

COURT NO. 3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA No. 2063/2018 WTH MA No. 2269/2018

Ex Sep Bhudev Sharma	...	Applicant
Versus		
Union of India & Ors.	...	Respondents

For Applicant : Mr. C K Agarwal, Advocate
For Respondents : Ms. Barkha Babbar, Advocate

CORAM :

HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER(J)

HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER

MA 2269/2018

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 12077 days in filing the present OA. During the course of submissions, Ld. Counsel for the applicant vehemently argued for grant of disability pension to the applicant and subsequently, demonstrated before us, the cause of delay of 33 years and 32 days in filing this OA, which he attributed to poor mental state of the applicant, lack of awareness and rejection of the second appeal of the applicant for disability pension by the Respondents. In the interest of justice, we allow MA 2209/2018 and condone the delay. In view of the judgments of the Hon'ble Supreme Court in the matter of UOI & Ors Vs Tarsem Singh 2009(1)AISLJ 371 and in Ex Sep Chain

Singh Vs Union of India & Ors (Civil Appeal No. 30073/2017)

and the reasons mentioned, the MA 2269/2018 is allowed despite opposition on behalf of the respondents and the delay of 12077 days in filing the OA 2063/2018 is thus condoned. The MA is disposed of accordingly.

OA 2063/2018

2. The applicant vide the present O.A. 2063/2018 has made the prayer for grant of disability pension. However, during the course of submissions made on 07.07.2025 on behalf of the applicant, it was submitted that alternate prayer for grant of invalid pension may be considered in case, the applicant is not entitled to grant of disability pension.

3. As regards the submissions on behalf of the applicant for disability pension is concerned, we observe from the unrefuted facts in the instant case through the Counter Affidavit dated 11.03.2019 of the respondents, that the applicant was enrolled in the Indian Army on 02.07.1976 and was medically invalided out of service w.e.f. 06.03.1979 in low medical category after rendering 03 years of service as a non-pensioner and there are no medical records held by the Respondents due to the case being more than 25 years old. Therefore, we consider it appropriate to examine the case for grant of invalid pension,

instead of disability pension or disability element, as prayed for, as the alternate prayer.

4. Faced with this situation, learned counsel for the applicant places his reliance on the Govt. of India, Ministry of Defence letter No.12(06)/2019/D(Pen/Pol) dated 16.07.2020, to submit to the effect that thereby personnel of the Armed Forces with less than 10 years of qualifying service who had been invalided out of service on account of any bodily or mental infirmity which was neither attributable to nor aggravated by military service and which permanently incapacitates them from military service as well as civil re-employment, have been entitled to the grant of the Invalid Pension.

5. Reliance was placed on behalf of the applicant on the order dated 09.11.2016 in OA 1442/2016 in the case of *Ex Rect Mithilesh Kumar Vs UOI & Ors.*, of the AFT(PB), New Delhi, as upheld by the Hon'ble Supreme Court in *Ex Rect Mithilesh Kumar Vs UOI & Ors* [Civil Appeal No. 16438/2017] to submit to the effect that the applicant having been invalided out of service, he cannot be denied the benefit of the invalid pension on the ground of non-qualifying length of minimum service for pension.

6. It was thus submitted on behalf of the applicant that in terms of Regulation-197 of the Pension Regulations for the Army 1961 which reads to the effect:

“Invalid pension/gratuity shall be admissible in accordance with the Regulations in the 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 retire/discharged from service for lack of alternative employment compatible with his low medical category.”,

the applicant is entitled to the grant of Invalid Pension for the condition of 10 years of service for grant of invalid pension for those who were invalided out of service, has since been waived. Reliance was also placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in Sukhvinder Singh Vs. UOI & Ors., (2014) FLR 629, with reference to observations to Para-9 thereof, which reads to the effect:-

“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 authorising the discharge or invaliding out of service where the disability is below twenty per cent and seems to us to be logically so. 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.”,

to submit to the effect that the applicant is thus entitled to the grant of Invalid pension.

7. The respondents have submitted to the effect that the instant OA has been filed after much delay and ought to be dismissed on the grounds of delay and laches. Inter alia, the respondents submit that as per the Govt. of India, Ministry of Defence letter dated 16.07.2020, as per provisions of the said letter in relation to the grant of the Invalid Pension to Armed Forces Personnel invalided out with less than 10 years of qualifying service on the ground of invalid pension even where his disabilities both bodily and mental were Neither Attributable to Nor Aggravated by military service, takes effect from 04.01.2019 and is applicable only where the disability for which the Armed Forces Personnel has been invalided out of military service, which permanently incapacitates the Armed Forces Personnel from military service as well as civil re-employment and that the provisions of the said letter apply to Armed Forces are applicable to those who were in service on or after 04.01.2019. The respondents thus submit that reliance placed on behalf of the applicant on the letter no. 12(06)/2019/D(Pen/Pol) dated 16.07.2020 issued by the Ministry of Defence, does not in any manner aid the applicant.

