

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

116.

OA 2966/2024 with MA 3311/2024

Smt Manju Tanwar Wd/O

Late CFN Ravinder Singh Tanwar Applicant

Versus

Union of India & Ors. Respondents

For Applicant : Mr. Praveen Kumar, Advocate

For Respondents : Mr. Rajeev Kumar, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE RASIKA CHAUBE, MEMBER (A)

ORDER

02.04.2025

MA 3311/2024

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. The MA stands disposed of.

OA 2966/2024

Invoking the jurisdiction of this Tribunal u/s 14 of the Armed Forces Tribunal Act, 2007, applicant claims grant of

ordinary family pension to the applicant w.e.f 03.02.2011, i.e. death of the applicant's husband and Invalid Pension to her husband w.e.f the date he was discharged from service i.e. 14.04.2004. The relief claimed in para 8 reads as under:

(a) Direct the respondents to grant Invalid Pension to the husband of the applicant w.e.f. the date of his invalided out from service i.e. (14 May 2004) till his death i.e. 03 Feb 2011 and thereafter Ordinary Family Pension to the applicant w.e.f 04 Feb 2011 for life along with arrears @ 8% per annum till the payment is made.

(b) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.

2. The applicant's husband was enrolled in the Indian Army on 15.01.1997. He was deployed in Trade duties i.e. Elect/MV and in the year 2002, it is said that he was diagnosed to be suffering from ADS (Alcohol Dependence Syndrome) and the disability assessed as 1-5% by the Medical Board vide medical proceedings (Annexure A-3) and he was Invalided Out from service on account of the aforesaid Alcohol Dependence Syndrome (ADS). After being Invalided Out of service on 14.04.2004, her husband died on 03.02.2011 and after death of her husband, the applicant is

said to have made a representation after more than 12 years on 19.03.2023 vide Annexure A-2 for grant of Ordinary family pension, as the the same having not been granted, applicant claims Invalid Pension for her husband and after his death ordinary family pension to the applicant, the widow of the employee. It is the case of the applicant that initially when a Government Servant or a member of the Armed Force retires from service on account of any bodily or mental infirmity, which permanently incapacitated him from service before completing the qualifying service of 10 years, he was not granted Invalid Pension, but by a Memorandum and Circular dt 16.07.2020 (Annexure A-10), it was stipulated, that, when a Armed Forces personnel is 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 him for military service, he shall be entitled to Invalid Pension. Relying on para 1 & 2 of the aforesaid circular dt 16.07.2022 which reads as under:

"Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Pension & Pensioners' 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 Nor Aggravated by Military Service and which permanently incapacitates them from military service as well as civil reemployment."

the applicant claims the benefit.

3. Learned counsel for the applicant argues that even in case where a personnel of the Armed Forces is invalided out on account of ailment and disability before completing the qualifying period of service of 10 years, the Regional Bench of this Tribunal at Lucknow in the case of *Chotte Lal Vs UOI & Ors.* [OA 368 of 2021] *decided on 11.03.2022* has been granted Invalid Pension after analyzing the provisions of the rules and regulations and therefore, the applicant is also entitled to the benefit of family pension after the death of her husband. There being a delay of more than 12 years in filing the OA, the application for condonation of delay is also filed.

4. Respondents have refuted the aforesaid contention and argue that the facts and circumstances of the case clearly indicate that applicant's husband was invalided out of service on 14.04.2004 before completing the qualifying service of 10 years. He was placed in the Low Medical Category S5(P) on account of being Alcohol Dependence Syndrome (ADS). Respondents refer to the Invaliding Medical Board Proceedings (IMB) dt. 21.04.2004 indicating that the disability was neither attributable to nor aggravated by Military Service. It was less than 20% i.e. 1-5% and therefore, the applicant is not entitled to the family pension.

