

COURT NO. 2, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA No. 2179/2019

Ex Gnr Vivek Pal

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. V.S. Kadian, Advocate

For Respondents : Ms. Barkha Babbar, Advocate

CORAM :

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

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

ORDER

1. The applicant vide the present O.A 2179/2019 has made the following prayers:-

“(a) Quash and set aside impugned letter No. AAD/14357565Y/CC-1457/14/PG(LC) dated 04. 10. 2019. and/or

(b) Direct respondents to treat the disability of the applicant as attributable to/aggravated by military service and grant him disability pension with the benefits of rounding off/broad banding. And/or

(c) Direct respondents to pay Invalid pension or service element of disability pension. And/or call for Resurvey Medical Board.

(c) Direct respondents to pay the due arrears from the date of his invalid medical board out with interest @12% with all the consequential benefits. And/or

(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.”

2. During the course of submissions made on 20.09.2023 on behalf of the applicant, it was submitted that the prayer made through the present OA is confined to seeking grant of invalid pension alone.

3. The unrefuted facts in the instant case through the Counter Affidavit dated 17.03.2021 of the respondents indicate that the applicant Ex Gnr Vivek Pal was enrolled in the Indian Army on 06.05.1981 and was transferred to the pension establishment with effect from 01.06.1989 under item II(iv) of the table annexed to Rule 13(3) of Army Rules 1954 after rendering 08 years and 26 days of service as a non-pensioner. His service and medical documents are stated to have been destroyed by burning after expiry of the mandatory retention period of 25 years and being a non-pensioner in terms of the regulations as submitted by the respondents. However, the basic data/ particulars of service documents are kept recorded in Long Roll and IAFK-1172 as available with the respondents. The applicant has submitted through the OA that his service in the Indian Army was cut short due to the disability of Bronchial Asthma that he suffered whilst performing military duties which disability has to be treated as attributable to/ aggravated by military service. As brought forth through the pleadings on the records, OA 529/2019 was filed by the applicant therein for invalid/ disability pension which was

disposed of vide order dated 11.04.2019 directing the respondents to treat the said OA as an appeal and to dispose of the same within the time stipulated under the Act by a speaking order and to communicate the same to the applicant with liberty granted to the applicant to seek legal recourse as may be available to him as per law if he was not satisfied with the said speaking order.

4. The Army Air Defence Records vide letter No AAD/14357565Y/CC-1457/14/PG(LC) dated 04.10.2019 issued a speaking order to the Applicant in implementation of the AFT Order dated 11.04.2019 passed in Original Application No. 529/2019, stating to the effect that from the annexures enclosed by the applicant to the OA it was found that the applicant was brought before an Invalidment Medical Board at Military Hospital, Roorkee on 16.03.1989 which had assessed the applicant's disability of Bronchial Asthma as neither attributable to nor aggravated by military service with a percentage of disablement with 30-40%(composite) for two years. The applicant disability pension claim was rejected vide letter dated 04.09.1990. It was stated in the letter no. AAD/14357565Y/CC-1457/14/PG-(LC) dated 04.10.2019 which is the letter impugned in the present OA as under:-

*"4. AND WHEREAS It is pertinent to mention here that, as per Para 173 of Pension Regulations for the Army 1961 (Part-I), disability pension is granted to an individual considering of service as well as disability element, who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non battle casualty and is assessed @ 20% or above. From the annexures enclosed with the Original Application, it has been found that you were brought before an Invalidment Medical Board at Military Hospital, Roorkee on 16 Mar 1989. The then medical board assessed your disability 'BRONCHIAL ASTHMA FOR RMB' as neither attributable to nor aggravated by the Military Service with 30-40% (composite) for two years. Accordingly, your disability pension claim was rejected by Medical Advisor (Pension) (MAP), PCDA (Pension) Allahabad vide their letter No G-3/90/1256/11 dated 04 Sep 1990. Hence, you are not entitled for disability pension.
5. AND IN PURSUANCE WHEREOF order dated 11 Apr 2019 passed by the Hon'ble AFT (PB) New Delhi in OA No 529/2019 stands complied with."*

5. The records thus speak eloquently and the applicant's records submitted in the form of Annexure R-2 to the counter affidavit dated 17.03.2021 filed by the respondents indicates clearly that the applicant was in medical category BEE(P) w.e.f. 08.09.1988 and was discharged on 31.05.1989 after rendering service of 8 years and 26 days without any punishment of any kind imposed on him. The particulars of non-effective documents qua JCOs/or Destroyed as submitted in Annexure R-2 qua the applicant read as scanned to the effect:-

