

COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

125.

OA 673/2022 WITH MA 869/2022

Ex GDSM (CLK) Hardev Singh	Applicant
Versus		
Union of India & Ors.	Respondents

For Applicant : Mr. Manoj Kr. Gupta, Advocate
For Respondents : Mr. Mohit Singh, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER
15.01.2025

MA 869/2022

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay in filing the present OA. In view of the judgment of the Hon'ble Supreme Court in the matter of Union of India and Ors. Vs. Tarsem Singh [2009 (1) AISLJ 371] and the reasons mentioned in the application, the delay in filing the OA is condoned. The MA is disposed of accordingly.

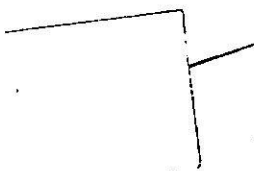
OA 673/2022

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 @ 20% (minimum) at the time of invalidment out of service, after declaring the disability as attributable to military service, as matter is covered by the various judgments of Hon’ble Apex Court, relied up-on by this Hon’ble AFT and RB Chandigarh in catena of orders including orders placed at Annexure- A4 to A7 and further broad banded to 50% as per MoD policy dt. 312.01.2001 and/or*
- (b) Set aside the respondents rejection orders (Annex A1/Colly) and issue an order or direction of appropriate nature to the respondents to grant invalid pension, if not found feasible for disability pension comprising both element; and/or*
- (e) 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 factual matrix of the case are that the applicant was enrolled in the Indian Army on 09.01.1973. After rendering approximately 09 year and 321 days of service, the applicant was invalided out from service on 25.11.1982, in Low Medical Category (LMC). While in service, the applicant suffered with a disability, namely, “EEE (Pmt).” There are no service documents or the record with regard to the assessment of disability of the applicant available on record since these have been destroyed after prescribed period of retention of 25 years.

4. The initial claims made by the wife of applicant for disability pension in January and February, 2020 were duly replied by the Records, Brigade of the Guards vide their letters No.6648367/D-Pen/Gen dated 9th January, 2020 and 6648367/D-Pen/Gen dated 2nd March, 2020 respectively indicating that all the service documents in respect of her husband had been destroyed after retaining them as provided under Para 595 of the Regulations for the Army (Revised) and, therefore, the



claim could not be considered in the absence of service record. Thereafter, the applicant served a legal notice cum appeal dated 8th September, 2021 which, taking the ground of non availability of service record, was also relied by the respondents vide letter No.6648367/LN/C-Cell dated 11th October, 2021, aggrieved of which the applicant has filed the instant OA.

5. It is the submission of learned counsel for the applicant that the applicant was invalidated out of service on medical ground after serving the Indian Army for about ten years. Placing reliance on the judgment of the Hon[']ble Supreme Court in the case of Dharamvir Singh Vs. Union of India and Ors. [2013 (7) SCC 36], learned counsel for applicant argued that at the time of entry into the Army the applicant was thoroughly medically examined and there was no note of any disability recorded in his service records. It is further contended that any disability occurring during the period of service is deemed to be attributable to or aggravated by military service.

6. With regard to percentage of disability and its attributability, learned counsel for the applicant has placed reliance on the judgment of the Hon[']ble Supreme Court in the case of Sukhvinder Singh Vs. Union of India [(2014) 14 SCC 364], wherein it was observed:

"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 authorizing the discharge or invaliding out of service where the disability is below twenty per cent and seems to us to be logically also. 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."

7. Per contra, in addition to the ground of delay in approaching this Tribunal, learned counsel for the respondents submitted that as the applicant was a non pensioner his documents were destroyed after completion of prescribed retention period of 25 years as provided in Para 595 (a) (i) of the Regulations for the Army, 1987 (Revised). It is further submitted that the applicant himself has no documents to prove that the disability suffered by him, in any way, can be said to have been attributable to or aggravated by military service. The stance of the respondents is that the facts of the case *Dharamvir Singh* (Supra), relied upon by the applicant in support of his arguments and the case at hand are different. Whereas in the case of *Dharamvir Singh* (Supra) the records were available; in the present case the service details of the applicant are not available which deny the respondents an opportunity of

rebuttal, hence the OA is liable to be dismissed both on the ground of delay and merit.

8. On perusal of the documents available on record and having heard learned counsel on either side, we are of the considered view that the applicant is entitled to invalid pension as he was enrolled in the Army in the year 1973 and was invalided out from service on medical grounds in the year 1982, i.e., after rendering 9 years and 321 days of service. The fact that the service documents of the applicant had been destroyed, though as per Rules, cannot become a ground for denial of disability pension to the applicant. The applicant was invalided out from service at a very young age of 31 years and has thus spent a fair portion of his life without any pension after his invalidment from the Army in the year 1982.

9. However, as regards the mandatory requirement of minimum 10 years of service for grant of invalid pension is concerned, the Government of India, Ministry of Defence, vide their letter No.12(06)/2019/D(Pen/Pol) dated 16.07.2020 and subsequently this Tribunal vide its judgments dated 07.07.2023 in the case of Lt. A.K. Thapa Vs. Union of India & Ors. (OA No.2240/2019) and Ex Rect Chhote Lal Vs. Union of India & Ors. (OA No.368/2021), judgment dated 11.03.2022, 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 having been 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 (CWP No.21064/2024), we see no reason but to allow the prayer of the applicant for grant of invalid pension. The disability of the applicant "EEE (Pmt)" @ 20% is broad banded to 50% in the light of the judgment of the Hon'ble Supreme Court in the case of Union of India and Ors. Vs. Ram Avtar (CA 418/2012) dated 10.12.2014.

10. Accordingly, we direct the respondents to calculate, sanction and issue necessary PPO to the applicant together with the amount of arrears within a period of three months failing which the applicant shall be entitled to interest @6% p.a. from the date of receipt of a copy of this order till payment. However, since there is a long delay on the part of the applicant in approaching this Tribunal, in view of the judgment of the Hon'ble Supreme Court in the matter of Union of India and Ors. Vs. Tarsem Singh [2009 (1) AISLJ 371] the arrears of invalid pension are restricted to three years prior to the date of filing of this OA on 30th March, 2022.

11. The OA is accordingly allowed.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[RASIKA CHAUBE]
MEMBER (A)

/vks/