

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

99.

**OA 2370/2024 with MA 2817/2024**

<b>CFN Kali Ram (Rtd)</b>	.....	<b>Applicant</b>
<b>Versus</b>		
<b>Union of India &amp; Ors.</b>	.....	<b>Respondents</b>
<b>For Applicant</b>	:	Mr. Manoj Kr Gupta, Advocate
<b>For Respondents</b>	:	Mr. R.S. Chhillar, Advocate

**CORAM**

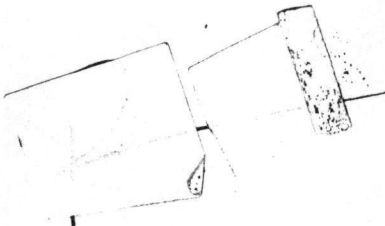
**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON  
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)**

**ORDER  
18.12.2024**

**MA 2817/2024**

Keeping in view the averments made in the application and in the light of the decision in **Union of India and others** Vs. **Tarsem Singh** [(2008) 8 SCC 648), the delay in filing the OA is condoned.

2. MA stands disposed of.



**OA 2370/2024**

3. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed the present OA.

4. At the outset, inviting our attention to the counter affidavit filed by the respondents, learned counsel for the applicant, Shri Manoj Gupta informs us that taking note of the averments made in the counter affidavit, the applicant would be satisfied in case the prayer made by him in para 8(b) is granted and he would not press for grant of any other prayer. The same reads as under:-

*"8(b) Call for the complete medical record including Invaldi or RMB proceedings and set aside the findings upto the extent it denies grant of DE and issue an order or direction of appropriate nature to grant Disability Element of pension for life as per Law laid down by the Hon'ble Supreme Court in Cdr Rakesh Pandey CA/5970/2019, considering MoD letter dt. 07 Feb 2001 (Annex-A3)."*

5. The brief facts of the case are that the applicant was enrolled in the Indian Army on 28.03.1972, in SHAPE-1, and subsequently develop a disease i.e. 'Neorosis (300)' in the year 1979-1980 while posted to tough terrain due to cumulative effect of service stressor after completion of 08 years 03 months of service. The Invaldiment

Medical Board assessed the percentage of disability of Neurosis (300) at @ 30% for two years. Thereafter, on 01.08.1980 (A/N), the applicant was discharged out from service under the Army Rule 13(3) item III(iii).

6. The initial claim of the applicant for the disability pension was rejected by PCDA(P), Prayagraj vide their letter No.G3/80/6487/IX/46 dated 06.11.1980 and the decision was communicated to the applicant vide letter dated 28.11.1980 with an advice to prefer an appeal against the rejection of his disability pension claim within six months from 06.11.1980. The applicant submitted appeal dated 21.04.1981 which was sent to PCDA(P) Allahabad. The said appeal was rejected vide letter dated 30.08.1982 again with an advice that in case the applicant is not satisfied, he may prefer 2<sup>nd</sup> appeal within six months from the date of receipt of ibid letter. However, the applicant did not prefer final appeal.

7. The applicant submitted another representation to the respondents seeking invalid pension on 22.03.2024 which was rejected by the respondents vide the impugned letter dated

02.05.2024 stating that "...as per directions of IHQ of MoD(Army) on the subject issue vide their letter No ESW, D(Pension/Policy) Note No 1(3)/2008-D (Pen/Pol) dated 17 May 2016, the delay cases/appeals beyond 05 years will not be processed/entertained by IHQ of MoD(Army)". Hence, this OA.

8. Placing 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], learned counsel for applicant argues 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. It is further contended that he served in the Army at various places in different environmental and service conditions in his service; therefore, any disability occurring during the period of his service is deemed to be attributable to or aggravated by military service.

9. *Per contra*, learned counsel for the respondents submits that as per para 173 of Pension Regulations for the Army, 1961, Part-I and Para 81 of Pension Regulations for the Army 2008 (Part-I), the primary condition for grant of disability pension is unless otherwise

specifically provided, a disability pension may be granted to an individual who is invalided out from service on account of a disability which is attributable to or aggravated by military service and disability is assessed at 20% or more. In the instant case, percentage of disability of the applicant has been assessed @30% for two years by Release Medical Board, disability being neither attributable to nor aggravated by military service. Hence, the applicant is not entitled for disability element as stipulated in Pension Regulation for the Army, 1961, (Part-I) and as such, his claim was rejected; thus, the applicant is not entitled for grant of disability pension due to policy constraints.

10. Noting the fact that the issue under consideration herein, i.e. grant of disability pension has already been adjudicated by the Hon'ble Patna High Court, the said order dated 08.08.2000 operates as a *res judicata*, thus barring this Tribunal to adjudicate on the aforesaid issue.

11. Noting the aforesaid, during the course of submissions at the time of final hearing, learned counsel for the applicant very fairly made an alternate oral prayer for grant of Invalid Pension to the

applicant. Keeping in view that the applicant in the instant case was cut short due to non-availability of sheltered appointment and he was discharged from service prior to completion of his terms of engagement, therefore, his case should be treated as a case of 'Deemed Invalidation' in terms of Para 9 of the Supreme Court's judgment in the case of **Sukhvinder Singh Vs Union of India & Ors.** which finds its affirmation in Pension Regulations for Army, 2008 (Part-I).

12. In view of the above, we find that the mandatory requirement of minimum 10 years service for grant of invalid pension has been dispensed with vide Govt. of India, Ministry of Defence letter No.12(06)/2019/D(Pen/Pol) dated 16.07.2020, and subsequently, the stand taken by this Tribunal in the case of **Lt. A.K. Thapa Vs. Union of India & Ors.** (OA No.2240/2019) vide its judgement dated 07.07.2023 and judgement dated 11.03.2022 in the case of **Ex Rect Chhote Lal Vs. Union of India & Ors.** (OA No.368/2021), wherein 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, and the cut-off date for applicability has been held to be 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 and the same has been affirmed by the Hon'ble Punjab and Haryana High Court vide its judgement dated 28.08.2024 in the case of **Union of India and Others** Vs. **Ex AC UT Ravinder Kaushik and Anr** (CWP No.21064/2024), we see no reason not to allow the prayer of the applicant with regard to the grant of invalid pension.

13. Therefore, in our considered view, the OA deserves to be allowed to the extent of the grant of invalid pension.

14. Accordingly, we direct the respondents to grant Invalid Pension to the applicant from the date of invalidment, i.e., 01.08.1980. However, the arrears shall be restricted to three years prior to the date of filing of OA keeping in view the law laid down in the case of **Union of India and others** Vs. **Tarsem Singh** [(2008) 8 SCC 648].

15. Accordingly, the respondents are directed to calculate, sanction and issue necessary PPO to the applicant within four months from the date of receipt of copy of this order failing which the applicant shall be entitled to interest @ 6% per annum till the date of payment.

16. No order as to costs.

**[JUSTICE RAJENDRA MENON]  
CHAIRPERSON**

**[RASIKA CHAUBE]  
MEMBER (A)**

/vb/