

COURT No.2  
ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

A..

OA 694/2015 with MA 748/2015

Ex Swr Jagbir Singh ..... Applicant

VERSUS

Union of India and Ors. .... Respondents

For Applicant : Mr. A K Trivedi, Advocate

For Respondents : Dr. Vijendra Singh Mahndiyani, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)

HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER  
06.02.2024

Vide our detailed order of even date we have allowed the OA 694/2015. Learned counsel for the respondents makes an oral prayer for grant of leave to appeal in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007 to assail the order before the Hon'ble Supreme Court.

After hearing learned counsel for the respondents and on perusal of order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order to grant leave to appeal. Therefore, the prayer for grant of leave to appeal stands declined.

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(JUSTICE ANU MALHOTRA)  
MEMBER (J)

\_\_\_\_\_  
(REAR ADMIRAL DHIREN VIG)  
MEMBER (A)

AP

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**OA No. 694/2015 with MA No. 748/2015**

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**... Applicant**

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**Union of India & Ors.**

**... Respondents**

**For Applicant** : Mr. AK Trivedi, Advocate

**For Respondents** : Dr. Vijendra Singh Mahndiyan, Advocate

**CORAM :**

**HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER(J)**

**HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)**

**O R D E R**

**M.A. 748/2015**

This is an application filed under Section 22(2) of The Armed Forces Tribunal Act, 2007 seeking condonation of delay of 238 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of **UoI & Ors. Vs Tarsem Singh** 2009(1) AISLJ 371 and in **Ex Sep Chain Singh Vs Union of India & Ors** (Civil Appeal No. 30073/2017) and the reasons mentioned, the MA 748/2015 is allowed and the delay

of 238 days in filing the OA 694/2015 is thus condoned. The MA is disposed of accordingly.

**O.A. 694/2015**

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

“

**(i) That Hon'ble Tribunal may graciously be pleased to pass an order declaring to the effect that the whole action of the respondents not considering and granting disability pension to the applicant is illegal and arbitrary and discriminatory in the eyes of law and consequentially pass an order directing the respondents to grant the disability pension to the applicant from the date of his retirement i.e. w.ef. 22/10/1973 with all consequential benefits including the arrears of back period pension with interest in the light Hon'ble Supreme Court Judgment in the case of the Dharmvir versus Union of India, SSC 316 (2013).**

**(a) Any other relief which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.**

**(b) Award Cost;”**

### **BRIEF FACTS**

2. The applicant was enrolled in the Indian Army on 27.07.1971 and was invalided out from service on 22.12.1973 after rendering 2 years and 5 months of service having been found medically unfit for further service. The applicant was placed in low medical category 'EEE' and the disability was assessed @60% as per Annexure A/2 annexed by the applicant in the original application. However, the attributability/ aggravation of the said disability could not be brought on record in medical board proceeding due to the fact that the applicant was a non-pensioner and service records to that effect were destroyed after the retention period of 25 years as per Para 592 to 596 of the Pension Regulation for the Army, 1987 (Revised Edition).

3. The claim for the grant of the disability pension for the said disability was rejected by the PCDA (P), Allahabad but no order of rejecting the claim of the applicant has been supplied to the applicant. Thereafter, the applicant made an application under RTI

Act, dated 23.10.2013 to the Records office seeking documents in relation to medical proceedings. The respondents vide its letter No. 398101/RTI/Gen/2013/NER dated 26.11.2013 replied that all the service and medical documents were destroyed after completion of 25 years of retention period in terms of Para 592 to 596 of the Pension Regulation for the Army, 1987 (Revised Edition).

4. The applicant thereafter filed the instant O.A. and thus, in the interest of justice in terms of Section 21(1) of the AFT Act, 2007, ~~(we take up the same for consideration)~~.

