

A

COURT No.3  
ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

OA 139/2017

With

MA 135/2017, MA 1678/2023 and MA 4558/2024

Ex L Nk Abdul Rashid

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant :

Mr. Naresh Ghai, Advocate

For Respondents :

Mr. Prabodh Kumar, Sr. CGSC

Col. Balraj Sharma, SC Col Legal,  
Territorial Army Dte.

CORAM

HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)

HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER

MA 135/2017

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 800 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 135/2017 is allowed despite opposition on behalf of the respondents and the delay of 800 days in filing the OA 139/2017 is thus condoned. The MA is disposed of accordingly.

**MA 1678/2023 and MA 4558/2024**

For the averments made in the above-mentioned applications, All MA(s) stands disposed of.

**OA 139/2017**

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant vide the present OA makes the following prayers:-

*"(i) Direct to pay Disability Pension consisting of Service Element [with Commutation and ACP, without 5%] and Disability Element duly rounded to 50%.*

*(ii) Fixed Medical allowance (in lieu of ECHS facility/card) be paid from the date the pension (DE) is paid by deducting Rs15000 Contribution from the Gratuity, but not given the ECHS card/ facility.*

*(iii) All above with interest@12% pa and Special costs for maliciously leaving on road, a soldier on becoming disabled by not paying the pension.*

**BRIEF FACTS**

2. The petitioner was enrolled in the Territorial Army with 159 Inf Bn (TA) (H&H) DOGRA on 14 January 2004 and was discharged from service on 31 March 2012 (AN). He rendered 8 years and 77 days of service and was discharged on completion of the prescribed age limit

(50 years) under the provision of TA Act Rule 14 (a) of TA Regulations 1948 (Revised 1976).

3. While serving with 159 Inf Bn (TA) (H&H) DOGRA, the petitioner sustained an injury on 19 January 2009 while loading ammunition in a DD vehicle. He was admitted to Command Hospital (Northern Command) Udhampur, where his injury was diagnosed as "PIVD L5/S1(R)" and he was placed in the low medical category SIHIA1P3(Permt)El. The petitioner was brought before a Release Medical Board (RMB) on 10 February 2012 at the same hospital to assess his disability before discharge. The RMB assessed his diagnosis "PIVD L5/S1 (R)" at 30% for life and regarded it as "Attributable to military service".
4. Following his discharge from service, the petitioner's Disability Pension claim was forwarded to PCDA (P) Allahabad. The PCDA (P) Allahabad sanctioned only the Disability Element at 30% with effect from 01 April 2012 for life, vide PPO No DE/0065/2013 dated 16 April 2013. Instructions were issued to the petitioner's PDA (SBI Doda, J&K) to recover a one-time ECHS contribution of Rs 15,000/- (Rupees fifteen thousand only) so that the applicant could get medical facilities post his discharge. However, the applicant did not pay the requisite amount, hence, he is not covered by any medical facility

#### **CONTENTIONS OF THE PARTIES**

5. The learned counsel for the applicant submitted that the applicant was enrolled in the Indian Army on 14.01.2004 and was discharged from service on 31.03.2012 in LMC due to the disability of PIVD L5/S1(R).
6. The learned counsel for the applicant stated that the applicant is entitled to the service element of the disability pension in view of Regulation 183 (b) (ii) of the Pension Regulations for the Army (Part-1) 2008. Regulation 183 (b) (ii) of the PRA 2008 states to the effect:

***"183. ... (1) Service element***

***a) ...***

***(b) Where the individual (i) has not rendered sufficient service to qualify for a service pension" (ii) In all other cases:***

***Equal to the service pension as determined per Regulation 136***

***(a) or 146, but it shall in no case, be less than 2/3rd of the minimum service pension admissible to the rank/pay Group.***

***It shall be further subject to a minimum of Rs.375/p.m.***

7. It is the contention of the learned counsel for the applicant that there is no requirement of minimum qualifying service and despite of shortfall where an individual has not rendered sufficient service, he would still be entitled for the grant of service element of the disability pension in view of Regulation 183 (b) (ii) of the PRA 2008 (supra).

