

COURT No. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 1268/2019 WITH MA 1999/2019

Sunita Namdev Pawar
Wd/o Late Ex MA-I NR Pawar ... Applicant
Versus
Union of India and Ors. ... Respondents

For Applicant : Mr. Ved Prakash, Advocate
For Respondents : Ms. T. Murugesan, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER

MA 1999/2019

Keeping in view the averments made in the application and in the light of the decision in Union of India and others Vs. Tarsem Singh [(2008) 8 SCC 648], the delay in filing the OA is condoned.

2. MA stands disposed of.

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3. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant filed this OA praying to direct the respondents to accept the disability of the applicant as attributable to/aggravated by military service and grant disability pension or in alternatively, Invalid Pension.

4. The applicant was enrolled in the Indian Navy on 16.03.1981 and invalided out from service on 07.12.1988 after serving for approximately 06 years, 10 months and 27 days of qualifying service. The Invaliding Medical Board held that the applicant was fit to be invalided from service in composite low medical category for the disability - NEUROSIS @ 20% for two years while the qualifying element for disability pension was recorded as NIL for life on account of disability being treated as neither attributable to nor aggravated by naval service (NANA).

5. The claim of the applicant for grant of disability pension was rejected vide letter no. DP/D/147597 dated 01.01.1990. The said rejection was appealed vide his representation dated 31.05.1990, which was rejected by IHQ/PDPA vide letter 7/147/91/Raksha/Pen/Appeal dated 10.09.1991, and the same was communicated to the applicant vide letter no. DP/D/147597 dated 22.11.2007. He again preferred an appeal, which was rejected vide letter no. Pen/600/D/Appeal/147597 dated 20.09.2010 stating that the aforesaid disabilities were considered as neither attributable to nor aggravated by naval service and does not fulfil the conditions. Aggrieved by the aforesaid rejection, the applicant has approached this Tribunal.

6. Placing reliance on the judgement of the Hon'ble Supreme Court in *Dharamvir Singh v. UOI & Ors* [2013 (7) SCC 36], Learned Counsel for applicant argues that no note of any disability was recorded in the service documents of the applicant at the time of the entry into the service, and that

he served in the Navy at various places in different environmental and service conditions in his prolonged service, thereby, any disability at the time of his service is deemed to be attributable to or aggravated by naval service.

7. Per Contra, Learned Counsel for the Respondents submits that under the provisions of Regulation 101 of the Pension Regulations for the Navy, 1964 (Part-I), the primary condition for the grant of disability pension is invalidation out of service on account of a disability which is attributable to or aggravated by naval service and is assessed @ 20% or more.

8. Relying on the aforesaid provision, Learned Counsel for respondents further submits that the aforesaid disabilities of the applicant were assessed as “neither attributable to nor aggravated” by Army service and not connected with the naval service and as such, his claim was rejected; thus, the applicant is not entitled for grant of disability pension.

9. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, we are of the opinion that it is not in dispute that the extent of disability was assessed to be 30% which is less than the bare minimum for grant of disability pension in terms of Regulation 101 of the Pension Regulations for the Navy, 1964 (Part-I). Now, another question that arises in the above backdrop is whether disability suffered by the applicant i.e. NEUROSIS was attributable to or aggravated by military service.

10. Before we proceed to adjudicate the issue under consideration, we find it pertinent to refer to the Guidelines for assessment of Psychiatric Disorder have been spelt out in the Guide to Medical Officers (Military Pension), 2002 which elaborates in detail the factors which impinge on Attributability and Aggravation of Psychiatric Disorders in Para 54 which are reproduced below:

54. Mental & Behavioural (Psychiatric) Disorders

Psychiatric illness results from a complex interplay of endogenous (genetic/biological) and exogenous (environmental, psychosocial as well as physical) factors. This is true for the entire spectrum of psychiatric disorders (psychosis & Neurosis) including substance abuse disorders. The relative contribution of each, of course, varies from one diagnostic category to another and from case to case.

