E -Court No 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 08 of 2022

Wednesday, this the 04th Day of May, 2022

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No. 6487848Y Ex Recruit Krishan Bir Singh, S/o Late Bijendra Singh, R/o Village – Ishara, Post- Ishara, District- Etah-207121 (U.P.)

…..... Applicant

Learned counsel for the Applicant : **Shri R. Chandra, Advocate**

Versus

1. Union of India, through, the Secretary, Ministry of Defence, Government of India, New Delhi-11.

2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army) DHQ Post Office, New Delhi -11.

3. The Officer –In-Charge, ASC Records (AT), Bangalaore – 560007.

4. The Chief Controller Defence Accounts, Draupadi Ghat, Allahabad(UP).

.....Respondents

Learned counsel for the Respondents. :**Dr. Chet Narayan Singh, Central Govt. Counsel**

ORDER

"Per Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)"

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

> *I. The Hon'ble Tribunal may be pleased to strike down Para 4 of the letter dated 16/07/2020 issued by respondent No. 1 (Annexure-A/1).*
>
> *II. The Hon'ble Tribunal may be pleased to direct the respondents to grant the invalid pension to the applicant in view of letter dated 16/07/2020 along with its arrears from the date of discharge of the applicant i.e. 04/01/2019 along with interest at the rate of 24% per annum.*
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> *III. Any other appropriate writ, order or direction which the Hon'ble Court may deem just and proper in the nature and circumstances of the case.*

2. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Indian Army on 28.02.1995. Applicant was invalided out from service in Low Medical Category for disability **'CUBITUS VALGUS BOTHSIDE'** which was assessed 'Nil' for life and was considered as neither attributable to nor aggravated by military service as the onset of the disability was not connected to military training. He was invalided out from service wef 16.03.2002 having been found medically unfit for further services under item III (iii) to Rule 13 (3) of Army Rule 1954. Govt of India, Min of Def letter No 12(06)/2019/D(Pen-Pol)

dated 16.07.2020 entitles such personnel for invalid pension who are invalided out of service with less than 10 years of qualifying service on account of any bodily or mental infirmity, which is neither attributable to nor aggravated by military service and Govt servant who retires from service on account of any bodily or mental infirmity which permanently incapacitates them from military service as well as civil re-employment. Para 4 of this policy letter states that armed forces personnel invalided out from service prior to 04.01.2019 are not entitled for invalid pension whereas armed forces personnel retired on or after 04.01.2019 are entitled for invalid pension. Applicant has filed this O.A. challenging para 4 of Govt of India, Min of Def policy letter No 12(06)/2019/D(Pen-Pol) dated 16.07.2020 which debars armed forces personnel for grant of invalid pension who invalided out of service prior to 04.01.2019.

3. Learned counsel for the applicant submitted that the applicant was enrolled in the Army in medically and physically fit condition and there was no note in his service documents with regard to suffering from any disease prior to enrolment. During training he was diagnosed to be suffering from **'CUBITUS VALGUS BOTHSIDE'** and he was invalided out from service on recommendations of the medical board. Claim of the applicant for grant of disability pension was rejected.

Govt of India, Min of Def impugned policy letter dated 16.07.2020 entitles such personnel for invalid pension who are invalided out of service with less than 10 years of qualifying service on account of any bodily or mental infirmity, which is neither attributable to nor aggravated by military service and Govt servant who retired from service on account of any bodily or mental infirmity which permanently incapacitates them from military service as well as civil re-employment. The sole aim of issuing of this policy letter was to mitigate the sufferings of those employees who were declared permanently unfit for service and thrown out of service without pension. Such persons cannot be discriminated on the basis of the date of invalidment. The benefit of this letter has been restricted to only such persons who were/ are in service on or after 04.01.2019. It creates homogeneous class of the armed forces personnel invalided out from service for diseases held to be neither attributable to nor aggravated by service condition. Armed forces personnel invalided out from service before completion of 10 years of service have been divided into two classes namely (a) the persons invalided out before 04.01.2019 and (b) the persons invalided out on or after 04.01.2019. Submission of learned counsel for the applicant is that para 4 of policy letter dated 16.07.2020 restricts the benefit of invalid pension to

