

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 429 of 2023**Friday, this the 22<sup>nd</sup> day of March, 2024**“Hon’ble Mr. Justice Anil Kumar, Member (J)  
Hon’ble Vide Admiral Atul Kumar Jain, Member (A)”**

Ex. AC Pawan Negi (No. 954312-T) S/o Shri Kamal Singh Negi,  
Permanent residing at House No. B-391, PO + TO – Kalagarh,  
District – Pauri Garhwal, Uttrakhand-246142.

**..... Applicant**

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

Versus

1. Union of India through the Secretary, Ministry of Defence,  
DHQ PO, New Delhi-110011.
2. Chief of Air Staff, Air HQ (Vayu Bhawan), Rafi Marg, New  
Dlehi.
3. Dte. Of Air Veterans, Air HQs, SMC Building (First Floor),  
Subroto Park, New Delhi-110010.
4. JCDA, Subroto Park, New Delhi-110010.

**.....Respondents**

Ld. Counsel for the : **Dr. Shailendra Sharma Atal**, Advocate  
Respondents. Central Govt. Standing Counsel  
Assisted by **MWO S.K. Mishra**,  
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) *Quash and set aside the Impugned Order No. Air HQ/99798/5/53/13/AC/DP/DAV dated 19.05.2014.*
- (b) *Direct respondents to grant Disability Pension (Service Element + Disability Element) duly rounded off to 50% to the Applicant w.e.f. his date of discharge i.e. 18.01.2013.*

OR

- (c) *Direct the respondents to grant Invalid Pension to the applicant w.e.f his date of discharge i.e. 18.01.2013.*
- (d) *Direct respondents to pay the due arrears of disability element of pension with interest @12% p.a. from the date of retirement with all the consequential benefits.*
- (e) *Any other relief which the Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case along with cost of the application in favour of the applicant and against the respondents.*

2. During the course of arguments, Ld. Counsel for the applicant submitted that he is not pressing for the grant of Disability Pension. He is pressing this Original Application for the grant of Invalid Pension only.

3. Briefly stated facts of the case are that applicant was enrolled in Indian Air Force on 28.09.2011 and was invalided out from service on 17.01.2013 in Low Medical Category after rendering 01

year and 112 days of service. At the time of invalidation from service, the Invaliding Medical Board (IMB) held at Command Hospital (Western Command) on 31.10.2012 assessed his disability '**OTHER NON ORGANIC PSYCHOSIS (F28)**' @40% for life and opined the disability to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected vide letter dated 19.03.2013. The applicant preferred First Appeal dated 26.05.2023 which too was rejected vide letter dated 19.05.2014. The applicant served Legal Notice-cum-representation dated 13.05.2022 but of no avail. It is in this perspective that the applicant has preferred the present Original Application.

4. Ld. Counsel for the applicant pleaded that since the applicant was invalided out from service he is entitled for the grant of Invalid Pension. He relied upon the order dated 07.07.2023 passed by the Armed Forces Tribunal, Principal Bench, New Delhi in the case of **Lt. A.K. Thapa (Released) Versus Union of India & Others** (O.A. No. 2240 of 2019), order dated 24.01.2024 passed by the Armed Forces Tribunal, Principal Bench, New Delhi in the case of **Ex. Rect. Ramashray Singh Yadav Versus Union of India & Others** (O.A. No. 2013 of 2018 with M.A. No. 2208 of 2018) and order dated 01.08.2023 passed by the Armed Forces Tribunal, Principal Bench, New Delhi in the case of **Ex. MER Gurbaksh Singh Versus Union of India & Others** (O.A. No. 672 of 2019).

Ld. Counsel for the applicant, on account of aforesaid, pleaded for Invalid pension to be granted to the applicant.

5. On the other hand, Ld. Counsel for the respondents submitted that since the applicant served in the Indian Air Force only 01 year and 112 days, therefore, he is not entitled for Invalid Pension. He pleaded that in the facts and circumstances, as stated above, Original Application deserves to be dismissed.

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

7. 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 : 16<sup>th</sup> 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 12<sup>th</sup> 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”

8. This Tribunal while disposing off the Original Application No. 368 of 2021, **Ex. Rect. Chhote Lal Versus Union of India & Others** (decided on 11.03.2022), has examined Para 4 of the Ministry of Defence letter dated 16.07.2020 and has held the said Para 4 of the letter as unconstitutional. Relevant paragraphs 20, 21, 22 and 23 reads as under :-

“20. Tested on the aforesaid principle enunciated by the Hon“ble Apex Court, the impugned letter dated 16.07.2020 fails to meet the aforesaid twin test. The letter arbitrarily denies the benefit of invalid pension to those armed forces personnel, who happened to be invalided out from service prior to 04.01.2020. There cannot be any difference on the ground of invalidment as both in the cases of personnel invalided out before and after 04.01.2020, they faced the similar consequences. In fact, the persons who have retired prior to 04.01.2020 have faced more difficulties as compared to the persons invalided out on or after 04.01.2020. The longer period of suffering cannot be a ground to deny the benefit by way of a policy, which is supposed to be beneficial. Such a provision amounts to adding salt to injury.

21. *In the instant case, applicant was diagnosed to be suffering from disability "SCHIZOAFFECTIVE DISORDER" and was invalided out from service. Applicant was denied disability pension because disability of the applicant was found neither attributable to nor aggravated by military service. Condition of qualifying service of ten years for grant of invalid pension is applicable in the case of a Armed Forces person who is invalided out on account of any bodily or mental infirmity.*

22. *As per policy letter of Govt of India, Ministry of Def dated 16.07.2020, there is a cut of date for grant of invalid pension. As per para 4 of policy letter, "provision of this letter shall apply to those Armed Forces Personnel who were/ are in service on or after 04.01.2019". Para 4 of impugned policy letter dated 16.07.2020 is thus liable to be quashed being against principles of natural justice as such discrimination has been held to be ultra virus by the Hon'ble Apex Court because the introduction of such cut of date fails the test of reasonableness of classification prescribed by the Hon'ble Apex Court viz (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group; and (ii) that differentia must have a rational relation to the objects sought to be achieved by the statute in question".*

23. *From the foregoing discussions, it may be concluded that the policy pertaining to invalid pension vide letter date 16.07.2020 will be applicable in the case of the applicant also as para 4 of the letter cannot discriminate against the petitioner based on a cut of date."*

9. In view of the above, the Policy letter dated 04.03.2024 is applicable in the case of the applicant also as para 4 of the said letter cannot discriminate against the applicant based on a cut off date.

10. Since the applicant was invalided out from service on account of the disability i.e. '**OTHER NON ORGANIC PSYCHOSIS (F28)**' which is a mental disorder, which permanently incapacitates the applicant from military service as well as civil reemployment. Therefore, the applicant is entitled for Invalid Pension.

11. In view of the above, the **Original Application No. 429 of 2023** deserves to be partly allowed, hence **partly allowed**. The applicant being invalided out from service on account of his disability is entitled to get Invalid Pension. The respondents are

directed to grant Invalid Pension to the applicant. However, in view of law laid down by the Hon'ble Apex Court in the case of **Shiv Dass vs. Union of India**, reported in 2007 (3) SLR 445, the arrears will be restricted three years prior to the date of filing of this Original Application. The date of filing of Original Application is 11.04.2023. 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.

12. No order as to costs.

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

14. Master Warrant Officer S.K. Mishra, 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.

**(Vide Admiral Atul Kumar Jain)  
Member (A)**

**(Justice Anil Kumar)  
Member (J)**

Dated : 22 March, 2024

AKD/-