

RESERVED
Court No.1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 204 of 2015

Friday, this the 01st day of December, 2017

“Hon’ble Mr. Justice D.P. Singh, Member (J)
“Hon’ble Air Marshal BBP, Sinha, Member (A)”

Rajendra Singh son of Late Nawab Singh Resident of 1610/10
Kashyap Nagar, Kalyanpur, District - Kanpur Nagar - 208017
..... **Applicant**

Ld. Counsel for the : **Shri P.K. Shukla, Advocate**
Applicant (Counsel for the applicant)

Versus

1. Union of India through Secretary, Ministry of Defence (Army)
West Block – 2, R.K. Puram, New Delhi.
2. Chief of the Army Staff, IHQ MoD (Army) South Block New
Delhi.
3. The Officer- in Charge, Record Officer of Grenadiers Records
Pin No. 908776, C/o 56 APO.
4. Principal Controller of Defence Accounts (Pensions) Draupadi
Ghat, Allahabad.

...Respondents

Ld. Counsel for the: **Shri Namit Sharma, Advocate,**
Respondents. Central Govt Standing Counsel.

Assisted by : **Maj Salen Xaxa, OIC Legal Cell.**

ORDER

“Per Hon’ble Air Marshal BBP Sinha, Member (A)”.

1. Present O.A has been preferred under section 14 of the Armed Forces Tribunal Act, 2007 for the twin reliefs of direction to constitute fresh Review Medical Board and to grant invalid pension.

2. The facts of the case in nutshell are that the Applicant was enrolled in the Indian Army on 28.10.1965 and was invalidated out from service on 23.08.1975 under Army Rule 13(3) Item III (iii) after rendering less than 10 years of service having been found unfit for the service on account of disability due to “CHEMICAL BURNS WITH MULTIPLE FRACTURE”. It is alleged that on 19.04.1974 while the Applicant was at his home on casual leave, he sustained burn injuries while lighting the crackers. Immediately after the accident, he was removed to Air Force hospital on 20.04.1974 from where he was transferred to Base Hospital Lucknow on 22.04.1974. Thereafter he was transferred to Command Hospital at Lucknow on 15.06.1974. The Applicant was again transferred back to Base Hospital from where he was granted four days’ sick leave. After expiry of sick leave period, the applicant reported back to Base Hospital Lucknow for further treatment. On examination by Surgical

Specialist, the applicant was category in low medical Category EEE. Thereafter, the Applicant was brought before Invalidating Medical Board on 26.06.1975. The aforesaid Board assessed the disability as 50% for two years and also opined that it was neither attributable to nor aggravated by military service. It was in this backdrop that the Applicant was finally discharged w.e.f 22.08.1975. The claim for disability pension was initially rejected by the PCDA (P) Allahabad vide communication dated 25.11.1975. The first appeal preferred against the decision of PCDA (P) was also rejected vide communication dated 17.07.1976. No further appeal was filed and it was by means of Application dated 13.06.2007 addressed to Defence Minister that the Applicant sought relief of grant of pension which was replied to vide communication dated 18.07.2007. The Applicant again preferred Application dated 26.06.2009 addressed to Defence Minister which was again replied to vide communication dated 08/12/10.2009. The Applicant yet again preferred Application dated 01.04.2011 addressed to Defence Minister which was also replied to vide communication dated 28.06.2011. It is in the above backdrop that the present O.A has come to be filed in this Tribunal.

3. We have heard learned counsel for the Applicant as also learned counsel for the respondents and have also gone through the material facts on record.

4. The main brunt of submission advanced by learned counsel for the Applicant is that since the Applicant was on casual leave for 10 days and it was during casual leave that he sustained burn injuries, he may be deemed on duty in terms of Rule 9 of the Rules of the Service framed by the Central Government regarding the conditions of leave of the persons subject to Army Act.

5. On the other hand, learned counsel for the respondents contends that even-if one is treated on duty or in active service, even then for claim of disability pension, one is required to prove that the disability has casual connection with the military service of the individual. It is also contended that the Applicant is also not entitled to invalid pension as he has less than 10 years of qualifying service.

6. In the instant case, admittedly, court of inquiry was held in which it was conceded by the Applicant that he suffered burn injuries while lighting crackers at his home during Diwali festival. In the facts and circumstances, the Court of Inquiry had placed the finding before the competent authority. The Competent authority after going through the finding of the court of inquiry categorically held that the injuries sustained by the Applicant were neither attributable to nor aggravated by military service.

7. Be that as it may, in the instant case, the Applicant prior to being discharged, was brought before invaliding

Medical Board on 26.06.1975, which assessed his disability at 50% for two years. However, the Board opined the disability as neither attributable to nor aggravated by Military service. At the time of discharge the Applicant had a shortfall of two months and 5 days only in completing 10 years of service for being entitled to invalid pension.

8. The Applicant cited Principal Bench judgment in the case of **Kulwant Singh Vs Union of India & Ors in TA 184/2009 decided on 11.01.2010, AFT Chandigarh Bench judgment in TA 440/2010 in Sher Singh Vs Union of India & Ors decided on 24.11.2010, TA 235/2010 in respect of Sarbati Vs Union of India & Ors decided on 15.04.2010, judgment of Punjab & Haryana High Court in CWP No 2297 of 2005 Hoshiar Singh Vs UoI &Ors, decided on 18.04.2006, CWP No 1369 of 1996 Vijay Singh Vs UoI &Ors decoded on 05.04.2006.**

