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

75.

OA No. 50/2018

Fg. Offr Simran Sodhi (Retd.) ... **Applicant**

Versus

Union of India & Ors. ... **Respondents**

For Applicant : Mr. Ajit Kakkar, Advocate

For Respondents : Mr. Shyam Narayan, Advocate

CORAM :

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

O R D E R
14.03.2024

O.A. 50/2018

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act,2007, the applicant has filed this O.A and the reliefs claimed in Para 8 - read as under:

"

a) To direct the respondents to place all medical records including medical boards conducted by the respondents

b) To direct the respondents to treat the PPO issued as valid and set aside the order of cancelling the PPO of the applicant.

c) To direct the respondents to grant the benefit of invalid pension to the applicant w.e.f 04.12.1999

d) To direct the respondents to grant the broad banding of invalid/disability pension

e) To direct the respondents to pay 12% interest on the arrears of pension and other benefits.

f) To grant such other relief appropriate to the facts and circumstances of the case as deemed fit and proper. "

BRIEF FACTS

2. The applicant was commission in the Indian Air Force as SSC officer on 16.12.1995 and was invalided out/retired from service on 03.12.1999, rendering 3 years and 11 months of service, having been found medically unfit for further service. The applicant was placed in low medical category A4 (P) G4 (T-24) for the disabilities viz. (i)Low Backache which was assessed to be neither attributable to nor aggravated by service, (ii) Mild Mixed Hearing Loss (Rt) which was held to be attributable by military service, (iii) Obesity which was assessed to be NANA,

(iv) Asthmatic Brochitis which was assessed as aggravated by military service and (v) Pregnancy assessed as NANA. However, either of the parties failed to bring on record the individual percentage of the said disabilities whereas the composite assessment for all the disabilities was assessed @15-19% for five years. The applicant was granted disability pension vide PPO dated 01.05.2002 which was withdrawn thereafter.

3. The applicant made an appeal to the Chief of Air Staff vide letter dated 15.04.2003 describing the wrong inflicted upon the applicant. However, the applicant received a reply to the same vide letter dated 01.05.2003 wherein the respondents stated that the clarification regarding admissibility of disability pension to SSC officer was taken up with the PCDA(P), Allahabad and it was assured that her case for the grant of disability pension was being taken up with MoD. Thereafter, the applicant was served with a letter dated 21.05.2004 informing her that the PPO for the disability pension is still awaited and also put forth that she is entitled for 50% disability pension w.e.f 04.12.1999.

4. The applicant, thereafter, received a letter dated 29.07.2005 stating that her case for grant of disability pension

was referred to PCDA, Allahabad and PCDA had rejected the disability pension stating that the applicant is not entitled for the grant of disability pension as she was invalided out not solely on medical ground.

5. The applicant sent a representation dated 09.03.2011 for the release of disability pension and received a reply to the same on 18.05.2011 stating that she is not entitled for the disability pension. Thereafter, the applicant sent another representation to DAV vide letter dated 23.04.2017 for non receipt of disability pension which was suffered by her during her active service. However, the respondents did not reply to the said representation till date, aggrieved by which the applicant has filed the instant O.A. and thus, in the interest of justice, under Section 21(1) of the AFT, Act, 2007, we take up the same for consideration.

CONTENTIONS OF THE PARTIES

6. The learned counsel for the applicant submitted that the applicant was invalided out from service on 03.12.1999 on completion of 3 years and 11 months of service on medical grounds due to low medical category A4 (P) G4 (T-24).

7. The learned counsel for the applicant placed reliance on the verdict of the Hon'ble Supreme Court in ***Ex Gnr Laxmanram Poonia Vs. Union of India, (2017) 4 SCC 697***. Reliance is also placed on the verdict of the Hon'ble Supreme Court in the case of ***Dharamvir Singh Vs. Union of India & Ors***. (Civil Appeal No. 4949 of 2013) wherein it was observed in para 28, which reads as under :-

> ***"28. A conjoint reading of various provisions, reproduced above, makes it clear that:***
>
> ***(i) Disability pension to be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service in nonbattle casualty and is assessed at 20% or over. The question whether a disability is attributable or aggravated by military service to be determined under "Entitlement Rules for Casualty Pensionary Awards, 1982" of AppendixII (Regulation 173).***
>
> ***(ii) A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service. [Rule 5 r/w Rule 14(b)].***
>
> ***(iii) Onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit***

of any reasonable doubt and is entitled for pensionary benefit more liberally. (Rule 9).

(iv) If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service. [Rule 14(c)].

(v) If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service. [14(b)].

