

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

OA 4664/2024

WITH

MA 4839/2024

Ex Rect Shinde Dipak Ashok		Applicant
Versus		
Union of India & Ors.		Respondents
For Applicant	:	Mr. Nawneet Krishna Mishra, Advocate
For Respondents	:	Mr. R. S. Chhillar, Advocate

CORAM

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

ORDER

MA 4839/2024

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay in filing the present OA. In view of the judgment of the Hon'ble Supreme Court in the matter of Union of India and Ors. Vs. Tarsem Singh [(2008) 8 SCC 648] and the reasons mentioned in the application, the delay in filing the OA is condoned. The MA is disposed of accordingly.

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2. After rendering one year one month and six days of service, the applicant enrolled in the Indian Army on 20th December, 2014, was invalided out of service on

medical grounds due to his disability, namely, **Mixed Connective Disease**, which was held NANA resulting in non grant of disability pension to him. The initial claim for grant of disability pension was rejected by the Records office vide letter no. 2815165/SR/PG-3(DP) dated 12.04.2016.

3. Being aggrieved by the decision of rejection of this claim for disability pension, the applicant preferred a first appeal which also came to be rejected by the First Appellate Committee vide letter No. B/40502360/2017/AG/PS-4 (Imp-II) dated 6th November, 2017. The Second Appeal preferred against rejection letter dated 6th November, 2017, as stated, has not so far been decided by the respondents. However, it is revealed from the counter affidavit that it was forwarded to IHQ of MoD (Army) on 11th November, 2019 and reminder for early disposal of the same has also been issued.

4. The facts germane to the filing of this OA are that after being thoroughly examined by a Medical Board and on being found fit in all respects, the applicant was enrolled into the Indian Army. It is also contended that no note of any disability including the present disability at the time of entry into Military Service was made in the service record of the applicant. The reliefs claimed are as under:-

“(a) Quash the Impugned Orders No. 2815165/Appeal/SR/PG-3(DP) dated 21.11.2017 and 2815165/SR/PG-3(DP) dated 12.04.2016.

(b) Direct the respondents to grant Disability Pension w.e.f his date of discharge.

(c) Direct the respondents to grant Invalid Pension w.e.f his date of discharge.

(d) Direct respondent to pay the arrears of pension with interest 12% per annum.

(e) Any other relief which the Hon’ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost of the application in favour of the applicant and against the respondents.”

5. Further contention of the applicant is that in case he is not entitled to disability pension, in terms of Regulation 197 of the Army Pension Regulations 1961, he is entitled to invalid pension. As regard the minimum qualifying service to receive invalid pension as contained in Regulation 198 is concerned, it is contended that the same has been waived off by GOI, MoD and personnel invalided out of service on account of any policy or mental infirmity which is NANA with less than ten years of qualifying service are entitled to invalid pension. However, so far as the qualifying date i.e. 04.01.2019 to receive invalid pension as mentioned in this letter is concerned, it is contended on behalf of the applicant that the provision is gross and blatant violation of Article 14 of the Constitution of India and it is claimed that

he is also entitled to similar benefits as provided to other similarly situated army personnel.

6. The applicant has relied on the judgment of the Hon'ble Supreme Court in the case of Sukhwinder Singh Vs. Union of India and Ors. ({2014} STPL (Web) 468 SC wherein it is 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."*

7. Reliance is also placed on the judgment of the Hon'ble Supreme Court in the case of Union of India and Ors. Vs. Gnr Sinchetty Styannarayan and 42 Ors. (SLP 20868/2009 decided on 23rd February, 2012) by the applicant to establish that all pre 1973 invalided out army personnel shall also be entitled to grant of service element irrespective of ten years of service condition prescribed under Regulation 198 of the Pension Regulations, therefore, the applicant is entitled to invalid pension.

8. By placing reliance on Regulation 197 of the Pension Regulations for the Army 1961 (Part I), the applicant submitted that the Hon. Supreme Court in the case of Ex Rect Mithlesh Kumar Vs. Union of India and Ors. (CA 16438-40/2017) held that the army personnel boarded

out and having less than ten years of qualifying service is also entitled to invalid pension. It is further submitted that in the light of the Government of India, MoD letter No.12(06)/2019/D(Pen/Policy) dated 16th July, 2020 also the applicant is entitled to invalid pension even if he has not completed ten years of qualifying service.(A~7).

9. Learned counsel for the applicant further placed reliance on the judgment of this Tribunal in the case of EX MER Gurbaksh Singh Vs. Union of India and Ors. (OA 672/2019) to state that the applicant in this case who served the Indian Navy for seven months and was invalided out of service was granted invalid pension. He further submitted that the applicant in OA 1817/2020 – Ex Rect Ramphal Singh Vs. Union of India and Ors. – was granted invalid gratuity but this Tribunal after examining his case granted him invalid pension To claim invalid pension, the applicant has also placed reliance on the judgment of this Tribunal in the case of Lt A.K. Thapa (Released) Vs. Union of India and Ors. (OA 2240/2019) decided on 7th July, 2023

10. The respondents have filed a detailed counter affidavit supported by medical and other related documents to contend that the applicant is not entitled to invalid pension. To support their case, the respondents have referred to Rule 5

of the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel 2008 to state that the medical test at the entry level is not so exhaustive and the individual seeking entry into the Armed Forces is only broadly physically examined and therefore in all probability any dormant disease may not be detected at that point of time. It is further pleaded that certain hereditary, constitutional and congenital disease may manifest later in life, whatever the service conditions may be. It is also submitted that any disease manifested during military service does not per se establishes that it is attributable to and aggravated by military service.

