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

OA 324/2018

Ex Gnr Suman Banerjee ... Applicant
Versus
Union of India and Ors. ... Respondents

For Applicant : Mr. U.S. Maurya, Advocate
For Respondents : Mr. Satya Ranjan Swain, Advocate

CORAM
HON'BLE MS. 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 praying to direct the respondents to accept the disability of the applicant as attributable to/aggravated by military service and grant disability element of pension @20% with effect from the date of discharge of the applicant; along with all consequential benefits.

2. The applicant was enrolled in the Indian Army on 17.06.2002 and discharged on 01.06.2013 being an inefficient/undesirable soldier under item III(V) of the table as per Rule 13(3) of the Army Rules, 1954. As per the counter affidavit filed on 20.08.2018, and taken on record vide order dated 25.09.2018, during the service of approximately 11 years, the applicant was awarded several

red ink entries, as specified below:

S.No	Offence under Army Act	Date of Offence	Punishment Awarded
(a)	Section 39(b) Without sufficient cause overstaying leave	08.04.2003	14 days RI
(b)	Section 39(b) Without sufficient cause overstaying leave	14.10.2003	14 days RI
(c)	Section 39(a) Absenting himself without leave	14.04.2007	14 days RI
(d)	Section 39(a) Absenting himself without leave	05.04.2008	14 days pay fine
(e)	Section 48 Intoxication	09.09.2009	14 days RI
(f)	Section 39(b) Without sufficient cause overstaying leave	19.11.2009	07 days RI
(g)	Section 39(b) Without sufficient cause overstaying leave	30.04.2010	07 days RI
(h)	Section 39(a) Absenting himself without leave	02.07.2012	07 days RI
(i)	Section 39(b) Without sufficient cause overstaying leave	04.12.2012	14 days RI

3. The Release Medical Board dated 07.05.2013 assessed the disability of the applicant - Fracture Inferior End Plate LV3 @ 20% for life, while holding it attributable to service. However, his claim for grant of disability pension was not processed by the Respondents on the ground that the PBOR who are discharged on administrative grounds after

earning 4 or more red ink entries are not eligible for grant of disability pension and therefore, the claim of the applicant was not processed.

4. On a perusal of the documents placed on record, the limited question for our consideration is - Whether a personnel discharged as undesirable soldier will be entitled to grant of disability pension ?

5. We find that this Tribunal has addressed this issue in ***Baljeet Singh*** Vs. ***Union of India & Ors.*** [OA 739/2010; Date of Decision: 27.01.2011], ***Ratna Bahadur Chetry*** Vs. ***Union of India*** [TA No. 19/2010; Date of Decision: 17.02.2011], ***Ex Sep Bhaba Prasanna Panda*** Vs. ***Union of India*** [AFT RB Kolkata, OA No. 07/2012; Date of Decision: 04.03.2013], ***Kulwinder Singh*** *Vs.* ***Union of India*** [AFT RB Chandigarh, OA 297/2012; Date of Decision: 20.03.2014] and ***Ex. Sepoy Manoj Kumar*** Vs. ***Union of India & Ors.*** [AFT PB, OA 913/2015; Date of Decision: 04.05.2018], wherein the Tribunal has relied upon a judgement of Hon'ble Supreme Court in ***Rampal Singh*** Vs. ***Union of India & Ors.*** [(1984)1 SCC 32/ AIR 1984 SC 504], and has granted the benefit of disability pension to the applicants, though being discharged as undesirable soldier/habitual offender.

6. At this point we find it pertinent to refer to the

judgement of Hon'ble Apex Court in ***Rampal Singh*** (supra) wherein three Judges Bench observed as under:

> *2. The appellant was employed in the Army and it is now not in dispute that he was injured in 1965 Indo-Pakistan conflict. He suffered a disability which is now assessed at 20%.*
>
> *3. The Regulation 173 of Pension Regulations governing the Armed Forces personnel provides that unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided from service on account of disability which is attributable to or aggravated by military service and is assessed at 20 per cent or over.*
>
> *4. Under the order of this Court the appellant was examined by Chairman of what we were informed was a Release Medical Board (Brig. A.S. Chahal, v. M. Consultant (Ortho) Surgery, Base Hospital Delhi Cantt.) and copy of the report submitted to the Court reveals the following facts:*
>
> *(a) From the medical records the disability of this ex-serviceman is Multiple shell wounds, both limbs sustained in September 1965 in Indo-Pak Conflict.*
>
> *xxx xxx xxx xxx*
>
> *(c) Disability was 20% (Twenty percent)*
>
> *5. Though the respondents were wobbling and equivocal in their approach on the question whether the appellant suffered injury in Indo-Pak Conflict meaning thereby while rendering active service on the war front. This is now concluded by reference to the records of medical report. The Army authorities were not well advised to take a stand which is not borne out by the record.*
>
> *6. The second important fact that emerges from the report is that the disability is 20 percent and, therefore, Regulation 173 is squarely attracted. The appellant is thus certainly entitled to disability pension.*
>
> *7. Mr. Yogeshwar Prasad at one point was in a mood to contend that the discharge of the appellant from Army service was illegal and that therefore, he must be deemed to have continued in service and in that event the benefits to which he would have been entitled would be entirely*

