

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

OA 1185/2021

WITH

MA 1073/2021

CPL Balbir Singh Yadav (Retd) Applicant

VERSUS

Union of India & Ors Respondents

For Applicant : Mr. Manoj Kumar Gupta, Advocate

For Respondents : : Dr. V.S. Mahndiyan, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

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

Dated: 28th July, 2025

ORDER

MA 1073/2021

Keeping in view the averments made in the application and in the light of the decision of the Hon'ble Supreme Court in the case of Union of India and Ors. Vs. Tarsem Singh [(2009) 1 AISLJ 371], the delay in filing the OA is condoned. MA stands disposed of.

OA 1185/2021

2. This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, by the applicant on being aggrieved by the denial of the invalid pension by the Respondents.

The applicant seeks the following reliefs:

- (a) *To direct the respondents to grant invalid pension in the form of service element, as the applicant disability must be either attributable to or aggravated by service as he was Invalidated Out in LMC on having been found medically u8nfit for further aservice in IAF and also adhere to the principle of rounding off as per the GoI, MoD order dt.31 Jan 2001 which has been accepted & upheld by the Apex Court in Ram Avtar vs UoI & Ors. And/or*
- (b) *Issue an order or direction of appropriate nature to the respondents to grant invalid pension (service element and disability element) in terms of Hon'ble Supreme Court judgment Ex Rect Mithilesh Kumar (Supra) Nanukuttan Nair (supra) read with the judgment in Sukhvinder Singh (supra) which has been followed in catena of Orders by this Hon'ble AFT including judgments supra (AnnexA7 to A9) to meet the ends of equity, justice and fair play; and*
- (c) *To pass any such further order or orders, directions as this Hon'ble AFT may deem fit and proper in accordance with law.*

3. The applicant after being found physically and mentally fit was enrolled in the Indian Air Force as a Combatant Soldier on 19th October, 1984. He was found to be suffering from CSOM (Bilateral) at Command Hospital, Pune on 27th March, 1992. On account of being diagnosed with the disability of CSOM (Bilateral), the applicant after serving for about eight years was invalidated out of service on 2nd June, 1992 and was granted invalid/disability pension assessed @ 20% for two years. Vide letter No.RO/2706/693952/NERW (DP-4) dated 30th April, 1993, the applicant's request for grant of disability pension was rejected by the AFRO on the ground that the PCDA (P) Allahabad had decided his disability not attributable to Military Service, therefore, he is not entitled to disability pension. The appeal

preferred on 14th June, 2021 by the applicant for grant of invalid/disability pension was also dismissed vide Air HQ letter No.99798/5/693952/TBS/Appeal/A V-III on the ground that it was received after a delay of about 28 years.

4. Learned Counsel for the applicant submitted that at the time of his entry into the service, the applicant was subjected to thorough medical examination conducted by the Medical Board and was found medically fit to join the service of Indian Air Force and there is no note or record to the effect that the applicant was suffering from any kind of disease or disability.

5. It is the contention of the applicant that while posted at different Air Force Stations he developed the disease due to stress and strain of Military Service and ignoring the fact that his disability is attributable to and/or aggravated by Military Service, he has been denied invalid/disability pension. It is further contended that initially the applicant was granted disability pension @20% for two years but PCDA (A), which is not an expert Medical authority denied the same since it was not attributable to Military Service and did not fulfil the condition that it existed before or arose during Military Service and thus aggravated thereby no disability pension is admissible. The learned counsel thereafter submitted that the respondents had failed to consider

the Government of India Notification No. 12 (06)/2019/D dated 16th July, 2020 issued by Department of Ex-Servicemen Welfare D/(Pension/Policy) Government of India which provides for invalid pension to the Armed Forces personnel with less than 10 years of service and who were invalided out of service on account of bodily/mental infirmity which was neither attributable to nor aggravated by military service and which permanently incapacitated them from military service. Learned counsel further submitted that respondents had failed to appreciate that the applicant had been found physically and mentally fit in all respects at the time of entering into service and had been invalided out of service due to disability assessed @ 20% on recommendations of an IMB and therefore was squarely covered by the order passed by this Tribunal in the case Ex Swr Ram Kumar Vs Union of India and Ors. (OA 1060/2016) dated 17th May, 2019. The learned counsel also relied upon the judgement of the Hon'ble Supreme Court in the case of Ex Rect Mithlesh Kumar Vs. Union of India and Ors. (Civil Appeal Nos.16438-40/2017), referred to in Ex Swr Ram Kumar (supra) and submitted that respondents had failed to appreciate the view taken by the Hon'ble Supreme Court in the case of Sukhvinder Singh Vs Union of India and Ors. [(2014) 14 SCC 364]. Learned counsel further submitted that since the

disease was infected during Military Service there is a causal connection between the disease and the Military Service hence the applicant is entitled to disability pension. Further contention of the applicant is that as per the extant Rules/Regulations, disability leading to invalidation from service would attract the grant of invalid pension, therefore the OA be allowed.