(vi) If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons. [14(b)]; and

(vii) It is mandatory for the Medical Board to follow the guidelines laid down in ChapterII of the "Guide to Medical (Military Pension), 2002 – "Entitlement : General Principles", including paragraph 7,8 and 9 as referred to above."

to contend to the effect, that if there is no note or record at the time of entrance, in the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service.

8. The learned counsel for the applicant placed reliance on the decision of the Hon'ble Supreme Court in the case of ***Ex Sapper Mohinder Singh Vs. Union of India & Ors. [Civil Appeal No. 104 of 1993]*** decided on 14.01.1993, wherein the Hon'ble Supreme Court has observed that without physical medical examination of the patient, the administrative authority cannot sit over the opinion of a medical board. The relevant observations in the judgment in the case of *Ex Sapper Mohinder Singh (supra)* are quoted below :

> ***"From the above narrated facts and the stand taken by the parties before us, the controversy that falls for determination by us is in a very narrow compass viz. whether the Chief Controller of Defence Accounts (Pension) has any jurisdiction to sit over the opinion of the experts (Medical Board) while dealing with the case of grant of disability pension, in regard to the percentage of the disability pension or not. In the present case, it is nowhere stated that the petitioner was subjected to any higher medical Board before the Chief Controller of Defence Accounts (Pension) decided to decline the disability pension to the petitioner. We are unable to see as to how the accounts branch dealing with the pension can sit over the judgment of the experts in the medical line without making any reference to a detailed or higher Medical Board which can be constituted under the relevant instructions and rules by the Director General of Army Medical Core."***

9. The learned counsel for the applicant submitted that the applicant is entitled to invalid pension, if not disability

pension, as per regulation 153 of the Pension Regulation for the Air Force, 1961.

10. Per contra, the learned counsel for the respondent submits that the applicant was invalided out from service on 03.12.1999, after rendering 3 years and 11 months, having been found medically unfit for further service, since, the applicant was in low medical category due to the disabilities viz. (i)Low Backache which was assessed to be neither attributable to nor aggravated by service, (ii) Mild Mixed Hearing Loss (Rt) which was held to be attributable by military service, (iii) Obesity which was assessed to be NANA, (iv) Asthmatic Bronchitis which was assessed as aggravated by military service and (v) Pregnancy assessed as NANA

11. The learned counsel for the respondents placed reliance on the verdict of the Hon'ble Supreme Court in ***UOI Vs. Damodaran AV***, SLP(C) No. 23727/2008 wherein it was held that the opinion given by the medical authorities is entitled to be given due weight and credence.

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 03.12.1999, after rendering 3 years and 11 months of service, having been found medically unfit for further service. The applicant was placed in low medical category A4 (P) G4 (T-24) for the disabilities viz. (i)Low Backache which was assessed to be neither attributable to nor aggravated by service, (ii) Mild Mixed Hearing Loss (Rt) which was held to be attributable by military service, (iii) Obesity which was assessed to be NANA, (iv) Asthmatic Brochitis which was assessed as aggravated by military service and (v) Pregnancy assessed as NANA. However, neither of the parties failed to bring on record the individual percentage of the said disabilities whereas the composite assessment for all the disabilities was assessed @15-19% for five years.

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 commissioned in the Air Force on 16.12.1995 and was invalided out from service on medical grounds on 03.12.1999 i.e. after rendering 3 years and 11 months of service.

14. Reliance is placed on 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 & 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 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 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

invalided out from service before 04.01.2019 will not be re-opened.

5. All other terms and conditions shall remain unchanged.

6. This issues with the concurrence of Finance Division of this Ministry vide their U.O No. 10(08)/2016/FIN/PEN dated 29.06.2020.

7. Hindi version will follow."

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 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.

....."

The Tribunal in reaching such a conclusion with respect to Para 4 of MoD letter No. 12(06)/2019/D(Pen-Pol) dated 16.07.2020 has placed reliance on the verdicts of the Hon'ble Apex Court in the cases of **:**

- ***D.S. Nakara and Others Vs Union of India, (1983), SCC 305 ;***
- ***Maneka Gandhi V. Union of India ;***
- ***Sriram Krishna Dalmia v. Sri Justice S.R. Tendolkar and Others1958 AIR 538 1959 SCR 279 ;***
- ***Ramana Dayaram Shetty v. The International Airport Authority of India &Ors 1979 AIR 1628 ;***
- ***State of Punjab &Anr. V. Iqbal Singh 1991 AIR 1532 1991 SCR (2) 790 ;***
- ***Jaila Singh &Anr. V. State of Rajasthan &Ors. 1975 AIR 1436 1975 SCR 428 1976 SCC (1) 602.***

15. In so far as the issue that the invalid pension will only be granted if the personnel is unfit for both military as well as civil employment is concerned, reliance is placed on para 27 of the order of ***Lt. A.K. Thapa Vs. Union of India & Ors***. in OA 2240/2019, Para 27 which reads as under :-

"....

