

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

**OA 1821/2023
with
MA 2632/2023**

Ex Cfn Satyendra Kumar Shahi	Applicant
Versus		
Union of India and Ors.	Respondents

For Applicant	:	Mr. Laxmi Kant Sharma, Advocate
For Respondents	:	Mr. Sudhir Kumar, Advocate

CORAM

**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)**

**O R D E R(ORAL)
09.07.2025**

MA 2632/2023

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.

While hearing the OA on admission on 14.07.2023 the applicant restricted his prayer to grant of invalid pension only.

3. The brief facts of the case are that, while in service, the applicant was detected as a case of 'Personality Disorder' in the year 1983. Being placed in Low Medical Category BEE (Permanent) under Item III(v) to Rule 13(3) of Army Rules 1954 and after rendering 09 years 4 months and 30 days military he was invalidated out from service on 09.07.1985. Prior to release, the applicant was brought before the Release Medical Board (RMB), which opined that the above disability is neither attributable to nor aggravated by military service due to the aforesaid disease and assessed the same @20% for two years.

4. The initial claim of the applicant for grant of disability pension was rejected by the PCDA (P), Allahabad vide their letter dated 09.02.1985 and the same was communicated to the applicant vide EME Records letter dated 13.01.1986 with an advice to prefer an appeal within six months from the date of issue of the ibid letter, if not satisfied with the decision of pension sanctioning authority. The applicant preferred first appeal on 03.03.1986 against rejection of disability pension. The same was rejected by Govt. of India,

Ministry of Defence vide letter dated 29.07.1986 stating that *"to inform you that the same has been reconsidered by the Government. However, it is regretted that no reasonable ground have been found to alter the decision already conveyed by the CDA(P), Allahabad"*. The applicant again submitted an application to the respondents dated 10.03.2023 to grant disability pension and the same was also rejected vide letter dated 01.05.2023 stating that *"as per directions of IHQ of MoD (Army) Ministry of Defence Ex-Servicemen Welfare, New Delhi letter dated 17.05.2016, delay cases/appeals beyond 05 years will not be processed/entertained"*. Another application was submitted by the applicant to the respondents on 01.06.2023 for grant of disability pension. However, the same was again rejected vide letter dated 12.07.2023. Thereafter, the legal notice dated 12.06.2023, sent by the applicant was also replied in negative vide letter dated 22.07.2023. Aggrieved by the aforesaid rejection, the applicant has approached this Tribunal by way of filing the present OA.

5. At the time of admission itself, learned counsel for the applicant 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., PERSONALITY DISORDER.

6. 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.

7. Regulation 198 of the Pension Regulations for the Army, 1961, is also relevant and the same 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 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 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.***
- 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 passed 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 dated 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, 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 grant of 'invalid pension'.

14. Accordingly, we direct the respondents to grant invalid pension to the applicant from the date of invalidment, i.e., 09.07.1985. 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.


(Justice Rajendra Menon)
Chairperson


[Rear Admiral Dhiren Vig]
Member (A)

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