

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

D..

OA 1353/2019

Ex Cpl Chandan Kumar Yadav

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Mr. Ved Prakash, Advocate

For Respondents : Dr. Vijendra Singh Mahndiyan, Advocate

CORAM

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

HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

02.01.2024

Vide our detailed order of even date; we have allowed the OA 1353/2019. 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)

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(REAR ADMIRAL DHIREN VIG)
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ORDER

OA 1353/2019

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

- (a) Quash the Impugned Letters No. Air HQ/99798/1/945374/DAV/DP/CC dated 09.07.2019 and Air HQ/99798/2/945374/DAV/DP/TMB dated 28.02.2019.*
- (b) Direct the respondents to grant disability pension to the applicant @100% + CAA (Constant Attendant Allowance) w.e.f his date of discharge.*

(c) Direct respondents to pay the due arrears of disability element of Pension with interest @12% p.a from the date of retirement with all the consequential benefits.

(d) 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. During the course of submissions made on 06.09.2023 in reply to a specific Court Query learned counsel for the applicant submitted that the prayers made through the present OA are confined to seeking the grant of the Invalid Pension alone.

3. The applicant Ex Cpl Chandan Kumar Yadav S.No.945374 was enrolled in the Indian Air Force on 29.12.2010 in a fit medical category and was discharged from IAF on 12.02.2019 under the clause "On having been found medically unfit for further service in the IAF" after rendering total of 08 years and 46 days of the regular service (including 58 days of NQP) of service in the Indian Air Force. The applicant whilst on annual leave met with an accident on road and sustained the **ID- Traumatic Fracture Dislocation DV6-DV-7 with Paraplegia (Optd)** when his bike skidded on 16.03.2016 at his native place Siwan (Bihar). The applicant was initially managed at the Civil Hospital and transferred to 12 AFH on 17.03.2016 being a case of

severe pain in mid back with inability to move both lower limbs, numbness below chest and loss of bowel/bladder continence. The applicant was managed conservatively and onward transferred to CH (CC) Lucknow and was evaluated and managed surgically by Neuro Surgeon. He was further transferred to SCIC MH Kirkee for rehabilitation on 27.05.2017.

4. The applicant underwent the disability assessment board and it was opined that he had sustained 100% permanent physical impairment for the said disability **ID- Traumatic Fracture Dislocation DV6-DV-7 with Paraplegia (Optd)**. He was evaluated by the Neuro Surgeon and recommended to be invalided out of service in LMC P5, equivalent to AgGp in the IAF since there was no improvement in the condition of the applicant despite optimum surgical and supportive treatment.

5. The Invaliding Medical Board held solely on medical ground at 9AFH vide AFMSF-16 dated 25.10.2018 found the applicant fit to be invalided out of service in Low Medical Category ApGp for the said disability **ID- Traumatic Fracture Dislocation DV6-DV-7 with Paraplegia (Optd)** but the IMB considered the disability of the applicant as being neither attributable to nor aggravated by military service. In view of the factum that the disability was neither due to

infection nor was sustained during performing any military duty as per the Injury Report dated 16.10.2018 and Para 60 of Chapter VI of the GMO (MPs) 2008. The percentage of disablement was assessed at 100% for lifelong with CAA in terms of Para 35 of Chapter VII of the GMO (MPs) 2008. However, the disability qualifying element for disability pension was NIL. The said IMB was approved by the JDMS(MB) Air HQ RKP dated 18.01.2019.