27. In view of the law laid down by the Hon'ble Supreme Court in ***Sukhvinder Singh(Supra)*** *and in* ***Balbir Singh(Supra)*** *on invalidment, the personnel of the Armed Forces who is invalided out is presumed to have been so invalided out with a minimum of twenty percent disability which in terms of the verdict in* ***Sukhvinder Singh(Supra)*** *is to be broadbanded to 50% for life, the incorporation by the respondents vide the MoD letter dated 16.07.2020 of a term of* ***a necessary permanent incapacity for civil re-employment****, is an apparent overreach on the verdict of the Hon'ble Supreme Court in* ***Sukhvinder Singh(Supra)****. Furthermore, the said clause of a requirement of an Armed Forces Personnel to be permanently incapacitated from Military service as well as Civil re-employment is wholly vague and arbitrary and does not take into account the extent of incapacity for Civil re-employment. This is so for the personnel of the Armed Forces who is invalided out with all limbs incapacitated may still have a functional brain and*

functional voice, may be able to speak, sing, paint and earn a livelihood. The utilisation of the words 'permanently incapacitates from civil re-employment', apparently requires a permanent brain dead armed forces personnel. We thus hold that the requirement of the Armed Forces Personnel ***'to be permanently incapacitated from civilian employment as well'*** *(apart from permanent incapacitation from military service) for the grant of invalid pension in terms of the MoD letter No. 12(06) /2019 /D (Pen/Pol) dated 16.07.2020 to be wholly arbitrary and unconstitutional and violative of Article 14 of the Constitution of India which is in Part-III of the Fundamental Rights with the sub heading 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."

Article 21 protects the ***Right to Livelihood*** *as an integral facet of the* ***Right to life*** *as laid down by the Hon'ble Supreme Court in* ***Narender Kumar Chandla Vs. State of Haryana,*** *1995 AIR 519 and the right to life is one of the basic human rights which even the State has no authority to violate, except according to procedure established by law.*

...."

16. It is, also, essential to observe that the Hon'ble Supreme Court in Civil Appeal No. 5970/2019 titled as ***Commander Rakesh Pande Vs. Union of India, dated on 28.11.2019***, observed as under :-

"Para 7 of the letter dated 07.02.2001 provides that no periodical reviews by the Resurvey Medical Boards shall be held for reassessment of disabilities. In case of disabilities adjudicated as being of permanent nature, the decision once arrived at, will be for life unless the individual himself requests for a review. The appellant is afflicted with diseases which are of permanent nature and he is entitled to disability pension for his life which cannot be restricted for a period of 5 years. The judgment cited by Ms. Praveena Gautam, learned counsel is not relevant and not applicable to the facts of this case. Therefore, the appeal is allowed and the appellant shall be entitled for disability pension @50% for life."

Thus in the instant case the disabilities was compositely assessed @15-19% for 5 years has to be held to have a duration of disablement for life and not just five years as put forth by the IMB dated 20.10.1999.

17. The disability of the applicant is required to be assessed atleast @20% as he was invalidated out from the service in low medical category 'A4 (P)G4 (T-24)' for the disabilities viz. (i)Low Backache which was assessed to be neither attributable to nor aggravated by service, (ii) Mild Mixed Hearing Loss (Rt) which was held to be attributable by military service, (iii) Obesity which was assessed to be NANA, (iv) Asthmatic Brochitis which was assessed as aggravated by military service and (v) Pregnancy assessed as NANA. In this regard, reliance is placed 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, Para 9 of the said judgment reads to the effect:-

> "9. "....
>
> ***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.

...."

CONCLUSION

18. We find no reason to differ from the law laid down in **Chhote Lal (supra) and in A.K. Thapa (supra)**, We are therefore of the considered view that the applicant was deemed to be invalided out of service on account of the said disabilities

and was invalided out before completing his term of initial engagement.

19. 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. However, as the applicant has approached the Tribunal after a considerable delay, in view of the law laid down in ***Union of India & Ors. Vs. Tarsem Singh 2009 (1) AISLJ 371***, arrears of invalid pension shall be restricted to commence to run from three years prior to the date of filing of O.A. 50/2018.

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

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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