

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

OA No. 2811/2021 with MA 2997/2021

Rect. Lok Ram (Retd.) **Applicant**

Versus

Union of India & Others **Respondents**

For Applicant : Mr. Manoj Kumar Gupta, Advocate

For Respondents : Mr. Kumar Gaurav, Advocate

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER(J)

HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

MA 2997/2021

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007, seeking condonation of delay of 12079 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of **Union of India v. Tarsem Singh [2009 (1) AISLJ 371]** and in **Ex Sep Chain Singh v. Union of India & Ors. [Civil Appeal No. 30073/2017]** and the reasons mentioned in the application, the MA 2997 of 2021 is allowed; and accordingly, the delay of 12079 days in filing the OA is also allowed. The MA is disposed of accordingly.

OA No. 2811/2021

1. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Paragraph 8 read as under:

“For the facts and circumstances stated in above, the applicant respectfully prays, that this Hon'ble AFT may be pleased:-

(a) To direct the respondents to grant Invalid/disability pension @20% for life after declaring the disability as attributable to military service in terms of judgments of Hon'ble Apex Court in Dharamvir Singh (Supra), Sukhvinder Singh(Supra) and Uol vs Rajbir Singh, relied upon by this AFT in catena of Orders including Orders placed at Annexure-A6 and A7; and further broad banded to 50% as per MoD policy dt. 31.01.2001; and/or

(b) Set aside the Respondent Rejection Orders (Annex-A1) and issue an order or direction of appropriate nature to the respondents to grant Invalid pension for life, if not found feasible for disability pension; in terms of Hon'ble Apex Court judgment in Ex Rect Mithilesh Kumar (Supra) and Rakesh Pandey(Supra); 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.

BRIEF FACTS

2. The applicant was enrolled in the Indian Army on 18.12.1987 and was invalided out from service under item IV of the table annexed to Rule 13(3)(iv) of Army Rules, 1954 due to the disability **'VERICOSE VEINS LEFT LOWER EXTREMITY'** on 02.05.1988 after having served less than 5 months of military service.

3. At the time of release, the applicant was in "EEE" (PERMANENT) Category and was suffering from the disability **'VERICOSE VEINS LEFT LOWER EXTREMITY'** assessed at @ 20% for two years and considered as 'Neither Attributable to Nor Aggravated (NANA) by the military service' by the Invaliding Medical Board (IMB) vide AFMSF-16 dated 29.03.1988.

4. Due to the matter being subjudice before the Headquarters UP Area and HQ 61 (1) Sub Area (Med), the Invalid Gratuity was not granted to the applicant at the time of his release.

5. After obtaining his medical documents and other documents of the IMB proceedings from the JAT Regiment, the applicant's initial claim for the grant of disability pension was rejected by the respondents vide letter No. 3181684/DP/RA/JR dated 27.10.2021 in terms of Paragraph 173 of the Pension Regulations for the Army ('PRA'), 1961 Part - 1, on the basis of 'NANA' finding by the IMB vide AFMSF-16 dated 29.03.1988, approved on 13.04.1988.

6. The applicant thereafter served a legal notice cum appeal bearing Ref no. Army/26/2021 dated 01.12.2021 claiming the grant of invalid pension, which was rejected by the respondents vide their letter dated 09.12.2021, reiterating the basis of the rejection of the initial claim for the grant of disability pension.

7. Aggrieved by the decision of the respondents, the applicant has filed the instant OA. In the interest of justice, in accordance with Section 21(1) of the AFT Act, we take up the present OA.

CONTENTIONS OF THE PARTIES

8. The learned counsel for the applicant submitted that the Applicant was enrolled in the Indian Army on 16.12.1987

and was invalided out on being found medically unfit for military service on 02.05.1988 due to the disability **'VERICOSE VEINS LEFT LOWER EXTREMITY'** which developed after 3-4 months of training and led to non-functional of his veins of left lower limb.

9. The learned counsel for the applicant has placed reliance on, *inter alia*, the verdict of the Hon'ble Supreme Court in the case of **Dharamvir Singh Vs. Union of India and Ors (2013 (7) SCC 316)**, wherein it was observed as under:

“....

(i) Disability pension to be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable or aggravated by military service to be determined under "Entitlement Rules for Casualty Pensionary Awards, 1982" (Regulation 173).

(ii) A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical

grounds any deterioration in health is to be presumed due to service. [Rule 5 r/w Rule 14(b)].

(iii) Onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally. (Rule 9).

(iv) If a disease is accepted to have been shown is having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service. [Rule 14(c)].

(v) If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service. [14(b)].

(vi) If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons. [14(b)]; and

(vii) It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II

of the "Guide to Medical (Military Pension), 2002 - "Entitlement: General Principles", including paragraph 7, 8 and 9 as referred to above.

...."