9. In this connection since the applicant was having a short fall of two months and five days for eligibility to invalid pension, the core issue revolves around condonation powers for short fall in minimum 10 years of service for invalid pension. We have had a look at the decision of the Principal Bench of the Armed Forces Tribunal at New Delhi dated 11.01.2010 passed in TA No 184 of 2009 in which it was shown that even in the case of invalid pension, the authority is competent to condone the deficiency upto 12

months in qualifying service, i.e., 10 years in terms of para 125 of the Pension Regulations for the Army, 1961. Para 12 of the aforesaid judgment runs as under:-

"Therefore the question is whether the qualifying service should here confine it to service pension or for invalid pension. Since this is a social measure and a general power has been conferred on the Service HQ for advancement of social justice, in Circular letter dated 14th August 2001 these are all social measures for the benefit of the service personnel and general expression for qualifying service cannot be confined to service pension as contended by the learned counsel for the respondents. For „qualifying service“ full power has been given to the Service HQ and they can even exercise for the Invaliding Service pension also. So far as the invaliding service pension is concerned, a period of 10 years has been mentioned that too by statutory order and not amending the provisions of Navy Regulations which has not been brought to our notice. Therefore, this order for the invaliding pension requiring 10 years was only administrative order and the order dtd 14th August 2001 is also an administrative order giving full power to relax qualifying 3 service of 10 years for invalid pension upto 6 to 12 months. Therefore, general qualifying power shall be equally applicable for the service pension as well as for invaliding pension. We are of the opinion that incumbent has put in 9 years 5 months and 17 days and he is short of six months and 13 days that is condonable period, hence that is condoned.

Petitioner be given the benefit of invalid pension and he may be given arrears of pension for three years preceding the date of filing of this petition, ie from year 2007 onwards. This should be worked out and same may be paid to him with 12% interest and his future pension may be worked out and paid regularly. This whole exercise should be completed within three months from today. Petition is accordingly allowed. No order as to costs."

10. Subsequent to the above judgment the respondents have issued revised specific directions with respect to "Condonation of Shortfall in Service for Invalid Pension" vide their letter dated 04.05.2011. Details are:-

Tele 233-35048

*Additional Dte Gen Personnel Services
Adj Gen's Branch Room No 438,
B Wing 4 th Floor Integrated HQ of MoD
(Army) DHQ PO New Delhi – 11*

B/39032/Misc/AG/PS-4(L)/BC 04 May 2011

*REDUCTION OF COURT CASES CONDONATION OF SHORTFALL IN SERVICE FOR
INVALID PENSION Brief Background*

- 1. As per Regulation 197 of PRA (Part-1), Invalid Pension is granted to an individual who is invalided out from service with ten years or more but less than fifteen years qualifying service. After fifteen years or more service individual would have qualified for service pension. Hence the provision of Invalid Pension exist for those individuals who are unable to complete the pensionable service.*
- 2. Hithertofore, Reg 197 has been strictly applied and no condonation in shortfall in service was granted even if individual has almost ten years of service with a shortfall of only a few days in some cases.*
- 3. The matter was considered at depth at this office and it was felt that although there are numerous instances where individuals are invalided out with less than ten years of service with a shortfall of hardly a few days, neither the administrative or medical authorities intended to deny him the benefit of Invalid Pension which affected the individual would have been entitled to had he had completed ten years of service after merely a few days. Hence it is felt*

that such individuals have suffered due to ignorance of the provisions of Reg 197 at all levels.

4. xx...xx...xx...xx..... Clarification on Invalid Pension by MoD & Dept of Pension & Pension Welfare

5. Of late we have been approaching the MoD for reconsideration of the policy not to condone shortfall in service in respect of those individuals who were invalidated out with almost ten years of service.

6. Now the MoD in consultation with Dept of Pension and Pension Welfare have clarified that in such cases nine years nine months can be rounded off to ten years. Reduction of Court Cases on Invalid Pension

7...xx.xxx..xx.. 8. Line Dte / Record Offices are requested to effect the withdrawal in cases by Uoi diligently and with utmost care so that only those cases where an individual was invalidated out with almost ten years of service are withdrawn.

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9. xx..xx..xx..xx

10. xx..xx..xx..xx

11. xx..xx..xx...xx.

Sd/- (Ajay Sharma) Col Dir, AG/PS-4 (Legal) For Adj Gen

11. In light of above we find that after Circular letter dated 14 Aug 2001 (on basis of which the earlier judgments passed in year 2010 were based) the authorities have promulgated revised guidelines specific to condonation of shortfall in service requirement for grant of Invalid Pension. As per guidelines round-off shortfall in qualifying service of upto 3 months is permissible at the Service Hq level. Since the petitioner has 09 years, 10 months and 5 days qualifying service to his credit he is entitled to grant of Invalid Pension.

12. At this stage, we would like to express a deep concern on the functioning of record offices towards welfare of

Jawans. It is very clear that there is a specific order from Army HQ issued in 2011 to condone deficiency of three months service for the purpose of eligibility to invalid pension . There is also a direction in the letter to withdraw court cases where applicable. However, it is surprising that record office is not following the order of its higher formation even in 2017. Whether it is because of incompetence or indifference it is for the IHQ of MoD(Army) to analyse & initiate corrective action. However unless record offices of the Army are effective and efficient, the Jawans will continue to suffer in future also.

13. The petition is therefore allowed to the extent of grant of invalid pension. It is directed that the Applicant shall be granted invalid pension within 4 months from the date of submission of a certified copy of this order. However, the arrears on the invalid pension payable to the applicant will be restricted to three years prior to the filing of the Original Application as covered by the decision rendered by the Apex Court in **Union of India & Ors. v. Tarsem Singh ((2008) 8 SCC 648)**. The order shall be complied with within four months failing which he shall be entitled to interest at the rate of 9%.

(Air Marshal BBP Sinha)
Member (A)

(Justice D.P. Singh)
Member (J)

Dated: December, 2017
BLY/-