The concept of attributability or aggravation due to the stress and strain of military service can be, therefore, evaluated independent of the diagnosis and will be determined by the specific circumstances of each case.

a. Attributability will be conceded where the psychiatric disorder occurs when the individual is serving in or involved in :-

- (i) Combat area including counterinsurgency operational area*
- (ii) HAA Service*
- (iii) Deployment at extremely isolated posts*
- (iv) Diving or submarine accidents, lost at sea*
- (v) Service on sea*
- (vi) MT accidents involving loss of life or Flying accidents (both as flier and passenger) in a service aircraft or aircraft accident involving loss of life in the station*
- (vii) Catastrophic disasters particularly while aiding civil authorities like earthquake, cyclone, tsunami, fires, volcanic eruptions (where one has to handle work in proximity of dead or decomposing bodies)*

b. Attributability will also be conceded when the psychiatric disorder arises within one year of serious/multiple injuries (e.g. amputation of upper/lower limb, paraplegia, quadriplegia, severe head injury resulting in hemiplegia of gross neuro cognitive deficit which are themselves considered attributable to military service. This includes Post Traumatic Stress Disorder (PTSD).

c Aggravation will be considered in Psychiatric disorders arising within 3 months of denial of leave due to exigencies of service in the face of:

- (i) Death of parent when the individual is the only child/son*
- (ii) Death of spouse or children*
- (iii) Heinous crimes (e.g. murder, rape or dacoity) against members of the immediate family*

(iv) Reprisals or the threat or reprisals against members of the immediate family by militants/terrorists owing to the fact of the individual being a member of the Armed Forces

(v) Natural disasters such as cyclones/earthquakes involving the safety of the immediate family.

(vi) Marriage of children or sister when the individual is the only brother thereof and specially if their father is deceased.

d. Aggravation will also be conceded when after being diagnosed as a patient of psychiatric disorder with specific restrictions of employability the individual serves in such service environment which worsened his disease because of the stress and strain involved like service in combat area including counterinsurgency operations, HAA, service on board ships, flying duties.

d. Attributability may be granted to any psychiatric disorder occurring in recruits and results in invalidment from service only when clearly identifiable severe stressors including sexual abuse or physical abuse are present as causative factor/factors for the illness.

11. From the perusal of the aforesaid Para 54, it can be inferred that Psychiatric disorders in service personnel are recognised as multifactorial conditions where military service can play a decisive role either in causing the illness (attributability) or worsening it (aggravation). Attributability is accepted when onset coincides with clearly stress-laden service conditions such as combat or counterinsurgency areas, high-altitude areas (HAA), extremely isolated posts, serious service accidents (MT, flying, diving, submarine, at sea), and catastrophic disaster-relief duties involving exposure to death and destruction. It is also conceded when a psychiatric disorder, including PTSD, develops within one year of serious or multiple service-related injuries already held attributable to service, and in recruits only where there is a clearly identifiable severe stressor like sexual or physical abuse directly linked to service.

12. Aggravation, by contrast, is accepted when an existing or latent psychiatric condition demonstrably worsens due to specific service exigencies or postings. This includes onset or clear deterioration within three months of denial of leave despite grave family crises (death of close kin, heinous crimes against family, terrorist reprisals, serious natural disasters affecting the family, or socially critical events like marriage of a dependent daughter or sister where the serviceman is the only male guardian), as well as continued employment contrary to medical restrictions in high-stress environments such as combat, counterinsurgency, HAA, ships or flying duties, thereby worsening the disorder. The common thread is a demonstrable causal nexus between defined service stressors and either the origin or the progression of the psychiatric illness, assessed case-by-case and independent of the formal diagnosis.

13. To understand the reasoning, whether the origin or onset of the disability of the applicant is anyway linked to the naval service by attributability or aggravation, it is pertinent to refer to the Specialist Opinion, which shows the primary cause of disability as -personal problems and domestic conditions, and the Para 2 and 3 of the same is reproduced as under:

"The individual has severe on going domestic stress which has resulted in release and observation reveals him to be pre-occupied with his domestic and personal problems. He does not mix with others and shuns special interaction. AFMSF-10 dated 08 Jun 88 is unsatisfactory.

