

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

OA 656/2015 with MA 706/2015

Recruit Makhan Singh **Applicant**
VERSUS
Union of India and Ors. **Respondents**

For Applicant: Ms. Archana Ramesh, Advocate
For Respondents: Mr. Anil Gautam, Sr CGSC for R-1,2 & 4
Ms. Anjali Vohra, Advocate for R-3

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

MA 706/2015

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 4015 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of **Uol & 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 706/2015 is allowed despite opposition on behalf of the

respondents and the delay of 4015 days in filing the OA 656/2015 is thus condoned. The MA 706/2015 is disposed of accordingly.

OA 656/2015

2. The applicant vide the present OA instituted on 31.08.2015 makes the following prayers:-

“(a) Issue directions to declare the disability of ‘Bilateral Bronchiectasis’ as attributable or aggravated to service and grant Disability Pension as deemed correct in the light of the judgment of the Hon’ble Armed Forces Tribunal in Re Sepoy Rakesh Utekar Vs UOI dated 26 Nov 2014 placed as Annexure A-4.

(b) Issue directions to grant consequential AGIF benefits to the Applicant in the light of the Hon’ble Punjab and Haryana High Court Judgment in Re Paramjit Singh Vs Union of India dated 12 Feb 2008 which has been upheld by the Hon’ble Supreme Court vide Order dated 04 April 2011 placed as Annexure A-5(Colly).

(c) Pass such other and further orders/directions to the Respondents for adequate compensation as may be deemed just and proper by the Hon’ble Armed Forces Tribunal in the attendant genuine circumstances of the case.”

3. During the course of submissions made on behalf of either side on 22.10.2024, counsel for the applicant has submitted that the prayers made through the present OA are confined to seeking the grant of Invalid Pension alone. Thus apparently the prayers seeking grant of disability pension as well as grant of AGIF Benefits as prayed in prayer (a),(b) of the OA is not pressed by the applicant.

4. The applicant no. 15169196L Ex Rect Makhan Singh was enrolled in the Regiment of Artillery on 13.01.2004. Whilst undergoing basic military training, he was admitted to Military Hospital, Golconda on 04.03.2004 due to disease "BILATERAL BRONCHIECTASIS J 47.0" and further transferred to Military Hospital(CTC) Pune w.e.f. 27.03.2004. After protracted treatment at Military Hospital (CTC) Pune, a Classified Specialist (Resp Med) opined as follows:-

"This patient is a case of Bilateral Bronchiectasis possibly due to recurrent childhood respiratory infection. No evidence of active Pulmonary Tuberculosis. In view of Bilateral Bronchiectasis, he will have recurrent chest infection. He is

unfit for retention in service. Recommended to be boarded out of service in P5."

He was invalided out of service w.e.f. 31 Aug 2004 (AN) [SOS from the Army on 01 Sep 2004 (FN)] under item IV of Army Rule 13(3). Prior to invalidment, the applicant was brought before an Invalid Medical Board held at Military Hospital (CTC) Pune on 27 Jul 2004, wherein his disability was regarded as aggravated by military service due to severe physical stress and strain of 5780 Recruit Training and the degree of disablement was assessed 50% for 2 years.

5. The disability pension claim of the applicant was however declined vide letter no. G-3/53/1579/1204 dated 27.06.2005 with an advise to prefer an appeal against the same in as much as it had been stated therein that the disability of the applicant for which he was invalided out of military service was neither attributable to nor aggravated by military service and was constitutional in nature and not related to service. As has been observed the respondent nos. 1,2 and 4 vide their counter affidavit dated 10.02.2016 as

well as the respondent no. 3 vide its Counter affidavit dated 10.11.2015 have both submitted that a sum of Rs. 1,25,000/- has been paid to the applicant on account of the payment of the disability benefit under the Army Group Insurance Fund. The respondent no. 3 vide its counter affidavit has further submitted that a sum of Rs. 3,392/- has also been paid in relation to the maturity benefits vide a Bankers' Cheque bearing no. 28879 dated 07.12.2004 which has since been realized on 31.12.2004.