10. The learned counsel for the applicant also placed reliance on the verdict of the Hon'ble Supreme Court in the case of **Sukhvinder Singh Vs. Union of India (2014 STPL (WEB) 468 SC)**, wherein the Hon'ble Supreme Court while granting invalid pension has held that a member is to be presumed in sound and physical mental condition upon entry into service if there is no recording to the contrary at the time of entrance; and as such, the claimant has to be given the benefit of reasonable doubt where the onus of proof would lie on the employer rather than the claimant of such pension. Moreover, it has been categorically observed as under:

".... 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...”

11. *Per contra*, the learned counsel for the respondents submitted that since the disability of the applicant is recommended as NANA by the military service, the applicant is not entitled for the grant of invalid/disability pension in view of Regulation 173 of the Pension Regulations for the Army, 1961 (Part-1) (hereinafter ‘PRA’).

ANALYSIS

12. On the careful perusal of the material available on record and also the submissions made on behalf of the parties, we are of the view that it is not in dispute that the applicant was invalidated out from service on medical grounds with the disability **‘VERICOSE VEINS LEFT LOWER EXTREMITY’** before completion of terms of engagement and after having served less than 5 months in the military service which was assessed by the IMB vide AFMSF-16 dated 29.03.1988 assessed at @ 20% for two years, which in our view is deemed invalidating from service.

13. The Regulation 173 of the Pension Regulation for the Army, 1961 (Part-1) reads as under:

“173. Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20 per cent or over.”

Lest it be contended that the applicant being invalided out after serving less than 5 months, however may not be eligible for getting the invalid pension if he is invalidated out of service on account of a disability which is neither attributable to nor aggravated by military service, it is apposite to advert to 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 Ministry of Defence (MoD) letter No. *12(06)/2019/D(Pen-Pol)* dated 16.07.2020 regarding the minimum period of service qualifying for invalid pension has been examined in detail. Paragraph 2 of this letter categorically states 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". 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,

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 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 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 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.

The AFT (Regional Bench) Lucknow while disposing off the OA No. 368 of 2021 has examined Paragraph 4 of the abovementioned MoD letter dated 16.07.2020 and has held the said Paragraph 4 of the letter as unconstitutional on the grounds that:

“ 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 invalided 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 invalided 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 vires 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. Significantly vide judgment dated 07.01.2025 of the Hon'ble Division Bench of the High Court of Punjab and Haryana in CWP 28442/2023 in **Union of India & Ors. v. No. 8994857B Ex. AC UT Sandeep Kumar and Anr.** the cut-off date of 04.01.2019 for grant of invalid pension only to those who **'were/are in service on or after 04.01.2019'** vide the MOD letter dated 16.07.2020 bearing reference no. 12(06)/2019/D(Pen/Pol) has been observed to be arbitrary

not being based on any intelligible differentia with no nexus to the objects thereto, as observed under Paragraph 14 of the said judgment which reads to the effect: -

“14. Conspicuously also when the prescription as made in Annexure P-4, contents whereof become extracted hereinafter, thus on plain reading thereof, after making relaxations in the period of rendition of service, yet makes a cut-off date, vis-a-vis, the applications thereof. However, the prescriptions therein vis-a-vis the apposite cut-off date for the benefits thereof becoming assigned to the concerned, but also is rather arbitrary. The reason for so concluding stems from the factum that since the soldier qua whom the benefits of Annexure P-4, become purveyed when do constitute a homogeneous in-segregable class. Resultantly each member of the homogeneous class was to be co equally endowed the benefits of Annexure P-4. Therefore, the segregations created through Annexure P-4, thus amongst the same class, rather through the makings therein of a cut-off date, and that too when the said cut-off date, is not based on any intelligible differentia nor when it has any nexus with the beneficent thereto objects, but are required to be discountenanced.

“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 invalided out from service before 04.01.2019 will not be re-opened.”

15. In addition to this, it is also essential to refer to the order of this Tribunal in **Lt. A.K. Thapa v. Union of India & Ors.** in **OA 2240/2019**, Paragraph 27 of which reads as under:-

“ ...

27. In view of the law laid down by the Hon'ble Supreme Court in **Sukhvinder Singh v. Union of India (2014 STPL (WEB) 468 decided on 25.06.2014 (Supra)** and in **Balbir Singh (Supra)** on invalidment, the personnel of the Armed Forces who is invalided out is presumed to have been so invalided out with a minimum of twenty percent disability which in terms of the verdict in **Sukhvinder Singh (Supra)** is to be broad-banded to 50% for life, the incorporation by the respondents vide the MoD letter dated 16.07.2020 of a term of **a necessary permanent incapacity for civil re-employment**, is an apparent overreach on the

