

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

A.

OA 907/2019 with MA 1552/2019

Ex Rect Krishan Singh Applicant
VERSUS

Union of India and Ors. Respondents

For Applicant : Mr. Trilok Chand, proxy for
Mr. Virender Singh Kadian, Advocate
For Respondents : Mr. Neeraj, Sr. CGSC

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER
21.03.2024

Order allowing the OA pronounced, signed and dated.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(LT GEN C.P. MOHANTY)
MEMBER (A)

TS

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ORDER

MA 1552/2019

This is an application filed under Section 22 of The Armed Forces Tribunal Act, 2007 seeking condonation of delay of **8395** 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 1552/2019 is allowed despite opposition on behalf of the respondents and the delay of **8395** days in filing the

OA 907/2019 is thus condoned. The MA is disposed of accordingly.

OA 907/2019

2. The applicant vide the present O.A. 907/2019 has made the following prayers:-

"(a) Quash and set aside the impugned letter No. 14703079/DP/NE&PG dated 16.04.2019. And/or

(b) Direct respondents to treat the disability of the applicant as attributable to/aggravated by military service and grant disability/invalid pension @ 100% and Constant Attendant Allowance from the date of invalidment to the date of discharge. And/or

(c) Direct respondents to pay the due arrears of disability pension with interest @12% p.a. from the date of discharge with all the consequential benefits.

(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with the cost of the application in favour of the applicant and against the respondents"

3. During the course of submissions made on 05.01.2024 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, and that the prayers made for the grant of the disability element of

pension and constant attendant allowance are not pressed.

4. The unrefuted facts in the instant case brought forth through the Counter Affidavit dated 24.12.2019 of the respondents indicate that the applicant Ex Rect Krishan Singh was enrolled in the Indian Army on 22.06.1995 and was medically invalided out of service w.e.f. 05.05.1996 in low medical category CEE (Pmt) due to the disability "Open Angle Glaucoma (Both Eyes)" after rendering 319 days of service as a non-pensioner.

5. The applicant has submitted through the OA that his service in the Indian Army was cut short due to the disability of "Open Angle Glaucoma (Both Eyes)" that he suffered whilst performing military duties which disability has to be treated as attributable to/ aggravated by military service. The applicant was brought before an Invalidment Medical Board on 04.04.1996 which had assessed the applicant's disability

as neither attributable to nor aggravated by military service with a percentage of disablement with 15-19% for two years.

6. The applicant's disability pension claim was rejected vide letter dated 30.05.1997 against which the applicant filed a first appeal which was again rejected by the Appellate Authority vide letter No. 7(1809)/97/D(Pen.A&AC) dated 13.10.1999. After expiry of almost 23 years, the applicant preferred an appeal-cum-representation dated 23.03.2019 seeking grant of disability pension, which was rejected by the Records, The Kumaon Regiment vide letter No. 14703079/DP/NE&PG dated 16.04.2019 on the ground that the Invalidment Medical Board has considered the disability as neither attributable to nor aggravated by military service. It is thus clear from the Invalidment Medical Board proceedings placed on record that the applicant was invalided out in low medical category CEE

(Pmt) due to the disability "Open Angle Glaucoma (Both Eyes)."

7. 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 319 days of service, he was not granted any service pension.

8. 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."

9. 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, 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.

10. The respondents have submitted to the effect that the instant OA has been filed after much delay and ought to be dismissed on the grounds of delay and laches. 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, take 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 personnel 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.

11. In as much as that the applicant seeks only grant of invalid pension which 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. As has already

been observed by us herein above, the factum that the applicant was invalided out of military service on 05.05.1996 due to the disability of "Open Angle Glaucoma (Both Eyes)" is brought forth through the record.

12. 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. 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."

13. 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 permanently incapacitates the Armed Forces personnel from military service as also permanently incapacitates the said armed forces personnel for 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.

14. 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 off 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."

15. 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 dated 16.07.2020 cannot discriminate against

the personnel of the Armed Forces based on a cut off 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 05.05.1996 due to the disability of "Open Angle Glaucoma (Both Eyes)" after a period of 319 days is held entitled to the grant of Invalid

pension for life from the date of invalidment from service
i.e. 05.05.1996.

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. The arrears of Invalid pension 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. 22.05.2019, 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 21st day of March, 2024.

[LT GEN C.P. MOHANTY]
MEMBER (A)

[JUSTICE ANU MALHOTRA],
MEMBER (J)

Ps