

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

A..

OA 360/2018

Ex AC (U/T) Rajat Gangwar

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Mr. Virender Singh Kadian, Advocate

For Respondents : Mr. KK Tyagi, Advocate

CORAM

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

HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER
08.02.2024

Vide our detailed order of even date, we have allowed the OA 360/2018. 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.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

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

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O R D E R

The applicant vide the present OA 360/2018 has made the following prayers:-

"(a) Quash and set aside the impugned letter No Air HQ/99798/2/8981622/DAV/DP/IMB dated 06.04.2017.

(b) Direct respondent to treat the disability of the applicant as attributable to or aggravated by military service and grant him disability pension being invalided out case with the benefits of broad banding it to 50%.

(c) Direct respondents to pay the due arrears of disability pension with interest @12% p.a. from the date of invalid out with all the consequential benefits.

(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost of the application in favour of the applicant and against the respondents."

2. The applicant Ex AC (U/T) Rajat Gangwar was enrolled in the Indian Air Force on 30.12.2015 in the technical trade Structure

Fitter at Secunderabad (Telengana), and then successfully completed training at Airmen Training Institute, Belgaum and trade training at Mechanical Training Institute (MTI), Tambaram (Chennai). He reported sick at Station Medicare Centre for acne problem in Nov 2016 and was incidentally detected with MICROCYTIC HYPOCHROMIC ANAEMIA and later referred to Command Hospital (AF) Bangalore for opinion of the Haematologist. He was downgraded to Low Medical Category 'P5' of SHAPE factor for the disability of MICROCYTIC HYPOCHROMIC ANAEMIA PROCEEDINGS BETA THALASSEMIA TRAIT (Fresh) D 56.1 and was recommended by the Haematologist to be invalided out from service in LMC P5. The applicant was brought before a duly constituted Invalidment Medical Board (IMB) at the Air Force Station, Tambaram on 21.12.2016 and on subsequent days. The IMB held his invaliding disease "MICROCYTIC HYPOCHROMIC ANAEMIA B THALASSEMIC TRAIT (Fresh) D 56.1" as neither attributable to nor aggravated by military service and not connected with service. His percentage of disablement was assessed @1-5% for life. The Invalidment Medical Board proceedings of the applicant were approved by the Competent Authority on 20.01.2017. The Invalidment Medical Board opined vide Para-1 in Part-V thereof to the effect:-

“

Disability	A	B	C
MICROCYTIC HYPOCHROMIC ANEAMIA B THALASSEMIA TRAIT (Fresh) D 56.1	NO	NO	YES

”

3. Para-2 of Part-V of the said IMB reads to the effect:-

“1. Did the disability exist before entering service? NO”

The percentage of disablement was put forth through Para-6 of Part-V of the said Invaliding Medical Board as under:-

“

6. What is present degree of disablement as compared with a healthy person of the same age and sex? (Percentage will be expressed as Nil or as follows) 1-5%, 6-10%, 11-14%, 15-19% and thereafter in multiples of ten from 20% to 100%				
Disease/Disability (As numbered in Para 1 Part VI)	Percentage of disablement	Composite assessment for all disabilities with duration (Max 100% duration)	Disability qualifying for disability pension with duration	Net assessment qualifying for disability pension (Max 100% with duration)
MICROCYTIC HYPOCHROMIC ANEAMIA B THALASSEMIA TRAIT (Fresh) D 56.1	1% - 5% for Life Long	1% - 5% for Life Long	NIL for Life long	NIL for Life long

”

5. The above facts are brought forth through the Counter Affidavit that the respondents have placed themselves on the record dated 27.07.2018 with annexures annexed thereto. What the applicant seeks vide the present OA is the grant of invalid pension and broad banding thereof w.e.f 13.02.2017, he having been invalided out w.e.f. 13.02.2017 apart from seeking interest @12% p.a. on the arrears of pension and other benefits.

6. The applicant who was unrefutedly invalidated out due to ailment of MICROCYTIC HYPOCHROMIC ANEAMIA B THALASSEMIA TRAIT (Fresh) D 56.1, despite the rejections of his prayer for grant of invalid pension and rejection of his first appeal dated 19.06.2017 is in terms of the Regulation-148 of the Pension Regulations for the Air Force, 1961 (Part I) which provides to the effect:-

"148. An individual who is invalidated out of the service on account of a disability attributable to field service or operations but whose disability is assessed at less than 20 per cent shall be granted gratuity equal to two months pay provided that- -

(a) no pension or gratuity is admissible under any other regulation, or

(b) the gratuity admissible under any other regulation is less than this gratuity, in which case the former shall not be drawn",-

entitled to the grant of invalid pension.

7. As regards, Regulation-153 of the Pension Regulations for the Air Force, 1961 (Part I) which reads as under:

"153. Unless otherwise specifically provided, a disability pension may be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by air force service and is assessed at 20 per cent or over. The question whether a disability is attributable to or aggravated by air force service shall be determined under the regulations in Appendix II."

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 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 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 invalidated 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/her from the service before completing qualifying service of ten years, may also be granted invalid pension subject to certain conditions. Though vide this letter

vide Clause(4) reproduced herein above, 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, qua the same, 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 Paras-20,22,23 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 04.01.2019. There cannot be any difference on the ground of invalidment as both in the cases of personnel invalided out before and after 04.01.2019, they faced the similar consequences. In fact, the persons who have retired prior to 04.01.2019 have faced more difficulties as compared to the persons invalided out on or after 04.01.2019. 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 off 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 vires by the Hon'ble Apex Court because the introduction of such cut off 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 off date."

8. 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.

9. 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 by this Tribunal 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 Chaudla 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 reiterated by this Tribunal to the effect:-

"16. 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."

Thus in the instant case, the applicant who was invalided out from service on 13.02.2017, is held entitled to the grant of invalid pension from the date of his invalidment in view of the verdict dated 08.04.2016 of the Hon'ble Supreme Court in *Balbir Singh VS UOI & Ors.* in Civil Appeal no. 3086/2012.

CONCLUSION

10. The OA 360/2018 is allowed. The applicant is held entitled to the grant of Invalid Pension from the date of invalidment, i.e. 14.02.2017.

11. The respondents are directed to calculate, sanction and issue the necessary Corrigendum PPO to the applicant within three

months from the date of receipt of the copy of this order and in the event of default, the applicant shall be entitled to the interest @6% per annum till the date of payment.

Pronounced in the open Court on the 8th day of February, 2024.

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

[JUSTICE ANU MALHOTRA]
MEMBER (J)

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