

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 646 of 2023**Thursday, this the 07th day of March, 2024**“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Lt. Gen. Anil Puri, Member (A)”**

4287653X Ex. Rect. Prashant Kumar Mishra, S/o Bachcha Kumar Mishra, Om Nagar, Chaubepur, Post Chaubepur, Malau, Kanpur Nagar, Uttar Pradesh-209203.

..... ApplicantLd. Counsel for the Applicant : **Shri Raj Kumar Mishra, Advocate
Ms. Upasna Mishra, Advocate**

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, DHQ PO, New Delhi-110011.
2. The Chief of the Army Staff, Integrated Headquarters, Ministry of Defence (Army), South Block-III, DHQ PO, New Delhi-110011.
3. Principal Controller of Defence Accounts (Pensions), Draupadi Ghat, Prayagraj, Uttar Pradesh-211014.
4. The Officer-in-Charge Records the Bihar Regiment.

..... RespondentsLd. Counsel for the Respondents. : **Shri Bipin Kumar Singh, Advocate
Central Govt. Standing Counsel
Assisted by Major Danish Farooqui,
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) *The Impugned proceedings of the Invaliding Medical Board dated 14.12.2019 rejecting claim of invalid pension may kindly be quashed and set aside being arbitrary and illegal.*
- (b) *Issue/pass an order or direction to the respondents to round off the disability pension from 30% for life to 50% for life in terms of benefit of broad-banding as held in Ram Avtar’s case.*
- (c) *The respondents may be directed to grant Invalid Pension to the applicant from the date of discharge i.e. 18.02.2020 along with arrears of pension with interest @18% p.a.*
- (d) *Any other relief which is deemed appropriate in the facts and circumstances of the present matter may kindly be granted in favour of the humble applicant.*
- (e) *Issue/pass any other order or direction which this Hon’ble Tribunal may deem just and proper in the nature and circumstances*
- (f) *Allow this application with exemplary costs.*

2. Briefly stated facts of the case are that applicant was enrolled in The Bihar Regiment of Indian Army on 10.04.2019 and was invalided out from service on 18.02.2020 (FN) in Low Medical Category before completion of terms of engagement under Rule 13 (3) Item III (iv) of the Army Rules, 1954. At the time of invalidation

from service, the Invaliding Medical Board (IMB) held at Military Hospital, Danapur Cantt. on 14.12.2019 assessed his disability **'IMMUNE MEDIATED NEUROPATHY'** @20% 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 07.09.2020. The applicant preferred representation which too was rejected vide letter dated 10.12.2020. The applicant served Legal Notice to the applicant through his Counsel which was replied vide letter dated 29.04.2021. The applicant preferred First Appeal which too was rejected vide letter dated 22.07.2021 which was communicated to the applicant vide letter dated 06.09.2021. It is in this perspective that the applicant has preferred the present Original Application.

3. Ld. Counsel for the applicant pleaded that the applicant was enrolled in the Army in medically and physically fit condition. It was further pleaded that an individual is to be presumed in sound physical and mental condition upon entering service if there is no note or record to the contrary at the time of entry. In the event of his subsequently being invalided out from service on medical grounds, any deterioration in his health is to be presumed due to service conditions. The Ld. Counsel for the applicant, on account of aforesaid, pleaded for disability/Invalid pension to be granted to the applicant.

4. On the other hand, Ld. Counsel for the respondents submitted that since the IMB has opined the disability as NANA, the applicant is not entitled to disability pension. He further accentuated that the applicant is not entitled to disability pension in terms of Regulation 96 of Pension Regulations for the Army, 2008 (Part-I). Accordingly, the applicant was informed about the rejection/non-entitlement of disability pension. The Ld. Counsel for the respondents further submitted that applicant served in the Army only 10 months and as per Part III of IMB, the duties did not involve severe/exceptional stress and strain. Conditions laid do not fulfil for being aggravated by service in terms of Para 30 of Guide to Medical Officer, 2002/2008 and Entitlement Rules, 2008. He further submitted that on receipt of new policy of Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare D (Pension/Policy) letter No. 12(06)/2019/D(Pen/Pol) dated 16.07.2020 and Principal Controller of Defence Accounts (Pension), Prayagraj Circular No. 640 dated 18.09.2020 regarding provision of Invalid Pension to Armed Forces Personnel before completion of 10 year of qualifying service, an adjudication of grant of Invalid Pension was carried out and on applicant's disability was recommended for grant of Invalid Pension vide letter dated 27.03.2021. However, the Principal Controller of Defence Accounts has notified Pension Payment Order No. 213202000764 granting gratuity amount. The applicant is not entitled for Invalid Pension as

IMB as he is fit for sedentary 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. On careful perusal of the documents, it has been observed that the applicant was enrolled on 10.04.2019, and the disease applicant was found to be suffering with in medical test first started on 21.06.2019, i.e. within three months of joining the service.