6. The applicant's claim for the grant of the disability element of pension was rejected vide letter dated 28.02.2019 stating that the disability of the applicant was neither attributable to nor aggravated by military service. The legal notice cum representation/appeal dated 22.03.2019 sent by the applicant was rejected vide the impugned letter dated 09.07.2019 letter no. Air HQ/99798/1945374/DAV/DP/CC stating to the effect that in terms of Rule 153 of the Pension Regulations for the IAF, 1961 (Part-I) the primary conditions for the grant of the disability pension are that the disability must be attributable to or aggravated by military service and that the degree of disablement should be assessed at 20% for more and that in as much as the disability did not fulfill the criteria of being neither attributable to or aggravated by the Air Force service, the applicant is not entitled for the grant of the disability element of pension. The applicant was

also apprised that he could file a first appeal. No such appeal is indicated to have been filed by the applicant. However, taking into account the pendency of the present OA since the date 22.02.2019, from the date of institution, we consider it appropriate to take up the OA for consideration in terms of Section 21(1) of the AFT Act, 2007.

7. In as much as the claim of the applicant is now confined only to seeking the grant of the Invalid Pension, it is essential to observe that the factum that the applicant was invalided out on medical grounds from service from the Indian Air Force service on 25.10.2018 is not refuted as brought forth through the counter affidavit of the respondents themselves.

8. On behalf of the applicant reliance is thus sought to be placed on the Govt. of India MoD letter, Department of Ex-Servicemen Welfare, D(Pension/Policy) No. 12(06)/2019/D(Pen/Pol) dated 16.07.2020, as applicable to all Armed Forces Personnel before completion of 10 years of qualifying service even in cases where they are invalided out of service on account of any bodily or mental infirmity even where so invalided out with less than 10 years of qualifying service with the disability which was Neither Attributable to Nor Aggravated by Military service and which permanently incapacitates them from Military service as well as civil

reemployment. As per this letter though it relates to the Armed Forces Personnel having been in service or being in service on or after 04.01.2019, it is essential to observe that vide order dated 11.03.2022 in OA 368/2021 in the case of *Ex Recruit Chhote Lal Vs UOI & Ors.*, of the AFT(RB), Lucknow, it has been held 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 of the AFT(RB), Lucknow in *Ex Recruit*

Chhote Lal(Supra) in relation to the aspect that the policy pertaining to invalid pension vide letter dated 16.07.2020 cannot discriminate against the personnel of the Armed Forces on the basis of a cut of date of having been in service or being in service on or after 04.01.2019. Thus the applicant in the instant case is entitled to the grant of the invalid pension in terms of letter dated 16.07.2020 read with order dated 11.03.2022 of the OA 368/2021 of the AFT(RB), Lucknow in *Ex Recruit Chhote Lal* (Supra), in as much as the applicant has been invalided out of service after 08 years and 46 days of the regular service (including 58 days of NQP) of service in the Indian Air Force.

9. It is further essential to observe that vide our order dated 07.07.2023 in OA 2240/2019 in *Lt A K Thapa vs UOI & Ors.* of this Tribunal has held that the words in Para 2 of this letter whereby it has been stated that there is requirement for the grant of invalid pension even to a person with less than 10 years of qualifying service even where the bodily or mentally infirmity is neither attributable to nor aggravated by military *service of a permanent incapacitation from military service as well as civilian employment, it has been held by us that the requirement of permanent incapacitation from civilian employment in this MoD letter in clause 2 thereof is wholly unconstitutional* and we find no reason to differ from our view in OA

2240/2019 in view of our observations vide paras 31, 32, 33 and 34 in OA 2240/2019 wherein it has been observed by us to the effect :-

"31. Further, it cannot be overlooked that the United Nations Convention on the Rights of Persons with Disabilities adopted by the United Nations General Assembly on 13.12.2006, lays down the following principles for empowerment of persons with disabilities:-

- (a) respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;*
- (b) non-discrimination;*
- (c) full and effective participation and inclusion in society;*
- (d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;*
- (e) equality of opportunity;*
- (g) equality between men and women;*
- (h) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities;*

AND WHEREAS India is a signatory to the said Convention;

AND WHEREAS India ratified the said Convention on the 1st day of October, 2007;

AND WHEREAS it is considered necessary to implement the Convention aforesaid.

India ratified this convention on 01.01.2007 and through its Parliament in the Sixty-Seventh year of the Republic of India enacted **The Rights of Persons with Disabilities Act, 2016** which has been given effect to 19.04.2017, to give effect to the United Nations Convention on the Rights of Persons with Disabilities and for matters connected therewith or incidental thereto.