different. We are not inclined to go into this question at this stage for the specific reason that Mr. Talukdar, learned Counsel for the respondents, on the other hand, contends that the appellant was not discharged on account of any disability but on account of being found to be an undesirable after repeated court martials were held against him on several occasions. It is no use moving backward by fifteen years and reopen closed chapter. That may even prove harmful to the appellant. Therefore, we are considering the question of awarding disability pension to the appellant.

8. Yesterday we directed the respondents appearing through learned Counsel Shri Talukdar to compute the pension which the appellant would be entitled to receive commencing from April 1, 1968 on the basis that he is discharged on account of disability and the disability is assessed at 20%. The pension in the initial years would be quite meagre as the chart shows. Pension was denied for a period of 15 years until the man knocked at the doors of Allahabad High Court and when he lost there, he came over to this Court. Counter Affidavit shows that things are not made easy for this injured army man. These are the relevant factors which must govern the verdict in this case. They are that for a period of 15 years pension was denied to this low grade army soldier to which he was legitimately entitled and that too on grounds wholly untenable. Further the petition of the appellant was resisted on grounds disclosing prevarications. Further relevant rules were not properly adhered to at the time of discharge. In determining the relief we propose to attach importance to these aspects.

9. The computation submitted by Mr. Talukdar shows a meagre amount that the appellant would be entitled to by way of arrears and the pension to which he would be entitled in future. The appellant would certainly be entitled to interest and some compensation for the harassment as also the costs of litigation. Having kept in view these relevant considerations we direct that the respondents shall pay a sum of Rs. 50,000/- to the appellant within four weeks from today and he shall be paid, future pension commencing from October 1, 1983 at the rate of Rs. 198/- per month. In awarding lump sum amount of Rs. 50,000/- we have taken into account pension arrears and all other computable benefits upto and inclusive of September 30, 1983 and no claim shall be made by the appellant and shall be entertained in this behalf. Appellant should be issued his Regular Pension

Payment Order within the same period of 4 weeks so that he is in a position to receive pension which will fall due on November 1, 1983. We understand that a pension of Rs. 198/- is basic pension and if there is any interim relief and other benefits that can be made under judgment of this Court or otherwise under the liberalised pension rules that may come up in future, he would be entitled to the same. The amount of Rs. 50,000/- shall be paid to the appellant by an 'Account Payee' cheque drawn in his name.

10. The appeal is disposed of accordingly.

7. An analysis of the aforesaid judgement shows that neither the relevant provisions pertaining to the discharge of applicant in the aforesaid case were under examination before the Hon'ble Supreme Court, nor the issue of grant of disability pension to the habitual offender/undesirable soldier was addressed on merits, and that the facts of the case were treated to be of special circumstances wherein the applicant in the aforesaid case was a battle casualty in the Indo-Pak War of 1965, which therefore means that the Hon'ble Supreme Court did not have the opportunity to address the issue on merits, being the special circumstances of humanitarian grounds and taking note of the fact that the compensation was meagre to the applicant at that point in time. In view of these factors the Hon'ble Supreme Court's Judgement will not apply in the facts and circumstances of the case.

8. Examining the policy on the subject in the case under

examination, we find that the applicant was discharged in the year 2013, thereby, the Pension Regulations of Army, 2008 are applicable with respect to his discharge, and therefore, we find it pertinent to refer to Para 41 of Pension Regulations of Army, 2008 reproduced as under:

> ***INDIVIDUAL DISMISSED/REMOVED OR DISCHARGED UNDER THE ARMY ACT 1950***
>
> ***41. (a) An individual who is dismissed under the provisions of Army Act, 1950 or removed under the Rules made there under as a measure of penalty, will be ineligible for pension or gratuity in respect of all previous service. In exceptional case, however, the competent authority on submission of an appeal to that effect may at its discretion sanction pension/gratuity or both at a rate not exceeding that which would be otherwise admissible had he been retired/discharged on the same date in the normal manner.***
>
> ***(b) An individual who is compulsorily retired/discharged or removed on grounds other than misconduct or discharged under the provisions of Army Act, 1950 and the Rules made thereunder, remains eligible for pension and/or gratuity as admissible on the date of discharge. This will suo-moto apply to cases of dismissal/removal converted into discharge subsequently.***
>
> ***(c) All appeals to the competent authority in this regard will be preferred within 2 years of the date of dismissal/removal.***

9. An analytical view of the Regulation 41(a) clarifies that if an individual who is dismissed under the provisions of Army Act, 1950 or removed under the Rules made there under as a measure of penalty, will be ineligible for the pension or gratuity meaning thereby that if the applicant had been removed under the provisions of Army Rules, 1950 as a

measure of 'penalty' shall not be entitled for pension, wherein we are of the opinion that the term 'penalty' will include the phrase, 'discharged being undesirable soldier', since the discharge of the applicant is consequential action of penalty, with respect to him being undesirable soldier, by virtue of his acts of indiscipline or his services no longer required in service , due to award of seven red ink entries.