7. In the above scenario, we are of the opinion that since the disease has started in less than three months of his enrolment, hence by no stretch of imagination, it can be concluded that it has been caused by stress and strains of military service. Additionally, it is well known that mental disorders can escape detection at the time of enrolment, hence benefit of doubt cannot be given to the applicant merely on the ground that the disease could not be detected at the time of enrolment. Since there is no causal connection between the disease and military service, we are in agreement with the opinion of the IMB that the disease is NANA. In view of the foregoing and the fact that the disease manifested in less than three months of enrolment, we are in agreement with the opinion of IMB that the disease is NANA.

8. Apart from above, in similar factual background this Tribunal had dismissed the claim for disability pension in T.A. No. 1462/2010 vide order dated 23.05.2011, wherein the applicant was enrolled on 21.01.2000 and was discharged on 27.04.2000, as he was suffering from Schizophrenia. Said disability was assessed @80% for two years and it was opined by the Medical Board to be neither attributable to nor aggravated by military service. The said order has been upheld by the Hon'ble Apex Court in Civil Appeal arising out of Dy. No. 30684/2017, Bhartendu Kumar Dwivedi Versus Union of India and Others, decided on November 20, 2017, by dismissing Civil Appeal on delay as well as on merits.

9. Additionally, in Civil Appeal No 7672 of 2019 in ***Ex Cfn Narsingh Yadav vs Union of India &Ors***, decided on 03.10.2019, it has again been held by the Hon'ble Supreme Court that mental disorders cannot be detected at the time of recruitment and their subsequent manifestation (in this case after about three years of service) does not entitle a person for disability pension unless there are very valid reasons and strong medical evidence to dispute the opinion of Medical Board. Relevant part of the aforesaid judgment as given in para 20 and 21 are as below :-

“20. In the present case, clause 14 (d), as amended in the year 1996 and reproduced above, would be applicable as entitlement to disability pension shall not be considered unless it is clearly established that the cause of such disease was adversely affected due to factors related to conditions of military service. Though, the

provision of grant of disability pension is a beneficial provision but, mental disorder at the time of recruitment cannot normally be detected when a person behaves normally. Since there is a possibility of non-detection of mental disorder, therefore, it cannot be said that 'Paranoid Schizophrenia (F 20.0)' is presumed to be attributed to or aggravated by military service.

21. Though, the opinion of the Medical Board is subject to judicial review but the courts are not possessed of expertise to dispute such report unless there is strong medical evidence on record to dispute the opinion of the Medical Board which may warrant the constitution of the Review Medical Board. The Invaliding Medical Board has categorically held that the appellant is not fit for further service and there is no material on record to doubt the correctness of the Report of the Invaliding Medical Board."

10. In view of the above, the applicant is not entitled for the grant of disability pension.

11. 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”

12. 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."

13. 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.

14. On the going through the IMB proceedings we find that at page 11 of the IMB proceedings under the heading of "FITNESS CERTIFICATE FOR CIVIL EMPLOYMENT" in para 2 the IMB endorsed as under :-

"2. He/She is :-
 (a) FIT FOR ALL TYPES OF EMPLOYMENT IN CIVIL . **No**
 (b) FIT FOR ONLY SEDENTARY EMPLOYMENT IN CIVIL. **Yes**
 (c) FIT FOR ALL EMPLOYMENT NOT INVOLVING HEAVY MACHINERY/MOVING PARTS. **Yes**

- (d) UNFIT FOR EMPLOYMENT IN CIVIL REQUIRING HIGH PHYSICAL/MENTAL FITNESS. **Yes**
 (e) ANY OTHER (SPECIFY). **No**”

15. In view of the IMB's endorsement, although the applicant is fit for sedentary employment in civil but he is not fit for all types of employment in Civil, he is unfit for employment in civil requiring high physical/mental fitness and he was invalided out from military service due to the aforesaid disability, we are of the view that the disability permanently incapacitates the applicant. Therefore, the applicant is entitled for Invalid Pension.

16. Further, vide letter No. 4298653X/1/DP/NE dated 29.04.2021 issued by Bihar Regimental Abhilekh Karyalaya, Records The Bihar Regiment to the applicant it has been conceded that the applicant is entitled for Invalid Pension w.e.f. 19.02.2020. Para 2 of the aforesaid letter is quoted as under :-

“2. As per Govt of India, Min of Defence, New Delhi letter No 12(06)/2019/D(Pen/Pol) dated 16 Jul 2020 and PCA (P), Allahabad Circular No 640 dt 18 Sep 2020, you are entitle for Invalid Pension wef 19 Feb 2020. The sanction of competent authority ie OIC Records has been accorded and claim documents for Invalid Pension in your favour have been processed to PAO (OR), Bihar Regt vide this officer letter No 4298653X/1/DP/NE dated 10 Apr 2021 (copy attached). The same will be processed to Pension Sanction Authority ie. PCDA (P) Allahabad after authentication from PAO (OR).”

17. In view of the above, the **Original Application No. 646 of 2023** deserves to be partly allowed, hence **partly allowed**. The impugned orders, rejecting the applicant's claim for grant of Invalid Pension, are set aside. 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 25.05.2023. 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.

18. No order as to costs.

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

20. Major Danish Farooqui, 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 : 07 March, 2024

AKD/-