

**COURT No.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

**OA 2588/2021
with
MA 2726/2021**

Ex Spr Kali Charan **Applicant**
Versus
Union of India and Ors. **Respondents**

For Applicant : Mr. Manoj Kumar Gupta, Advocate
For Respondents : Mr. Shyam Narayan, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER

MA 2726/2021

Keeping in view the averments made in the miscellaneous application and finding the same to be bona fide, in the light of the decision in **Union of India and others** Vs. **Tarsem Singh** [(2008) 8 SCC 648], the MA is allowed condoning the delay in filing the OA.

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2. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this OA and has made the following prayers:

"(a) To direct the respondents to grant Invalid/disability pension @60% after declaring the disability as attributable to military service as matter is covered by the various judgments of Hon'ble Apex Court, relied upon by this AFT in catena of Orders including Orders placed at Annexure-A7 to A11; and further broad banded to 75% as per MoD policy dt. 31.01.2001; and/or

(b) Set aside the Respondent Rejection Orders (Annex-A1/Colly) and issue an order or direction of appropriate nature to the respondents to grant the Invalid pension, if not found feasible for disability pension; and/or

(c) To pass such further order or orders, direction/Directions as this Hon'ble AFT may deem fit and proper in accordance with law."

3. The applicant was enrolled in the Indian Army on 28.09.1985. As per the submissions of the applicant, while in service, the applicant was detected as a case of SCHIZOPHRENIA in Oct 1988 and treated in Military Hospital (MH) and downgraded to Low Medical Category CEE (Permanent) after more than three years of military service. On 06.03.1989, the applicant was brought before the Invaliding Medical Board held at Command Hospital, Western Command, Chandigarh which opined his disability of "SCHIZOPHRENIA" as neither attributable to nor aggravated by military service and assessed the disability @ 60% for two years. Thereafter, on 05.04.1989, he was invalided out from service on medical grounds after rendering about 03 years, 06 months and 08 days of service.

4. The initial claim of the applicant for grant of disability pension was rejected by the PCDA (P), Allahabad vide their letter

dated 10.08.1989 and the same was communicated to the applicant vide Records The Bombay Engineer Group, Kirkee, Pune letter dated 18.08.1989. However, after a gap of 15 years, the applicant had filed a CWP No.3911/2006 before the Hon'ble Delhi High Court for grant of disability pension. The Hon'ble High Court vide its order dated 17.10.2006 had gave the liberty to the applicant to file statutory appeal and disposed of the matter. Thereafter, the applicant preferred a 1st Appeal dated 13.11.2006 but as submitted by him the same has not been considered. However, from the counter affidavit it is revealed that vide IHQ of MoD (Army) letter dated 25.05.2007 (Annexure R-5), the 1st Appeal of the applicant was rejected by the appellate committee. Thereafter, the applicant submitted 2nd Appeal dated 05.09.2007 and the same was rejected by the Govt. of India, MoD, New Delhi vide their letter dated 18.07.2008 (Annexure R-6). Aggrieved by the aforesaid rejection, the applicant has approached this Tribunal.

5. At the time of final arguments, learned counsel for the applicant very fairly made an oral prayer that he is only pressing for grant of invalid pension to the applicant since he was held to be invalided out from service and his service was cut short by the aforesaid disability, i.e., SCHIZOPHRENIA.

6. With respect to the alternate prayer clause 8 (a) pressed by the applicant, i.e., the grant of invalid pension is governed by Regulation 197 of the Pension Regulations for the Army, 1961, provides to the effect:-

"197. Invalid pension/gratuity shall be admissible in accordance with the Regulations in this 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 retired/discharged from service for lack of alternative employment compatible with his low medical category."

It is thus apparent through Regulation 197 (b) of the Pension Regulations for the Army, 1961, that an individual who is invalided out of service on account of a disability which is neither attributable to nor aggravated by service is entitled to the grant of invalid pension/gratuity.

7. Regulation 198 of the Pension Regulations for the Army, 1961, reads as under:

"198. The minimum period of qualifying service actually rendered and required for grant of invalid pension is 10 years. For less than 10 years actual qualifying service invalid gratuity shall be admissible."

8. However, we find it essential to observe that the MoD letter No.12(06)/2019/D(Pen-Pol) dated 16.07.2020, has removed the

mandatory requirement of 10 years for grant of invalid pension and the same 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 who 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."

9. 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 No.368/2021 in the case of **Ex Recruit Chhote Lal Vs. Union of India & Ors.**, it has been held, vide Paras 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."

10. We find no reason to differ from the observations in the order dated 11.03.2022 in OA No.368/2021 in the case of ***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.

11. Further, 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.*** (OA No.2240/2019) vide its judgement dated 07.07.2023 and judgement dated 11.03.2022 in the case of ***Ex Rect Chhote Lal Vs. Union of India & Ors.*** (OA

No.368/2021), 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.

12. Noting the fact that the judgements of this Tribunal in the cases of ***Ex Rect Chhote Lal*** (supra) and ***Lt. A.K. Thapa*** (supra) have been affirmed by the Hon'ble Punjab and Haryana High Court vide its judgement dated 28.08.2024 in the case of **Union of India and Others** Vs. **Ex AC UT Ravinder Kaushik and Anr** (CWP No.21064/2024), we see no reason not to allow the prayer of the applicant with regard to the grant of invalid pension.

13. Therefore, in our considered view, the OA deserves to be allowed to the extent of the grant of invalid pension.

14. Accordingly, we direct the respondents to grant invalid pension to the applicant from the date of invalidment, i.e., 05.04.1989. However, the arrears shall be restricted to three years prior to

the date of filing of OA keeping in view the law laid down in the case of **Union of India and others** Vs. **Tarsem Singh** [(2008) 8 SCC 648].

15. Accordingly, the respondents are directed to calculate, sanction and issue necessary PPO to the applicant within four months from the date of receipt of copy of this order failing which the applicant shall be entitled to interest @ 6% per annum till the date of payment.

16. No order as to costs.

17. Pending miscellaneous application(s), if any, stands closed.

Pronounced in open Court on this 27th day of February, 2025.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

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