

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

E.

OA 517/2021 with MA 577/2021

Ex Sep Narayan Singh

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Mr. Virender Singh Kadian, 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
25.09.2023

Vide our detailed order of even date; we have allowed the OA 517/2021. 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.

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)

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ORDER

1. The applicant vide the present O.A 517/2021 has made the following prayers:-

- "(a) Quash and set aside impugned letter No. 7078181/DP-2/Pen dated 10.12.2020. and/or*
- (b) Direct respondents to treat the disability of the applicant as attributable to/aggravated by military service and grant him disability pension(both service element and disability element) with the benefits of rounding off/broad banding. And/or*
- (c) Direct respondents to pay Invalid pension. And/or*
- (c) Direct respondents to pay the due arrears from the date of his invalid medical board out with interest @12% with all the consequential benefits. And/or*
- (d) Any other belief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case."*

2. During the course of submissions made on 08.08.2023 on behalf of the applicant, it was submitted that the prayer made through the present OA is confined to seeking grant of invalid pension alone.

3. The applicant Ex Sep Narayan Singh in the instant case was enrolled in the Army(Corps of EME) on 20.11.1963 and was discharged from service on medical grounds w.e.f. 08.04.1970. The applicant thus served for 06 years 04 months and 17 days of qualifying service. According to the respondents, the applicant being a non-pensioner, his service/medical documents were destroyed by burning on 27.01.1999 on completion of its prescribed retention period in terms of Para-595 of Regulations for the Army, 1987. The applicant pursuant to discharge from service was paid dues as under:-

“(a) Credit balance	Rs. 969.75
(b) AFPP Fund balance	Rs. 2719.00
(c) Invalid Gratuity	Rs. 1101.60 ”

4. In terms of Para-132 of Pension Regulations for the Army, 1961(Part-1), which states to the effect:-

“Para 132: Minimum Qualifying Service for Pension
The minimum period of qualifying service(without weightage) actually rendered and required for earning service pension shall be 15 years.
Unless otherwise provided for, the minimum qualifying colour service for earning a service pension is 15 years.”,

as the applicant had rendered only 6 years 04 months and 17 days of qualifying service, he was not granted any service pension.

5. The disability pension in relation to the disability of BILATERAL FLAT FEET was not granted to the applicant, the disability of the applicant having being opined to be *Neither Attributable to Nor Aggravated* by military service and not thus fulfilling the parameters required in terms of Regulation-173 of Pension Regulation for the Army, 1961(Part-1) which requires the necessity of the disability if arisen in service to be established to have been due to the conditions of military service that determined or contributed to the onset of the disease and that the conditions were established due to the circumstances of the duty of military service.

6. The applicant submitted a petition dated 01.09.2005 for grant of the disability pension which was responded to by the EME records vide letter no. 7078181/DP-2/Pen dated 19.10.2005. The applicant submitted that his service was cut short due to his disability and that the Medical Authorities recommended his invalidment out from service on medical grounds and that the disability of the applicant was required to be treated as Attributable to and Aggravated by military service. Inter alia, the applicant submits that at the time of his enrolment, there was no note of any disease in his medical



records and that he is entitled to be compensated for the disability from which he suffered during the service tenure, which is to be treated as Attributable or Aggravated by military service. Inter alia, the applicant also sought the rounding off of the benefits in terms of Govt. of India, MoD letter No 1(2)/97/1/D (Pen -C) dated 31.01.2001 and in the verdict of the Hon'ble Supreme Court in **UOI & Ors. vs Ramavtar** in Civil Appeal No. 418/2012.

7. 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, have been entitled to the grant of the Invalid Pension. Reliance was placed on behalf of the applicant on the order dated 06.12.2018 in OA 1051/2016 in the case of **Ex Sep Bhagat Singh Vs UOI & Ors.**, of the AFT(PB), New Delhi to submit to the effect that the applicant having been invalided out of service, he cannot be denied the benefit of the invalid pension on the ground of non-qualifying length of minimum service for

pension. Inter alia, the applicant placed reliance on the verdict of the Hon'ble Supreme Court in *UOI & Ors. Vs Ex Gnr Sinchetty Satyanarayan & 42 others* in SLP No. 20868 of 2009, decided on 23.02.2012, wherein it has been observed to the effect:-

"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. 01.01.1973."

8. It was thus submitted on behalf of the applicant that in terms of Regulation-197 of the Pension Regulations for the Army 1961 which reads to the effect:

"Invalid pension/gratuity shall be admissible in accordance with the Regulations in the 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 retire/discharged from service for lack of alternative employment compatible with his low medical category."

the applicant is entitled to the grant of Invalid Pension for the condition of 10 years of service for grant of invalid pension for those who were invalided out of service prior to 01.01.1973 has since been

waived. Reliance was also placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in *Ex Rect Mithlesh Kumar Vs UOI & Ors.*, in Civil Appeal no. 16438-16440/2017 to contend to similar effect that he is entitled to the grant of Invalid pension. Reliance was also placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in *Sukhvinder Singh Vs. UOI & Ors.*, (2014) FLR 629, with reference to observations to Para-9 thereof, which reads to the effect:-

"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."-

to submit to the effect that the applicant is thus entitled to the grant of Invalid pension.

