

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

OA No. 552/2016

Ex AC 2 Budh Prakash

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. VS Tomar, Advocate

For Respondents : Mr. KK Tyagi, 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) Quash and set aside the impugned letter No. Air HQ/997998/2/271986/DAV(DP/RMB) dated 07.07.2014 and grant disability pension (both disability and service element) to the applicant with effect

from the date of his invalidment after treating the same as attributable to or aggravated by military service.

- b) Direct the respondents to grant the service element of disability pension with effect from the date of his invalidment as per Govt. of India, Ministry of Defence letter dated 10.02.2014 and PCDA (P) Allahabad circular No. 527 dated 25.04.2014.*
- c) Direct the respondents to grant the disability pension to the applicant by giving benefits of broad banding/rounding off in term of Govt of India, Ministry of Defence letter No. 1(2)/97/D(PEN-C) dated 31.01.2001 and law settled by Hon'ble Supreme Court in Civil Appeal No. 418/2012 titled UOI &Ors. Vs. Ram Avtar vide judgment dated 10.12.2014.*
- d) Direct the respondent to pay the due arrears entitled pension with interest @12% p.a. with effect from the date of invalidment from service with all the consequential benefits.*
- e) Any other relief which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."*

BRIEF FACTS

2. The applicant was enrolled in the Indian Air Force on 11.04.1966 and was invalided out from service on 11.12.1967

having been found medically unfit for further service. The applicant was placed in low medical category 'EEE' for the disability "Epilepsy" which was assessed by the IMB @ 60% as averred by the applicant. 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. However, the respondents through their counter affidavit stated that the disability of the applicant as neither attributable to nor aggravated by service.

3. The claim for the grant of the disability pension for the said disability was rejected by the PCDA (P), Allahabad vide letter G3/CA/68/55762/3 dated 03.04.1968. Thereafter, the applicant's first appeal was rejected vide MoD letter No. 199630/R-47/Pen-A dated 14.07.1969.

4. The applicant did not prefer a second appeal but filed OA No. 32/2013 before the Armed Forces Tribunal, (Principal Bench), New Delhi for the grant of disability pension which was dismissed vide its order dated 08.02.2013. The applicant, thereafter, filed the OA 239/2014 seeking the grant of service element of pension in which the Armed Forces Tribunal, Principal Bench vide its order dated 30.05.2014 directed the

respondents therein to dispose off the representation filed by the applicant with them. The respondents, in compliance to the order dated 30.05.2014 issued a speaking order dated 20.11.2014 stating that the applicant is not entitled to pensionary benefit, 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 11.12.1967 on medical grounds due to permanent low medical category "EEE" for the disability 'Epilepsy'. The learned counsel for the applicant submitted that the IMB assessed the disability of the applicant @60% and considered it to be NANA.

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 order of The Armed Forces Tribunal in TA No. 48/2009 in WP (C) 6324/2007 titled as **Nakhat Bharti Vs. Union of India & Ors.** wherein it was held that the medical authorities have to record the reason why the disease which was present at the time of acceptance of service could not be detected and that if such cogent reason is not found in the finding of the Medical Board then a presumption has to be drawn that the disease had arisen during the course of service. The learned counsel further submitted that in the instant case the disease of the applicant has to be held to be either attributable to or aggravated by service due to stress and strain of military service as no note of

disease in the medical documents was made at the time of enrolment by the Medical Board.

9. The learned counsel for the applicant placed reliance on the verdict of the Hon'ble Supreme Court in the case of **Union of India & Ors. Vs. Ex Gnr Sinchetty Satyanarayan & Ors.** in SLP No. 20868 of 2009, decided on 23.02.2012 wherein it was observed as under :-

“....

The issue regarding grant of service element to those invalidated 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.

....”

10. 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.

....”

11. The learned counsel for the applicant submitted that the applicant is entitled to invalid pension, if not disability pension, as per regulation 153 of the Air Force Pension Regulation 1961, Part I and during the course of submissions made on 16.10.2023, confined the prayer made through the present OA to the grant of invalid pension alone.

12. Per contra, the learned counsel for the respondent submits that the applicant was invalided out from service on 11.12.1967, after rendering 1 year 245 days, having been found medically unfit for further service as the applicant was in low medical category 'EEE' due to the disability "Epilepsy".

13. The learned counsel for the respondents submitted 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. 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 respondent further

submitted that the applicant filed the instant O.A. after more than 730 days from 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.

15. 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."

ANALYSIS

16. 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 11.12.1967, after rendering 1 year 245 days of service, in low medical category 'EEE' due to the disability 'Epilepsy' and consequently considered it to be neither attributable to nor aggravated by service as adverted by the respondents through their counter affidavit filed on 07.11.2016. However, the attributability/ aggaravation of the said disability could not be

brought on record in 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).

17. 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.

18. 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 11.04.1966 and was invalided out from service on medical grounds on 11.12.1967 i.e. after rendering 1 year and 245 days of service.

19. 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 issued 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,

M. Narayanan
(Malathi Narayanan)

Under Secretary to the Govt. of India

Copy to:-
As per standard distribution list.

20. Reliance is placed on 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.”

CONCLUSION

21. In view of law laid down by the Hon'ble Supreme Court of India in ***Union of India Vs. Sychetty 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..

22. 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.

23. The OA 552/2016 is disposed of accordingly.

Pronounced in the open Court on this day of 23 November,
2023.



[REAR ADMIRAL DHIREN VIG]
MEMBER (A)



[JUSTICE ANU MALHOTRA]
MEMBER(J)

/pranav/