

**COURT No.3  
ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI**

**OA 1931/2020 with MA 2242/2020**

|                                |       |                    |
|--------------------------------|-------|--------------------|
| <b>Ex Sep Chhatar Pal</b>      | ..... | <b>Applicant</b>   |
| <b>VERSUS</b>                  |       |                    |
| <b>Union of India and Ors.</b> | ..... | <b>Respondents</b> |

**For Applicant :** Mr. S.M. Dalal, Advocate  
**For Respondents :** Mr. Y.P. Singh, Advocate  
Capt Abhishek Kumar, OIC Legal Cell

**CORAM**

**HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)**  
**HON'BLE MS. RASIKA CHAUBE, MEMBER (A)**

**ORDER**

**MA 2242/2020**

Keeping in view the averments made in this application and finding the same to be bonafide, in the light of the decision in the case of **Union of India and Ors.** Vs. **Tarsem Singh** [(2008) 8 SCC 648], the instant application is allowed condoning the delay of 6110 days in filing the OA. MA stands disposed of.

**OA 1931/2020**

**BRIEF FACTS**

2. The brief facts germane to decide entitlement of grant of disability element of disability pension are that the applicant

was initially enrolled in the Rajputana Rifles on 25.08.1984 and discharged therefrom at his own request wef 4 January 1990 under the provisions of rule 13(3) item III (iv) of Army Rules, 1954. While serving with the Rajputana Rifles, he had earned 4 red ink entries for various offences committed under the Army Act 1950. Thereafter (3 years) he again applied for and was enrolled in the DSC on 27.02.1993 as Sepoy. During DSC service also he had earned six red ink entries for various offences committed under the Army Act. He was discharged from service wef 23.10.2001 under Rule 13(3) Item III(V) of Army Rules 1954. The applicant filed WP(C) No. 10708/2004 challenging his discharge order with prayer to reinstate him in service with all consequential benefits or in the alternative grant him service pension by condoning the deficiency in qualifying service before the Honb'le Delhi High Court and the same was transferred to AFT (PB) New Delhi bearing No. TA 550/2009. Vide AFT order dt 04.04.2012, the discharge of the applicant was upheld, however the respondents were directed to consider the case of applicant for condonation of deficiency in qualifying service only if he was so eligible otherwise. The

prayer of applicant was rejected vide DSC Records letter dt 23.02.2013, as his deficiency in qualifying service was more than one year. The applicant thereafter preferred a Review Peition against the order dt 04.04.2012 which came to be dismissed by the AFT (PB) New Delhi vide order dt 15.03.2013.

3. Unfazed, the applicant filed another OA bearing No. 155/2013 before the AFT(PB), New Delhi with the same pleadings, which came to be dismissed vide order dt 23.09.2013 with the observation, "*the waiver is permissible upto one year, here the petitioner is short of service by 79 days, even for 14 years*". It was further held that "*such successive petitions are not maintainable and the issue which has already been raised considered cannot be examined by the coordinate bench in subsequently filed OA*".

4. Thereafter, the applicant filed Writ Petition 6832/2013 before the Hon'ble High Court of Delhi AFT seeking direction to quash the AFT orders dt 15.03.2013 and 23.09.2013 and to grant him service pension condoning the deficiency of more

than one year in qualifying service. The Hon'ble High Court disposed off the case vide order dt. 20.03.2015 directing him to file application afresh for condonation of delay. The applicant filed MA 388/2015 and MA 389/2015 in OA 155/2013 before AFT (PB) for condonation of delay in filing Leave to Appeal (LTA) which was rejected by AFT (PB) vide order dt 08.05.2015. Again the applicant filed Civil Appeal Dy No. 17785/2015 before the Hon'ble Supreme Court but the same was also dismissed vide order dt 22.08.2019.

5. Now the applicant is before us seeking the following relief:

*(a) Quash impugned order dated 07 Mar 2004 passed by Respondent No. 3 qua denial of disability pension being contrary to settled law.*

*(b) Direct the respondents to grant disability pension to the applicant @ 30% for life with further direction to broad band it to 50% w.e.f 24 Oct 2001 for life.*

*(c) Direct the respondents to pay interest @ 12% PA over the arrears of disability pension.*

*(d) Pass any other or further order(s) which this Hon'ble Tribunal considers appropriate in the facts and circumstances of this case.*

6. However, vide written submission filed on 23.07.2025, the applicant opted to limit his prayer for grant of Disability Element of Disability Pension only. Thus, the present case is

being considered qua the prayer for grant of disability element of pension alone.