Apart from relying upon various rules in this regard, it is the case of the respondents that earlier the applicant had approached this Tribunal in OA 1960/2022 for grant of Ordinary family pension w.e.f 03.02.2011 i.e. the date of death of the applicant. As no benefit was granted to the applicant and therefore, the applicant is not entitled to any relief. The respondents further contended that the applicant's husband was Invalided Out of service on account of Alcohol Dependence Syndrome (ADS). Apart from the fact that the said disability is not a result of anything connected with Military Service, nor this has any causal connection with Military Service, it is an ailment which was caused on account of the habit of the applicant, who was found to be habitual in consuming liquor, it was the creation of the applicant, that he was diagnosed with such a syndrome. Respondents refer to the medical history of the applicant and the opinion rendered by the medical authorities in the medical documents produced before us in support of their contentions and says that the applicant was a habitual drunker. He used to come to duty in a drunken state and in the counter affidavit, it is the case of the respondents, that the applicant during his service of 7 years and 3 months had

been habitual in coming to duty in a drunken condition and for the same he has already been warned. In spite of this, he has not improved his habit and a person who invites the ailment on account of his acts of Commission and Omission, by his own impermissible acts cannot claim Invalid Pension on the basis of the policies and circulars. Respondents also contend that merely because the applicant was invalided even without the attributability or aggravation not available for claiming Invalid Pension but once it is established that the disability of the applicant was a creation of his own habits and deeds which also amount to being an indisciplined officer in uniform, no Invalid Pension can be granted, in the peculiar facts and circumstances of the present case.

5. We have heard the learned counsel for the parties at length, and we have bestowed our anxious consideration on various aspects of the matter. Even though, it's a fact that vide policy letter dt 16.07.2020, Invalid Pension is also payable to an Armed Force Personnel who is invalided out on account of bodily or mental infirmity which is neither attributable to nor aggravated by military service and which permanently incapacitates him for Military Service. The core issue before us in the peculiar facts and circumstances of the

case is as to whether, in a case where the invalidation of the employee or the Armed Forces Personnel occurs on account of an ailment, which is a creation of his own acts of Commission and Omission, can he be permitted to take advantage of his own conduct and claim benefit. Even though, there is an inordinate delay in as much as the applicant's husband never claimed Invalid Pension during his lifetime, even after his death, this application is filed after a long delay. We do not intend to dismiss this application on the ground of delay, but we propose to address the issue on merit.

6. Taking note of the peculiar circumstances based on which the applicant had been invalided out of service, facts on record indicate that the applicant was brought before the Invaliding Medical Board on 21.04.2004 and it is seen from the record that Late Ravinder Singh was diagnosed with Alcohol Dependence Syndrome (ADS) at Jaipur on 14.12.2002 i.e. when he was before the Command Hospital, Pune. Thereafter, when he was examined in the Military Hospital, Jaipur on 16.06.2003, he was again found to be suffering from the same ailment. In the Summary of Opinion and Diagnosis of the applicant recorded in the Case Medical

Sheet, it is seen that the applicant in his own statement admitted before the authorities, at the time of medical examination that he was found to be drunken while on duty. He was found to be absent unauthorisedly from duty and he admitted of coming to duty, drunken on certain occasions. The medical documents also indicate that the unit report indicates that he has been repeatedly counselled at various levels with regard to his conduct of drinking and coming to duty in drunken state, but despite all these, he never improved. A detailed analysis of his statement and behaviour available in the medical dossiers, indicates that apart from being counselled repeatedly he was punished on various occasions for being habitually coming to duty in drunken condition and in the year 1999, he was counselled and warned about his act of coming to duty in a drunken condition. The detailed report available running to more than four pages speaks volumes about the applicant's habit of drunkenness, indiscipined act with regard to consuming alcohol and finally the reason for the disability is indicated in the medical report, by recording, that the disability is attributable to the negligence and conduct of the applicant, the reason being excessive consumption of alcohol. The

aforesaid statements are recorded in para 4 and the Opinion of the medical Board in para 5. On an analysis of the various documents available, we find that the applicant was suffering from Alcohol Dependence Syndrome (ADS) which is neither attributable to nor aggravated by Military Service, but is the applicant's own creation on account of his consuming alcohol in a manner which was detrimental to his health. He was a habitual drunker punished for the same, warned and counseled. In spite of this, he did not show any improvement, which ultimately resulted in his invalidment.

