

2/15/21

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

31.

OA 60/2021 with MA 2357/2023 , 415/2025 & 73/2021

Capt ANK Nath (Retd.) Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Rajesh Nandal, Advocate
For Respondents : Mr. Rajeev Kumar, Advocate

CORAM

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

ORDER
11.03.2025

MA 73/2021

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of 805 days delay 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 (2008) 8 SCC 648 and in Ex Sep Chain Singh Vs Union of India & Ors, Civil Appeal 22965/2017 arising out of Civil Appeal Diary no 30073/2017 and the reasons mentioned, the MA 73/2021 is allowed and the delay in filing the OA 60/2021 is thus condoned. The MA 73/2021 is disposed of accordingly.

MA 2357/2023

This application has been filed by the respondents seeking condonation of 06 days delay in filing the counter affidavit, which in the interest of justice is allowed.

The applicant vide the present OA makes the following prayers:-

“(a) direct the respondents that since applicant was invalidated out he is entitled for service element as well as disability element of pension and

(b) direct respondents to conduct Re-Survey/re-assessment Medical Board to assess percentage of the disability of the applicant and to grant disability element of pension along with benefits of broad banding. and/or

(c) Direct respondents to pay the due arrears of disability element of pension with interest @12% p.a from the date applicant was invalidated out from the service and

(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 no SS-27327H was commissioned in the Indian Army on 12.05.1974 in the rank of Second Lieutenant of the Indian Army but was invalidated out on 14.10.1976 due to dislocation of both his shoulders due to an injury sustained in the course of duty.

3. The applicant has submitted vide this OA that he be granted the disability element as well as service element of pension and has also *inter alia* sought the conducting of a re-survey / re-assessment Medical Board to assess the percentage of his disability.

4. Taking into account the factum that the applicant was invalidated out from service on 14/10/1976 and apparently it

would be the Pension Regulation for the Army (1961) Part-I, that would be applicable and even if the period of 07 years from the date of invalidation is taken into account in terms of Regulation 178 thereof which reads as under:-

“Manifestation of a disability after an individual is retired/ discharged from service.

178. An individual who is retired/ discharged from service, otherwise than at his own request, with a pension or gratuity, but who, within a period of seven years from the date of retirement/discharged, and to be suffering from a disease which is accepted as attributable to his military service, may, at the discretion of the President, be granted, in addition to his pension/gratuity, a disability element at the rate appropriate to the accepted degree of disablement and the substantive rank last held, with effect from such date as may be decided upon in the circumstances of the case.”

(emphasis supplied),

the period of 07 years there from has long since elapsed and there can be no re-survey / re-assessment Medical board conducted in the said circumstances.

5. As regards, the prayer made by the applicant for the grant of the service element as well as disability element of pension, counsel for the applicant confines his prayer now to seeking the grant of Invalid Pension alone submitting that the applicant was declared permanently unfit for any form of military service by Medical Board held on him at Military Hospital Ambala Cantt on 14/08/1976 as per the document dated 14.10.1976 no 38184/16/MS7C placed on the record with the OA, which document is not refuted by the respondents.

6. It is essential to advert to Rule 197 of the Pension Regulations of the Army 1961, which is reproduced as below

*“197. Invalid pension/gratuity shall be admissible in accordance with the Regulations in this chapter, to
(a) an individual who is invalidated out of service on account of a disability which is neither attributable to nor aggravated by service;
(b) an individual who is though invalidated out of service on account of a disability which is attributable to or aggravated by 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.”*

7. Lest it be contended that the applicant being invalidated out after serving for 11 months and 02 days, however may not be eligible for getting the invalid pension as per Rule 198 of the Pension Regulation for the Army, 1961, which 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.”

it is apposite to mention the order of the Armed Forces Tribunal (Regional Bench) Lucknow in *Ex. Recruit. Chhote Lal Vs. Union Of India & Ors.* in OA No.368 of 2021, wherein the MoD letter No. 12(06)/2019/D(Pen-Pol) dated 16.07.2020 has been examined in detail. The said MoD letter is reproduced below:

“ Subject: Provision of Invalid Pension to Armed Forces Personnel before completion of 10 years of qualifying service- Reg.

*Sir,
I. 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 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 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 invalided 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.”

