

COURT NO. 2,  
ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

OA 1058/2019 WITH MA 1732/2019

Smt. Ramesh Devi Wd/o  
Late Gnr Ishwar Singh  
Versus  
Union of India & Ors.

... Applicant

... Respondents

For Applicant : Mr. Praveen Kumar, proxy for  
Mr. V.S. Kadian, Advocate  
For Respondents : Mr. Prabodh Kumar, Sr. CGSC

CORAM :

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)  
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER

MA 1732/2019

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 12775 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 1732/2019 is allowed despite opposition on behalf of the respondents and the delay of 12775 days in filing the OA 1058/2019 is thus condoned. The MA is disposed of accordingly.

2. The applicant vide the present O.A. 1058/2019 has made the following prayers:-

*“(a) Quash and set aside impugned letter No. 14452061W/Appeal/Pen-2D dated 08. 12. 2017. and/or*

*(b) Direct respondents to treat the disability of the applicant as attributable to/aggravated by military service and grant disability/invalid pension from the date of invalidment to the date of death i.e. 10.06.2010 with the benefits of rounding off/broad banding. And/or*

*(c) Direct respondents to pay the due arrears from the date of invalid medical board with interest @12% p.a. 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.”*

3. During the course of submissions made on 18.01.2024 on behalf of the applicant, it was submitted that the prayer made through the present OA is confined to seeking grant of invalid pension alone.

4. The unrefuted facts in the instant case through the Counter Affidavit dated 16.09.2019 of the respondents indicate that the husband of the applicant Late Gnr Ishwar Singh was enrolled in the Regiment of Artillery, Indian Army on 22.03.1977 and was medically invalided out of service w.e.f. 22.02.1984 in low medical category CEE (Pmt) due to the disability “Neurosis (300) Depressive Reaction” after rendering 07 years of service as a non-pensioner.

5. The applicant has submitted through the OA that his service in the Indian Army was cut short due to the disability of "Neurosis (300) Depressive Reaction" that he suffered whilst performing military duties which disability has to be treated as attributable to/ aggravated by military service. The applicant was brought before an Invalidment Medical Board on 12.01.1984 which had assessed the applicant's disability as neither attributable to nor aggravated by military service with a percentage of disablement with 40% for two years.

6. The applicant disability pension claim was rejected vide letter no. G-3/84/3139/II dated 28.04.1984, and the same was communicated to the applicant vide letter No. 14452061/DP-24738/NE dated 04.06.1984. Applicant filed a first appeal against the said rejection which was again rejected vide letter no. 7/833/84CDA/Appeal dated 04.04.1986, on the ground that no reasonable grounds were found by the Competent Authority to alter the decision of the PCDA(P) Allahabad. It is thus clear from the medical board record that the applicant was invalided out in low medical category CEE (Pmt) due to the disability "Neurosis (300) Depressive Reaction."

7. In terms of Para-132 of Pension Regulations for the Army, 1961 (Part-1), which states to the effect:-

*"Para 132: Minimum Qualifying Service for Pension*

*The minimum period of qualifying service (without weightage) actually rendered and required for earning service pension shall be 15 years.*

*Unless otherwise provided for, the minimum qualifying colour service for earning a service pension is 15 years."*

as the applicant had rendered only 7 years of qualifying service, he was not granted any service pension.

8. The applicant has further placed reliance on the Govt. of India, Ministry of Defence letter no.12(06)/2019/D(Pen/Pol) dated 16.07.2020, to submit to the effect that thereby personnel of the Armed Forces with less than 10 years of qualifying service who had been invalided out of service on account of any bodily or mental infirmity which was neither attributable to nor aggravated by military service and which permanently incapacitates them from military service as well as civil re-employment, have been entitled to the grant of the Invalid Pension. Reliance was placed on behalf of the applicant on the order dated 06.12.2018 in OA 1051/2016 in the case of *Ex Sep Bhagat Singh Vs UOI & Ors.*, of the AFT(PB), New Delhi to submit to the effect that the applicant having been invalided out of service, he cannot be denied the benefit of the invalid pension on the ground of non-qualifying length of minimum

service for pension. Inter alia, the applicant placed reliance on the verdict of the Hon'ble Supreme Court in *UOI & Ors. Vs Ex Gnr Sinchetty Satyanarayan & 42 others* in SLP No. 20868 of 2009, decided on 23.02.2012, wherein it has been observed to the effect:-

