

COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA No. 2326/2019

Ex Rect Kalicharan

..... Applicant

Versus

Union of India & Others

..... Respondents

For Applicant : Mr. Ved Prakash, Advocate

For Respondents : Mr. V.S. Tomar, Advocate

CORAM:

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

1. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 are read as under:

"It is therefore humbly prayed that this Hon'ble Tribunal may graciously be pleased to: -

(a) Quash the Impugned Orders No. B/40502/1463/06/AG/PS- 4(Imp-II) dated 22.03.2007 und No. C/6945583/Pen/Dis-III dated 13.04.2006

(b) Direct the respondents to grant disability pension to the Applicant duly round off to 50% w.e.f. his date of discharge.

OR

Direct the respondents to grant Invalid Pension to the applicant w.e.f. his date of discharge.

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(c) Direct respondents to pay the due arrears of disability 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 favor of the applicant and against the respondents."

2. Although the applicant, through this OA, sought for the grant of the disability pension, however, during the course of hearing, the learned counsel for the applicant sought to confine the prayer made in the OA for seeking the grant of invalid pension only. Thus, the present case is being considered qua the prayer for the grant of invalid pension only.

BRIEF FACTS

3. The applicant was enrolled in the Army Ordnance Corps of the Indian Army on 20.01.2003 and was invalided out from service w.e.f. 09.08.2003 under Army Rule 13 (3) (iv) having been found medically unfit in the Lower Medical Category (LMC) S1H1A1P5E1 for the disability of **ORAL SUBMUCOUS FIBROSIS.**

4. As per the IMB vide AFMSF-16, dated 09.07.2003, the applicant was diagnosed with the disability of **ORAL SUBMUCOUS FIBROSIS.** The disability assessed at the time of invalidment of the applicant have been recommended as neither attributable to nor aggravated by the military service and also not connected to the military service. The percentage of



the disablement of the applicant had been assessed at @ 6-10% for life by the IMB proceedings.

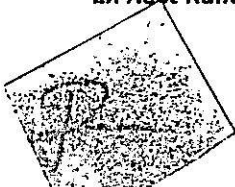
5. The first appeal dated 08.06.2006 and second appeal dated 07.06.2007 were rejected by the respondents vide their letters dated 22.03.2007 and 28.08.2008 respectively, in terms of Regulation 173 of Pension Regulations for Army, 1961, Part – 1 *i.e.*, neither attributable to nor aggravated by military service.

6. Aggrieved by the decision of the respondents, the applicant has filed the instant OA. In the interest of justice, in accordance with Section 21(1) of the AFT Act, we take up the present OA.

CONTENTIONS OF THE PARTIES

7. The learned counsel for the applicant submitted that the applicant was enrolled in the Indian Army in the AOC on 20.01.2003 and was invalided out from service in LMC on 09.08.2003 after rendering more than 06 months of service.

8. The learned counsel for the applicant had placed reliance on the judgement of the Hon'ble Supreme Court in the case of *Dharamvir Singh Vs. Union of India and Ors.* [2013 (7) SCC 36], that after thorough medical examination the applicant was enrolled into military service and there was no note of any disability recorded in his service records.



Therefore, any disability occurring during the period of his service is deemed to be attributable to or aggravated by military service.

9. The learned counsel for the applicant also placed reliance on the judgment of the Hon'ble Supreme Court in UOI v. Rajbir Singh (Civil Appeal No. 2904/2011) whereby it was held that the disability must be presumed to have been arisen in the course of service which must, in the absence of any reason recorded by the Medical Board, be presumed to have been attributable to or aggravated by military service. The learned counsel submitted that there is admittedly neither any note in the service records of respondents at the time of the applicant's entry into service nor have any reasons been recorded by the Medical Board to suggest that the disease which the applicant was found to be suffering from could not have been detected at the time of his entry into service.

10. The learned counsel for the applicant had also placed reliance on the verdict of the Hon'ble Supreme Court in the case of Sukhvinder Singh Vs. Union of India (2014 STPL (WEB) 468 SC) decided on 25.06.2014, wherein it was observed as under:

"....

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.

....”