8. The AFT, (Regional Bench), Lucknow while disposing off the OA No. 368 of 2021 has examined Para 4 of the MoD letter dated 16.07.2020 and has held the said Para 4 of the letter as unconstitutional on the grounds spelt out in para 20 of the said order 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 04.01.2020.*

There cannot be any difference on the ground of invalidment as both in the cases of personnel invalidated out before and after 04.01.2020, they faced the similar consequences. In fact, the persons who have retired prior to 04.01.2020 have faced more difficulties as compared to the persons invalidated out on or after 04.01.2020. 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 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.

....."

9. The Tribunal in *Ex. Recruit. Chhote Lal* (supra) whilst arriving at the said conclusion with respect to Para 4 of MoD letter No. 12(06)/2019/D(Pen-Pol) dated 16.07.2020 has placed reliance on the verdicts of the Hon'ble Supreme Court in the cases of :-

- *D.S. Nakara and Others Vs Union of India, (1983), SCC 305;*
- *Maneka Gandhi V. Union of India ;*
- *Sriram Krishna Dalmia v. Sri Justice S.R. Tendolkar and Others 1958 AIR 538 1959 SCR 279 ;*
- *Ramana Dayaram Shetty v. The International Airport Authority of India &Ors 1979 AIR 1628 ;*
- *State of Punjab &Anr. V. Iqbal Singh 1991 AIR 1532 1991 SCR (2) 790 ;*
- *Jaila Singh &Anr. V. State of Rajasthan &Ors. 1975 AIR 1436 1975 SCR 428 1976 SCC (1) 602.*

10. In the circumstances, in relation to the prayer made on behalf of the applicant seeking the grant of Invalid Pension, the matter is no more *res integra* in view of the order of this Tribunal dated 11.03.2022 of the AFT (RB) Lucknow in OA 368 of 2021 in the case of *Ex Recruit Chhote Lal vs UOI*, which aspect has been upheld vide observations in judgment dated 07.01.2025 of the Hon'ble High Court of Punjab and Haryana in CWP 28442/2023 in the case of *Union of India and others* versus *Ex AC UT Sandeep Kumar and Anr* whereby the cut-off date of 04.01.2019 mentioned in the GoI MoD letter no 12(06)/2019/D(Pen-Pol) dated 16.07.2020 in relation to the grant of Invalid Pension has been held to be wholly arbitrary and the cut off date of 04.01.2019 in terms of the said Government of India, MoD letter, Department of Ex-Servicemen Welfare, D (Pension/Policy) No. 12(06) /2019/D (Pen/Pol) dated 16.07.2020 has been quashed and set aside by the Hon'ble High Court of Punjab and Haryana.

11. Furthermore, even qua the aspect of the grant of Invalid Pension to those who may be eligible for civil employment though wholly unfit for military employment is no longer in issue in view of the orders of this Tribunal of the AFT (PB) New Delhi in OA 2240/2019 in the case of *Lt A K Thapa (Released) vs UOI & Ors* dated 07.07.2023 whereby vide para 34 thereof it has been held to the effect:-

"34. Significantly, Section-3(4) of this enactment further stipulates that no person shall be deprived of his

or her personal liberty only on the ground of disability. As has been observed by us herein above, as laid down by the Hon'ble Supreme Court, personal liberty in terms of Article-21 of the Constitution of India includes within it as an integral facet thereof, the Right to Livelihood. That the applicant herein is entitled to grant of invalid pension from the date of invalidment is brought forth in terms of the verdict of the Hon'ble Supreme Court in *Balbir Singh Vs UOI & Ors.*, Civil Appeal no. 3086/2016. The provision that was considered therein was Regulation -186 of the Pension Regulations for the Army, 1961. The analogous provisions in relation thereto for the Indian Navy is the Section-101 of the Pension Regulations for the Navy, 1964 which reads to the effect:-

“Conditions for the grant of disability pension. Unless otherwise specifically provided, a disability pension may be granted to a person who is invalided from service on account of a disability which is attributable to or aggravated by service and is assessed at twenty per cent, or over.

Explanation. (1) The question whether a disability is attributable to or aggravated by service shall be determined in accordance with the rules contained in Appendix V to these regulations.