6. At the very outset learned counsel for the respondents submitted that medical documents in respect of the applicant have been destroyed after retaining them for the period as stipulated under the Rules.

7. It is submitted on their behalf that the applicant had undergone initial medical examination and had been declared fit for enrolment in the Indian Air Force. He joined the service on 19th October, 1982 and was discharged on 1st June, 1992 under the clause "*having been found medically unfit for further service in IAF*".

8. Learned counsel further contended that as per Entitlement Rules 2008, the mere fact that a disease has manifested during Military Service, does not per se establishes attributability or aggravation by Military Service. He inter alia submitted that the medical test at the time of entering into service is not exhaustive and maybe some dormant disease, besides certain hereditary

constitutional and congenital diseases may manifest later in life irrespective of conditions of service.

9. The counsel then referred to Rule 153 of the Pension Regulations for the Indian Air Force 1961 (Part-1) and asserted that the applicant's case did not meet the twin criteria of the disability being either attributable to or aggravated by service and the degree of disablement being 20% or more. The Counsel then elaborated that though the second condition was not applicable in the case of the applicant, being invalided by an IMB, the IMB had assessed the disability as neither attributable to nor aggravated and was, therefore, not entitled to the disability element. He further added that since the applicant was not entitled to the disability element, the question of its rounding-off did not arise.

10. GoI/ MoD / Dept of Ex-Servicemen Welfare/ D (Pension/ Policy) letter No 12(06)/2019/D(Pen/Pol) dated 16th July, 2020 regarding provision of invalid pension to Armed Forces personnel before completing 10 years of qualifying service is extracted below:

“ Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Pension & Pensioner's Welfare vide their O.M. No. 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&PW(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 No 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 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.

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.”

11. Keeping in view that the mandatory requirement of minimum 10 years service for grant of invalid pension has been dispensed with vide Government of India, Ministry of Defence letter No.12(06)/2019/D/Pen/Pol) dated 16th July, 2020 and subsequently the stand taken by this Tribunal in the case of Lt A.K Thapa Vs. Union of India and Ors. (OA 2240/2019) vide its judgment dated 7th July, 2023 and 11th March, 2022 in Ex Rect Chhote Lal Vs. Union of India and Ors. (OA 368/2021), and cut off date for applicability has been held to be wholly arbitrary and unconstitutional and violative of Articles 14 and 16 of the Constitution of India and has thus been set aside and the same

has been affirmed by the Hon'ble Punjab and Haryana High Court in the case of Union of India and Ors. Vs. Ex AC UT Ravinder Kaushik and Anr. (CWP 21064/2024) decided on 28th August, 2024, we see no reason not to allow the prayer of the applicant for grant of invalid pension.

12. It is also worthwhile to observe that the Hon'ble Delhi High Court vide judgment dated 26th November, 2024, in WP (Civil) 13577/2024- Lt. AK Thapa Vs. Union of India and Ors. in the matter of No. 2240/2019 arising out of the decision of this Tribunal in OA No. 2240/2019 has upheld the decision of the Tribunal for grant of invalid pension. Para 25 and 29 which are relevant for the purpose of decision of the OA read as under:

"25. The Learned AFT also referred to the answer 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."

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"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."

13. In view of the above, in our considered opinion, the OA deserves to be allowed, hence allowed.

14. The respondents are accordingly directed to grant invalid pension to the applicant from the date of invalidment, i.e., 2nd June, 1992. However, keeping in view the law laid down in the case of Tarsem Singh (supra) the arrears shall be restricted to three years prior to the date of filing of the OA on 2nd July, 2021. The respondents are further directed to calculate, sanction and issue necessary PPO to the applicant within four months from the date of receipt of a copy of this order failing which the applicant shall be entitled to interest @ 6% per annum till the date of payment.

15. Pending application(s), if any, also stands closed.

Pronounced in open Court on this ^{28th} day of July, 2025.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

(RASIKA CHAUBE)
MEMBER (A)

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