11. *Per contra*, the learned counsel for the respondents submitted that as per Regulation 173 of Pension Regulation for the Army, 1961, Part-I, “*Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual 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 at 20% or over.*” However, in the instant case, the disability of the applicant ORAL SUBMUCOUS FIBROSIS was considered as neither attributable to nor aggravated by military service and the disability was

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assessed at @ 6-10% which is less than 20%. Thus, the applicant is not entitled for disability pension.

ANALYSIS

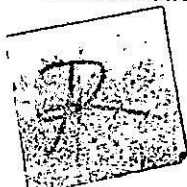
12. On the careful perusal of the material available on record and also the submissions made on behalf of the parties, we are of the view that it is not in dispute that the applicant was invalided out on medical ground from service on 09.08.2023. in LMC SIH1A1P5E1 due to the disability 'Oral Submucous Fibrosis' which was assessed by the IMB at @ 6-10% for life being NANA.

13. After perusal of the records produced before us and arguments advanced by either side, we hold that the applicant is entitled to invalid pension, as the applicant was enrolled in the Army on 20.01.2003 and was invalided out from service on 09.08.2003 i.e., after rendering more than 06 months of service, which in our view is deemed invaliding from service. In this regard, reliance is placed upon Rule 197 of the Pension Regulation for the Army, 1961 which is reproduced herein below:

“ 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.”

14. Lest it be contended that the applicant being invalided out after serving 06 months, however may not be eligible for getting the invalid pension as per Rule 198 of the Pension Regulation for the Army, 1961, which 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 apposite to mention the order of the Armed Forces Tribunal (Regional Bench) Lucknow in *Ex. Recruit. Chhote Lal Vs. Union Of India & Ors.* in OA No.368 of 2021, wherein the MoD letter No. 12(06)/2019/D(Pen-Pol) dated 16.07.2020 has been examined in detail. The said MoD letter is reproduced below:

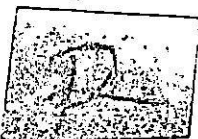
“Subject: Provision of Invalid Pension to Armed Forces Personnel before completion of 10 years of qualifying service- Reg.

Sir,

1. Government of India, Ministry of Personnel, Public Grievances & pensions, Department of Pension &

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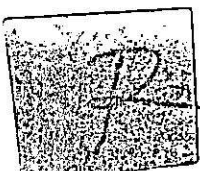


Pensioners, Welfare vide their O.M 21/01/2016-P&PW(F) dated 12th February 2019 has provided that a government servant, who retires from service on account of any bodily or mental infirmity which permanently incapacitates him from the service before completing qualifying service of ten years, may also 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 invalidated 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 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 invalidated out from service before 04.01.2019 will not be re-opened.



5. All other terms and conditions shall remain unchanged.

The AFT, Regional Bench, Lucknow Bench while disposing off the OA No. 368 of 2021 has examined Para 4 of the MoD letter dated 16.07.2020 and has held the said Para 4 of the letter as unconstitutional on the grounds that:

“ 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 04.01.2020. There cannot be any difference on the ground of invalidment as both in the cases of personnel invalided out before and after 04.01.2020, they faced the similar consequences. In fact, the persons who have retired prior to 04.01.2020 have faced more difficulties as compared to the persons invalided out on or after 04.01.2020. 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 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 vires 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.

....."

15. To this effect, reliance is also placed on para 27 of the order of Lt. A.K. Thapa v. Union of India & Ors. in OA 2240/2019, Para 27 reads as under: -

Constitution of India, which is in Part-III
of the Fundamental Rights with the sub heading

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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.

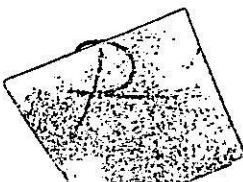
Article 21 of the Constitution of India lays down to the effect: -

"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."

CONCLUSION

16. We find no reason to differ from the law laid down in **Chhote Lal (supra)** and in **A.K. Thapa (supra)**, and we are therefore of the considered view that the applicant was deemed to be invalided out of service on account of the said disability as the applicant rendered more than 06 months of service and was invalided out before completing his term of initial engagement. Therefore, the applicant is held entitled to invalid pension, despite the fact that he had not completed the qualifying length of service of ten years.

17. 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.

18. MA, if any, stands disposed of accordingly.

Pronounced in the open Court on this 19th day of November, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL ~~DHIREN VIG~~]
MEMBER (A)

/PRGz/