9. Reliance was also placed on behalf of the applicant on the factum that it is not refuted by the respondents that the applicant was invalided out of military service and rather the averments in Para-7 of the Counter Affidavit dated 09.09.2021 filed on behalf of the respondents, categorically state to the effect:-

“Further, it is submitted that the applicant was invalided out from service due to disability which was considered as “Neither Attributable to Nor Aggravated by Military Service”.

10. The respondents have submitted that the instant OA has been filed by the applicant with much delay and seek to place reliance on the verdict of the Hon'ble Supreme Court in ***C. Jacob Vs. Director of Geology and Mining*** and another reported in (2008) 10 SCC 115, to submit to the effect that a dead or stale claim ought not to be permitted to be revived. Likewise, reliance was placed on the behalf of the respondents on the order dated 04.08.2004 in Civil Misc. Writ Petition No. 8524/2000 of the Hon'ble High Court of Judicature at Allahabad, in the case of ***Inderpal Singh Vs UOI & Ors.***, where the petitioner thereof had kept silent for 18 years. Reliance was also placed on behalf of the respondents on the order dated 18.10.2016 in MA 19/2016 in OA 154/2015 titled as ***Mathai MD Vs UOI & Ors.***, in which case the applicant was discharged in November 1982 and did

not make any claim for grant of pension till he preferred an appeal in March 1994 and subsequently filed the petition in 2012 and then in OA in 208/2013 which was dismissed as not pressed. Reliance was also placed on behalf of the respondents on the order dated 08.03.2017 in *Ex Sep Goverdhan Viswakarma Vs UOI & Ors.*, in OA Nil/2016, wherein the applicant thereof had not sought relief for more than a decade and, even after dismissal of his second OA, had not sought the redressal in a reasonable period of time. The respondents thus submit that the instant OA, having been filed on 24.02.2021, after 51 years of his invalidment ought to be dismissed outright on the grounds of delay and laches.

11. 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. As regards, the contentions raised on behalf of the respondents, that there is an delay in the institution of the present OA, with the OA having been filed after a lapse of 51 years with condonation sought vide MA 577/2021 for condoning a delay of 18350 days. It is undoubtedly true that the present OA has been filed with much delay, yet it cannot be overlooked that the factum that the applicant was invalided out of military service due to the disability that he suffered from of BILATERAL FLAT FEET is unrefutably brought forth through the Counter Affidavit filed by the respondents themselves. In these circumstances, as the prayer that the applicant has made through the present OA seeking the grant of Invalid Pension is based on a continuing wrong and thus, 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.

13. The spirit of the verdict of the Hon'ble Supreme Court in *Ex Sep Chain Singh Vs UOI & Ors.* in Civil Appeal diary no. 30073/2017, decided on 11.12.2017 wherein it has been observed to the effect that in relation to matters of pension and that too of disability pension, the same relates to a continuous cause of action and the applicant would be entitled to receive the same each month and thus for the same, the applicant thereof ought not to be denied the benefit by taking up a hyper technical view, though the benefit of past pension can be confined for a period of three years prior to the institution of the prayer made seeking relief. In these circumstances, in view of the law laid down by the Hon'ble Supreme Court in *UOI & Tarsem Singh*(Supra) and in *Ex Sep Chain Singh*(Supra), in the interest of justice and for the reasons submitted through the application dated 27.01.2021 vide **MA 577/2021** the same is allowed,

and we consider it appropriate to condone the delay in the institution of the present OA. Thus we consider it appropriate to take up the OA 517/2021 for consideration.

14. As has already been observed by us herein above, the factum that the applicant was invalided out of military service on 08.04.1970 due to the disability of BILATERAL FLAT FEET is brought forth through the Counter Affidavit of the respondents themselves dated 09.09.2021. 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, even in terms of the Govt. of India, Ministry of Defence letter no. 12(06)/2019/D(Pen/Pol) dated 16.07.2020, wherein 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."

15. 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.***, 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.

16. 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.

17. In these circumstances, the applicant who was invalided out of service on 08.04.1970 due to the disability of BILATERAL FLAT FEET after a period of 06 years 04 months and 17 days is held entitled to the grant of Invalid pension for life from the date of invalidment from service.

CONCLUSION

18. The applicant is thus entitled to the grant of Invalid pension with effect from the date of invalidment of 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, which however 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. 24.02.2021, in view of the verdict of the Hon'ble Supreme Court in the case of **Tarsem Singh** (Supra)

19. 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 25 day of September, 2023.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/TS/