

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

B.

OA 80/2019 with MA 469/2019

Ex Sigmn Hasti Ram Hooda

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Mr. AK Trivedi, Advocate  
For Respondents : Mr. Avdhesh Kumar Singh, Advocate

CORAM

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

ORDER  
13.12.2023

Vide our detailed order of even date we have allowed the OA 80/2019. 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)

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**For Applicant** : Mr. AK Trivedi, Advocate

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**CORAM :**

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

**ORDER**

**M.A. 469/2019**

This is an application filed under Section 22(2) of The Armed Forces Tribunal Act, 2007 seeking condonation of delay of 10032 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of **UoI & Ors. Vs Tarsem Singh** 2009(1) AISLJ 371 and in **Ex Sep Chain Singh Vs Union of India & Ors** (Civil Appeal No. 30073/2017) and the reasons mentioned, the MA 469/2019 is allowed and the delay of 10032 days in

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filing the OA 80/2019 is thus condoned. The MA is disposed of accordingly.

**O.A. 80/2019**

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) Set aside the finding of Invaliding Medical Board dated 02.07.1985 and PCDA order dated 16.12.1986 with regard to attributability and aggravation of disability declaring as illegal, unjust and arbitrary.***
- b) Direct the respondents to consider the claim of the applicant for grant of disability pension consisting of service element and disability element wef the date of invalidment i.e wef 21.07.1985 by treating the disease of schizophrenia as attributable to and aggravated by military service as the disease has arisen during service and remained aggravated thereby and the applicant was invalided out from service in Medical Category 'EEE'.***
- c) To extend the benefit of judgment of Hon'ble Supreme Court of India in the case of Sukhvinder Singh Vs. Union of***

**India & Ors. (Civil Appeal No. 5605 of 2010) decided on 25.06.2014.**

- d) The applicant may also be entitled for rounded off of disability pension to 50%.**
- e) Direct the respondents to conduct Re-Survey Medical Board in respect of applicant for assessing his future disability percentage and the applicant may be entitled for his disability pension in terms of RSMB with all consequential benefits.**
- f) Any other order as may be deemed just and proper in the facts and circumstances of the case."**

### **BRIEF FACTS**

2. The applicant was enrolled in the Indian Army (Corps of Signal) on 17.06.1980 and was invalided out from service on 21.07.1985, rendering 5 years and 34 days of service, having been found medically unfit for further service under item III (iii) of table annexed to Rule 13 (3) of Army Rules, 1954. The applicant was placed in low medical category 'EEE' for the disability "**Schizophrenia**" which was assessed by the IMB @ 40% for two years and considered it to be NANA.

3. The claim for the grant of the disability pension was forwarded to the PCDA (P), Allahabad for adjudication vide Signal Records letter No. P/14237189/DP-5/NER dated



20.10.1986. The PCDA(P), Allahabad rejected the claim of the applicant for the grant of the disability pension vide letter No. G-3/86/8697/V dated 16.12.1986.

4. The applicant, thereafter, preferred an appeal dated 10.02.1987 for the grant of service element of the disability pension, which was rejected by the respondents vide Signal Records letter No. 7(463)/87/D (Pen/Appeal) dated 31.08.1987, aggrieved by which the applicant has filed the instant O.A. and thus, in the interest of justice, under Section 21(2)(b) 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 17.06.1980 on completion of 5 years and 34 days of service. The learned counsel for the applicant submitted that the applicant was invalided out of service under Army Rule of 1954, Rule 13(3) item III on medical grounds due to permanent low medical category "EEE". The learned counsel for the applicant further

submitted that the IMB assessed the disability 'Scizophrenia' of the applicant @40% for two years and considered it to be NANA.

6. The learned counsel for the applicant submitted that para 1 of part III of the opinion of the Invalidment Medical Board states as follows:

*"Did you suffer from any disability mentioned in question 2 or anything like it before joining the Armed Forces? If so give details and dates*

*"Answered "No".*

7. The learned counsel for the applicant further placed reliance on the verdict of the Hon'ble Supreme Court in the case of **Dharamvir Singh Vs. Union of India**, Civil Appeal No. 4949/2013 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.

8. 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.***

***....”***

9. 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 17.11.2023, confined the prayer made through the present OA to the grant of invalid pension alone.

10. Per contra, the learned counsel for the respondents submit that the applicant was invalided out from service on 21.07.1985, after rendering 5 years and 34 days, having been found medically unfit for further service under item III (iii) of table annexed to Rule 13 (3) of Army Rules, 1954 since,

as the applicant was in low medical category 'EEE' due to the disability "Schizophrenia".

11. The learned counsel for the respondents submitted that the disability "Schizophrenia" of the applicant was opined as being neither attributable to nor aggravated by service and the medical board also assessed the percentage of disability @40% for two years and hence the applicant cannot be granted the disability pension.

### **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 grounds from service on 21.07.1985, after rendering 5 years and 34 days of service, in low medical category 'EEE' due to the disability 'Schizophrenia' which was assessed by the IMB @40% for two years and consequently considered it to be neither attributable to nor aggravated by service vide their impugned order.

13. 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 17.06.1980 and was invalided out from service on medical grounds on 21.07.1985 i.e. after rendering 5 years and 34 days of 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.”**

14. Lest it be contended that the applicant being invalided out after serving for 5 years and 34 days , 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 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.”**

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.***

15. Further vide the order of this Tribunal in ***Lt. A.K. Thapa Vs. Union of India & Ors.*** in OA 2240/2019,

dated 07.07.2023 vide Para 27 thereof it was observed 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 **Chhote Lal (supra) and in A.K. Thapa (supra)**, and We are therefore of the considered view that the applicant has to be deemed to be invalided out of service on account of the said disability as the applicant rendered 5 years and 34 days 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.

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% 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 commence to run from three years prior to the date of filing of O.A. 80/2019.

Pronounced in the open Court on this day of 13<sup>th</sup> December, 2023.

[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)

[JUSTICE ANU MALHOTRA]  
MEMBER(J)

/pranav/