

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

15.

OA 861/2016

Smt Babli Devi W/o Late Sep Dalbir Singh Applicant
VERSUS

Union of India and Ors. Respondents

For Applicant : Mr. Mohan Kumar, Rashmi Singh &
Rohit Pratap, 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
05.10.2023

Vide this OA, the applicant makes the following prayers:

*“(a) To direct the respondents to grant the disability pension and Special Family Pension.
(b) Any other order as may be deemed fit and proper in the facts and circumstances of the case.”*

2. The applicant in the instant case is a widow of late Sep. Dalvir Singh, a personnel of the Armed Forces who enrolled as a recruit in the Corps of EME of the Indian Army on 10.10.1998 and was invalided out from service w.e.f. 03.01.2005 under Item III(iii) of Rule 13(3) of the Army Rules, 1954 due to his disability “SCHIZOPHRENIA F-20” and the

Invaliding Medical Board(IMB) considered the said disability of the applicant's husband as neither attributable to nor aggravated by military service being a constitutional disorder and assessed the same @30% for life vide AFMSF-16 dated 06.12.2004. The counter affidavit dated 15.05.2018 that has been placed on record by the respondents with an affidavit 04.05.2018 *inter alia* makes mention of the stated legitimate dues stated to have been paid as mentioned to the effect:

<i>a) Regular Maturity benefits under AGI-Rs.9,114/-</i>	
<i>b) Credit balance</i>	<i>Rs.11,725/-</i>
<i>c) AFPP Fund balance</i>	<i>Rs.1,14,919/-</i>
<i>d) Invaliding Gratuity</i>	<i>Rs.37,171/-</i>
<i>e) Death-cum-Retirement Gratuity</i>	<i>Rs.30,074/-"</i>

3. The applicant's husband in all had rendered 06 years, 02 months and 23 days of service with the Indian Army. Apparently, he had not completed the length of qualifying service and the said Late Sep Dalvir Singh expired on 11.12.2013 in a train accident leaving behind the applicant and two children. During the course of submissions that have been made on behalf of the applicant, it is fairly stated on behalf of the applicant that the prayer made in the present OA is confined to the grant of invalid pension for the period during the life time

of the deceased from the date of invalidment out from service till the date of his demise as per Regulation 197 of the Army Pension Regulation 1961. Reliance was also placed on behalf of the applicant in relation to the IMB proceedings dated 06.12.2004 with specific reference to Para 21 thereof which reads to the effect:

***“21. Invalid/disability Pension for which recommended
-Recommended for invalid pension”***

which indicates to the effect that the recommendations were made for the grant of invalid pension.

4. The learned counsel for the respondents submits fairly that the respondents had their own of recommended the grant of invalid pension to the soldier and admitted the factum of the applicant's late husband having been invalided out from service initially due to ailments whilst in military service and does not refute or oppose the grant of invalid pension that would have been due to the applicant's late husband Sep. Dalvir Singh.

5. 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.

6. 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 10.10.1998 and was invalided out from service on medical grounds on 03.01.2005 i.e. after rendering 06 years 02 months and 23 days of service. In this regard, it is essential to advert to 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 by 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.”

7. Lest it be contended that the applicant being invalided out after serving for 06 years 02 months and 23 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 dated 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.*

8. To this effect, we may refer to para 27 of the order of of this Tribunal in *Lt. A.K. Thapa Vs. Union of India & Ors.* in OA 2240/2019 wherein Para 27 thereof reads 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

9. We find no reason to differ from the law laid down in Chhote Lal (supra) and in A.K. Thapa (supra). We are, therefore, of the considered view that the applicant’s late husband having been invalided out of service on account of the said disability as the late

soldier rendered 06 years 02 months and 23 days of service before completing his term of initial engagement. Thus, the applicant is held entitled to the grant of the arrears of invalid pension from the date of the invalidment of her late husband i.e. Late Sep Dalvir Singh till the date of his demise, despite the fact that the late soldier had not completed the qualifying length of service of ten years.

10. The respondents are thus directed to calculate, sanction and issue the necessary PPO to the applicant within a period of three months from today 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.

11. The O.A. 861/2016 stands disposed of in above terms.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

/CHANANA/