

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

B..
OA 762/2018

Ex Ck (S) Suresh Chandra Gupta Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Ajit Kakkar, Advocate
For Respondents : Mr. Arvind Patel, Advocate

CORAM
HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE LT GEN P.M.HARIZ, MEMBER (A)

ORDER
15.01.2024

Vide our detailed order of even date; we have allowed the OA 762/2018. 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 our 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, prayer for grant of leave to appeal stands declined.

[Signature]
(JUSTICE ANU MALHOTRA)
MEMBER (J)

[Signature]
(LT GEN P.M.HARIZ)
MEMBER (A)

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ORDER

The applicant 'No. 151956-F Ex Ck (S) Suresh Chandra Gupta' vide the present OA makes the following prayers:-

"(a) To direct the respondents to place all medical records including medical boards of the applicant.

(b) To quash the letter (letters at A-1 Colly are dated 09.01.2018, 15.07.1993 and November 1993) denying disability pension to the applicant.

(c) To direct the respondents to grant disability pension to the applicant from the date of retirement in view of the above mentioned circumstances and the settled law with regard to grant of disability pension.

(d) To grant the broad banding of disability pension.

(e) To direct the respondent 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."

2. During course of submissions made on 04.12.2023, it has been submitted on behalf of the applicant that the prayer made through the present OA is confined to seeking the grant of Invalid pension alone.

3. The applicant had joined the Indian Navy on 17 Sep 1987 and was discharged as Invalided out from the Indian Navy in medical category S5A5 (Pmt) on 25 Nov 1991 after rendering 04 years, two months and 09 days of service. At the time of discharge, the applicant was suffering with the disability of 'Generalized Seizures (Idiopathic) ICD 349'. The Invalid Medical Board assessed the disability as being neither attributable to nor aggravated the service (NANA) with the assessment disablement @ 60% for life.

4. The applicant's claim for grant of disability pension was rejected vide letter dated 02.04.1993 no. PEN/DIS/B/92/952. The applicant's first appeal dated 14.03.1993 is stated by the respondents to have been rejected as per averments made in their counter affidavit dated 11.03.2019 vide Annexure R4, copy of which is placed at Page 19 of the record being letter no. PEN/DIS/B/92/APP/952 dated 15.07.1993, as the disability of the applicant was neither attributable to nor aggravated by military service.

5. A bare perusal of Annexure R4 however indicates that it is a communication made by the Accounts Officer Navy to the Chief CDA Pensions inter alia stating to the effect:-

"In the event of the appeal of individual being accepted by your Ministry he will be entitled to Disability pension consisting of Service element @ Rs.....p.m. with disability element based on the accepted degree of disablement Rs.....pm... subject to recovery of Rs.....on account of invalid gratuity already paid.

An early action in the matter is requested."

and in these circumstances, though it is contended on behalf of the respondents that the present OA has been filed after a lapse of 25 years, and though the respondents vide the impugned letter dated 09.01.2018 have in response to a letter dated 23.12.2017 of the applicant qua the first appeal of the applicant informed the applicant that his appeal could not be considered, in the circumstances of the instant case where the applicant's first appeal dated 07.07.1993 as already adverted to by us hereinabove was in fact not dealt with and rather the communication was made by the Accounts Officer Navy to the Chief CDA Pensions as stated therein as depicted hereinabove, it is considered appropriate to take up the present OA pending since its institution, instituted on 03.04.2018 for consideration in terms of Section 21 (1) of the AFT Act 2007.

6. The records indicate that the Invaliding Medical Board proceedings dated 10.08.1991 indicate that the applicant suffered from 'Generalized Seizures (Idiopathic) ICD 349' which disability was opined to be with a percentage of disablement of 60% for life which the invaliding Medical Board opined to be neither attributable to nor aggravated by military service and that the applicant was invalided out from Military service is admitted through the contents of the counter affidavit filed by the respondents themselves.

7. The applicant has submitted that he joined the Indian Navy in a fit medical condition without any note of any disability of any kind and on the records of the respondents and thus the disability that had arisen after three years of service in the India Navy has to be held to be attributable to or aggravated by military service and that he is entitled to the Invalid Pension in relation thereto.