32. As held by the Hon'ble Supreme Court in **Vishaka & Ors. vs State of Rajasthan** vide verdict dated 13.08.1997 and vide verdict dated 14.10.2003 by the High Court of Delhi in **Neelam Katara & Ors. ILR(2003) II DELHI 377**, it has been laid down specifically to the effect that in view of Section-2(d) of the Protection of Human Rights Act, 1993 thereof which provides to the effect that human rights means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodying in the International conventions are enforceable by Courts in India, unless expressly ousted by any enactment by India, international covenants not inconsistent with the fundamental rights and the harmony with its spirit, may be read into the municipal law. In **Vishaka & Ors. Vs.**

State of Rajasthan & Ors. vide order dated 13.08.1997, the Hon'ble

Supreme Court it has been observed to the effect:-

"The meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to compass all the facets of gender equality including prevention of sexual harassment or abuse. Independence of Judiciary forms a part of our constitutional scheme. The international conventions and norms are to be read into them in the absence of enacted domestic law occupying the fields when there is no inconsistency between them. It is now an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic law. The High Court of Australia in Minister for Immigration and Ethnic Affairs vs. Tech. 128 ALR 535, has recognised the concept of legitimate expectation of its observance in the absence of contrary legislative provision, even in the absence of a Bill of Rights in the Constitution of Australia.

In Nilabati Behera vs. State of Orissa 1993 (2) SCC 746, a provision in the ICCPR was referred to support the view taken that an enforceable right to compensation is not alien to the concept of enforcement of a guaranteed right', as a public law remedy under Article 32, distinct from the private law remedy in torts. There is no reason why these international conventions and norms cannot, therefore, be used for construing the fundamental rights expressly guaranteed in the Constitution of India which embody the basic concept of gender equality in all spheres of human activity.

In view of the above, and the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at work places, we lay down the guidelines and

norms specified hereinafter for due observance at all work places or other institutions, until a legislation is enacted for the purpose. This is done in exercise of the power available under Article 32 of the Constitution for enforcement of the fundamental rights and it is further emphasised that this would be treated as the law declared by this Court under Article 141 of the Constitution.

Accordingly, we direct that the above guidelines and norms would be strictly observed in all work places for the preservation and enforcement of the right to gender equality of the working women. These directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field. These Writ Petitions are disposed of, accordingly."

As held by the High Court of Delhi in the case of Neelam Katara Vs UOI, ILR(2003) II Delhi 377 Division Bench dated 14.10.2003, vide Para-11 has been laid down to the effect:-

"11. The Hon'ble Supreme Court in the judgment Vishaka Vs. State of Rajasthan reported as 1997(6) SCC 241 observed that in the absence of domestic law occupying the field, any international convention not inconsistent with the fundamental rights and the harmony with its spirit may be read into the municipal law."

coupled with The Rights of Persons with Disabilities Act, 2016 in force w.e.f. 19.04.2017 in India which vide clause-2(s) thereof describes the persons with disabilities as under:-

"(s) "persons with disability" means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others",

33. *The Preamble to this Act states to the effect:-*

“ An Act to give effect to the United Nations Convention on the Rights of Persons with Disabilities and for matters connected therewith or incidental thereto.”,

and thus the MoD letter which requires a permanent incapacitation for Civil Re-employment ‘as well’, for grant of invalid pension even in cases of bodily or mentally infirmity due to which the Armed Forces personnel has been invalided out from service,- is in total violation of the Right to Equality and life to live with dignity and respect, in terms of Section-3(1) of the Rights of Persons with Disabilities Act, 2016, as also Section-3(2) thereof which provide that the appropriate government shall takes steps to utilize the capacity of persons with disabilities by providing appropriate environment. Furthermore, Section-3(3) of this Act is to the effect:-

“No person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim.”

