral arguments, 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.

The person who sleeps over his right is not entitled for any indulgence.”

11. The learned counsel for the respondents further submitted that the claim for the disability pension and the first appeal of the applicant was rejected on 11.03.1998.

ANALYSIS

12. 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 25.06.1993, after rendering 9 years and 6 months of service under Army Rule 13 (3) item III (iii) of Army Rules 1954, in low medical category 'EEE' due to the disability 'Reactive Psychosis' which was assessed by the IMB @ 50 % for two years and considered it to be neither attributable to nor aggravated by service. It is also not in dispute that the applicant was in receipt of Invalid gratuity.

13. During the course of arguments, the applicant, through his counsel, prayed only for the grant of invalid pension and did not press on the disability pension with regards to the disability of the applicant.

14. 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 on 22.05.1984 and was invalided out from service on medical grounds on 25.06.1993 i.e. after rendering more than 9 years and 6 months of service, which in our view is deemed invaliding from service. In this regard, reliance is placed upon Rule 197 of the Pension Regulation for the Army, 1961 which is reproduced herein 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.”***

15. Lest it be contended that applicant being invalided out after serving for more than 9 years and 6 months, however may not be eligible for getting the invalid pension as per Rule 198 of the Pension Regulation for the Army, 1961, which reads as under :

“ 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.”

it is apposite to mention the order of the Armed Forces Tribunal (Regional Bench) Lucknow in ***Ex. Recruit. Chhote Lal Vs. Union Of India & Ors.*** in OA No.368 of 2021, wherein the MoD letter No. 12(06)/2019/D(Pen-Pol) dated 16.07.2020 has been examined in detail. The said MoD 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 invalidated 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.”

The AFT, Regional Bench, Lucknow Bench while disposing off the OA No. 368 of 2021 has examined Para 4 of the MoD letter dated 16.07.2020 and has held the said Para 4 of the letter as unconstitutional on the grounds that:

“ 20.

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.

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.

.....”

The Tribunal 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 verdicts of the Hon'ble Apex Court in the cases of :

- ***D.S. Nakara and Others Vs Union of India, (1983), SCC 305 ;***
- ***Maneka Gandhi V. Union of India ;***
- ***Sriram Krishna Dalmia v. Sri Justice S.R. Tendolkar and Others 1958 AIR 538 1959 SCR 279 ;***
- ***Ramana Dayaram Shetty v. The International Airport Authority of India &Ors 1979 AIR 1628 ;***
- ***State of Punjab &Anr. V. Iqbal Singh 1991 AIR 1532 1991 SCR (2) 790 ;***
- ***Jaila Singh &Anr. V. State of Rajasthan &Ors. 1975 AIR 1436 1975 SCR 428 1976 SCC (1) 602.***

16. It is important to note with regards to the contention raised by the learned counsel for the respondent to the effect of issuance of certificate of fitness for the civil employment to the applicant, it is essential to advert to , observations rendered by the Armed Forces Tribunal, Principal Bench New Delhi in O.A. 2240/2019 titled as **Lt AK Thapa Vs. Union of India & Ors.** dated 07.07.2023 whereby the clause referring essentiality of requirement for permanent incapacitation for civil employment for grant of invalid pension has been struck down by us as being unconstitutional.

CONCLUSION

17. We find no reason to differ from the law laid down in **Chhote Lal (supra)**, we are therefore of the considered view that the applicant was deemed to be invalided out of service on account of the said disability as the applicant rendered more than 9 years and 8 months of service and was invalided out 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.

18. 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**, arrears of invalid pension will be restricted to three years prior to the date of filing of O.A. 250/2020.

Pronounced in the open Court on this day of 27 August,
2023.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER(J)

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