

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

Suppl.
1.

OA 1004/2018 with MA 895/2018

Ex Swr Dharamvir Singh Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. V S Kadian, Advocate
For Respondents : Mr. Arvind Patel, Advocate

CORAM

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

ORDER
08.02.2024

Vide our detailed order of even date, we have allowed the OA 1004/2018. Learned counsel for the respondents makes an oral prayer for grant of leave to appeal in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007 to assail the order before the Hon'ble Supreme Court. After hearing learned counsel for the respondents and on perusal of our order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order to grant leave to appeal. Therefore, prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

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

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ORDER

MA 895/2018

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of **11527** days in filing the present OA. In view of the verdicts 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 in the application, the MA 895/2018 is allowed despite opposition on behalf of the

respondents and the delay of 11527 days in filing the OA 1004/2018 is thus condoned.

OA 1004/2018

The applicant vide the present OA seeks the following prayers:-

- “a) Quash and set aside the impugned letter 1074527/DP/LR/PC/Pen dated 07.03.2018. and/or*
- (b) Direct respondents to treat the disability of the applicant as aggravated by military service and grant him disability pension with the benefits of broad banding. and/or*
- (c) Direct respondents to grant invalid pension to the applicant. And/or*
- (d) Direct respondents to pay the due arrears of disability pension /invalided pension with interest @12% p.a from the date of discharge with all the consequential benefits.*
- (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.”*

2. The applicant Ex Swr Dharamvir Singh No. 1074527A was enrolled in the Army on 04.02.1983 and invalided out of service by the Invaliding Medical Board on 27.03.1986 vide 17 HORSE Part II Order No 77/02/86, after rendering three years, one month and twenty four days of service in the Army.

3. All records qua the applicant as averred in the counter affidavit filed by the respondents dated 09.08.2018 have been destroyed by burning on completion of its mandatory retention period in terms of Para 592 to 595 of the Defence Service Regulations for the Army 1987. As per the said counter affidavit, there are no medical documents of the applicant

available with the respondents, as they submit that the applicant has filed the OA with much delay.

4. It has been stated by the respondents further through their counter affidavit that in terms of para 592 to 595 of Defence Service Regulations for the Army, 1987 (Revised), the Sheet Roll, Service book and Register containing details of pension in respect of JCOS/OR are retained by the records office for a period of fifty years in the case of pensioners and for twenty five years in the case of non pensioners from the date of an individual becomes Non Effective. The respondents submit that as the applicant was a non pensioner, his service and medical documents have been destroyed by burning on completion of its mandatory retention period of 25 years in accordance with Para 592 to 595 of Defence Service Regulations for the Army 1987 (Revised).

5. The respondents thus submit that in the absence of medical documents qua the applicant, the Armoured Corps Records is not in a position to clarify the attributability/aggravation factor of his disability or its assessment and admissibility of the disability pension under the prevailing rules/regulations but submit that the disability pension claim of the applicant was rejected vide letter no. G3/86/9808/VII dated 06.02.1987.

6. It is essential however, to observe that during the course of submissions made on behalf of the applicant on 05.01.2024, the prayer made on behalf of the applicant through the present OA was confined to seeking the grant of invalid pension alone. That the applicant was invalided out from service on 27.03.1986 is borne out through annexure R1 placed at page 87 of the record forming part of the counter affidavit filed by the respondents and the said aspect is thus not refuted.

7. The verdict of the Hon'ble Supreme Court in **Sukhvinder Singh Vs. UoI & Ors.** vide para 9 thereof, lays down to the effect :-

"9. 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 Force : 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 Force requires absolute and undiluted protection and if any 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 invalided 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 extant Rules/Regulations, a disability

leading to invalided out of service would attract the grant of fifty per cent disability pension."

8. In terms of the verdict of the Hon'ble Supreme Court in *Commander Rakesh Pande vs UOI & Ors.*, dated on 28.11.2019 the duration of the disablement has to be held to be for life specially as in the instant case, the applicant has been invalided out from service.

9. Regulation-197 of the Pension Regulations for the Army, 1961 provides to the effect:-

"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."

It is thus apparent through Regulation 197 of the Pension Regulations for the Army 1961, that an individual who though invalided out of service on account of a disability which is attributable to or aggravated by service

even if the disability is assessed at less than 20% or who is invalided out of service on account of disability which is neither attributable to nor aggravated by service, is entitled to the grant of invalid pension / gratuity.

10. Regulation-198 of the Pension Regulations for the Army, 1961 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 essential to advert to the MoD letter No. 12(06)/2019/D(Pen-Pol) dated 16.07.2020 which is reproduced 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 incapacities them from military service as well as civil reemployment.

3. Pension Regulation of the Services will be amended 3 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."

In relation to 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 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 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 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."

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 date 16.07.2020 cannot discriminate against the personnel of the Armed Forces based on a cut of date of having been in service on or after 04.01.2019.

11. 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. Thus, in the instant case the applicant who was invalided out from service on 06.08.1996 (AN) is held entitled to the grant of invalid pension from the date of his invalidment.

CONCLUSION

12. The OA 1004/2018 is thus allowed to the extent that the applicant is held entitled to the grant of invalid pension which in view of the verdict of the Hon'ble Supreme Court in *Ex Sep Chain Singh vs. Union of India & Ors.* (Civil Appeal No. 30073/2017) and in *UOI & Ors. vs Tarsem*

Singh 2009(1)AISLJ 371, in relation to the arrears shall be confined to commence to run from a period of three years prior to the institution of the present OA.

11. 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.

Pronounced in the open Court on the 8th day of February, 2024.

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

[JUSTICE ANU MALHOTRA]
MEMBER (J)

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