There is nothing that is brought forth through the MoD letter dated 16.07.2020 which requires a permanent incapacitation from Civil re-employment for the grant of Invalid Pension to show that the said policy through the MoD letter 16.07.2020 is a proportionate means of

achieving a legitimate aim. As has already been observed by us herein above, the letter dated 16.07.2020, which requires a permanent incapacitation from Civil re-employment for grant of Invalid pension is an overreach over the judgment of the Hon'ble Supreme Court in **Sukhvinder Singh(Supra)**.

34. Significantly, Section-3(4) of this enactment further stipulates that no person shall be deprived of his or her personal liberty only on the ground of disability. As has been observed by us herein above, as laid down by the Hon'ble Supreme Court, personal liberty in terms of Article-21 of the Constitution of India includes within it as an integral facet thereof, the Right to Livelihood. That the applicant herein is entitled to the grant of invalid pension from the date of invalidment is brought forth in terms of the verdict of the Hon'ble Supreme Court in **Balbir Singh Vs UOI & Ors., Civil Appeal , no. 3086/2016**. The provision that was considered therein was Regulation -186 of the Pension Regulations for the Army, 1961. The analogous provisions in relation thereto for the Indian Navy is the Section-101 of the Pension Regulations for the Navy, 1964 which reads to the effect:-

"Conditions for the grant of disability pension. Unless otherwise specifically provided, a disability pension may be granted to a person who is invalided from service on account of a disability which is attributable to or aggravated by service and is assessed at twenty per cent, or over.

Explanation. (1) The question whether a disability is attributable to or aggravated by service shall be determined in accordance with the rules contained in Appendix V to these regulations.

Explanation. (2) Service rendered in aid of the civil power shall be treated as service in the Indian Navy for the purpose of this regulation”.

Thus we hold that the words in clause 2 of the MoD letter dated 16.07.2020 which requires a permanent incapacity for Civil Re-employment as well – i.e. which states ‘Permanently incapacitates them from the military service as well as Civil re-employment’ for the receipt of Invalid Pension to be wholly unconstitutional qua the requirement of permanent incapacitation for civil re-employment, for invalid pension being also 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 and the said words in the clause(2) of the MoD Letter dated 16.07.2020 for grant of invalid pension by the Armed Forces personnel being wholly unconstitutional and unreasonable and not based on any intelligible differentia nor any reasonable classification are thus set aside, i.e. the words in the MoD letter dated 16.07.2020 for grant of invalid pension, which requires the permanent

incapacitation of the personnel of the Armed Forces 'as well' as from Civil Re-employment for grant of Invalid pension in cases where the Armed Forces on account of any bodily or mental infirmity even though it be Neither Attributable to nor Aggravated by Military Service are invalidated out to be unconstitutional and the same is thus set aside."

CONCLUSION


10. The disablement of the applicant in the instant case being **Traumatic Fracture Dislocation DV6-DV-7 with Paraplegia (Optd)** with the disablement percentage being 100% + CAA in terms of Para 35 of Chapter VII of the GMO (Military Pensions) 2008, the applicant is also held entitled to the grant of Constant Attendant Allowance from the date of discharge in addition to the grant of the Invalid Pension from the date of invalidment in terms of the MoD letter dated 16.07.2020 and the order in OA 368/2021 of the AFT(RB), Lucknow in *Ex Recruit Chhote Lal* (Supra), the order of this Tribunal in OA 2240/2019 in *Lt A K Thapa* (Supra) and in view of the verdict of the Hon'ble Supreme Court *Balbir Singh Vs UOI & Ors.*, Civil Appeal no. 3086/2016.

11. The respondents are thus directed to calculate, sanction and issue the necessary PPO to the applicant for the grant of invalid

and also CAA allowance
pension as per rules from the date of invalidment 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 *2* day of January, 2024.


[REAR ADMIRAL DHIREN VIG]
MEMBER (A)


[JUSTICE ANU MALHOTRA]
MEMBER (J)

/yogita/