

AFR
Court No. 2
Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

Original Application No. 184 of 2017

Friday this the 24th day of November, 2017

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Lt Gen Gyan Bhushan, Member (A)

No 4078099M Ex Rifleman Pradeep Singh
S/o late Shri Jaspal Singh
R/o Village and Post Office : Kujashu, Tehsil – Pokhri,
District – Chamoli (Uttarakhand)

..... Applicant

By Legal Practitioner : **Shri Lalit Kumar, Advocate**

Versus

1. Union of India through
Secretary, Ministry of Defence,
South Block, New Delhi.
2. The Officer-in-Charge,
Records, The Garhwal Regiment,
Lancedown (Uttarakhand)
3. PCDA (Pensions), Allahabad.

..... Respondents

By Legal Practitioner : **Dr. Chet Narain Singh,**
Learned Counsel for the
Respondents

ORDER

“Hon’ble Lt Gen Gyan Bhushan, Member (A)”

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant for grant of invalid pension.

2. The undisputed factual matrix as agreed by learned counsel for both the parties is that the applicant was enrolled in the Indian Army on 27.10.1996 in medically fit condition. The applicant incurred five red ink entries during his service under Army Act Section 48 and 63. He was discharged from service as an undesirable soldier on 23.06.2009 under Rule 13 (3) III (v) of the Army Rules 1954. At the time of discharge the Release Medical Board considered the disability of the applicant due to **‘Alcohol Dependence Syndrome’** as neither attributable to nor aggravated by Army service and assessed it as 6% to 10% (less than 20%) for life. He filed O.A. No 10 of 2011 before this Tribunal seeking re-instatement in service which was dismissed vide order dated 29.04.2013. The applicant filed Review Application No 27 of 2013 against the judgment and order dated 29.04.2013 which was also dismissed by the Tribunal vide order dated 07.09.2016. Now the applicant has filed present Original Application for grant of invalid pension.

3. We have heard Shri Lalit Kumar, Ld. Counsel for the applicant and Dr. Chet Narain Singh, Ld. Counsel for the respondents and perused the record. The delay in filing the Original Application has been condoned by order dated 19.05.2017.

4. Learned counsel for the applicant submitted that since disability of the applicant has been considered as 6% to 10% (less than 20%), therefore, as per paras 197 and 198 of the Pension Regulations for the Army 1961 (Part I), he is entitled to invalid pension as such invalid pension should be granted to him. It is further submitted that since the applicant was enrolled in a medically fit condition and discharged under Rule 13 (3) III (v) of the Army Rules 1954 as an undesirable soldier in Low Medical Category after serving for more than 12 years, he is entitled for invalid pension. He has placed reliance on the judgment of Armed Forces Tribunal, Chandigarh passed in ***O.A. No 3114 of 2013, Major Singh Vs Union of India and Others***, decided on 01.05.2015 whereby, in similar matter, the applicant was granted invalid pension.

5. **Per contra**, learned counsel for the respondents submitted that as per para 173 of Pension Regulations for the Army 1961 (Part-I) disability pension is admissible to an individual who is invalided out from service on account of disability which is attributable to or aggravated by military service and is assessed at 20% or more. In the instant case, the applicant was discharged from service as an undesirable soldier under Rule 13 (3) III (v) of Army Rule 1954 and was not invalided out from service by medical authority. Hence he is not entitled for invalid pension. As per Regulation 132 of the Pension Regulations for the Army 1961 (Part- 1), an individual is required to render minimum 15 years of pensionable service for grant of pension which has not been done. Regulation 197 and 198 of the Pension Regulations for the Army 1961 (Part- 1) states about invalid pension whereas petitioner was discharged under Army Rule 13 (3) III (v) being undesirable soldier and was not invalided out.

6. We have also gone through the Original Application No 10 of 2011 preferred by the applicant challenging his premature discharge. The pleadings made in said Original Application do not relate to grant of invalid pension, hence the same does not operate as res-judicata.