8. In as much as that the applicant seeks only grant of invalid pension which is based on a continuing wrong and thus, as laid

down by the Hon'ble Supreme Court in UOI & Ors. Vs. Tarsem Singh reported in 2008(8) SCC 648, despite the long delay in seeking the remedy with reference to the date on which the continuing wrong commenced, which if such wrong creates a continuing source of injury, and where the relief sought does not affect the rights of the third parties, the delay in seeking such relief in relation to a continuing wrong may be granted, though the courts are to restrict the consequential relief relating to arrears normally for a period of three years, prior to the date of the filing of the application,- which cannot be overlooked.

9. In terms of Regulation 197 of the Pension Regulations for the Army, 1961, the person invalided out on medical grounds is entitled to the grant of Invalid pension, as has been laid down in terms of the Govt. of India, Ministry of Defence letter no. 12(06)/2019/(Pen/Pol) dated 16.07.2020, wherein it is provided to the effect:-

"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 Nor Aggravated by Military Service and which permanently incapacitates them from military service as well as civil re-employment."

10. In terms of the said letter dated 16.07.2020, the grant of Invalid pension to Armed Forces Personnel with less than 10

years of qualifying service in cases where personnel are invalidated out of service on account of any bodily or mental infirmity, even where it is Neither Attributable to Nor Aggravated by Military Service has been made admissible, though it has been made admissible where the said disability which permanently incapacitates the Armed Forces Personnel from military service also permanently incapacitates the said armed forces personnel as well from civil re-employment, and the provisions of the said letter apply to Armed Forces Personnel who were/are in service on or after 04.01.2019.

11. 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 368/2021 in the case of Ex Recruit Chhote Lal Vs UOI & Ors., it has been held, vide paragraphs-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."

12. We find no reason to differ from the observations in the order dated 11.03.2022 in OA 368/2021 in Ex Rect Chhote Lal (supra) in relation to the aspect that the policy pertaining to invalid pension vide letter date 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.

13. It has also been held by this Tribunal in OA 2240/2019 in Lt AK Thapa (Released) Vs UOI & Ors. vide order dated 07.07.2023, that 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, is 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 thereby.

14. We further note that the cases wherein Regional Bench, Chandigarh of this Tribunal has allowed the grant of Invalid Pension, the same were assailed before Hon'ble Punjab & Haryana High Court in Union Of India and Ors. Vs Ex AC/UT Ravinder Kaushik and Anr. [CWP 21064/2024] and Union Of India and

Ors. Vs Ex AC/UT Sandeep Kumar and Anr. [CWP 21052/2024], which has dismissed the aforesaid Writ Petitions vide its order dated 28.08.2024.

15. At this point, we find it essential to advert to the judgment dated 26.11.2024 of the Hon'ble Delhi High Court in in the matter of Lt. AK Thapa (Released) Vs UoI & Ors. [W.P.(C) 13577/2024] arising out of the decision of this Tribunal in Lt. AK Thapa Vs Union of India and Ors., (supra) wherein the Hon 'ble Delhi High Court has upheld the decision of this Tribunal, for the grant of invalid pension to the applicant, vide Paras 25 and 29 of the Judgment. Paras 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 the 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."

16. Furthermore, vide judgment dated 11.12.2024 of the Hon'ble High Court of Delhi in W.P. (C) No. 17139/2024, filed by the Union of India, to assail the order of this Tribunal dated 07.07.2023 in Lt. AK Thapa (Released) (supra) 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 /2023 to assail the order dated 07.07.2023 in OA 2240/2019. The observations in Para 6-11 of the Hon'ble High Court of of Delhi in *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/or leave to appeal is disposed of and if leave to appeal is granted, until the appeal is disposed of; and an application/or 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."

17. Since, there is no stay granted so far by the Hon'ble Supreme Court of the operation of the order dated 07.07.2023 in OA 2240/2019 of the Tribunal, in Lt. AK Thapa (Released) (Supra), and 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 (Released) Vs. Union of India & Ors. (supra) 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. (supra), 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 and the said requirement has thus been set aside and the same has 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 (supra), and Hon'ble Delhi High Court in Lt. AK Thapa (Released) v. UOI & Ors. [W.P.(C) 13577/2024], thus, OA deserves to be allowed to the extent of the grant of invalid pension.

18. In these circumstances, the applicant who was invalided out of service on 06.03.1979 due to the disability is held entitled to the grant of Invalid pension for life from the date of invalidment from service.

19. Therefore, in view of the settled position as established herein above, and while holding that the applicant is entitled to grant of invalid pension, 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 for the grant of Invalid Pension shall be paid by the respondents, after adjusting the amount already paid, if any, towards death-cum-retirement gratuity and invalid gratuity, failing which the applicant will be entitled for interest @6% p.a. from the date of receipt of copy of the order by the respondents. However, the arrears of the Invalid Pension be paid and Ordinary Family Pension are restricted to commence to run from three years prior to the filing of this OA. [Date of filing of OA: 05.12.2018]

20. Pending MA, if any, is disposed off.

Pronounced in the open Court on the 21st day of July, 2025.

(JUSTICE NANDITA DUBEY)
MEMBER (J)

(LT GEN C.P. MOHANTY)
MEMBER (A)

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