*"the issue regarding grant of service element to those invalided out prior to 1973 with less than minimum qualifying service for pension as prescribed from time to time, has been considered in the Ministry and with the approval of Hon'ble RM it has been decided to grant the benefit of "Service Element" to all pre-1973 cases w.e.f. 01.01.1973."*

9. It was thus submitted on behalf of the applicant that in terms of Regulation-197 of the Pension Regulations for the Army 1961 which reads to the effect:

*"Invalid pension/gratuity shall be admissible in accordance with the Regulations in the 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 service, but the disability is assessed at less than 20%; and*

*(c) a low medical category individual who is retire/discharged from service for lack of alternative employment compatible with his low medical category."*

the applicant is entitled to the grant of Invalid Pension for the condition of 10 years of service for grant of invalid pension for those who were invalided out of service, has since been waived. Reliance was also placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in *Ex Rect Mithlesh Kumar Vs UOI & Ors.*, in Civil

Appeal No.16438-16440/2017 to contend to similar effect that he is entitled to the grant of Invalid pension. Reliance was also placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in *Sukhvinder Singh Vs. UOI & Ors.*, (2014) FLR 629, with reference to observations to Para-9 thereof, which reads 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."*

to submit to the effect that the applicant is thus entitled to the grant of Invalid pension.

10. The respondents have submitted to the effect that the instant OA has been filed after much delay and ought to be dismissed on the grounds of delay and laches. Inter alia, the respondents submit that as per the Govt. of India, Ministry of Defence letter dated 16.07.2020, as per provisions of the said

letter in relation to the grant of the Invalid Pension to Armed Forces Personnel invalidated out with less than 10 years of qualifying service on the ground of invalid pension even where his disabilities both bodily and mental were Neither Attributable to Nor Aggravated by military service, takes effect from 04.01.2019 and is applicable only where the disability for which the Armed Forces Personnel has been invalidated out of military service, which permanently incapacitates the Armed Forces Personnel from military service as well as civil re-employment and that the provisions of the said letter apply to Armed Forces are applicable to those who were in service on or after 04.01.2019. The respondents thus submit that reliance placed on behalf of the applicant on the letter No.12(06)/2019/D(Pen/Pol) dated 16.07.2020 issued by the Ministry of Defence, does not in any manner aid the applicant.

11. In as much as that the applicant seeks only grant of invalid pension which is based on a continuing wrong and thus, as laid down by the Hon'ble Supreme Court in *UOI & Ors. Vs. Tarsem Singh* reported in 2008(8) SCC 648, despite the long delay in seeking the remedy with reference to the date on which the continuing wrong commenced, which if such wrong creates a continuing source of injury, and where

the relief sought does not affect the rights of the third parties, the delay in seeking such relief in relation to a continuing wrong may be granted, though the courts are to restrict the consequential relief relating to arrears normally for a period of three years, prior to the date of the filing of the application,~ which cannot be overlooked. As has already been observed by us herein above, the factum that the applicant was invalided out of military service on 22.02.1984 due to the disability of "Neurosis (300) Depressive Reaction" is brought forth through the record.

