

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

**OA 629/2024 WITH MA 752/2024**

**Ex Sep Chandra Mohan Thakur** ..... **Applicant**  
**Versus**  
**Union of India and Ors.** ..... **Respondents**

**For Applicant** : Mr. Ved Prakash, Advocate  
**For Respondents** : Mr. S.S. Sinha, Advocate

**CORAM**

**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON**  
**HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)**

**ORDER**

**MA 752/2024**

Keeping in view the averments made in the application and in the light of the decision in **Union of India and others Vs. Tarsem Singh** [(2008) 8 SCC 648), the delay in filing the OA is condoned.

2. MA stands disposed of.

**OA 629/2024**

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. JC-561944A/DP/NE dated 30.06.2023 and impugned letter No. dated 24.10.1986.**

**(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 respondents to pay the arrears of pension with interest @12% per annum."**

4. The applicant was enrolled in the Indian Army on 19.08.1980. Thereafter, after basic training, he was posted to 8 BIHAR and while serving with 8 BIHAR, the applicant was diagnosed with Essential Hypertension on 19.11.1984 and on review of the medical condition the applicant was placed in Medical Category CEE (Permanent) for two years w.e.f. 06.07.1985. Subsequently, vide certificate dated 19.08.1985 the applicant had rendered his unwillingness for continuation in service. The commanding officer also did not recommend him to continue in service due to non availability of sheltered appointment commensurate to his disability. The Release Medical Board of the applicant was conducted and the disability of Essential Hypertension was assessed @ 30% for five years and the same was held as neither attributable to nor aggravated by military service. Thereafter on 22.12.1985 (AN), the applicant was discharged out from service under the Army Rule 13(3) item III(iv) on completion of 05 years, 04 months and 04 days of service.

5. The initial claim of the applicant for the disability pension was rejected by PCDA (P), Allahabad vide their letter No.G3/86/7232/VII dated 01.10.1986 and the same had been informed to the applicant vide Records The Bihar Regiment letter NO. 4260410/1/DP/6/NE dated 24.10.1986 with an advice to prefer an appeal. Against the said rejection, the applicant instead of preferring an appeal, had submitted a Representation dated 02.01.1987 to Records The Bihar Regiment. On 16.01.1986 The Bihar Regiment had advised the applicant vide letter No. 4260410/1/DP/8/NE dated 16.01.186 (1987) to submit appeal with complete details for further processing the same to the Competent Authority. Thereafter, on 31.01.1987, the applicant had submitted an appeal against the rejection of Disability Pension claim by the CDA (P) Allahabad to Records the Bihar Regiment. On 15.04.1987 Records The Bihar Regiment vide letter No. 4260410/1/DP/20/NE had forwarded the ibid said appeal to Controller of Defence Accounts (Pension), Allahabad. The Controller Defence Accounts (Penison), Allahabad vide letter No. G3/867232/VII dated 26.06.1986 had returned the disability pension claim to Records the Bihar Regiment with observation to

re-submit the claim alongwith certain details and information for proper adjudication of case. Thereafter vide letter dated 06.10.1987 the Bihar Regiment forwarded the required information to the Controller Defence Accounts (Pension), Allahabad but nothing has been done. Further, the applicant had submitted a petition dated 01.01.1988 through Directorate General of Infantry which was replied by the Records The Bihar Regiment vide letter dated 16.01.1988 stating that the case is still under consideration of Controller Defence Accounts (Pension), Allahabad. Thereafter, the applicant again submitted a Representation addressed to the Hon'ble President of India, New Delhi regarding grant of the Disability Pension and vide letter dated 14.10.1988 a reply of the same has been given to the applicant vide Govt. of India, Ministry of Defence. Thereafter, the applicant had filed a CWJC No. 9744/1999 before the Hon'ble High Court Patna for grant of disability pension which was dismissed by the Hon'ble High Court, Patna vide order dated 08.08.2000. Thereafter the applicant had submitted the representation to Prime Minister office which was replied vide letter dated 28.09.2010 stating that the applicant is not entitled for disability pension as per the existing departmental policy. On

06.06.2023 the applicant has forwarded legal notice through Mr. Ved Prakash and Devendra Kumar to the Directorate General of Personnel Service-4 and the same was replied by The Bihar Regiment vide letter dated 30.09.2023. Aggrieved by the aforesaid rejections, the applicant has approached this Tribunal.

6. Placing 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], learned counsel for applicant argues 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. 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 @30% for five years by Release 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 the 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. Noting the fact that the issue under consideration herein, i.e. grant of disability pension has already been adjudicated by the Hon'ble Patna High Court, the said order dated 08.08.2000 operates as a *res judicata*, thus barring this Tribunal to adjudicate on the aforesaid issue.

9. Noting the aforesaid, during the course of submissions at the time of final hearing, learned counsel for the applicant very fairly made an alternate oral prayer for grant of Invalid Pension to the applicant. Keeping in view that the applicant in the instant case were cut short due to non-availability of sheltered appointment and he was discharged from service prior to completion of his terms of

engagement, therefore, his case should be treated as a case of 'Deemed Invalidation' in terms of Para 9 of the Supreme Court's judgment in the case of **Sukhvinder Singh Vs Union of India & Ors.** which finds its affirmation in Pension Regulations for Army, 2008 (Part-I).

10. Noting aforesaid, we find that the mandatory requirement of minimum 10 years service for grant of invalid pension has been dispensed with vide Govt. 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.** (OA 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 Govt. 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 the grant of invalid pension.

11. Therefore, in our considered view, the OA deserves to be allowed to the extent of the grant of invalid pension.

12. Accordingly, we direct the respondents to grant Invalid Pension to the applicant from the date of invalidment, i.e., 22.12.1985. However, the arrears shall be restricted to three years prior to the date of filing of OA keeping in view the law laid down in the case of **Union of India and others** Vs. **Tarsem Singh** [(2008) 8 SCC 648].

13. Accordingly, the respondents are directed to calculate, sanction and issue necessary PPO to the applicant within four months from the date of receipt of copy of this order failing which the applicant shall be entitled to interest @ 6% per annum till the date of payment.



14. No order as to costs.

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

Pronounced in open Court on this 19<sup>th</sup> day of December, 2024.

(JUSTICE RAJENDRA MENON)  
CHAIRPERSON

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

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