7. On the issue of delay and laches in filing the Original Application, we recall the case of **Shiv Dass Vs. Union of India reported in 2007 (3) SLR page 445 (Supra)** in Para 9 of the judgment, Hon'ble The Apex Court has observed:

“In the case of the pension the cause of action actually continues from month to month. That however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits, it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”

8. So far as the first limb of the arguments of learned counsel for the respondents that the applicant was discharged from service as undesirable soldier under Rule 13 (3) (III) (v) of Army Rule 1954 and was not invalidated out from service by medical authorities is concerned, the Armed Forces Tribunal, Regional Bench, Chandigarh in **O.A. No 3114 of 2013 Major Singh Vs Union of India and others**, decided on 01.05.2015, has observed that

9. For grant of invalid pension, the relevant portions of the Pension Regulations for the Army 1961 (Part I) and Entitlement Rules for Casualty Pension Award, 1982 are reproduced below:-

(a) **Para 173 of Pension Regulations for the Army 1961 (Part I)**

“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 percent or over.

(b) Para 197 of Pension Regulations for the Army 1961 (Part- 1) - (Invalid Pension/Gratuity when Admissible)

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 by service, but the disability is assessed 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.*

(c) Para 198 of Pension Regulations for the Army 1961 (Part- 1) –(Minimum Qualifying Service)

198. *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.*

“(d) Entitlement Rules for Casualty Pensionary Awards, 1982

4. *Invaliding from service is necessary condition for grant of a disability pension. An individual who, at the time of his release under the Release Regulation, is in a lower medical category than that in which he was recruited, will be treated as invalided from service. JCOs/ORs & equivalents in other services who are placed permanently in a medical category other than ‘A’ and are discharged because no alternative employment suitable to their low medical category can be provided, as well as those who having*

been retained in alternative employment but are discharged before the completion of their engagement will be deemed to have been invalided out of service.

10. A plain reading of the provisions of relevant portion of Pension Regulations clearly lay down conditions for grant of disability pension and invalid pension. Both pensions are governed by different provisions of Pension Regulations. Grant of invalid pension is governed by para 197, 198 and 200 of Pension Regulations for the Army 1961.

11. We are of the considered view that provisions of Regulations 197 and 198 of the Pension Regulations for the Army 1961 (Part- 1) helps the applicant in as much as when a person is discharged in lower medical category than in which he was recruited, he would be treated to be invalided out of service. Admittedly, the applicant was recruited in a medically fit condition and was discharged in low medical category, thus, as per para 4 of Entitlement Rules, he is to be treated as invalided out of service. Since he has been considered as invalidated out of service he becomes entitled to the benefits accruing from the provisions of paras 197 and 198 of Pension Regulations and, therefore, he is to be considered entitled for invalid pension. Invalid pension can be granted to an individual after 10 years of service and it is granted to an individual who is invalided out of service on account of disability which is neither attributable to nor aggravated by military service. We find force in the submission of learned counsel for the applicant that in similar circumstances, in the case of **Major Singh** (supra), Armed Forces Tribunal, Regional Bench, Chandigarh has granted relief.

12. In the instant case the applicant was recruited in medically fit condition and was discharged in low medical category as undesirable soldier under Rule 13 (3) III (v) of Army

Rule 1954. His disability has been considered as neither attributable to nor aggravated by military service and it has been assessed as less than 20% (6% to 10%).

13. Keeping in view the relevant portion of Pension Regulations for the Army 1961 (Part-1), we are of the view that the applicant is entitled for the grant of invalid pension and Original Application deserves to be allowed.

14. Accordingly, the Original Application succeeds and is **allowed**. The respondents are directed to grant invalid pension considering the disability as minimum 20% for life to the applicant from three years prior to filing of the Original Application. The respondents are further directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. In case the respondents fail to give effect to this order within the stipulated time, they will have to pay interest @ 9% on the amount accrued from due date till the date of actual payment.

No order as to costs.

(Lt Gen Gyan Bhushan)
Member (A)

(Justice S.V.S. Rathore)
Member (J)

Date : November 2017
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