

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

TRANSFERRED APPLICATION No. 22 of 2024

Friday, this the 13th day of December, 2024

**“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Lt. Gen. Anil Puri, Member (A)”**

Ex. Rect/MT Amit Kumar Singh (Army No. 14881970X) S/o Ravindra Singh, House No. N-101, Gali No. 04, Sadatpur Extn, Karawal Nagar, Delhi-110093.

..... Applicant

Ld. Counsel for the : **Shri Vinay Pandey**, Advocate
Applicant **Shri Shashi Kant Chaturvedi**, Advocate

Versus

1. Union of India through Secretary, Ministry of Defence, Room No. 101 A, South Block, DHQ PO, New Delhi-110011.
2. Chief of Army Staff, IHQ of MoD (Army), Room No. 195, South Block, DHQ PO, New Delhi, PIN-110011.
3. ASC Records (South), Bangalore-560007.
4. The PCDA (P), Draupadi Ghat, Allahabad (UP)-211012.

..... Respondents

Ld. Counsel for the : **Shri Ashish Kumar Singh**, Advocate
Respondents. Central Govt. Standing Counsel

ORDER

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

1. The instant application (Original Application No.2332 of 2022) has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, before the Armed Forces Tribunal, Principal Bench, New Delhi, which has been transferred to this Tribunal and has been renumbered as Transferred Application No. 22 of 2024, for the following reliefs:-

- (a) *To quash and set aside the impugned order No.14881970X/NS/DP dated 22.02.2022 as ANNEXURE A-1 (Impugned Order).*
- (b) *To direct the respondents to grant Invalid Pension to the applicant wef 05.09.2021 for life on the basis of Hon’ble Supreme Court order dated 27.10.2017 in Civil appeal No. (s) 16438-16440/2017 titled as Ex Rect Mithlesh Kumar Vs UOI & Ors and Govt of India Min of Def policy No. 12(06)/2019/D (Pen/Pol) dated 16.07.2020 along with interest @10% p.a. till final payment.*
- (c) *Pass any other or such further order or orders as deemed fit to this Hon’ble Tribunal in order to secure the ends of justice in favour of the applicant.*

2. Briefly stated facts of the case are that applicant was enrolled in the Indian Army on 17.12.2018 and invalided out from service on 04.09.2021 in Low Medical Category before completion of terms of engagement after rendering 02 years, 08 months and 18 days of

service under Rule 13 (3) Item IV of the Army Rules, 1954. Before invalidation from service, the Invaliding Medical Board (IMB) held at Command Hospital Air Force, Bangalore on 22.04.2021 assessed his disabilities (i) **'ILIO TIBIAL BAND SYNDROME RIGHT HIP'** and (ii) **'MYOFACITIS RIGHT HIP'**, composite disabilities @20% for life and opined the disabilities to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for the grant of Disability Pension was rejected vide letter dated 22.02.2022. The applicant's claim for grant of Invalid Pension was rejected vide letter dated 13.04.2022. The applicant preferred representation dated 26.11.2021 but of no avail. The applicant also preferred First Appeal dated 17.03.2022 which too was rejected vide letter dated 26.08.2022. It is in this perspective that the applicant has preferred the present Application for the grant of Invalid Pension.

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/injuries of the applicant were contracted during the service, hence they are attributable to and aggravated by Military Service. He further contended that applicant was doing training i.e. assault practice (Parallel Rope) at WT Ground, ASC

Centre (South), 2 ATC on 14.03.2019 he fell down and sustain blunt injury to the right hip region. The Injury Report dated 30.09.2020 opined that the injury occurred in peace area and is attributable to military service. Ld. Counsel for the applicant further submitted that since the applicant was invalided from service before completion of terms of engagement in low medical category the applicant is entitled for the grant of Invalid Pension. He further submitted that Government of India has issued Gazette Notification No. 21/1/2016-P & PW (F) dated 04.01.2019 which provides that if a Government Servant, in case where the provision of Section 20 of the Right of Persons with Disabilities Act, 2016 (45 of 2016) are not applicable, retires from the service on account of any bodily or physical infirmity which permanently incapacitates him for the service, he may be granted Invalid Pension in accordance with Rule 49 of CCS Rules irrespective of qualifying service of 10 years. In order to give effect Central Civil Service (Pension) Amendment Rules, 2018 dated 04.01.2019, Ministry of Personnel, Public Grievance & Pension, New Delhi issued OM dated 12.02.2019 and forwarded to all Ministries/Departments of the Government of India. To extend the aforesaid provisions to the Ex-Servicemen, Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare, D (Pension/Policy), New Delhi issued Policy letter No.12(06)/2019/D (Pen/Pol) dated 16.07.2020. Ld. Counsel

for the applicant further submitted that in terms of Regulation 197(b) and (c) the applicant is entitled for the grant of Invalid Pension. The applicant has failed to avail the remedy of Second Appeal and filed the instant Original Application which is premature and liable to be dismissed. He relied upon the order dated 27.10.2017 passed by the Hon'ble Apex Court in Civil Appeal No. (S) 16438-16440/2017 in the case of ***Ex. Rect. Mithilesh Kumar Vs. Union of India & Others***. He pleaded that Hon'ble Apex Court and various Benches of Armed Forces Tribunal have granted Invalid Pension in similar cases, as such the applicant be granted Invalid Pension.

4. On the other hand, Ld. Counsel for the respondents submitted that Para 2 of the Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare, D (Pension/Policy), New Delhi letter No.12(06)/2019/D(Pen/Pol) dated 16.07.2020 provides that *"the invalid pension would henceforth also be admissible to Armed Forces Personnel with less than 10 years of qualifying service in case 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"*. In the instant case the applicant's composite disabilities were assessed @20% for life and the

competent medical authority certified that “*UNFIT FOR EMPLOYMENT IN CIVIL REQUIRING HIGH PHYSICAL FITNESS*” as such disabilities do not permanently incapacitates the applicant from Military Service as well as Civil Re-employment, hence, applicant is not entitled for the grant of Invalid Pension. However, the applicant was granted Invalid Gratuity amounting to Rs.88,098/- vide PPO No. 240202102849 dated 17.03.2022 issued by PCDA (Pension), Allahabad. The applicant case was taken up with PCDA (Pension), Allahabad vide ASC Records (South) letter dated 13.04.2022 for the grant of invalid pension which was rejected vide PCDA (Pension), Allahabad letter dated 21.07.2022. He pleaded that in the facts and circumstances, as stated above, Transferred Application deserves to be dismissed.

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

6. 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 Delhi 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"

7. 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 invalided out from service on 06.08.1996 (AN) is held entitled to the grant of invalid pension from the date of his invalidment.”*

8. Although the IMB held on 22.04.2021 has opined that the applicant is *“UNFIT FOR EMPLOYMENT IN CIVIL REQUIRING HIGH PHYSICAL FITNESS”*, 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 applicant is entitled for the grant of Invalid Pension as he was invalided out from Military service for the aforesaid disability, before completion of terms of engagement.

9. In view of the above, the **Transferred Application No. 22 of 2024** deserves to be allowed, hence **allowed**. The impugned orders, rejecting the applicant claim for the grant of Invalid Pension, are set aside. The applicant being invalided out from Military service on account of his disability is entitled to get Invalid Pension from the next date of his invalidation. The respondents are directed

to grant Invalid Pension to the applicant from the next date of his invalidation. 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.

10. No order as to costs.

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

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

(Justice Anil Kumar)
Member (J)

Dated : 13 December, 2024

AKD/-