Mental status examination reveals the individual to be tense with anxious and apprehensive. Thought contents reveals pre-occupation with domestic worries and personal problem. No psychotic features seen. Insight is intact. Motivation for further service poor. Sleep off and on is disturbed..."

14. In background of aforesaid specialist opinion, it would be pertinent to refer to the judgement of the Hon'ble Apex Court in Civil Appeal No 7672 of 2019 (Diary No 27850 of 2017), decided on 03/10/2019, in the case of Ex Cfn Narsingh Yadav Vs UOI & Others, wherein the Apex court had upheld the decision of AFT, Regional Bench, Lucknow in OA No. 235 of 2010 dated 23.09.2011 denying Disability Pension to a soldier medically boarded out with Schizophrenia. The Supreme Court was pleased to opine-

"20. In the present case, clause 14 (d), as amended in the year 1996 and reproduced above, would be applicable as entitlement to Disability Pension shall not be considered unless it is clearly established that the cause of such disease was adversely affected due to factors related to conditions of military service. Though, the provision of grant of Disability Pension is a beneficial provision but, mental disorder at the time of recruitment cannot normally be detected when a person behaves normally. Since there is a possibility of non-detection of mental disorder, therefore, it cannot be said that Schizophrenia is presumed to be attributed to or aggravated by military service.

21. Though, the opinion of the Medical Board is subject to judicial review, the Courts are not possessed of expertise to dispute such a report unless there is strong medical evidence on record to dispute the opinion of the Medical Board which may warrant the constitution of the Review Medical Board. The invaliding Medical Board has categorically held that the appellant is not fit for further service and there is no material on record to doubt the correctness of the Report of the invaliding Medical Board.

22. Thus, we do not find any merit in the present appeal, accordingly, the same is dismissed".

15. Regarding the issue of Primacy of the Medical Board, the Supreme Court in its judgement in UoI vs Ravinder Kumar in Civil Appeal No. 1837/2009 decided on 23.05.2012, has explicitly viewed that :

"5. We are of the view that the opinion of the Medical Board which is an expert body must be given due weight, value and credence. Person claiming disability pension must establish that the injury suffered by him bears a causal connection with military service.

6. In the instant case, the Medical Board has opined as under:-

"ID. Generalised Tonic Seizure. MA opined that ID is genetic in origin, not connected with service.

Thus in view of the above, it is evident that the ailment with which respondent has been suffering from is neither aggravated nor attributable to the Army Service".

16. Applying the above parameters to the case at hand, we find no infirmity in the opinion of the Medical Board and are of considered opinion that the disability - NEUROSIS @ 30% cannot be attributed to service and hence, the relief vis-à-vis disability pension is not sustainable.

17. Moving on to the alternate prayer for grant of Invalid Pension, we find that it is an admitted fact that the applicant was invalided out from service and 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."

18. 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 invalided 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.

19. 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."

20. 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.

21. 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

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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.

22. 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.

23. 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 in the matter of *Lt. AK Thapa (Released) v. 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."

24. 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 vs. Union of India and Ors., (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."

25. 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 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.

26. In these circumstances, the original applicant who was invalided out of service on 07.12.1988 due to the disability is held entitled to the grant of Invalid pension for life from the date of invalidment from service. 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 are restricted to commence to run from three years prior to the filing of this OA, till the date of the death of the Original Applicant i.e. 19.05.2023 {Date of filing of OA: 26.07.2019}, after which, the applicant shall be entitled to grant of Ordinary Family Pension.

27. Therefore, in our considered view, the OA 1268/2019 is allowed to the extent of grant of Invalid Pension and subsequently, Ordinary Family Pension.

28. No order as to costs.

29. Pending Miscellaneous application, if any, stand closed.

Pronounced in the open Court on 30th day of January, 2026

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

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