

**COURT NO. 1**  
**ARMED FORCES TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**OA No. 1674/2018 WITH MA 1816/2018**

**Ex Rect Yogesh Singh** ..... Applicant

*Versus*

**Union of India & Others** ..... Respondents

**For Applicant** : Ms. Archana Ramesh, Advocate

**For Respondents** : Ms. Jyotsna Kaushik, Sr. CGPC

**CORAM:**

**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON**  
**HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)**

**ORDER**

1. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 are read as under:

*"A. Issue directions to the Respondents to quash and set aside Mahar regiment Records Letter dated 02 May 2016 and declare that the disability of Bilateral Nephrocalcinosis with Nephrolithiasis (N-48) needs to be declared either as attributable or aggravated to military service and consequentially the Applicant be granted Disability Pension by the Hon'ble Armed Forces Tribunal to meet the ends of equity, justice and fair play;*

*B. Pass such other and further orders or directions to the Respondents by way of adequate exemplary compensation by way of harassment, agony and humiliation in the attendant genuine circumstances of the case, to meet the ends of justice."*

2. Although the applicant, through this OA, sought for the grant of the disability pension, however, during the course of hearing, the learned counsel for the applicant sought to confine the prayer made in the OA for seeking the grant of invalid pension only. Thus, the present case is being considered qua the prayer for the grant of invalid pension only.

#### **BRIEF FACTS**

3. The applicant was enrolled in the Mahar Regiment of the Indian Army on 30.10.2014 and was invalided out from service on 03.10.2015 under Army Rule 13 (3) (iv) before fulfilling the terms of engagement being placed in the Lower Medical Category (LMC) S1H1A1P5E1.

4. As per the IMB vide AFMSF-16, dated 10.07.2015, the applicant was diagnosed with the disability of **BILATERAL NEPHROCALCINOSIS WITH NEPHROLITHIASIS**. The disabilities assessed at the time of invalidment of the applicant have been recommended as neither attributable to nor aggravated by the military service and also not connected to the military service. The percentage of the disablement of the applicant had been assessed as NIL for life by the IMB proceedings.

5. The initial claim of the applicant for the grant of disability element of pension was denied by the respondents and was found as neither attributable to nor aggravated by the military service in terms of Regulation 173 of Pension Regulations for the Army 1961, Part – 1 (now Para 95 for the Pension Regulations for the Army 2008, Part -1) as the percentage of the disablement was assessed less than 20%, NIL for life.

6. The applicant did not prefer any appeal against the initial rejection of the claim for the grant of disability element of pension in respect of the disability Bilateral Nephrocalcinosis with Nephrolithiasis.

7. Aggrieved by the decision of the respondents, the applicant has filed the instant OA. In the interest of justice, in accordance with Section 21(1) of the AFT Act, we take up the present OA.

### CONTENTIONS OF THE PARTIES

8. The learned counsel for the applicant submitted that the Applicant was enrolled in the Mahar Regiment on 30.10.2014 and due to the disability of **Bilateral Nephrocalcinosis with Nephrolithiasis** was invalided out of military service on 03.10.2015.

9. The learned counsel for the applicant submitted that the applicant had filed a statutory complaint to the COAS through ADGPS and to which the applicant did not receive any reply till the filing of this OA.

10. The learned counsel for the applicant had placed reliance on the judgement of the Hon'ble Supreme Court in the case of Dharamvir Singh Vs. Union of India and Ors. [2013 (7) SCC 36], that after thorough medical examination the applicant was enrolled into military service and there was no note of any disability recorded in his service records. Therefore, any disability occurring during the period of his service is deemed to be attributable to or aggravated by military service.

11. *Per contra*, the learned counsel for the respondents submitted that as per Regulation 173 of Pension Regulation for the Army, 1961, Part-I (now Para 95 of the Pension Regulations for the Army 2008, Part -1), disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or more. In the instant case, the applicant was medically examined by competent medical board and declared his disability as neither attributable to nor aggravated by Military service and also not connected with military service. Thus, the applicant is not entitled of the disability element of pension.

12. The learned counsel for the respondents had placed reliance on the judgment of the Hon'ble Supreme Court of India in SLP (C) 23727 of 2008 in the case of *Union of India v. Damodaran AV* wherein the apex court

directed that medical board is an expert body and its opinion is entitled to be given due weight, value and credence.

### ANALYSIS

13. 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 03.10.2015 in LMC S1H1A1P5E1 due to the disability '**Bilateral Nephrocalcinosis with Nephrolithiasis**' which was assessed by the IMB as NANA, Nil for life.

14. 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 30.10.2014 and was invalided out from service on 03.10.2015 i.e., after rendering around 11 months of service, which in our view is deemed invaliding from 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.”*

15. Lest it be contended that the applicant being invalided out after serving around 11 months, 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 invalidated 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 invalidated out from service before 04.01.2019 will not be re-opened.*

5. *All other terms and conditions shall remain unchanged.*

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 vires 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.

.....”

16. To this effect, reliance is also placed on para 27 of the order of Lt. A.K. Thapa v. Union of India & Ors. in OA 2240/2019, Para 27 reads as under: -

“ ...

27. In view of the law laid down by the Hon'ble Supreme Court in Sukhvinder Singh v. Union of India (2014 STPL (WEB) 468 decided on 25.06.2014 (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 broad-banded 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 reemployment. This is so for the personnel of the Armed Forces who is invalidated 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 utilization 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."*

#### CONCLUSION

17. 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 was deemed to be invalided out of service on account of the said disability as the applicant rendered 11 months 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.

18. 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.

19. Consequently, Miscellaneous Application(s), stands disposed off accordingly.

Pronounced in the open Court on this 12<sup>th</sup> day of November, 2024.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)

/PRGx/