

COURT No.1  
ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

55.

OA 3852/2023 WITH MA 5128/2023

Ex Rect Gurav Rohit Bajrang ..... Applicant  
Versus  
Union of India and Ors. .... Respondents

For Applicant : Mr. Ved Prakash, Advocate  
For Respondents : Mr. K.K. Tyagi, Sr. CGSC

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON  
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER  
24.10.2024

MA 5128/2023

Keeping in view the averments made in the miscellaneous application and finding the same to be bona fide, in the light of the decision in Union of India and others Vs. Tarsem Singh [(2008) 8 SCC 648], the MA is allowed condoning the delay in filing the OA.

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2. Even though the prayer made in the OA is for grant of disability pension, an alternate prayer for grant of invalid pension has also been made. In view of the order passed by this Tribunal in the matter of Lt A.K. Thapa (Released) Vs. Union of India and Ors. (OA 2240/2019) decided on 7<sup>th</sup> July, 2023; Ex Rect Chhote Lal Vs. Union of India & Ors. (OA No.368/2021) decided on 11.03.2022 and the order passed by Hon'ble High Court of Punjab and Haryana upholding the aforesaid

judgments, learned counsel for the applicant submits that he gives up his claim for disability pension and would only be pressing his claim for invalid pension. In view of the statement made by learned counsel for the applicant the OA is disposed of in terms of the order passed below.

3. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this OA and has made the following prayers:

*“(a) Quash the Impugned Letter No. 15600580K/06/D/Pen dated 11.05.2022.*

*“(b) Direct the respondents to grant disability pension to the applicant duly round off to 50% w.e.f his date of discharge.*

OR

*“(c) Direct respondents to grant Invalid pension*

*“(d) Direct respondent to pay the arrears of pension with interest 12% per annum.*

*“(e) Any other relief which the Hon’ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost of the application in favour of the applicant and against the respondents.”*

4. The applicant was enrolled in the Indian Army on 14.10.2020. While serving, in August 2021, the applicant suffered with a disability, namely, “Seizure Disorder.” On 05.01.2022 the Invalid Medical Board of the applicant was conducted and the disability of “Seizure Disorder” was assessed @ 20% for life but the same was held as neither attributable to nor aggravated by military service. Thereafter on 09.04.2022, the applicant was invalided out from service in Low Medical Category (LMC) after rendering approximately 10 months of service.

5. The initial claim of the applicant for the disability pension was rejected by PCDA (P), Allahabad vide their letter

No.15600580K/06/D/Pen dated 11.05.2022. Against the said rejection, the applicant preferred First Appeal on 07.07.2022 which has not been decided by the respondents.

6. Placing reliance on the judgment of the Hon'ble Supreme Court in the case of Dharamvir Singh Vs. Union of India and Ors. [2013 (7) SCC 36], learned counsel for applicant argues that after thorough medical examination the applicant was commissioned into military service and there was no note of any disability recorded in his service records. It is further contended that he served in the Army at various places in different environmental and service conditions in his prolonged service; therefore, any disability occurring during the period of his service is deemed to be attributable to or aggravated by military service.

7. Per contra, learned counsel for the respondents submits that as per Regulation 173 of Pension Regulations for the Army, 1961, Part-I, the primary condition for grant of disability pension is, unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided out from service on account of a disability which is attributable to or aggravated by military service and disability is assessed at 20% or more. In the instant case, percentage of disability of the applicant has been assessed @ 20% for life by Invalid Medical Board, disability being neither attributable to nor aggravated by military service. Hence, the applicant is not entitled for disability element as stipulated in Pension Regulation for Army, 1961, (Part-I) and as such, his claim was

rejected; thus, the applicant is not entitled for grant of disability pension due to policy constraints.

8. Applying the above parameters to the case at hand, we find no infirmity in the opinion of the Medical Board and are of considered view that the disability "Seizure Disorder." @ 20% for life cannot be attributed to service and hence, the prayer seeking grant of disability pension is not sustainable.

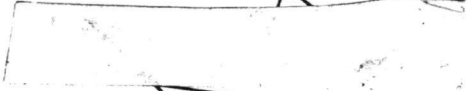
9. However, with respect to the alternate oral prayer made by the learned counsel for the applicant during the course of hearing, keeping in view that the mandatory requirement of minimum 10 years service for grant of invalid pension has been dispensed with vide Government. of India, Ministry of Defence letter No.12(06)/2019/D(Pen/Pol) dated 16.07.2020 and subsequently the stand taken by this Tribunal in the case of Lt. A.K. Thapa Vs. Union of India & Ors. (OA No.2240/2019) vide its judgement dated 07.07.2023 and judgement dated 11.03.2022 in the case of Ex Rect Chhote Lal Vs. Union of India & Ors. (CA No.368/2021), wherein 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 Government. of India, Ministry of Defence letter No.12(06)/2019/D(Pen/Pol) dated 16.07.2020 and the cut-off date for applicability has been held to be 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 and

the same has been affirmed by the Hon'ble Punjab and Haryana High Court vide its judgement dated 28.08.2024 in the case of Union of India and Others Vs. Ex AC UT Ravinder Kaushik and Anr (CWP No.21064/2024), we see no reason not to allow the prayer of the applicant with regard to grant of invalid pension. Therefore, in our considered view, the OA deserves to be allowed to the extent of grant of invalid pension.

10. Accordingly, we direct the respondents to grant invalid pension to the applicant from the date of invalidment, i.e., 09.04.2022. The respondents are directed to calculate, sanction and issue necessary PPO to the applicant within four months from the date of receipt of a copy of this order failing which the applicant shall be entitled to interest @ 6% per annum till the date of payment.

11. No order as to costs.

12. Pending miscellaneous application(s), if any, stands closed.

  
(JUSTICE RAJENDRA MENON)  
CHAIRPERSON

  
(RASIKA CHAUBE)  
MEMBER (A)

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