7. Based on these undisputed facts, the issue before us is as to whether the applicant's case comes within the purview of the policy dt 16.07.2020 Annexure A-10 relied upon by the applicant for grant of Invalid Pension, can this Tribunal in a mechanical manner award Invalid Pension to the applicant, based on the circular by holding that the mental infirmity or the bodily infirmity even though neither attributable to nor aggravated by Military Service entitles the applicant to claim Invalid Pension and after his death the applicant herein to Family Pension.

8. The initial policy of the Government of India was not to grant Invalid Pension to a person who is invalided out of

service before completing the qualifying service of 10 years. However, by the policy in question dt 16.07.2020, decision was taken to grant Invalid Pension to such persons who are permanently incapacitated to do service even before completing qualifying service of 10 years and the policy speaks out that the Government servant or military personnels who are permanently incapacitated on account of bodily or mental infirmity before completing 10 years of service and such bodily or mental infirmity is neither attributable to nor aggravated by military service. The intention of the policy makers and the purpose for bringing this policy is to give advantage and benefit to such personnel and employees who contract bodily and mental infirmity on account of service rendered by them and such infirmity or ailment may not have any direct or causal connection with their military service but there can be reasons, which are unknown or not recorded and therefore, the benefit of doubt is granted by grant of Invalid Pension. But can this liberalized policy be stretched to such an extent that it gives advantage to persons who invite the body infirmity or the mental infirmity only on account of their own acts of Commission and Omission by indisciplined way of lifestyle

which goes contrary to the norms laid down by the society and the service environment. Drinking alcohol may be permissible unless prohibited by law. A citizen may have a right to consume liquor, but a member of the Armed Forces has to lead a disciplined life and if, he is found to be habitually consuming alcohol and even coming for performing duties as a member of the disciplined Armed Forces in a drunken condition, the same cannot be approved, particularly where repeated counselling and punishment does not have any result, the person does not mend his ways and continues with the indisciplined way of his behaviour, that being the position, we are of the considered view that in such a case, a libereal attitude or benefit should not be granted to a person who does not deserve the sympathy or discretion in the matter of grant of relief by this Tribunal. The records as indicated hereinabove clearly demonstrates that the applicant was a habitual consumer of alcohol, he used to come to duty in a drunken state. He was punished for this, counselled and asked not to repeat the same. He repeated the same and ultimately became a victim of the ailment i.e. Alcohol Dependence Syndrome (ADS), which in our considered view was nothing but a creation of the

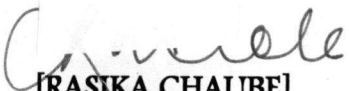
employee's own habits and attitude and his deliberate act to continue with such attitude inspite of warnings, counselling and punishment imposed upon him by the Competent Authorities. That being so, we are of the considered view that a liberal policy brought into force by the Government for helping deserving personnel to atleast get Invalid Pension for the service rendered by them in the force cannot be stretched to such an extent and applied in case of non-deserving, indisciplined personnel who by their own acts of Commission and Omission create a situation where they invite the ailment, create disciplinary situation which can endanger national security and discipline in force like the Army.

9. Accordingly, in the peculiar facts and circumstances of the case and the reasons discussed by us, we are of the considered view that the purpose of the policy in question dt. 16.07.2020 is not to give benefit or privilege to persons like the applicant's husband if, such a liberal attitude in the interpretation of this policy is adopted by this Tribunal, we will be opening a fresh avenue, where indiscipline soldiers who are suffering from Alcohol Dependence Syndrome (ADS) on account of their own creation by acts of Commission and Omission would be given benefit for their

impermissible conduct, which the law does not permit. Accordingly, we feel that, it is not a fit case, where the relief claimed for by the applicant can be granted. Accordingly, finding no ground the application stands as dismissed.



[JUSTICE RAJENDRA MENON]
CHAIRPERSON



[RASIKA CHAUBE]
MEMBER (A)

/kt/