**Contentions of the parties**

7. Learned counsel for the applicant stated that applicant was enrolled in Rajasthan Rifles on 25.08.1984 and took discharge from Army Services on 04.01.1990, and was re-enrolled in DSC on 27.02.1993 after thorough medical examination in medical category SHAPE-1. While serving with 738 DSC he contracted diseases "Allergice Rhinitis" and "Asthmatic Bronchitis" in September, 2000 and placed under Low Medical Category (LMC). The Release Medical Board (RMB) opined both the diseases aggaravated due to adverse climatic condition and assessed the disabilities (i) Allergic Rhinitis as 6-10% for life, (ii) Asthmatic Bronchitis as 20% for life (compositly assessed @ 30% for life).

8. It is further contended by the counsel that the applicant contracted the disabilities after serving for seven years. Since both the disabilities suffered by him were aggravated due to adverse climatic conditions and were assessed

more than 20%, the bare minimum percentage for grant of disability pension, the applicant is eligible for grant of disability element of disability pension in terms of Hon'ble Supreme Court's judgment in the case of **Ram Pal Singh v. Union of India & Ors.** AIR 1984 SC 504.

9. To substantiate his arguments, learned counsel for the applicant has further placed reliance on the decisions of AFT (PB), New Delhi, **Sepoy Bhagwan Singh Vs UOI & Ors.** in OA 329/2015 decided on 29.08.2018 and **Ex Nk Bharat Singh Vs. UOI & Ors.** OA 712/2015 decided on 26.10.2018

10. *Per Contra*, Learned Counsel for the respondents submitted that aggregate qualifying service rendered by the applicant in both the spells of service was 13 yrs and 332 days (5 yrs and 105 days of qualifying service with Rajputana Rifles and 8 yrs 227 days qualifying service in DSC). However, service of 5 yrs 105 days rendered by the applicant with Rajasthan Rifles was not counted as he had not completed 03 years consecutive service with exemplary remarks in DSC service due to red ink entries.

11. Learned counsel for the respondents in their counter affidavit has contended that while serving with Rajputana Rifles, the applicant had earned four red ink entries and in the DSC service the applicant had earned six red ink entries due to his indisciplined attitude/character for various offences committed under Army Act, 1950. Subsequently, the case of the applicant was sent to the higher authorities for considering his discharge from service on the ground of undesirable soldier as service no longer required. A Show Cause Notice was served to the individual in accordance with policy letter of IHQ of MoD (Army) dt 28.12.1988 and discharge of the applicant was sanctioned wef 23.10.2001 under the Rule 13(3) Item III(v) of Army Rules 1954.

12. Larned counsel for the respondents further invited our attention to the instructions vide Para 5(c) of HQ of MoD (Army) letter dt. 18.08.2005 which reads as under:

|                                                                                                                                                        |                                                                                                                                              |
|--------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| <i>(c) Where the individual has been discharged from service at his own request or discharged locally being undesirable on administrative grounds.</i> | <i>Such cases will not be adjudicated nor will any appeal lie against non-grant of disability pension. They may be informed accordingly.</i> |
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13. The counsel for the respondents has relied on the judgments of the Hon'ble High Court of Jammu & Kashmir in the case of **Kalyan Singh v. Union of India & Ors.** in support of his submission that no disability benefit was payable on discharge from service under Rule 13(3) Item-III(V) of Army Rules, 1954.

### **Analysis**

14. We have heard learned counsel for both the sides and perused the documents carefully placed before us and the judgment cited. The only question before us is whether an individual who has been discharged from service on administrative grounds under the Rule 13(3) Item III(v) of Army Rules 1954 is entitled for disability element of pension, if his disability is found aggravated by military service and assessed 20% or above.

15. It is not in dispute that the applicant had incurred 6 red entries during his DSC Service. The details of offence and punishment awarded are reproduced as under:

|    |                                                  |                                                                         |            |
|----|--------------------------------------------------|-------------------------------------------------------------------------|------------|
| a) | AA Sec 63                                        | 28 days detention in Military custody                                   | 14.07.1993 |
| b) | AA Sec 36 (a)                                    | 07 days detention in Military custody                                   | 16.04.1998 |
| c) | AA Sec 39 (d) and 63                             | 28 days Rigorous Imprisonment                                           | 29.09.1998 |
| d) | AA Sec 39(a)                                     | 14 days imprisonment in Military custody                                | 02.05.2000 |
| e) | AA Sec 48(1), Sec 40(b), Sec 40(a) and Sec 55(b) | 28 days detention in Military custody and Penal deduction of Rs. 4048/- | 29.05.2000 |
| f) | AA Sec 39(a)                                     | 28 days imprisonment in Military custody                                |            |

