

**RESERVED
Court No. 1**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

Original Application No.266 of 2018

Tuesday, this the 26th day of March, 2019

Hon'ble Mr. Justice SVS Rathore, Member (J)
Hon'ble Air Marshal SVS Rathore, Member (A)

No. 2804886N Ex Sepy Jadhav Nilesh Dinkar, resident of Village and Post Kolwad, Tehsil and District Buldana, PIN 443001 (Maharashtra).Applicant

Ld. Counsel for the applicant: **Shri Vinay Pandey, Advocate**

Versus

1. Union of India, through Secretary, Ministry of Defence (Army), DHQ PO New Delhi -11.
2. Chief of the Army Staff, Army Headquarters, Sena Bhawan, New Delhi.
3. Commanding Officer, 12 Maratha LI, C/o 56 APO.
4. The Officer-in-Charge Records, Maratha LI, c/o 56 APO.
5. Principal Controller of Defence Accounts Draupadi Ghat, Allahabad.

.....Respondents

Counsel for the: **Shri VPS Vats,**
respondents **Addl Central Government Counsel.**

ORDER

Delivered by Hon'ble Mr Justice SVS Rathore, (Member-J)

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant for grant of disability pension with the following prayers:-

“(a) Issue/pass an order or direction of appropriate nature to the respondents to grant the disability pension to the applicant with effect from 08.06.2013 and also grant benefit of broad banding of disability pension as per the Government of India letter dated 31.01.2001.

(b) Issue/pass an order or direction of appropriate nature to the respondents to make the payment of arrears along with interest accrued to the applicant due to revision of his pension and continue to pay regular pension to the applicant in the revised.

(c) Issue/pass any other order or direction as this hon'ble Tribunal may deem fit in the circumstances of the case.

(d) Allow this application with costs.”

2. At the very outset it may be observed that the petition for grant of disability pension has been preferred by the applicant with delay of 03 years, 11 months and 10 days. Since payment of pension involves recurring cause of action, as such, vide order dated 17.05.2018 delay in approaching the Tribunal was condoned and the petition was admitted. Parties have exchange their affidavits.

3. Facts necessary for disposal of the petition, stated in brief, are that the applicant was enrolled in the Indian Army on 01.07.2003 as Sepoy General Duty and posted with 12 Maratha Light Infantry. On 28.02.2011 he was admitted in Military Hospital for psychiatric treatment and thereafter was transferred to 151 Base Hospital on 02.03.2011. He was downgraded to Medical Category S3(T-24) with effect from 18.04.2011 to 03.10.2011 for diagnosis (i) ALCOHOL

DEPENDENCE SYNDROME IN UNCOMPLICATED WITHDRAWAL, (ii) ALCOHOL INDUCED PSYCHOSIS and (iii) DELIBERATE SELF HARM. Subsequently, the applicant was invalidated out of service with effect from 08.06.2013 under Army Rule 13 (3) II (ii). The Release Medical Board held before discharge considered the disability as “neither attributable to nor aggravated by Military service” (NANA) with composite assessment as NIL for life. Consequently, the applicant has been denied disability pension. The applicant represented his grievance with the appropriate authority for grant of disability pension which was rejected vide letter dated 29.05.2015. Hence, the present O.A.

4. Submission of learned counsel for the applicant is that the applicant was discharged in low medical category after putting in 09 years 11 months and 08 days of service, as such, the applicant is entitled to get disability pension by condoning the shortfall of a few days for completion of 10 years of regular service.

5. Learned counsel for the respondents has contested the claim of the applicant to get disability pension on the ground that the disability (i) ALCOHOL DEPENDENCE SYNDROME IN UNCOMPLICATED WITHDRAWAL, (ii) ALCOHOL INDUCED PSYCHOSIS AND (iii) DELIBERATE SELF HARM is self induced disability. However, in para-28 of the counter affidavit, it has been averred that keeping in view the 09 years, 11 months and 08 days of qualifying service, the case of the applicant has been taken up with the Integrated Headquarter of Ministry of Defence vide letter dated

22.06.2017 and subsequent reminder dated 20.11.2017 for rounding off of his qualifying service.

6. We have heard learned counsel for the parties and have carefully perused the record.

7. Para 197 of the Pension Regulations for the Army (Part-1) which provides as under:

“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.

8. Learned counsel for the respondents could not dispute that Army personnel being invalided out of service after completing 10 years of qualifying service are entitled to receive disability pension even in case where the invaliding disability is assessed by the medical board neither attributable to nor aggravated by military service. It is admitted to the respondents that inception of the invaliding disease, i.e. (i) ALCOHOL DEPENDENCE SYNDROME IN UNCOMPLICATED WITHDRAWAL, (ii) ALCOHOL INDUCED PSYCHOSIS AND (iii) DELIBERATE SELF HARM was in the year 2011 i.e. in the later part of service career of the applicant. The applicant was invalided out of service on 08.06.2013, i.e. a few days prior to his completing 10 years of service.

9. In our view, it is a case where the applicant has been invalidated out for a disability which is “neither attributable to nor aggravated” by military service. His disability is primarily induced by excessive alcohol consumption, i.e. a case of Alcohol Dependence Syndrome (ADS). However the question before us is that, can he be deprived of the beneficial provisions of invalid pension which is given to personnel whose disability is NANA and who have 10 years’ or more service.

10. We have noted that there is a precedence of ADS cases getting Invalid Pension in the Army. We find that since ADS cases are being invalidated out on medical grounds as NANA, legally there is no bar to their eligibility to invalid pension. In this particular case, the applicant is short of 10 years’ of service by 22 days. In this situation, when the livelihood of an individual is getting adversely affected, it is expected from a Government Organization to be magnanimous and considerate to its employee, and in this case, the same could have been achieved by delaying the discharge by 22 days. Hence, we are of the considered opinion that in the interest of substantial justice, the applicant is to be notionally treated in service till he completes 10 years of service and he should be granted invalid pension. However, due to law of limitations, the benefits are to be restricted to 03 years before the filing of the O.A.

11. In view of our observations made hereinabove, we **allow** the O.A. The respondents are directed to consider the applicant to be notionally in service till he completed 10 years of service and grant

him invalid pension for life from three years prior to the filing of the present Original Application. The date of filing of the O.A. is 20.11.2017. 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 cost.

(Air Marshal BBP Sinha)
Member (A)

Dated: March, 2019

anb

(Justice SVS Rathore)
Member (J)