Annexure R-2
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In lieu of IAFK-1172

PARTICULARS OF NON-EFFECTIVE DOCUMENT: JCO/QR DESTROYED

1. Army No. 143575654 last Rk held/ trade Sgt Name Yivek Pal
2. Date of enrolment 06/05/1981 3. Age on en/dt of birth 11/12/1961
4. Enrolment at Siliguri 5. Father's Name MOHAR PAL SINGH
6. Religious/Class Hindu O/C Rajoda 7. Address:- Vill PILKHANA
PO PILKHANA TO DIBAI
Teh ANUP SHAR Thana NARQORA
Dist BULADSHAR State UP PIN
8. Details of former service NA Yrs Days (if any)
9. Details of medals/ Decorations dt vide PTO No
10. Med cat at the time of disch BEE (P) wof 8/9/1988
11. Date of SOS: 01/06/1989
(a) Disch 31/05/1989 (b) Death (c) Desertion wof
12. Cause of Disch :- Tfr to pen cat on fulfilling conditions of his enrolment under AR-13, Item
13. Details of punishment :-
(a) Red Ink entries (b) Black Ink entries
14. Details of NQS
15. Kindred Roll :-
(a) Wife CHENDER PRABHA (DOB 05/10/1963) (b) Mother BHAGWATI
(c) Son(s) Atul Kumar 03/10/1986 (d) Daughter (a) Priya Kumari 23/2/1982
16. Unit served (last) 511 ADM S/L-Rmt
17. Dt of issue of disch cert 31/05/1989 18. Character at the time of disch Exemplary
19. Detail of all terminal benefits
(a) FSA 487.00 (b) ADFE Fund 4450.00
(c) (d)
20. Details of last pay/drawn R 250 Basic RS 10.00 RS
21. Details of pension/First PPO rate & DPDO etc (a) PPO No
22. Total Service 8 yrs and 26 days

Sig of task ell Sd/ Sig of Sec Supdt Sd/
Sig of sec Off Sd/ Linked to long roll and short roll
Destroyed on 21 Nov 18

Note: In case of desertion, details will be correctly filled up giving date of desertion and date of dismissal etc.

6. In terms of Para-132 of Pension Regulations for the Army, 1961(Part-1), which states to the effect:-

"Para 132: Minimum Qualifying Service for Pension
The minimum period of qualifying service(without weightage) actually rendered and required for earning service pension shall be 15 years.

Unless otherwise provided for, the minimum qualifying colour service for earning a service pension is 15 years.”,

as the applicant had rendered only 8 years and 26 days of qualifying service, he was not granted any service pension.

7. The applicant has further placed reliance on the Govt. of India, Ministry of Defence letter no. 12(06)/2019/D(Pen/Pol) dated 16.07.2020, to submit to the effect that thereby personnel of the Armed Forces with less than 10 years of qualifying service who had been invalided out of service on account of any bodily or mental infirmity which was neither attributable to nor aggravated by military service and which permanently incapacitates them from military service as well as civil re-employment, have been entitled to the grant of the Invalid Pension. Reliance was placed on behalf of the applicant on the order dated 06.12.2018 in OA 1051/2016 in the case of ***Ex Sep Bhagat Singh Vs UOI & Ors.***, of the AFT(PB), New Delhi to submit to the effect that the applicant having been invalided out of service, he cannot be denied the benefit of the invalid pension on the ground of non-qualifying length of minimum service for pension. Inter alia, the applicant placed reliance on the verdict of the Hon'ble Supreme Court in ***UOI & Ors. Vs Ex Gnr Sinchetty Satyanarayan & 42 others*** in

SLP No. 20868 of 2009, decided on 23.02.2012, wherein it has been observed to the effect:-

“the issue regarding grant of service element to those invalided out prior to 1973 with less than minimum qualifying service for pension as prescribed from time to time, has been considered in the Ministry and with the approval of Hon’ble RM it has been decided to grant the benefit of “Service Element” to all pre-1973 cases w.e.f. 01.01.1973.”

8. It was thus submitted on behalf of the applicant that in terms of Regulation-197 of the Pension Regulations for the Army 1961 which reads 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.”,*

the applicant is entitled to the grant of Invalid Pension for the condition of 10 years of service for grant of invalid pension for those who were invalided out of service, has since been waived. Reliance was also placed on behalf of the applicant on the verdict of the Hon’ble Supreme Court in *Ex Rect Mithlesh Kumar Vs UOI & Ors.*,

in Civil Appeal no. 16438-16440/2017 to contend to similar effect that he is entitled to the grant of Invalid pension. Reliance was also placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in *Sukhvinder Singh Vs. UOI & Ors.*, (2014) FLR 629, with reference to observations to Para-9 thereof, which reads 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.",-

to submit to the effect that the applicant is thus entitled to the grant of Invalid pension.