8. Per contra, the learned counsel for the respondents submitted that the applicant had rendered 08 years and 77 days of embodied service against 15 years of qualifying service. The learned counsel for the respondents inter alia has placed reliance on Rules 47, 53 (a), 54, and 184 of Pension Regulations for the Army (Part-1) 2008 (in short 'PRA 2008') contending that the applicant is not entitled to the benefit of service pension as he had not rendered the minimum qualifying service period i.e., 15 years for Personnel Below Officers Rank (PBORs). Rules 47, 53 (a), 54, and 184 of the PRA 2008 states to the effect: -

*"Rule 47. MINIMUM QUALIFYING SERVICE FOR SERVICE PENSION: Unless otherwise provided for, the minimum qualifying service for earning a service pension is 15 years.*

Para 53 (a) of Pension Regulations for the Army, 2008 (Part-1). *An individual released/retired/discharged on completion of terms of engagement or on completion of service limits or on attaining the prescribed age (irrespective of his period of engagement), if found suffering from a disability attributable to or aggravated by military service and so recorded by Release Medical Board, may be granted disability element in addition to service pension or service gratuity from the date of retirement/discharge, if the accepted degree of disability is assessed at 20 percent or more.*

Para 54 of Pension Regulations for the Army, 2008 (Part-I).

*The minimum period of qualifying service actually rendered and required for earning service gratuity shall be 5 years without weightage. The service gratuity shall be admissible only when the individual has not rendered the minimum qualifying service for earning service pension under these Regulations. Provided a Personnel Below Officer Rank who is remustered from a higher to a lower pay group on being rendered surplus after having rendered 05 years or more but less than 15 years qualifying service and who is discharged in circumstances entitling him to a service gratuity, will, where more favourable, be granted service gratuity which he had earned upto the date of being rendered surplus.*

*Rule. 184 (a) Subject to following provisions, the service qualifying for pension and reckonable emoluments in case of Territorial Army personnel shall be as specified in Section-2 of Chapter-I:*

*(i) Aggregate of qualifying embodied service whether continuous or broken shall count for service pension and gratuity. For calculating the total embodied service the break in embodied service due to disembodiment shall be treated as condoned but the period of breaks itself shall not*

*be treated as qualifying service for pension. Where qualifying embodied service has been rendered in broken spells, 5 percent cut shall be imposed on the pension of the Personnel Below Officer Rank who have completed 15 years or more of aggregate embodied service, but have not completed 20 years of aggregate embodied service.*

*(ii) ...*

*(iii) ...*

*(iv) ...*

***Rule 186. MINIMUM QUALIFYING SERVICE FOR PENSION:***

*All Territorial Army personnel (other than civil Government servants and civil pensioners), who have a minimum qualifying aggregate embodied service of 20 years in the case of Officer and 15 years in the case of Personnel Below Officer Rank, shall be eligible for service pension."*

**ANALYSIS**

9. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, we are of the opinion that it is not in dispute that that the applicant was discharged from service on completion of the prescribed age limit (50 years) under the provision of TA Act Rule 14 (a) of TA Regulations 1948 (Revised 1976). The applicant was

placed in Low Medical Category (LMC) for the disability "PIVD L5/S1 (R)" which was assessed at @30% for life and is in receipt of the disability element of pension vide PPO No. DE/0065/2013 (ARMY) dated 16.04.2013. The applicant is not in receipt of service pension over and above the disability element since he has not completed 15 years of qualifying service needed for service pension.

10. Upon perusal of the Counter Affidavit filed by the respondents, it has been observed that the applicant was enrolled in the Territorial Army in 159 Inf Bn (TA) (H&H) DOGRA of the Indian Army. As per the annexure placed on record, it has been brought out by the learned counsel for the respondents that the total embodiment service of the applicant is 08 years and 77 days at the time when he was discharged from service on reaching the age of 50 years.

11. The learned counsel for the respondents during the course of the hearing had drawn the attention to Regulation 184 (a) (i) of the PRA 2008 according to which aggregate or minimum qualifying embodiment service shall not be less than 15 years for Personnel Below Officers Rank (PBORs).

