

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

A..

OA 1831/2017 with MA 1373/2017

Ex Sep Giriraj Sharma

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Mr. S M Dalal, Advocate

For Respondents : Dr. Vijendra Singh Mahndiyan, Advocate

CORAM

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

HON'BLE LT GEN P.M.HARIZ, MEMBER (A)

ORDER

15.01.2024

Vide our detailed order of even date; we have allowed the OA 1831/2017. 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 P.M.HARIZ)  
MEMBER (A)

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**... Respondents**

**For Applicant : Mr. S.M. Dalal, Advocate**

**For Respondents : Mr. V.S. Mahndiyar, Advocate**

**CORAM :**

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

**HON'BLE LT GEN. P.M. HARIZ, MEMBER (A)**

**ORDER**

1. The applicant vide the present O.A 1831/2017 has made the following prayers:-

*“(a) Quash the impugned order dated 30 Jun 2016 passed by Respondent No. 3 being bad in law.*

*(b) Set aside opinion of the Invaliding Medical Board qua attributability aspect being arbitrary.*

*(c) Set aside recommendation of CO 14 Rajput and direction of Cdr 164 Mtn Bde being devoid of reasons.*

*(d) Declare that the injury sustained by the applicant is attributable to military service.*

*(e) Direct the respondents to pay disability pension to the applicant @100% with further direction to pay interest over the arrears w.e.f. 18 Aug 1995.*

*(f) Pass any other or further order(s) which this Hon'ble Tribunal considers appropriate in the facts and circumstances of this case.”*

2. During the course of submissions made on 18.12.2023 on behalf of the applicant, it was submitted that the prayer made through

the present OA is confined to seeking the grant of invalid pension alone.

3. The applicant Ex Sep Giriraj Sharma no. 2900441-X, was enrolled in the Indian Army on 28.06.1990 and was discharged from service on 17.08.1995 under Army Rule 13(3)III(iii) read in conjunction with Army Rule 13(2A), before fulfilling the conditions of enrolment in low Medical Category EEE(P) due to disability Fract D12 L-1(Optd) with traumatic paraplegia after rendering only five years one month and 19 days of Military Service. As per the RMB the Applicant's disability was held as NANA by the competent Authority. The percentage of disability was held 100% for a period of two years in as much as the injury sustained by the applicant was on 12.03.1994 whilst he was on annual leave in his home when he fell down in the washroom. The disability pension claim was rejected by the PCDA(P), Allahabad in view of the opinion of the medical enquiry which held that the injury sustained by the applicant was not in pursuance to any military duty. The appeal dated nil dated 21.02.1997 against rejection of the disability pension claim was also rejected vide letter dated 27.06.2001 observing to the effect that the disability had no causal relationship with military service.

4. The records reveal unrefutedly as per the impugned letter no.

2990441/DP/PG dated 30.06.2016 which states to the effect:-

*"2. As per your service documents you were enrolled in Army on 28 Jun 1990 and **invalided out from service wef 17 Aug 1995** on account of disability FRACTURE D-12 L-1 WITH TRAUMATIC PARAPLEGIA Your claim for grant of disability pension was rejected vide PCDA (P) Allahabad letter No G3/63/42/6-96 dt 15 Jan 1997 as your disability was assessed by them as neither attributable to nor aggravated by military service. You were granted Rs. 5076/- on account of Invalid gratuity and Rs. 9998/- on account of DCRG by the PCDA(P) Allahabad which was paid to you."*

indicating thereby that the applicant had been invalided out of service on account of the disability of Fracture D-12 L-1 with Traumatic Paraplegia.

5. On a consideration of the submissions that have been made on behalf of either side, it is essential to observe that it has been laid down by the Hon'ble Supreme Court in Civil Appeal no. 5605/2010 in the case of *Sukhvinder Singh Vs UOI & Ors.* vide observations in Para-9 thereof to the effect:-

*"We are of the persuasion, therefore, that firstly, 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 Forces; 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 Forces requires absolute and undiluted protection and if an 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 invaliding 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 the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension."-*

6. Regulation-197 of the Pension Regulations for the Army, 1961

provides to the effect:-

*"Invalid pension/gratuity shall be admissible in accordance with the Regulations in the 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 retire/discharged from service for lack of alternative employment compatible with his low medical category."-*

and thus the applicant is entitled in terms thereof to the grant of Invalid pension.

