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

OA No. 231 of 2022

Rfn Ashok Thapa (Retd.) **...Applicant**

Versus

Union of India & Others **.... Respondents**

For Applicant: Mr. Manoj Kumar Gupta, Advocate

For Respondents: Mr. RS Chillar, Advocate

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

O R D E R

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 Para 8 are read as under:

> ***"(a) To direct the respondents to grant disability (Invalid) pension comprising Disability as well as service element of pension; after declaring the disability as attributable to military service in terms of judgments placed at Annexure A-4 to Annexure A-6 wherein it was held an invaliding disability can't be less than 20% further and broad banded to 50% as per policy dated 31.01.2001; and/or***

(b) Set aside the respondents order dated 16.12.2021 and issue an order or direction of appropriate nature to the respondents to grant the Invalid Pension, if not found feasible for disability pension; and/or;

(d) To pass such further order or orders, direction(s) 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 26.04.2005 and was invalided out from service under item III (V) annexed to Rule 13 (3) of Army Rules, 1954 due to the disability **'EPILEPSY (GENERALISED) 345, V67'** on 31.05.2000 after having served around 06 years and 01 month and 05 days of military service.

3. As per the RMB vide AFMSF-16 dated 04.02.2000, at the time of discharge, the applicant was found in Low Medical Category (LMC) 'BEE (Permanent)' for the disability **'EPILEPSY (GENERALISED) 345, V67'** which was assessed at @ 11-14 % for life and considered as Neither Attributable to Nor Aggravated (NANA) by the military service as disease being congenital/genetic in origin and not related to military service.

4. The applicant filed a representation dated 27.02.2001 seeking the grant of disability pension. The representation was

processed and the respondents vide letter No. B/405012/631/02/AG/PS/4(d) dated 28.10.2002 rejected the said representation stating the disease being constitutional disorder and hence neither attributable to nor aggravated (NANA) by the military service.

5. The applicant against the initial rejection preferred an Appeal-cum-Legal Notice dated 01.12.2021 seeking the grant of disability/invalid pension, however, the same was rejected by the respondents vide the impugned order, annexed as Annexure A-1 to OA, stating that the disease was considered as NANA and not connected with military service with Nil percentage qualifying for disability pension.

6. 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

7. The applicant, through this OA, sought for the grant of Disability Pension or Invalid Pension. However, during the course of hearing today on 20.05.2025, the learned counsel for the applicant sought to confine the prayer made in the OA for

seeking the grant of invalid pension only. Thus, the present case is being considered qua the prayer for the grant of invalid pension only.

8. The learned counsel for the applicant submitted that the applicant was enrolled in the Indian Army on 26.04.1994 and was invalided out from service on 31.05.2000 in LMC 'CEE (P)' due to the disease **'EPILEPSY (GENERALISED) 345, V67'.**

9. The learned counsel for the applicant submitted that the applicant was enrolled into military service after thorough medical examination and there was no note of any disability recorded in his service records and that the applicant contracted the invaliding disease **'EPILEPSY (GENERALISED) 345, V67'** during the service.

10. The learned counsel for the applicant placed reliance on the judgement of the Hon'ble Supreme Court in the case of ***Dharamvir Singh*** Vs. ***Union of India and Ors.*** [2013 (7) SCW 4236], that after thorough medical examination the applicant was enrolled into military service and there was no note of any disability recorded in his service records. Therefore, any disability occurring during the period of his

service is deemed to be attributable to or aggravated by military service.

11. The learned counsel for the applicant also placed reliance on the decision of the Hon'ble Supreme Court in **CA No. 16438-16440/2017 titled *Ex Rect Mithlesh Kumar v. UOI & Ors.*** wherein the Hon'ble Supreme Court by placing reliance upon Regulation 197 of the Pension Regulations for the Army 1961 (Part-1) granted invalid pension to the applicant who was boarded out before completion of the initial 10 years of military service.

12. The learned counsel for the applicant had also placed reliance on the decision of the Hon'ble Supreme Court in case no. CA-5605/2010 titled ***Sukhvinder Singh v. Union of India*** (2014 STPL (web) 468 SC) decided on 25.06.2014, wherein it was held that 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.

13. *Per contra,* the learned counsel for the respondents submitted that the applicant was enrolled in the Indian Army 26.04.1994 and was released from service due to paucity of

suitable shelter appointment in the unit, on medical grounds, w.e.f. 31.05.2000 in LMC 'BEE (Permanent)' due to the disability **'EPILEPSY (GENERALISED) 345, V67'** assessed at @ 11-14 % for life and none qualifying for disability pension opining the disability being congenital/genetic in origin and not related to military service and hence not connected with service and recommended the same as Neither Attributable to Nor Aggravated (NANA) by the military service. Since the disability of the applicant is recommended as NANA by the military service and percentage of disablement being less than 20%, the applicant is not entitled for the grant of disability pension in view of Para 173 of Pension Regulations for the Army (Part-1) 1961 (hereinafter 'PRA'). Para 173 of the PRA 1961 reads to the effect:

> ***"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."***

ANALYSIS

14. 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 invalided out from service on medical grounds with the disease **'EPILEPSY (GENERALISED) 345, V67'** in LMC 'BEE (Permanent)' before completion of terms of engagement after having served around 06 years 01 month and 05 days in the military service which was assessed by the RMB vide AFMSF-16 dated 04.02.2000 at @ 11-14 % for life, which in our view is deemed invaliding from service.

15. Lest it be contended that the applicant being invalided out after serving around 06 years and 01 month and 05 days, however may not be eligible for getting the invalid pension as per Rule 198 of the Pension Regulation for the Army, 1961 (Part-1), which reads as under:

> ***" 198. The minimum period of qualifying service actually rendered and required for invalid pension is 10 years or more. For less than 10 years' qualifying service, invalid gratuity shall be admissible."***

It is apposite to mention 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 MoD letter No. *12(06)/2019/D(Pen-Pol) dated 16.07.2020* has been examined in detail. 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 Bench while disposing off the OA No. 368 of 2021 has examined Para 4 of the MoD letter dated 16.07.2020 and has held the said Para 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.

....."

16. 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 Para 14 of the said judgment which reads to the effect: -

> ***"14. Conspicously also when the prescription as made in Annexure P-4, contents whereof become extracted hereinafter, thus on plain reading thereofs, 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 thereins 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 thereins 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."

17. To this effect, reliance is also placed on para 27 of the order of ***Lt. A.K. Thapa* v. *Union of India & Ors. in OA 2240/2019,*** Para 27 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-IIT 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."

18. 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. No. 2240 of 2019** 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 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."

19. Furthermore, vide judgment ***dated 11.12.2024*** of the Hon'ble High Court of Delhi, 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 Para 6-11 of the Hon'ble HC 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: -***
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> > ***"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."

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).***

CONCLUSION

20. 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 was deemed to be invalided out of service on account of the disability **'EPILEPSY (GENERALISED) 345, V67'** as the applicant rendered 06 years and 01 month and 05 days of military service and was invalided out from the Indian Army solely on medical grounds before completing his term of initial engagement. Therefore, the applicant is held entitled to invalid pension, despite the fact that he had not completed the qualifying length of service of ten years.

21. 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 i.e., 14.02.2022, and shall be paid by the respondents failing which the applicant will be entitled for interest at @ 6% p.a. from the date of receipt of copy of the order by the respondents.

22. Consequently, Miscellaneous Application(s) if any, stands disposed off accordingly.

Pronounced in the open Court on this 1st day of July, 2025.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

/PRGx/