12. In terms of Regulation 197 of the Pension Regulations for the Army, 1961, the person invalided out on medical grounds is entitled to the grant of Invalid pension, as has been observed in the case of *Ex Sep Bhagat Singh*(supra) in OA 1051/2016 in relation to Armed Forces Personnel who had been invalided out prior to 1973 with less than qualifying service of 10 years, the benefit of service element to all pre-1973 w.e.f. 01.01.1973, has been accorded. Furthermore, even in terms of the Govt. of India, Ministry of Defence letter No. 12(06)/2019/D(Pen/Pol)dated 16.07.2020, wherein 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 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 incapacitates them from military service as well as civil re-employment;"*

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 invalided 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 as well from civil re-employment, and the provisions of the said letter apply to Armed Forces Personnel who were/are in service on or after 04.01.2019.

13. 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."*

14. 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.

15. 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.

16. We further note that the cases wherein Regional Bench, Chandigarh of this Tribunal has allowed the grant of Invalid Pension, the same were assailed before *Hon'ble Punjab & Haryana High Court* in *Union Of India and Ors. vs Ex AC/UT Ravinder Kaushik and Anr. [CWP 21064/2024]* and *Union Of India and Ors. vs Ex AC/UT Sandeep Kumar and Anr. [CWP 21052/2024]*, which has dismissed the aforesaid Writ Petitions vide its order dated 28.08.2024.

17. We also find it essential to advert to the judgment dated 26.11.2024 of the Hon'ble Delhi High Court in in in the matter of *Lt. AK Thapa (Released) v. UoI & Ors. [W.P.(C) 13577/2024]* arising out of the decision of this Tribunal in *Lt. AK Thapa vs. Union of India and Ors., (supra)* wherein the Hon 'ble Delhi High Court has upheld the decision of this Tribunal, for the grant of invalid pension to the applicant, vide Paras 25 and 29 of the Judgment. Paras 25 and 29 of the said judgment respectively read as follows:

"25. The learned AFT also referred to the answers provided by the Commanding Officer of INS Virbahu, Visakhapatnam on 21.09.1982 and found that since 10.02.1982, the petitioner had been performing 'Sedentary Duties Ashore', and he was not assigned to a submarine or sailing duties. The learned AFT took note of responses of the said Commanding Officer stating that the petitioner's disability was neither attributable to nor aggravated by service. It also noted the response of IMB proceedings of March, 1982, that the petitioner's disability existed before entering the service, thus referring to all of the above, the learned AFT concluded that petitioner's disability cannot be held to be attributable to nor aggravated by Military service in the peculiar facts and circumstances of the case. The learned AFT, thus, passed a detailed and reasoned Order after noting all the submissions of the parties, the decisions cited before it, as well as the documents produced for its perusal and consequently, granted Invalid Pension to the petitioner, however, not the Disability element of Pension."

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29. In light of these circumstances, we are constrained to hold that there is no infirmity in the Impugned Order passed by the learned AFT and it would not be appropriate for this Court to interfere with the order passed by it, specifically when the order passed is well reasoned."

18. Furthermore, vide judgment dated 11.12.2024 of the Hon'ble High Court of Delhi in *W.P. (C) No. 17139/2024*, filed by the Union of India, to assail the order of this Tribunal dated 07.07.2023 in *Lt. AK Thapa vs. Union of India and Ors., (supra)* has been dismissed, in view of leave to appeal having been granted by this Tribunal vide order dated 17.05.2024 in OA 1721/2024 with MA No. 34608-4609/2023 /2023 to assail the order dated 07.07.2023 in OA 2240/2019. The observations in Para 6-11 of the Hon'ble

High Court of of Delhi in *W.P. (C) 17139/2024* are to the effect: ~

*"6. On the other hand, the learned counsel for the respondent, who appears on advance notice submits that by an Order dated 17.05.2024 passed in M.A. 1721/2024 with M.A Nos. 4608-4609/2023 passed in the above OA by the learned AFT, leave has been granted to the petitioners to assail the Order dated 07.07.2023 passed in the above OA before the Supreme Court.*

*7. Placing reliance on Section 31(3) of the Armed Forces Tribunal Act, 2007 (in short, 'AFT Act'), he submits that once leave is granted, the appeal is deemed to be pending before the Supreme Court. He submits that; therefore, this Court should not exercise its powers under Article 226 of the Constitution of India to examine the plea raised by the petitioners.*