### **CONTENTIONS OF THE PARTIES**

5. The learned counsel for the applicant submitted that the applicant was invalided out from service on 22.12.1973. The learned counsel for the applicant further submitted that as per Rule -7 (b) of the Appendix II (Entitlement Rules) of the Army Pension Regulation 1961, it is clearly provided that a disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service if no note was made at the time of individual's acceptance for military service, therefore the applicant is entitled for the grant of the disability pension.

6. The learned counsel for the applicant submitted that the applicant was medically examined by the Army Medical authorities at the time of the enrolment and was found medically and physically fit in all respects and there was no occasion for the medically authorities to make a note in the service/medical documents as the applicant was not suffering from any disease whatsoever.

7. The learned counsel for the applicant submitted that the Hon'ble Supreme Court while deciding the case of **Dharamvir Vs. Union of India**, SSC 316 (2013) held that if there is no proof indicating that the applicant had any illness upon entering the military service, it is to be presumed that the applicant was in good physical and mental health at that point and that any decline in health during the service is presumed to be connected to the conditions of service, and the disability of the applicant is considered to be causally related to the service conditions.

8. The learned counsel for the applicant submitted that the Division Bench of Hon'ble Punjab & Haryana High Court while deciding the case of **Amarjit Singh Vs. Union of India** CWP No. 12311 of 1996 laid down the law that if a person has provided one day of service and subsequently becomes disabled, they are eligible

for the service element in addition to the disability pension and that the Government cannot assert that the individual has not fulfilled the necessary years of service in such a case.

9. Per contra, the learned counsel for the respondents submitted that the applicant was invalided out from service on 22.12.1973 after rendering 2 years and 5 months of service due to which the applicant cannot be given any pensionary benefits.

10. The learned counsel for the respondents submitted that due to non-existence of service and medical documents of the applicant, it is not possible to clarify whether the invaliding disability of the applicant was attributable to or aggravated by military service and its assessment was at 60% as it is only the submission of the applicant which has been made after a lapse of more than 42 years and he has not produced any such valid documents in support of his claim.

### **ANALYSIS**

11. 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 the applicant was invalided out on medical ground from service on 22.12.1973 after rendering 2 years and 5

months of service as per discharge slip, placed by the applicant, as Annexure A/2 in low medical category 'EEE' which was assessed by the IMB @60%. However, the attributability/ aggravation of the said disability could not be brought on record due to the fact that the applicant was a non-pensioner and service records to that effect were destroyed after the retention period of 25 years as per Para 592 to 596 of the Pension Regulation for the Army, 1987 (Revised Edition).

12. During the course of arguments, the applicant, through his counsel, prayed only for the grant of invalid pension and did not pray for the disability pension with regard to the disability of the applicant.

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 27.07.1971 and was invalided out from service on medical grounds on 22.12.1973 i.e. after rendering 2 years 5 months of service as per the discharge slip places as A/2. 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 by 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 for 2 years 5 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 & 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 (?)**

*(04.01.2019 as per letter dated 16.07.2020). There cannot be any difference on the ground of invalidment as both in the cases of personnel invalidated out before and after 04.01.2020 (?) (04.01.2019 as per letter dated 16.07.2020), they faced the similar consequences. In fact, the persons who have retired prior to 04.01.2020 (?) (04.01.2019 as per letter dated 16.07.2020) have faced more difficulties as compared to the persons invalidated out on or after 04.01.2020 (?) (04.01.2019 as per letter dated 16.07.2020). 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 Others 1958 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. To this effect, reliance is also placed on para 27 of the order of ***Lt. A.K. Thapa Vs. Union of India & Ors.*** in OA 2240/2019, Para 27 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.

....”

### **CONCLUSION**

16. 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 has to be deemed to be invalided out of service as the applicant rendered 2 years 5 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.

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 will be restricted to three years prior to the date of filing of O.A. 694/2015.

Pronounced in the open Court on this day of 6<sup>th</sup> February, 2024.

[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)

[JUSTICE ANU MALHOTRA]  
MEMBER(J)

/pranav/