Explanation. (2) Service rendered in aid of the civil power shall be treated as service in the Indian Navy for the purpose of this regulation”.

Thus we hold that the words in clause 2 of the MoD letter dated 16.07.2020 which requires a **permanent incapacity for Civil Re-employment as well** – i.e. which states ‘Permanently incapacitates them from the military service as well as Civil re-employment’ for the receipt of Invalid Pension to be wholly unconstitutional qua the requirement of permanent incapacitation for civil re-employment, for invalid pension being also 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 and the said words in the clause(2) of the MoD Letter dated 16.07.2020 for grant of invalid pension by the Armed Forces personnel being wholly unconstitutional and unreasonable and not based on any intelligible differentia nor any reasonable classification are thus set aside, i.e. the words in the MoD letter dated 16.07.2020 for grant of invalid pension, which requires the permanent incapacitation of the personnel of the Armed Forces ‘as well’ as from Civil Re-employment for grant of Invalid pension in cases where the Armed Forces on account of any bodily or mental infirmity even though it be Neither Attributable to nor

Aggravated by Military Service are invalidated out to be unconstitutional and the same is thus set aside.”

12. It is essential to observe that the writ petition filed by the applicant *Lt AK Thapa* (Released) challenging the said order dated 07.07.2023 in OA 2240 of 2019 and seeking the grant of disability pension has been dismissed vide judgment dated 26.11.2024 of the Hon'ble High Court of Delhi in WP (C) 13577 of 2024 upholding the grant of the invalid pension alone to that applicant.

13. The prayers made by the applicant in the instant case are also on a similar footing and all that can be granted to the applicant is only invalid pension, qua which counsel for the applicant has now fairly confined the prayers made on behalf of the applicant to that extent.

14. It is also essential to observe that vide judgment dated 11/12/2024 in WP (C) 17139 of 2024 filed by the Union of India and other respondents arrayed as petitioners who were arrayed as respondents to the OA 2240 of 2019 against the order dated 07.07.2023 in the case of OA 2240 of 2019 in *LT AK Thapa (Released)* has also been dismissed vide paras 10 to 13 thereof to the effect:-

“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.

12. We, therefore, do not deem it fit to exercise our powers under Article 226 of the Constitution of India in the present petition, a statutory remedy having already been availed of by the petitioners and pending adjudication.

13. We, therefore, dismiss this writ petition. However, we make it clear that we have not expressed any opinion on the merits of the claim made by the petitioners.”

15. There is nothing to indicate that the order dated 07.07.2023 in OA 2240 / 2019 of this Tribunal has been stayed by any order of the Hon'ble Supreme Court nor is the number of any SLP stated to be contemplated to be filed placed before this Tribunal.

16. Furthermore, it is essential to observe that in terms of the order dated 11/12/2024 in WP (C) 17139 of 2024, the Hon'ble High Court of Delhi, in view of the grant of the leave to appeal by this Tribunal vide order dated 17.05.2024 in MA 1721 of 2024 with MA 4608/2023 & MA 4609/2023 in OA 2240/2019 to assail the order dated 07.07.2023 in OA 2240 of 2019 as specifically observed vide paragraphs 7, 8 and 9 thereof with observations in paragraphs 10 and 11 which have already been reproduced hereinabove that in terms of Section 31 (3) of the AFT Act 2007, such appeal would be deemed to be pending before the Hon'ble Supreme Court.

17. As observed hereinabove, there is no stay of the operation of the order dated 07.07.2023 in OA 2240 of 2019. In the circumstances, the applicant is held entitled to the grant of Invalid Pension with effect from the date of his discharge which grant of invalid pension shall however, in view of the verdict of the Hon'ble Supreme Court in *Union of India & Ors. vs. Tarsem Singh* {(2008) 8 SCC 648}, be confined to commence to run from a period of three years prior to the institution of the present OA instituted on 18/12/2020.

18. The corrigendum PPO be issued by the respondents and all arrears due to the applicant be paid within a period of three months from the date of this order, failing which, the applicant would be entitled to interest @ 6% per annum, till the date of payment.

19. The OA 60/2021 is thus disposed of, and the MA 415/2025 calls for no further action which is also disposed of.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

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

AP
11.03.2025