10. Furthermore, we find it pertinent to refer to Note 2 of Appendix 'C' of IHQ MoD letter No.B/40122/MA(P)/AG/PS-5 dated 20.07.2006, which reads as under:

> *"2. The following categories of ex-Army personnel are not eligible for grant of disability pension and, therefore, claims in respect of such personnel should not be processed at all, even if they may otherwise be fulfilling the twin eligibility conditions for the same as brought out in the foregoing paragraphs*
>
> *(a) Officers who proceed on premature retirement except when they do so within one month of actual date of retirement and, that too, for the purpose of getting enhanced rate of commutation of pension.*
>
> *(b) Officers who retire from Army Service on superannuation in medical category SHAPE-I and are re-employed in the Army and are found to be in low medical category during such re-employment, unless the re-employment is terminated due to such disability.*
>
> *(c) PBOR who are discharged prematurely at their own request or on administrative ground after earning 4 orMore red ink entries."*
>
> *(Emphasis supplied)*

11. However, we find that the aforesaid provision Regulation 41(a) Pension Regulations of Army, 2008 and Appendix 'C' of IHQ MoD Letter No.B/40122/MA(P)/AG/PS-5 dated 20.07.2006 has escaped the attention of this Tribunal in earlier cases, and has not been considered within the policy framework, while solely relying on the judgement of Hon'ble Supreme Court in ***Rampal Singh*** (supra), which was based on the facts germane to that case itself.

12. In light of the conclusions arrived at on the issue under consideration, with great respect, we find ourselves unable to subscribe to the view taken by the different benches of the Tribunal in ***Baljeet Singh*** (supra), ***Ratna Bahadur Chetry*** Vs. ***Union of India*** (supra), ***Ex Sep Bhaba Prasanna Panda*** Vs. ***Union of India*** (supra), ***Kulwinder Singh*** Vs. ***Union of India*** (supra) and ***Ex. Sepoy Manoj Kumar*** Vs. ***Union of India& Ors.*** (supra) in light of our aforesaid conclusions and reliance on Defence policy letters and Pension Regulations issued by Ministry of Defence in 2006 and 2008 regarding the entitlements of Dismissed/Removed or Discharged under Army Act 1950 and therefore hold that an individual who has been discharged as 'undesirable soldier' is not entitled to

grant of disability pension in view of the Regulation 41(a) of the Pension Regulations for the Army, 2008.

13. Since we intend to differ with the views of our coordinate benches it would be appropriate to place reliance on the verdict of Larger Bench in the case of ***Hav Raj Kumar (Retd.)*** Vs. ***Union of India***, OA 57/ 2020, wherein the Tribunal was posted with a reference question that "*whether an order by a Coordinate Bench will be taken as the settled law position and hence binding on other Benches of AFT while dealing with similar cases ?* " The Tribunal answered the question partly in affirmation and further elaborated on the circumstances in which a dissenting view can be taken by a coordinate bench. Relevant portion of the aforesaid judgment is reproduced as under:

XXX ***XXX*** ***XXX***

> ***Thus, it is the statement of the principle of law applicable to the legal problem disclosed by the facts of the case, which is the ratio decidendi of a case and thus where the facts of a case before a subsequent Bench are distinguishable from the facts of a case adjudicated by a previous Bench of coordinate strength, or where the adjudication of the lis, before the previous Bench is sub silentio in relation to an issue which is fundamentally required to be adjudicated upon in the matter before the subsequent Bench for grant of relief or otherwise, even though where the same has not been adjudicated upon by the previous Bench, it would be open to the subsequent Bench to apply the applicable law on the given facts and circumstances of a case"***

14. Taking note of aforementioned position and also the distinguishable nature of facts we are of the considered view that the instant case is *sui genres* as the facts of the case are distinct from other cases cited above. Hence, in light of the reasons stated above and in view of the Regulation 41(a) of the Pension Regulations for the Army, 2008 the applicant is discharged as an 'undesirable soldier' and therefore, not entitled to grant of disability pension.

15. Consequently, the OA 324/2018 is dismissed.

16. No order as to costs.

Pronounced in the open Court on 14 day of May, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

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