

**COURT No.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

OA 307/2016

Ex Rect Deepam Thapa **Applicant**
Versus
Union of India and Ors. **Respondents**

For Applicant : Ms. Archana Ramesh, Advocate
For Respondents : Mr. Arvind Patel, Advocate for R 1-3
Ms. Anjali Vohra, Advocate for R-4

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HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this OA and has made the following prayers:

"(a) Issue directions to the Respondents to grant Disability Pension to the Applicant as quantified in the Release Medical Board in the light of the Judgment of the Hon'ble Supreme Court in Re Dharamvir Singh Versus Union of India dated 02 July 2013 placed herein as Annexure A - 5 as also the Judgment of the Hon'ble Armed Forces Tribunal in Re Naib Subedar Girija Shankar Shukla Versus Union of India in OA No 335/2015 dated 27 Feb 2015 placed herein as Annexure A - 6.

(b) Issue directions to the Respondents to grant the consequential AGIF benefits to the Applicant in the light of the Judgment of the Hon'ble Armed Forces Tribunal, Regional Bench Kolkata in OA No 100/2012 in Re Ex Naik Nabaghana Behera Versus Union of India dated 25 Sep 2013 which is placed herein as Annexure A - 7 as also the Judgment of the Hon'ble Punjab and Haryana High Court in Re Paramjit Singh Versus Union of India dated 12 Feb 2008 which has been upheld by the Hon'ble Supreme Court vide Order dated 04 April 2011 jointly placed herein as Annexure A - 8 (Colly).

(c) Issue directions to grant LPG Agency to the Applicant based on his Disability percentage and the rules of which are placed as Annexure A - 9.



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(d) Pass such other and further orders/directions to the Respondents in the attendant genuine circumstances of the case to meet the ends of justice."

2. The applicant was enrolled in the Indian Army on 03.01.2000. Thereafter, after about seven months of training, the applicant was diagnosed with Seizure (INV) V-71 on 31.07.2000 and on transfer to Command Hospital, Chandimandir, he underwent treatment for one and half month and diagnosed as a case of GENERALIZED TONIC CLONIC SEIZURE. On 16.03.2001, the Invalid Medical Board of the applicant was conducted and the disability of GENERALIZED TONIC CLONIC SEIZURE was assessed @ 15-19% for two years and the same was held as neither attributable to nor aggravated by military service. Thereafter on 28.04.2001, the applicant was invalided out from service under the Army Rule 13(3) item III(iv) on completion of 01 year and 116 days of service.

3. The initial claim of the applicant for the disability pension was rejected by PCDA (P), Allahabad vide their letter No.G-3/75/71/8-2001. Against the said rejection, the applicant preferred a 1st Appeal dated 01.11.2003 but as submitted by the applicant neither any action has been taken nor any reply has been received by him. However, from the counter affidavit it is revealed that vide Army HQ letter No.B/40502/1204/04/AG/PS-4(Imp-II) dated 19.08.2005 (Annexure R-17), the 1st Appeal was got

rejected and the said decision was communicated to the applicant (Annexure R-18). Thereafter, the applicant submitted 2nd Appeal dated 17.12.2005 for disability pension which was also rejected by the Govt. of India, MoD vide their letter No.1(110)/2007/D(Pen-A & AC) dated 23.07.2008. Aggrieved by the rejections, the applicant has approached this Tribunal.

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

5. Per contra, learned counsel for the respondents submits that as per Regulation 173 of Pension Regulations for the Army, 1961, 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 @ 15-19% for two years by Invalid 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.

6. Applying the above parameters to the case at hand, we find no infirmity in the opinion of the Medical Board and are of considered view that the disability GENERALIZED TONIC CLONIC SEIZURE @ 15-19% for two years cannot be attributed to service and hence, the prayer seeking grant of disability pension is not sustainable.

7. However, during the course of submissions 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 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.

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

9. Accordingly, we direct the respondents to grant invalid pension to the applicant from the date of invalidment, i.e., 28.04.2001. 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].

10. 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.

11. No order as to costs.

12. Pending miscellaneous application(s), if any, stands closed.

Pronounced in open Court on this 11th day of November, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

(LT GEN C.P. MOHANTY)
MEMBER (A)

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