16. The applicant was discharged under Rule 13(3) item III(v) of Army Rules 1954 on the ground of undesirable soldier as service no longer required. His successive application, rival appeal to quash the discharge order and to reinstate him in service with all consequential benefits or in alternative grant of service pension by condoning deficiency in qualifying service had been dismissed by the AFT (PB) Delhi and Hon'ble Supreme Court respectively.

17. As aforesaid in the present case the applicant during his submissions has limited his prayer seeking a direction to the respondents to grant him Disability Element of Disability

Pension on the ground of having been placed in Low Medical Category (LMC) P-3 (Permanent) as he contracted disabilities; Allergic Rhinites and Asthmatic Bronchites (in Sep 2000) during his DSC service and opined as aggravated due to adverse service condition and assessed compositely @ 30% for life. It is pertinent to note that the applicant was not discharged on medical ground but on administrative ground as a case of undesirable soldier as service no longer required; this discharge, under provision of Army Rule 13(3) item III(V) as undesirable soldier on administrative ground having received more than 4 red ink entries has attained finality.

18. As per the Rule 2(c) of the Revised Rules and Procedures for grant of Disability Pension/Special Family Pension to Armed Forces Personnel, laid down in Appendix 'C' to IHQ of MoD (Army) letter No. B/40122/MA(P)/AG/PS-5 dt 20.07.2006, PBOR who are discharged on administrative ground after earning 4 or more red ink entries are not eligible for grant of Disability Pension. Rule 2 is reproduced as under:

*2. The following categories of ex-Army personnel are not eligible for grant of disability pension and, therefore, claims in respect of such personnel should not be processed at all, even if they may otherwise*

*be fulfilling the twin eligibility conditions for the same as brought out in the foregoing paragraphs -*

*(a) Officers who proceed on premature retirement except when they do so within one month of actual date of retirement and, that too, for the purpose of getting enhanced rate of commutation of pension*

*(b) Officers who retire from Army Service on superannuation in medical category SHAPE-I and are re-employed in the Army and are found to be in low medical category during such re-employment, unless, the re-employment is terminated due to such disability.*

*(c) PBOR who are discharged prematurely at their own request or on administrative ground after earning 4 or more red ink entries*

19. Furthermore, as per the provisions of HQ of MoD (Army) letter dt 18.08.2005, where the individual has been discharged from service at his own request or discharged locally being undesirable on administrative grounds, his case will not be adjudicated nor will any appeal lie against non-grant of disability pension. In the present case Service Pension was declined to the applicant due to the deficiency of more than one year in qualifying service and also considering the discharge of the applicant on administrative grounds. Now after so many years he has come in a round about manner for grant of disability element of Disability Pension. Disability Element is only a component of Disability Pension comprising of Service Element and Disability Element. When the Service Pension has been denied to the applicant and upheld upto the Hon'ble

Supreme Court, there is no question of grant of Disability Element of pension now.

20. As narrated hereinabove, multiple occasions came before the applicant with alternative prayer of grant of service pension but for the reasons best known to him, he did not pray for grant of Disability Pension or Disability Element of Pension in any of his earlier petitions, though the said claim was available to him at the time of discharge.

21. Once the applicant has abandoned the relief/claim he could have asked for in the earlier petitions, but intentionally omitted to do so, he cannot afterwards ask for the same relief so omitted or relinquished. As such the instant claim is barred under Explanation IV to section 11 of CPC and Order II Rule II of CPC.

22. The Law on Constructive res judicata was considered in the case of Samir Kumar Majumdar v. Union of India (2023 SCC online SC 1182 and the Hon'ble Supreme Court held as under:

*33. Almost two centuries ago, in Henderson vs. Henderson, (1843) 3 Hare, 100, the Vice-Chancellor Sir James Wigram felicitously puts the principle thus:- "In trying this question I believe I state the rule of the Court correctly when I say that, where a given matter becomes the*

*subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time....."*

34. This principle popularly known as the doctrine of constructive res judicata, based on the might and ought theory, has been recognized by this Court in several judgments. In *Maharashtra Vikrikar Karamchari Sangathan vs. State of Maharashtra and Another*, (2000) 2 SCC 552, this Court held as under:-