7. 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 observe that the letter dated 16.07.2020 reads to the effect:-

***"Sub: Provision of Invalid Pension to Armed Forces Personnel before completion of 10 years of qualifying service-reg.***

***Sir,***

***Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Pension & Pensioners' Welfare vide their O.M. No. 21/01/2016-P&PW(F) dated 12 ^ (1h) 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 - P8.PW(F) dated 04.01.2019.***

***2. The proposal to extend the provisions of Department of Pension & Pensioners' Welfare O.M. No. 21/1 / 2016 \* P 8.PW(F) dated 12, 2.2019 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 who 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(8) / 2016 / F \* IN / P \* EN dated 29.06.2020.*

*7. Hindi version will follow."*

Though vide clause(4) of this letter it was stipulated to the effect that the provisions of this letter shall apply to those Armed Forces Personnel who were and in service on after 04.01.2019. The applicant in the instant case was invalided out on 17.08.1995. 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."*

Thus the requirement of a period of 10 years of service as a necessary factor for grant of invalid pension stands obliterated vide the order dated 11.03.2022 in *Ex Rect Chhote Lal*(Supra).

8. 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 invalidated out is presumed to have been so invalidated 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 invalidated 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."*

9. The applicant in the instant case thus cannot be deprived of the grant of Invalid Pension on an imaginary claim that he is not disabled and thus the applicant is clearly entitled to the grant of Invalid Pension. Further vide order dated 25.09.2023 in OA 517/2021 in *Ex Sep Narayan Singh Vs. UOI & Ors.* and as vide Para-16 thereof, it has been held 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."*

However, in as much as the disability that the applicant suffers from *FRACTURE D-12 L-1 WITH TRAUMATIC PARAPLEGIA* of 100% disablement and the clause-6 of the RMB dated 12.07.1995 adverted to herein above, categorically reflects that the applicant is in need of

attendant whole time permanently, it is apparent that the disability that the applicant suffers from is of permanent nature and the percentage of probable duration of disablement cannot in the circumstances be confined to a period of two years in view of the verdict of the Hon'ble Supreme Court in Civil Appeal no. 5970/2019 titled as **Commander Rakesh Pande vs UOI & Ors.**, dated on 28.11.2019. The applicant is thus entitled to the grant of Invalid pension from the date of invalidment. However, in as much as the present OA is filed with much delay on 25.10.2017, the grant of the arrears of invalid pension shall commence to run from three years prior to the institution of the present OA, in view of the verdict of the Hon'ble Supreme Court in the case of **UOI & Ors Vs Tarsem Singh 2009(1)AISLJ 371.**

10. Para-6 of Part-III of Opinion of Medical Board reads to the effect:-

***“6. Does the individual require an attendant? If so, (I) Whole or part time. (ii) Permanently or temporarily. (iii) if temporarily, for how long? Yes, whole time permanently.”***

thereby making it apparent that the applicant needs a whole time requisite attendant permanently. Thus, the applicant is also held entitled to the grant of constant attendant allowance w.e.f. 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 for grant of invalid pension as directed herein above with also the grant of the attendant allowance within a period of three months from the date of receipt of copy of this order, to commence from the period of three years prior to the institution of the OA and the amount of arrears shall be paid by the respondents accordingly, failing which the applicant will be entitled to interest @6% p.a. from the date of receipt of a copy of the order by the respondents.

Pronounced in the open Court on the 15 day of January, 2024.

**[LT GEN P.M. HARIZ]**  
**MEMBER (A)**

**[JUSTICE ANU MALHOTRA]**  
**MEMBER (J)**

/TS/