verdict of the Hon'ble Supreme Court in **Sukhvinder Singh (Supra)**. Furthermore, the said clause of a requirement of an Armed Forces Personnel to be permanently incapacitated from Military service as well as Civil re-employment is wholly vague and arbitrary and does not take into account the extent of incapacity for Civil reemployment. This is so for the personnel of the Armed Forces who is invalided out with all limbs incapacitated may still have a functional brain and functional voice, may be able to speak, sing, paint and earn a livelihood. The utilization of the words 'permanently incapacitates from civil re-employment, apparently requires a permanent brain-dead armed forces personnel. We thus hold that the requirement of the Armed Forces Personnel 'to be permanently incapacitated from civilian employment as well' (apart from permanent incapacitation from military service) for the grant of invalid pension in terms of the MoD letter No. 12(06) /2019 /D (Pen/Pol) dated 16.07.2020 to be wholly arbitrary and unconstitutional and violative of Article 14 of the Constitution of India which is in Part-III of the

Fundamental Rights with the sub heading thereto of 'Right to Equality', and lays down to the effect:-

"14. Equality before law - The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 21 of the Constitution of India lays down to the effect:-

"21. Protection of life and personal liberty - No person shall be deprived of his life or personal liberty except according to procedure established by law."

16. It is essential to observe that the Hon'ble Delhi High Court vide judgment dated 26.11.2024 in **W.P.(C) 13577/2024** titled **Lt. A K Thappa vs. Union of India and Ors.**, in the matter of **NO 40634Z LT A K THAPA (RELEASED) v. UNION OF INDIA & ORS.**, arising out of the decision of this Tribunal in **OA No. 2240/2019** has upheld the decision of this Tribunal, for the grant of invalid pension to the applicant, vide Paragraphs 25 and 29 of the Judgment. Paragraphs 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 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.”

“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.”

17. Furthermore, vide judgment dated 11.12.2024 of the Hon’ble High Court of Delhi, the W.P. (C) 17139/2024, filed by the Union of India to assail the order dated 07.07.2023 in

OA 2240/2019 in ***Lt. AK Thapa (Released) v. Union of India and Ors***, 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 to assail the order dated 07.07.2023 in OA 2240/2019. The observations in Paragraphs 6 to 11 of verdict of the Hon'ble High Court of Delhi in the said 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 for leave to appeal is disposed of and if leave to appeal is granted, until the appeal is disposed of; and an application for 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.”

In this backdrop, it is pertinent to note that while the respondents have filed SLP (Civil) bearing diary no. 38701/2025 in the Hon'ble Supreme Court assailing the order dated 07.07.2023 in OA 2240/2019, there is no stay that has been granted so far by the Hon'ble Supreme Court vis-à-vis the said order dated 07.07.2023 in OA 2240/2019 of the Tribunal, i.e. ***Lt. AK Thapa (Released) (Supra)***.

18. It is furthermore significant to observe that the Hon'ble High Court of Delhi vide the Order dated 07.07.2025 in W.P. (C) 8183/2025 in the case of ***UOI v. Ex Rect. Fateh Singh*** whilst dismissing the said petitions vide Paragraphs 13 to 18 thereof has observed to this effect:-

“13. As it transpires, para 4 of the letter dated 16 July 2020 stands struck down as unconstitutional by a judgment of the Lucknow Bench of the AFT in Ex. Recruit Chhote Lal v UOI.

14. Mr. Kumar submits that an SLP has been preferred in the Supreme Court against the said decision. However, it appears that no interim order has been passed in the said case till date.

15. As on date, therefore, para 4 of the letter dated 16 July 2020 stands struck down.

16. In that view of the matter, no exception can be taken to the impugned order passed by the AFT, holding the respondent to be entitled to invalid pension.

17. We, therefore, are not inclined to interfere in the present writ petition, least of all in the limited exercise of our jurisdiction under Article 226 of the Constitution of India.

18. The writ petition is accordingly dismissed in limine.”

Thus, as observed vide the abovementioned order of the Hon'ble High Court of Delhi, it has been clearly observed thereby that Paragraph 4 of the letter dated 16.07.2020 stands struck down as on the said date.

CONCLUSION

19. We find no reason to differ from the law laid down in **Chhote Lal (supra)** and in **A.K. Thapa (supra)**, and we are therefore of the considered view that the applicant has to be deemed to be invalided out of service on account of the disability of '**VERICOSE VEINS LEFT LOWER EXTREMITY**' as the applicant had rendered less than 5 months of service and was invalided out before completing his term of initial engagement. Thus, the applicant is held entitled to the grant of invalid pension.

20. 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 shall be restricted to commence to run from a period of 03 (three) years prior to the date of filing of the present OA, failing which the applicant shall be entitled for interest @ 6% p.a. from the date of receipt of copy of the order by the respondents.

21. Consequently, Miscellaneous Application(s), if any, stand disposed off accordingly.

Pronounced in the open Court on this 13th day of November, 2025.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/KG/