*"22. It was then contended on behalf of the appellants that neither the Recruitment Rules of 1971 nor the Seniority Rules of 1982 provided for carrying forward the vacancies falling in either category. In the absence of such rules which specifically provide for carrying forward the vacancies falling in either category, no such carry-forward rule could be implied either in the Recruitment Rules or in the Seniority Rules. This contention need not detain us any longer because such a contention was available to the appellants in the earlier proceedings, namely, Transfer Application No. 822 of 1991 and the same was not put in issue. That not having been done, it must follow that such a contention is barred by the principles of constructive res judicata. Neither the contesting respondents nor the appellants ever raised this contention at any stage of the proceedings in Transfer Petition No. 822 of 1991.*

23. Similar view has been taken in the case of Forward Construction Co. V. Prabhat Mandal (1986) 1 SCC100, wherein the Hon'ble Supreme Court held:

*20. So far as the first reason is concerned, the High Court in our opinion was not right in holding that the earlier judgment would not operate as res judicata as one of the grounds taken in the present petition was conspicuous by its absence in the earlier petition. Explanation IV to 5.11 C.P.C. provides that any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided as incidental to or essentially connected with the subject matter of the litigation and every matter coming within the legitimate purview of the original action both in respect of the matters of claim or defence. The principle underlying Explanation IV is that where the parties have had an opportunity of controverting a matter that should be taken to be the same thing as if the matter had been actually controverted and decided".*

24. The reliance placed by the applicant on judgment rendered by AFT (PB) in the case of **Sepoy Bhagwan Singh** (Supra) and **Ex Nk Bharat Singh** (Supra) decided on the basis of judgment rendered by Hon'ble Supreme Court in case of **Ram Pal Singh V. Union of India & Ors.** (AIR 1984 SC 504) wherein the benefit of the Disability Pension was extended to the applicant is misplaced. The judgments are distinguishable

in view of the peculiar facts of present case. It is pertinent to mention that the appellant in the mentioned case (Ram Pal Singh (Supra) was employed in the Army and sustained injuries in 1965 Indo-Pakistan conflict while rendering active service on the war front. Under the orders of Hon'ble Supreme Court, the applicant was examined by the Chairman of Release Medical Board and as per the medical report, the disability "Multiple Shell Wounds both limbs" sustained in September 1965 in Indo-Pak Conflict was assessed 20% and therefore, applying Regulation 173 of Pension Regulation governing Armed Forces held him entitled to disability pension on account of disability attributable to or aggravated by military service and assessed at 20% or more. Question regarding mode of his discharge was not gone into. The Counsel for Respondents though contended that the applicant was not discharged on account of any disability but on account of being found undesirable after repeated court martial were held against him, the Hon'ble Supreme Court on humanitarian ground adopted a sympathetic approach considering that the individual was a

war injury survivor and granted Disability Pension to appellant.

The Hon'ble Supreme Court has observed in para 7:

*"7. Mr. Yogeshwar Prasad at one point was in a mood to contend that the discharge of the appellant from Army service was illegal and that therefore, he must be deemed to have continued in service and in that event the benefits to which he would have been entitled would be entirely different. We are not inclined to go into this question at this stage for the specific reason that Mr. Talukdar, learned Counsel for the respondents, on the other hand, contends that the appellant was not discharged on account of any disability but on account of being found to be an undesirable after repeated court martials were held against him on several occasion. It is no use moving backward by fifteen years and reopen closed chapter. That may even prove harmful to the appellant. Therefore, we are considering the question of awarding disability pension to the appellant."*

25. Whereas in the present case, the applicant's challenge to his discharge on administrative ground as well as prayer for grant of Service Pension has been rejected by this Bench and the appeal filed by applicant was dismissed by the Hon'ble Supreme Court. Though the disability suffered by the applicant held aggravated by military service however, applying Regulation 173 of Pension Regulation in the present case is not helpful as the mode of discharge was not on medical grounds.

The applicant was discharged on administrative grounds under

Rule 13(3) item III(v) of Army Rules 1954 on the ground of undesirable soldier as service no longer required.

26. In view of the afore discussed, we also not find any merit in the present OA and the same is accordingly dismissed.

27. Miscellaneous applications, if any, pending stand closed.

Pronounced in the open Court on this day 25<sup>th</sup> September, 2025.

(JUSTICE NANDITA DUBEY)  
MEMBER (J)

(RASIKA CHAUBE)  
MEMBER (A)

/kt/