

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

A.

OA 88/2019

Ex Sep Gajender Singh

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Mr. Trilokchand, proxy for

Mr. S M Dalal, Advocate

For Respondents : Mr. K K Tyagi, Advocate

CORAM

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

HON'BLE LT GEN P.M. HARIZ, MEMBER (A)

ORDER
21.03.2024

Vide our detailed order of even date we have allowed the OA 88/2019. 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.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

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

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ORDER

The applicant "No. 3182107-W Ex Sep Gajender Singh" vide the present OA makes the following prayers:-

"(a) Quash the impugned order dated 16 Nov 2018 passed by Respondent No. 3 being arbitrary.

(b) Quash order dated 17 Apr 1996 passed by PCDA (P) Allahabad being arbitrary and perverse.

(c) Set aside opinion of Invaliding Medical board qua attribtuability aspect, being arbitrary and contrary to law laid down by Hon'ble Supreme Court.

(d) Direct the respondents to grant disability pension to the applicant @ 60% w.e.f 12 Apr 1995 with further direction to broad band the same to 75%.

(e) Direct the respondent to pay interest over the arrears @12% p.a. w.e.f. 12 Apr 1995."

2. The applicant was enrolled in the Indian Army on 23.01.1988 and was invalided out from service with effect from 26.05.1995 under Rule 13 (3) (III) (iii) of the Army Rules, 1954 after rendering 07 years, 04 months and 03 days of service in low medical category “**EEE**” for the disability of “**SCHIZOPHRENIA ICD NO 295**”.

3. The Invaliding Medical Board held at 5 Air Force Hospital assessed the disability of the applicant as being at 60 % for two years and considered it as being neither attributable to nor aggravated by military service being a constitutional disease not connected with the service vide AFMSF-16 dated 11.04.1995.

4. The applicant's claim for grant of disability pension was processed to PCDA (P), Allahabad vide Records JAT letter No 3182107/DP/JR dated 17 Apr 1996, however the concerned authority rejected his disability pension claim due to it not meeting the primary condition for grant of disability pension as prescribed in Regulations 173 of Pension Regulations for the Army, 1961 (Part-I) i.e., the disability was required to be either attributable to or aggravated by military service. The decision of PCDA (P), Allahabad was communicated to the applicant vide Records JAT letter No 3182107/DP/JR dated 30 Apr 1996. The said rejection was sent with an advice to prefer an appeal against rejection of his disability

pension claim within six months from 17 Apr 1996, if not satisfied with the decision of PCDA (P) Allahabad.

5. An appeal dated 01 Jul 1996, was submitted by the applicant against rejection of his disability pension which was forwarded to PCDA (P), Allahabad for onward submission to Govt. of India, Ministry of Defence vide Records JAT letter No 3182107/DPAppeal/JR dated 27 Jul 1996 which was rejected by the Govt. of India, Ministry of Defense vide letter No 7(1837)/96/D(Pen-A&AC) dated 20.03.1998 addressed to the applicant. The applicant was neither granted disability pension nor invalid pension but was paid a sum of Rs. 7,755/- on account of invalid gratuity.

6. The respondents submit that after a lapse of almost 23 years of his release from service, the applicant preferred an application dated 24 May 2018 under RTI Act, 2005, seeking information/photocopies of several documents. In turn, photocopies of documents sought were furnished to the applicant vide Records JAT letter No 3182107 / RTI / JR dated 9 Jun 2018. Thereafter, he served a legal notice no. 24012 / GS / Appl dated 10 Oct 2018 for grant of rounding off benefits of disability pension from 60% to 75% w.e.f. 12 Apr 1995. In turn, the applicant was informed that his disability pension claim was rejected by the PCDA(P), Allahabad vide Records No G3/64 / 235 / 12 - 95 dated 17 Apr 1996 due to the disability having been assessed as neither attributable to nor aggravated by military

service. The first appeal against rejection of the disability pension has already been rejected by the Govt. of India, Min of Def (Army) vide their letter No 7(1837)/96/D (Pen.A&AC) dated 20 Mar 1998 vide Records JAT letter No 3182107/DP/JR dated 16 Nov 2018.

7. During the course of submissions made on behalf of the applicant on 25.10.2023 it was submitted by the learned counsel for the applicant that the prayer made through the present OA is confined to seeking the grant of invalid pension alone.

8. The records of the instant case thus speak eloquently to the effect that the applicant who was enrolled in the Indian Army on 23.01.1988 was invalidated out of service with effect from 26.05.1995 in low medical category "EEE" for the disability of "SCHIZOPHRENIA ICD NO 295".

9. In terms of the Govt. of India, Ministry of Defence letter no. 12(06)/2019/D(Pen/Pol) dated 16.07.2020, it is provided to the effect:-

"2. The proposal to extend the provisions of Department of Pension & Pensioners Welfare O.M. No. 21/01/2016-P&PW(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 invalidated out of service on account of any bodily or mental infirmity which is Neither Attributable to Nor Aggravated by Military Service and which permanently incapacitates them from military service as well as civil re-employment."

10. In terms of the said letter dated 16.07.2020, the grant of invalid pension to Armed Forces Personnel with less than 10 years of qualifying service in cases where personnel are invalidated out of service on account of any bodily or mental infirmity, even where it is Neither Attributable to Nor Aggravated by Military Service has been made admissible, though it has been made admissible where the said disability which permanently incapacitates the Armed Forces personnel from military service also permanently incapacitates the said armed forces personnel from civil re-employment as well, and the provisions of the said letter would apply to Armed Forces personnel who were/are in service on or after 04.01.2019.

11. In relation to the said aspect, it is 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 paragraphs-22 and 23 thereof to the effect:-

"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."

Furthermore, it has already been observed by this Tribunal vide order dated 07.07.2023 in OA 2240/2019 in the case of ***Lt AK Thapa(Released) vs UOI & Ors.***, that we find no reason to differ from the observations in the order dated 11.03.2022 in OA 368/2021 in ***Ex Rect Chhote Lal*** (supra) in relation to the aspect that the policy pertaining to invalid pension vide letter date 16.07.2020 cannot discriminate against the personnel of the Armed Forces based on a cut of date of having been in service on or after 04.01.2019.

12. It has also been held by this Tribunal in OA 2240/2019 in ***Lt AK Thapa(Released) vs UOI & Ors.*** vide order dated 07.07.2023, 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.

13. Thus, in the circumstances of the instant case the applicant who was invalided out from service on 26.05.1995 after a period of 07 years, 04 months and 03 days of military service is held entitled to the grant of invalid pension for life from the date of invalidment from service.

CONCLUSION

14. The **OA 88 / 2019** is thus disposed of with directions to the effect that the applicant is held entitled to the grant of **Invalid Pension** with effect from the date of invalidment from service in view of the verdict of the Hon'ble Supreme Court in **Balbir Singh & Ors.** in Civil Appeal No. 3086/2012 vide verdict dated 08.03.2016, which however in the circumstances of the instant case, shall be confined to commence for a period of three years prior to the institution of the OA, in view of the verdict of the Hon'ble Supreme Court in the case of **UOI & Ors vs Tarsem Singh** reported in 2008 (8) SCC 648.

15. 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.

16. No order as to costs.

Pronounced in the Open Court on the 21st day of March, 2024.

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

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/AP/