6. It has been observed in Para- 3 hereinabove that the prayer made by the applicant through the present OA is confined to the grant of invalid pension. On behalf of the respondent nos. 1,2 and 4, the factum that the applicant was invalided out of military service has not been disputed. In view thereof, despite contentions raised through the counter affidavit of respondent nos. 1,2 and 4 to the effect that the applicant had not completed a period of 10 years in military service, it has to be essentially observed that the grant of invalid pension to the Armed Forces Personnel who had since

been invalidated out of service is no more *res integra*, in view of the orders of this Tribunal in ***Ex Rect Chhote Lal vs. UOI & Ors.*** vide order dated 11.03.2022 of the AFT(RB), Lucknow in OA 368/2021 as well as the orders of this Tribunal dated 07.07.2023 in OA 2240/2019 in the case of ***Lt AK Thapa(Released) vs. UOI & Ors.***

7. This is so in as much as though vide Regulation-198 of the Pension Regulations for the Army, 1961, it has been regulated to the effect:-

“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.”-

the MOD letter No. 12(06)/2019/D(Pen-Pol) dated 16.07.2020 provided as under:

“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 incapacitates 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."

8. It has been stipulated categorically thereby vide the said MOD letter No. 12(06)/2019/D(Pen-Pol) dated 16.07.2020 to the effect that a Government servant, who retires from service on account of any bodily or mental infirmity which permanently incapacitates him/her from the service before completing qualifying service of ten years, may also be granted invalid pension subject to certain conditions.

9. Though vide this letter vide Clause(4) reproduced herein above, it was stipulated to the effect that the provisions of this letter shall apply to those Armed Forces Personnel were/are in service on or after 04.01.2019 and the cases in respect of personnel who were invalidated out from service before 04.01.2019 will not be re-opened, qua the same, 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 Paras-20,22,23 thereof to the effect:-

"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 04.01.2019. There cannot be any difference on the ground of invalidment as both in the cases of personnel invalided out before and after 04.01.2019, they faced the similar consequences. In fact, the persons who have retired prior to 04.01.2019 have faced more difficulties as compared to the persons invalided out on or after 04.01.2019. 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 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 vires by the Hon'ble Apex

Court because the introduction of such cut off 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 off date."

10. Thus qua the said cut off date, it has been specifically laid down therein that there can be no discrimination against the personnel of the Armed Forces based on a cut off date of having been in service on or after 04.01.2019 in relation to the grant of invalid pension.

11. Vide order dated 07.07.2023 in OA 2240/2019 in the case of **Lt AK Thapa (Released) vs UOI & Ors.**, it has been observed vide Para-27 thereof to the effect:-

“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."

12. Further vide order dated 25.09.2023 in OA 517/2021 in **Ex Sep Narayan Singh vs. UOI & Ors.** vide Para-16 thereof, it has been reiterated by this Tribunal to the effect:-

"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."

13. Thus in the instant case, the applicant who was invalided out from service on 31.08.2004, is held entitled to the grant of invalid pension from the date of his invalidment in view of the verdict dated 08.04.2016 of the Hon'ble Supreme Court in ***Balbir Singh VS UOI & Ors.*** in Civil Appeal no. 3086/2012.

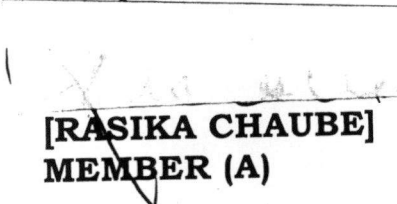
CONCLUSION

14. The OA 656/2015 is thus partially allowed. The applicant is held entitled to the grant of Invalid Pension from the date of invalidment w.e.f next to the date of his invalidment of 31.08.2004. However, in view of the factum that the

applicant did not file any appeal against the rejection of his disability pension claim rejected vide letter no. 15169196L/PPO/DP-62375/Pen-2(C) dated 02.09.2005, and submitted a Statutory petition on 29.01.2014 only, the applicant is held entitled to the grant of the arrears of Invalid pension from the date 29.01.2014 only.

16. The respondents are directed to calculate, sanction and issue the necessary Corrigendum PPO to the applicant within three months from the date of receipt of the copy of this order and in the event of default, the applicant shall be entitled to the interest @6% per annum till the date of payment.

Pronounced in the open Court on the 2nd day of November, 2024.


[RASIKA CHAUBE]
MEMBER (A)


[JUSTICE ANU MALHOTRA]
MEMBER (J)

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