*8. We have considered the submissions made by the learned counsels for the parties.*

*9. Section 31 of the AFT Act reads as under: "*

*"31. Leave to appeal. - (1) An appeal to the Supreme Court shall lie with the leave of the Tribunal; and such leave shall not be granted unless it is certified by the Tribunal that a point of law of general public importance is involved in the decision, or it appears to the Supreme Court that the point is one which ought to be considered by that Court.*

*(2) An application to the Tribunal for leave to appeal to the Supreme Court shall be made within a period of thirty days beginning with the date of the decision of the Tribunal and an application to the Supreme Court for leave shall be made within a period of thirty days beginning with the date on which the application for leave is refused by the Tribunal.*

*(3) An appeal shall be treated as pending until any application/or leave to appeal is disposed of and if leave to appeal is granted, until the appeal is disposed of; and an application/or leave to appeal shall be treated as disposed of at the expiration of the time. within which it might have been made, but it is not made within that time.*

*10. Sub Section (3) of Section 31 of the AFT Act, creates a deeming fiction providing that if the leave to appeal is granted by the learned AFT, until the appeal is disposed of, such appeal shall be treated to be pending before the Supreme Court.*

*11. In the present case, the effect of the Order dated 17.05.2024 passed by the learned AFT, therefore, shall be that the appeal filed by the petitioners to challenge the Order dated 07.07.2023 is pending before the Supreme Court. There cannot be two alternate remedies simultaneously taken by the petitioners to challenge the same order."*

19. Since, there is no stay granted so far by the Hon'ble Supreme Court of the operation of the order dated 07.07.2023 in OA 2240/2019 of the Tribunal, in *Lt. AK Thapa (Released)* (Supra), and keeping in view that the mandatory requirement of minimum 10 years service for grant of invalid pension has been dispensed with vide Govt. of India, Ministry of Defence letter No.12(06)/2019/D(Pen/Pol) dated 16.07.2020, and subsequently, the stand taken by this Tribunal in the case of *Lt. A.K. Thapa Vs. Union of India & Ors. (supra)* vide its judgment dated 07.07.2023 and judgment dated 11.03.2022 in the case of *Ex Rect Chhote Lal Vs. Union of India & Ors. (supra)*, wherein 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, and the cut-

off date for applicability has been held to be 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 and the same has been so affirmed by the *Hon'ble Punjab and Haryana High Court* vide its judgment dated 28.08.2024 in the case of *Union of India and Others Vs. Ex AC UT Ravinder Kaushik and Anr (supra)*, and *Hon'ble Delhi High Court* in *Lt. AK Thapa (Released) v. UoI & Ors. [W.P.(C) 13577/2024]*, the, OA thus deserves to be allowed to the extent of the grant of invalid pension.

20. In these circumstances, the husband of the applicant who was invalided out of service on 01.06.1989 due to the disability of Neurosis (300) Depressive Reaction after a period of 7 years is held entitled to the grant of Invalid pension for life from the date of invalidment from service till the date of his death i.e. 10.06.2010.

21. With respect to the entitlement of the applicant for grant of Ordinary Family Pension, subsequent to the death of her husband, we find the said issue has been adjudicated upon by this Tribunal in *Smt Indira Othiyil v. UoI & Ors.* [AFT PB; OA 1067/2017; Date of decision: 06.02.2025], wherein it has been observed as under:



24. Qua the prayer of the applicant for the grant of Ordinary Family Pension, the Pension Regulations for the Air Force 1961 (Part-1) is silent on the aspect of the grant of Ordinary Family Pension to the Persons Below Officer Rank (PBORs), therefore, in view of the same, the spirit of Regulation 212 the Pension Regulations for the Army, 1961 (Part-1) is hereby adopted for the purpose of determining the circumstances under which Ordinary Family Pension is admissible. Since all the major pensionary governing regulations in all the three military services i.e., Army, Navy and Air Force are in pari materia, therefore, it is essential to advert to Regulation 212 of the Pension Regulations for the Army, 1961 (Part-1) (hereinafter 'PRA'). Regulation 212 under clause 2 sub clause (ii) of the Pension Regulations for the Army, 1961 (Part-1) provides for the circumstances under which Ordinary Family Pension is admissible after retirement/discharge of the PBORs. Regulation 212 of the PRA reads as under: -

*"2. Ordinary Family Pension When admissible.*

*When an individual dies on account of causes, which are neither attributable to nor aggravated by Military Service.*

*(i) either while in service provided, he had been found fit after successful completion of the requisite training and medical examination for commission or at the time of enrolment in the case of personnel below officer rank.*

*(ii) or after retirement/discharge from services and was on the date of death in receipt of or eligible for retiring/ special/ Reservist/ disability/ invalid/ War injury pension.*

*(iii) Death due to suckle does not disqualify the heir from ordinary family pension."*

25. In the instant case, since the husband of the applicant was invalidated out on medical grounds i.e., "being mentally unfit for further service in the IAF" (as provided in Annexure R- 1) and at the time of discharge, he was found unfit due to low medical category, the husband of the applicant was eligible for the grant of invalid pension at the time of invalidment and has been adjudicated to grant of invalid pension as brought forth in Para 22 hereinabove, and therefore the applicant in accordance with sub-clause (ii) clause 2 of Regulation 212 of Pension Regulations for the Army 1961 is also held entitled for the grant of Ordinary Family Pension from the next date of the death of her husband i.e., 20.10.2002.

26. Significantly, questions (b) and (c) framed by the Larger Bench on 24.04.2018 in OA 1238/2016 and OA 272/2018 in



*Smt. Shama Kaur v. UOI & Ors. and in Ex. Nk. Vijay Singh vs. UOI & Ors. respectively states to the effect:*

*"(b) Should the application for condonation of deficiency of service ought to be made by the official during his lifetime, if not, within how much time it should be made?"*

*(c) Can such an application be filed by the widow of the employee, if so, within how much time it must be done?"*

*were answered vide para 48 (ii) thereof of the order dated 01.10.2019 therein to the effect:*

*"48 ....*

*(ii) Clubbing point of reference (b) and (c), it is held that widows of defence personnel have the right to approach this Tribunal to claim pension or family pension "in consequence to the claim of pension qua deceased employees which falls within the definition of "service matter" under the Act and this right is provided by Section 2(2) of the Armed Forces Tribunal Act, 2007. Though there is no applicability of limitation, in continuing wrongs and recurring causes of action, the arrears of pension, in the specific cases of condonation of shortfall, would however have to be restricted from 14.08.2001 as already directed in Paragraph: 12 of Surender Singh Parmar (supra) which is binding on us. Further, the claims of dual family pension (in addition to the first family pension) would have to be restricted from 24.09.2012, as already provided by Ministry of Defence letter dated 17.01.2013 (supra)."*

*It is thus apparent that the contention raised by the respondents vide letter 22.05.2019 that as the deceased was not in receipt of any pension, the applicant too was not entitled to a family pension has to be negated."*

22. Therefore, in view of the settled position as established herein above, whilst holding that the applicant is entitled to grant of ordinary family pension, 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 for the

grant of Invalid Pension due to the late husband of the applicant and Ordinary Family Pension to the applicant shall be paid by the respondents, after adjusting the amount already paid, if any, towards death-cum-retirement gratuity and invalid gratuity, 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, the arrears of the Invalid Pension to be paid and Ordinary Family Pension are restricted to commence to run from 03 (three) years prior to the filing of this OA filed on 04.07.2019.

23. Pending MA, if any, is disposed off.

Pronounced in the open Court on the 27<sup>R</sup> day of May, 2025.

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

[JUSTICE ANU MALHOTRA]  
MEMBER (J)

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