9. The respondents have submitted to the effect that the instant OA has been filed after much delay and ought to be dismissed on the grounds of delay and laches. Inter alia, the respondents submit that as

per the Govt. of India, Ministry of Defence letter dated 16.07.2020, as per provisions of the said letter in relation to the grant of the Invalid Pension to Armed Forces Personnel invalided out with less than 10 years of qualifying service on the ground of invalid pension even where his disabilities both bodily and mental were Neither Attributable to Nor Aggravated by military service, takes effect from 04.01.2019 and is applicable only where the disability for which the Armed Forces Personnel has been invalided out of military service, which permanently incapacitates the Armed Forces Personnel from military service as well as civil re-employment and that the provisions of the said letter apply to Armed Forces are applicable to those who were in service on or after 04.01.2019. The respondents thus submit that reliance placed on behalf of the applicant on the letter no. 12(06)/2019/D(Pen/Pol) dated 16.07.2020 issued by the Ministry of Defence, does not in any manner aid the applicant. Inter alia, the applicant has placed on record, letter dated 20.12.1989 issued from the office of the Chief CDA Pensions, Allahabad to the applicant which shows that the applicant suffered from the disability of Bronchial Asthma and had been invalided out for the same and had been granted invalid gratuity. In as much as that the applicant seeks only grant of invalid pension which is based on a continuing wrong and thus, as laid

down by the Hon'ble Supreme Court in *UOI & Ors. Vs. Tarsem Singh* reported in 2008(8) SCC 648, despite the long delay in seeking the remedy with reference to the date on which the continuing wrong commenced, which if such wrong creates a continuing source of injury, and where the relief sought does not affect the rights of the third parties, the delay in seeking such relief in relation to a continuing wrong may be granted, though the courts are to restrict the consequential relief relating to arrears normally for a period of three years, prior to the date of the filing of the application,- which cannot be overlooked. As has already been observed by us herein above, the factum that the applicant was invalided out of military service on 01.06.1989 due to the disability of Bronchial Asthma is brought forth through the record.

10. In terms of Regulation 197 of the Pension Regulations for the Army, 1961, the person invalided out on medical grounds is entitled to the grant of Invalid pension, as has been observed in the case of *Ex Sep Bhagat Singh*(supra) in OA 1051/2016 in relation to Armed Forces Personnel who had been invalided out prior to 1973 with less than qualifying service of 10 years, the benefit of service element to all pre-1973 w.e.f. 01.01.1973, has been accorded. Furthermore, even in terms of the Govt. of India, Ministry of Defence letter no.

12(06)/2019/D(Pen/Pol) dated 16.07.2020, wherein it is provided to the effect:-

"2. The proposal to extend the provisions of Department of Pension & Pensioners Welfare O.M. No. 21/01/2016-P&PW(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 re-employment."

11. In terms of the said letter dated 16.07.2020, the grant of Invalid pension 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, even where it is Neither Attributable to Nor Aggravated by Military Service has been made admissible, though it has been made admissible where the said disability which permanently incapacitates the Armed Forces Personnel from military service also permanently incapacitates the said armed forces personnel as well from civil re-employment, and the provisions of the said letter apply to Armed Forces Personnel who were/are in service on or after 04.01.2019. In relation to the said aspect, 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.

12. 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. In these circumstances, the applicant who was invalided out of service on 01.06.1989 due to the disability of Bronchial Asthma after a period of 08 years and 26 days is held entitled to the grant of Invalid pension for life from the date of invalidment from service.

CONCLUSION

14. The applicant is thus entitled to the grant of Invalid pension with effect from the date of invalidment of service, in view of the verdict of the Hon'ble Supreme Court in *Balbir Singh & Ors.* in Civil Appeal No. 3086/2012 vide verdict dated 08.03.2016, the arrears of

Invalid pension however in the circumstance of the instant case, shall be confined to commence ^{to run from a} for a period of three years prior to the institution of the present OA i.e. 21.11.2019, in view of the verdict of the Hon'ble Supreme Court in the case of **Tarsem Singh** (Supra)

15. 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, 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 3rd day of January, 2024.

~~[REAR ADMIRAL DEVI RAN VIG]~~
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/TS/