11. Further contention of the respondents is no causal connection between disability and military has been established and since the disease has neither arisen during the period of military service nor caused as a result of military conditions, the applicant is not entitled to invalid pension. It is also averred that the Invaliding Medical Board has also held that the disability of the applicant diagnosed within 17 week of training is not connected with military service therefore it is neither attributable to nor aggravated by military service and the Medical Board has assessed it nil for life, therefore, the disability does not qualify for grant of invalid pension.

12. The respondents have also referred to Rule 59 of Pension Regulations for the Army (Revised) 2008 in their defence to state that in case the qualifying service is less than 10 years, as prescribed in this Rule, the individual is entitled to invalid gratuity and not invalid pension, though vide GoI MoD letter No.12(06)/2019/D(Pen)/Pol dated 16th July, 2020, this condition of ten years of qualifying service has been dispensed with but only in those cases where the infirmity has permanently incapacitated the army personnel from military service as well as civil employment and is applicable only in those cases where the army personnel who were or are in service on or after 1st January, 2019 and since in the present case the applicant was invalided out of service on 25th January, 2016 well before the qualifying date, i.e., 1st January, 2019, this policy letter is not applicable in the facts of the present case. It is also submitted that as the Invalid Medical Board certified the applicant fit for suitable civil employment, he cannot be is not entitled to grant of invalid pension.

13. We have heard learned counsel for the parties at length and have also gone through the documents filed and policies and judgments referred to in their support.

14. The only question that needs to be answered in the given facts and circumstances stated above is *“As to whether the applicant is entitled to invalid pension?”*

15. After perusal of the records produced before us and arguments advanced by either side, it is not in dispute that the applicant was invalided out from service with the disease/disability **Mixed Connective Disease** before completion of terms of engagement after having served for around 01 year 01 month and 06 days in the military service. Therefore, we hold that as the applicant was enrolled in the Army on 11.03.2020 and was invalided out from service on medical grounds on 09.04.2021 i.e., after rendering about 01 year and 29 days of military service, he is entitled to invalid pension. In this regard, reliance is placed upon Rule 197 of the Pension Regulations for the Army, 1961 which is reproduced herein below:

“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.”

16. In case it be contended that the applicant being invalided out after serving around 01 year and 29 days, however, may not be eligible for getting the invalid pension as per Rule 198 of the Pension Regulation for the Army, 1961, which stipulates that *"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"* it is apt to mention the order of the Armed Forces Tribunal (Regional Bench), Lucknow in Ex. Recruit. Chhote Lal Vs. Union of India and 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 which is reproduced herein 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 while disposing of the OA has also examined Para 4 of the MoD letter dated 16.07.2020 and has held the said Para 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 (ought to be read as 04.01.2019), they faced the similar consequences. In fact, the persons who have retired prior to 04.01.2020 (ought to be read as 04.01.2019) 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.

....."

17. Further the Hon'ble Division Bench of the High Court of Punjab and Haryana vide its judgment dated 7th January, 2023 in Union of India & Ors. Vs. No. 8994857B Ex. AC UT Sandeep Kumar and Anr., (CWP No.28442/2023) in para 14 has observed that 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) to be arbitrary not being based on any intelligible differentia with no nexus to the objects thereto.

18. To this effect, reliance is also placed on Para 27 of the order of Lt. A.K. Thapa, (supra) which 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-III 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."

19. It is worthwhile to observe that, the Hon'ble Delhi High Court vide judgment dated 26.11.2024 in W.P.(C) No.13577/2024 titled *Lt. A K Thappa Vs. Union of India and Ors.*, in the matter of *NO 40634Z LT A K THAPA (RELEASED)* Vs. *UNION OF INDIA & ORS.*, arising out of the decision of this Tribunal in OA No.2240 of 2019 has upheld the decision of this Tribunal for the grant of invalid pension to the applicant instead of disability pension.

20. Records reveal that there is no stay granted so far by the Hon'ble Supreme Court on the operation of the order dated 07.07.2023 in OA No.2240/2019 of the Tribunal, in *Lt. AK Thapa (Released)* (supra).

21. There seems to be no reason for us to differ from the law laid down in *Chhote Lal* (supra) and in *A.K. Thapa* (supra), and we, therefore, are of the considered opinion that the applicant was invalided out of service on account of the disability of **Mixed Connective Disease** after rendering around one year one month and six days of service and was invalided out before completing his term of initial engagement. The applicant is thus held entitled to the grant of invalid pension.

22. The respondents are 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 failing which the applicant will be entitled to interest @6% p.a. from the date of receipt of copy of the order till payment is made by the respondents. However, keeping in view the law laid down in the case of *Tarsem Singh* (supra) the arrears shall be restricted to three years prior to the date of filing of the OA.

23. Pending miscellaneous application(s), if any, stands closed accordingly.

24. No order as to costs.

Pronounced in open Court on this 19 day of May, 2025.


[JUSTICE RAJENDRA MENON]
CHAIRPERSON


[RASIKA CHAUBE]
MEMBER (A)

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