

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 1351 of 2023**Friday, this the 05th day of April, 2024**“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Lt. Gen. Anil Puri, Member (A)”**

Ex. Hav. Meheub Alam (Army No. 3015648W), S/o Shri Hazi Mofizuddin Ahamed, R/o Village & Post – Kutubganj, District Malda, State – West Bengal-732102.

..... Applicant

Ld. Counsel for the Applicant : **Shri Rama Kant**, Advocate
Shri Shiv Narain Kaushal, Advocate

Versus

1. Union of India through Secretary of Defence, Ministry of Defence, South Block, New Delhi-01.
2. The Chief of Army Staff, South Block, IHQ of MoD (Army), New Delhi-110011.
3. Senior Record Officer, Records The Rajput Regiment, Pin-900427, C/o 56 APO.
4. Director PS-4, AG’s Branch, IHQ of MoD (Army), DHQ PO, New Delhi-110011.
5. Sr. Accounts Officer, PCDA, Draupadi Ghat, Prayagraj, Uttar Pradesh-211014.

..... Respondents

Ld. Counsel for the Respondents. : **Shri Dr. S.N. Pandey**, Advocate
Central Govt. Standing Counsel
Assisted by **Major Uma Yadav**,
Departmental Representative

ORDER

“Per Hon’ble Mr. Justice Anil Kumar, Member (J)”

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- (A) *That the present Original Application may be allowed.*
- (B) *Direct the respondents to decide the representation dated 04.05.2023.*
- (C) *The Respondents may be directed to consider the disability of the Applicant attributable to Military Service. AND/OR*
- (D) *Direct the respondents to condone the shortfall of 08 months and 15 days so as to entitle the Applicant for Invalid Pension under Army Pension Regulation para 198 and letter issued from Sena Bhawan, New Delhi-110011 dated 16 July 2020 vide letter No.12(06)/2019/D(Pen/Pol) Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare D (Pension/Policy).*
- (E) *The respondents may be directed to grant Invalid Pension to the Applicant.*
- (F) *That the arrears of the Pensionary benefits for past years with 9% interest may also be allowed to the Applicant.*
- (G) *Any other relief this Hon’ble Court deems fit under the facts and circumstances may be granted in favour of the Applicant.*

2. Briefly stated facts of the case are that applicant was enrolled in The Rajput Regiment of Indian Army on 23.12.2013 and was discharged from service on 30.04.2023 (AN) in Low Medical

Category under Rule 13 (3) Item III (iii) (a) (i) of the Army Rules, 1954 after rendering 09 years, 04 months and 07 days of qualifying service. At the time of discharge from service, the Release Medical Board (RMB) held at Military Hospital, Fatehgarh (UP) on 21.01.2023 assessed his disabilities (i) **'RIGHT PUJ OBSTRUCTION (OPTD) (N 13.0)'** @15% for life and (ii) **'PRIMARY HYPERTENSION (I10)'** @30% for life, composite disabilities @40.5% for life and opined the disabilities to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected vide letter dated 25.04.2023. The applicant preferred First Appeal dated 04.05.2023 for the grant of Invalid/Disability Pension which too was rejected vide letter dated 14.11.2023 which was communicated to the applicant vide letter dated 08.12.2023. It is in this perspective that the applicant has preferred the present Original Application.

3. Ld. Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. The diseases of the applicant were contracted during the service, hence they are attributable to and aggravated by Military Service. He further pleaded that the applicant was invalided out from service before completion of terms of engagement. He relied upon the Order dated 09.02.2024 passed by Armed forces

Tribunal, Principal Bench, New Delhi in Original Application No.495 of 2019, **Ex. Capt. Ashok Kumar Chugh Versus Union of India & Others**. The Ld. Counsel for the applicant, on account of aforesaid, pleaded for the grant of Invalid pension to the applicant.