Regulation 184 (a) (i) of the PRA 2008 states to the effect:

***"Rule. 184 (a) Subject to following provisions, the service qualifying for pension and reckonable emoluments in case of Territorial Army personnel shall be as specified in Section-2 of Chapter-I: (i) Aggregate of qualifying embodied service whether continuous or broken shall count for service pension***

*and gratuity. For calculating the total embodied service the break in embodied service due to disembodiment shall be treated as condoned but the period of breaks itself shall not be treated as qualifying service for pension. Where qualifying embodied service has been rendered in broken spells, 5 percent cut shall be imposed on the pension of the Personnel Below Officer Rank who have completed 15 years or more of aggregate embodied service, but have not completed 20 years of aggregate embodied service."*

12. From the available records, it is prima facie undisputed that the total period of embodiment service of the applicant is less than 15 years, i.e., 08 years and 77 days hence he was not eligible for service pension. However, since at the time of discharge, he was found to be in low medical category (LMC) due to PIVD L-5/S1(R) with disability of 30% considered attributable to service. Hence, he was granted disability element. This is as per regulations 53(a) of PRA,2008 Part-I which states as under:

*"An individual released/retired/discharged on completion of term of engagement or on completion of service limits or on attaining the prescribed age (irrespective of his period of engagement), if found suffering from a disability attributable to or aggravated by military service and so recorded by Release Medical Board, may be granted disability element in addition to service pension or service*

***gratuity from the date of retirement/discharge, if the accepted degree of disability is assessed at 20 percent or more”.***

Hence, the action of the respondents in granting disability element to the applicant without the service pension/service element, since he did not complete the embodied service of 15 years, is as per the existing policy of the Govt.

13. It is important to consider at this stage whether the applicant is entitled to Disability Pension as prayed for which would automatically entitle him to service element along with the disability element. As per regulation 81(a) of PRA, 2008 Part-I

***“Service personnel who is invalided from service on account of a disability which is attributable to or aggravated by such service may, be granted a disability pension consisting of service element and disability element in accordance with the Regulations in this section”.***

From the abovementioned regulation, it is understood that the Disability Pension is given to those who are invalided out of service wherein the service element along with the disability element is granted irrespective of the fact whether the individual has completed 15 years of qualifying service for pension.

14. Hence, The claim of the applicant for the grant of service element of the disability pension is not legally sustainable in view of the fact that the Applicant was not invalided and instead was discharged on attaining the superannuating age of 50 years for his rank. Hence, the prayer of the

applicant for the grant of service element of disability pension is not tenable and is dismissed. He could have been granted service pension along with the disability element had he completed 15 years of embodied service. But the fact that his embodied service was only 8 years and 77 days hence service pension/service element was not granted to him. However, the fact that the applicant was found to be having the disability of PIVD L5/S1 (R) which was considered attributable to service and hence he was granted disability element even without service pension.

15. Now, as far as the prayer for granting FMA is concerned, the applicant can be granted the benefit of Fixed Medical Allowance in case he is not a beneficiary of ECHS subject to the provision in the policy letter No.22(01)/2011/WE/D(Res-I) dated 01st November 2018 wherein Para-7, it is stated:-

*“Commencement / Restoration of FMA As stated above, the ECHS member residing in a district where ECHS Polyclinic/ Armed Forces Hospital / MI Room upgraded to accommodate ESMs is not available can seek commencement of FMA payment through his/her Pension Disbursing Agency (PDA) /Authorised Pension Disbursing Bank, by submitting an application in the prescribed format to the nearest Stn. HQ in triplicate. The Stn HQ will scrutinize the residential address of the ECHS member and verify the applicability of District in the address for FMA and confirm the authorization of FMA on the application in the prescribed format.”*

It is pertinent to mention here that the intent of the abovementioned policy letter is to extend the benefits of FMA to those ESMs who cannot take the benefit of ECHS due to its operational unavailability. Moreover, the fact that Respondents have nowhere denied the possibility of grant of Fixed Medical Allowance instead as per counter affidavit had agreed to make him a member of ECHS after making a payment of Rs. 15000/- for joining ECHS, which facility is not being utilised by the applicant, hence as an alternate, the Fixed Medical allowance is granted to the applicant subject to the conditions stipulated in the policy letter no. No.22(01)/2011/WE/D(Res-I) dated 01st November 2018.

16. The instant OA 139/2017 is partially allowed.

17. Pending miscellaneous application(s), if any are disposed off.

Pronounced on this 19<sup>th</sup> day of November, 2025

  
(JUSTICE NANDITA DUBEY)

MEMBER (J)

  
(RASIKA CHAUBE)

MEMBER (A)