ANALYSIS

8. On a consideration of the submissions that have been made on behalf of either side, it is essential to observe that it has been laid down by the Hon'ble Supreme Court in Civil Appeal no. 5605/2010 in the case of **Sukhvinder Singh Vs UOI & Ors.** vide observations in Para-9 thereof to the effect:-

"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."-

9. Regulation-99 of the Pension Regulations for the Navy, 1964 provides to the effect:-

"99. Sailors invalided out of service - (1) A sailor who is invalided out of the service on account of a disability attributable to service but whose disability is assessed at less than twenty percent shall be granted gratuity equal to two months pay if :-

(i) no pension or gratuity is admissible to him under any other regulation, or

(ii) the gratuity admissible to him under any other regulation is less than the gratuity admissible under this regulation, in which case the former shall not be drawn.

(2) Pay for assessment of gratuity under this regulation shall be same as for service gratuity under regulation 90.

(3) The provisions of regulations 102 and 104, shall apply mutatis mutandis to the grant of gratuity under this regulation."

It is thus apparent through Regulation 99 (1) of the Pension Regulations for the Navy 1964, that an individual who is invalided out of service on account of a disability which is attributable to or aggravated by service with the disability is assessed at less than 20%, is entitled to the grant of invalid pension / gratuity.

However, it is essential to observe that the MoD letter No. 12(06)/2019/D(Pen-Pol) dated 16.07.2020 which is reproduced as under:

*"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 3 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."

stipulates categorically to the effect 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 the qualifying service of ten years, may also be granted invalid pension subject to certain conditions. Vide Clause(4) reproduced of this letter hereinabove, it was stipulated to the effect that the provisions of this letter shall apply to those Armed Forces Personnel were/are in service on or after 04.01.2019 and the cases in respect of personnel who were invalided out from service before 04.01.2019 will not be re-opened.

10. The applicant in the instant case was invalided out from service on 25.09.1991. In relation thereto, it is also essential to observe that vide order dated 11.03.2022 of the AFT(RB), Lucknow in OA 368/2021 in the case of *Ex Recruit Chhote Lal Vs UOI & Ors.*, it has been held vide Paras- 20,21,22,23 thereof to the effect:-

"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 invalided 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 invalided 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."

11. Thus qua the said cut off date, it has been specifically laid down therein that there can be no discrimination against the personnel of the Armed Forces based on a cut off date of having been in service on or after 04.01.2019 in relation to the grant of invalid pension.

12. Vide order dated 07.07.2023 in OA 2240/2019 in the case of ***Lt AK Thapa(Released) vs UOI & Ors.***, it has been observed vide Para-27 thereof to the effect:-

"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 invalidated out is presumed to have been so invalidated 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 invalidated 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."

Further vide order dated 25.09.2023 in OA 517/2021 in *Ex Sep Narayan Singh vs. UOI & Ors.* vide Para-16 thereof, it has been held by this Tribunal to the effect:-

"That 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, is 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 thereby."

Thus in the instant case, the applicant who was invalided out from service on 25.09.1991, is held entitled to the grant of invalid pension from the date of his invalidement in view of the verdict of the Hon'ble Supreme Court in *Balbir Singh Vs UOI & Ors.* in Civil Appeal no. 3086/2012 vide verdict dated 08.04.2016.

CONCLUSION

13. In the circumstances, the **OA 762 / 2018** is allowed and the applicant is held entitled to the grant of Invalid Pension with effect from the date of his Invalidment. However, in as much as the present OA has been filed with much delay in terms of the verdict of the Hon'ble Supreme Court in **Tarsem Singh** (supra) the arrears shall commence to run from three years prior to the filing of the OA and the respondents are directed to issue the corrigendum PPO with directions to the respondents to pay the arrears within a period of three months from the date of receipt of a copy of this order, *failing which*, the respondents would be liable to pay interest @6% p.a. on the arrears due from the date of this order.

14. No order as to costs.

Pronounced in the Open Court on the 15 day of January, 2024.

[LT GEN P. M. HARIZ]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/AP/