4. On the other hand, Ld. Counsel for the respondents submitted that since the RMB has opined the disabilities as NANA, the applicant is not entitled to disability pension in terms of Regulation 179 of Pension Regulations for the Army, 1961 (Part-I) which stands revised vide Regulation 53(a) of the Pension Regulations for the Army, 2008 (Part-I) which provides that “*An individual released/retired/ discharged on completion of terms of engagement or on completion of service limits or on attaining the prescribed age (irrespective of his period of engagement), if found suffering from a disability attributable to or aggravated by military service and so recorded by Release Medical Board, may be granted disability element in addition to service pension or service gratuity from the date of retirement/discharge, if the accepted degree of disability is assessed at 20% or more*”. He further submitted that the Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare D(Pension/Policy) has issued letter No. 12(06)/2019/D(Pen/Pol) dated 16.07.2020 which provides that “*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.” He further submitted that the applicant’s disabilities do not permanently incapacitate the applicant from civil re-employment. The RMB has opined that the applicant is *“Fit for all types of employment in civil”*. He pleaded that in the facts and circumstances, as stated above, Original Application deserves to be dismissed.

5. We have heard Ld. Counsel for the parties and perused the material placed on record.

6. For adjudication of the controversy involved in the instant case, we need to address only two issues; firstly, is the discharge of applicant a case of normal discharge or invalidation? and secondly is applicant is entitled to Invalid Pension.

7. For the purpose of first question as to whether the discharge of the applicant by Release Medical Board is a case of discharge or invalidation. In this context, it is clear that the applicant was discharged from service before completion of his terms of engagement in low medical category. In this regard, Rule 4 of the Entitlement Rules for Casualty Pensionary Awards, 1982 defines invalidation as follows:

“..... An individual, who, at the time of his release under the Release Regulations, is in a lower medical category than that in which he was recruited will be treated as invalided from service. JCOs/ORs and equivalent 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.”

8. Thus, in light of above definition, it is clear that the applicant was in low medical category as compared the one when he was enrolled and hence his discharge is to be deemed as invalidation out of service.

9. With regard to Invalid Pension we would like to quote the letter No. 12(06)/2019/D(Pen/Pol) dated 16.07.2020 issued by the Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare (D(Pension)/Policy, New Dlehi as under :-

*“No. 12(06)/2019/D(Pen/Pol)
Government of India
Ministry of Defence
Department of Ex-Servicemen Welfare
D(Pension/Policy)*

*Sena Bhawan, Delhi-110011.
Dated : 16th July, 2020*

To

*The Chief of the Army Staff
The Chief of the Naval Staff
The Chief of the Air Staff*

Sub: Provision of Invalid Pension to Armed Forces Personnel before completion of 10 years of qualifying service – reg.

Sir,

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 of 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 provision 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.

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 who 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.

6. This issues with the concurrence of Finance Division of this Ministry vide their U.O. No. 10(08)/2016/FIN/PEN dated 29.06.2020.

7. Hindi version will follow.

Yours faithfully,

Sd/-

(Ashok Kumar)

Under Secretary to the Government of India”

10. In the case of **Ex. Capt. Ashok Kumar Chugh Versus Union of India & Others (supra)**, in para 9 of the order dated 09.02.2024, the Armed Forces Tribunal, Principal Bench, New Delhi has held as under:-

“9. It has 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 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. Thus, in the instant case the applicant who was invalidated out from service on 06.08.1996 (AN) is held entitled to the grant of invalid pension from the date of his invalidment.”

11. Although the RMB held on 21.01.2023 has opined that the applicant is fit for all types of employment in civil, but in view of order passed by the Armed Forces Tribunal, Principal Bench, New Delhi in the case of ***Ex. Capt. Ashok Kumar Chugh Versus Union of India & Others (supra)*** we are of the considered view that the view that the applicant is entitled for Invalid Pension as he was discharged from service before completion of terms of engagement which is deemed to be invalidation out from service.

12. In view of the above, the **Original Application No. 1351 of 2023** deserves to be allowed, hence **allowed**. The impugned orders, rejecting the applicant's claim for grant of Invalid Pension, are set aside. The applicant being invalidated out from service on account of his disabilities is entitled to get Invalid Pension. The respondents are directed to grant Invalid Pension to the applicant from the next day of his invalidation i.e. 01.05.2023. The respondents are further directed to calculate, sanction and issue the necessary PPO to the applicant. The respondents are 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. Default will invite interest @ 8% per annum till actual payment.

13. No order as to costs.

14. Pending applications, if any, are disposed of accordingly.

15. Major Uma Yadav, Departmental Representative for the respondents orally submitted to grant Leave to Appeal against the above order which we have considered and no point of law of general public importance being involved in the case the plea is rejected.

(Lt. Gen. Anil Puri)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 05 April, 2024

AKD/-