those armed forces personnel 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, to only such armed forces personnel who were/ are in service on or after 04.01.2019. Para 4 of the impugned letter dated 16.07.2020 is illegal and unreasonable because it divides invalided out armed forces personnel into two classes on the basis of the date of invalidment. Learned counsel for the applicant prayed to strike down para 4 of Govt of India, Min of Def policy letter No 12(06)/2019/D(Pen-Pol) dated 16.07.2020 which debars armed forces personnel for grant of invalid pension who invalided out of service prior to 04.01.2019 .

4. On the other hand, learned counsel for the respondents argued that Medical Board, being an expert body, who physically examined the applicant, had considered the disability of the applicant as NANA and applicant was not fulfilling the conditions for grant of disability pension as laid down in Para 179 of Pension Regulations for the Army, 1961 (Part-I), hence claim of the applicant for grant of disability pension was rejected by PCDA (P), Allahabad. Applicant filed O.A. No 69 of 2020 for

grant of disability pension before this Tribunal which was dismissed vide order dated 10.12.2020.

5. Learned counsel for the respondents further submitted that applicant was not fulfilling the conditions for grant of Invalid Pension in terms of para 198 of Pension Regulations for the Army, 1961 (Part-I) which stipulates that minimum period of qualifying service required for invalid pension is 10 years. For less than 10 years qualifying service an invalid gratuity only shall be admissible. Rule 8 of Entitlement Rules of the Casualty Pensionary Awards, 1982, states that attributability/ aggravation shall be conceded if causal connection between death/ disablement and military service is certified by appropriate medical authority. He submitted that consequent upon being invalided out from service, applicant was granted regular disability benefits under AGI, Invalid Gratuity, Credit Balance and Regular Maturity benefits under AGI. Further Govt of India, MoD has issued provision of invalid pension to Armed Forces Personnel before completion of 10 year of qualifying service vide letter dated 16.07.2020. Para 4 of this policy letter states that *'The provision of this letter shall apply to those Armed Forces Personnel who were/ are in service on or after 04 Jan 2019. The case in respect of personnel who were invalided out from service before 04 Jan 2019 will not be re-opened'.* Since

the applicant was invalided out from service wef 16.03..2002 i.e. before 04 Jan 2019, he is not entitled for invalid pension as per the above provision. The instant O.A. filed by the applicant lacks merit and substance and is liable to be dismissed.

6. We have heard learned counsel for the parties and perused the material placed on record.

7. The questions before us to decide are:-

(a) Whether para 4 of Govt of India, Min of Def policy letter dated 16.07.2020 is sustainable in the eyes of law?

(b) Is it right to grant invalid pension only to those armed forces personnel who were invalided out on or after 04.01.2019 and not to those who invalided out prior to 04.01.2019?

(c) Is the differential treatment to pensioners on the basis of date of retirement in violation of article 14 and if so should it be declared unconstitutional?

(d) Is the applicant eligible for grant of invalid pension in terms of the policy letter dated 16.07.2020?

8. Armed forces personnel perform their duties in odd conditions without caring for their life. During performance of duty they sacrifice their life in the service of the nation and sometimes they become disabled. In caring for their future Govt of India issues policy letters from time to time to compensate them.

9. For disabled armed forces personnel there is provision to grant disability pension with certain conditions. Those armed forces personnel who become low medical category during performance of their duty on completion of terms of engagement are granted disability pension subject to fulfilling of certain prescribed criteria. Further, armed forces personnel discharged in low medical category, before completion of terms of engagement are also granted disability pension subject to fulfilling of certain prescribed criteria. Earlier there was provision that armed forces personnel placed in low medical category and discharged on their own request, before completion of terms of engagement, were not granted disability pension. This anomaly was removed in Sixth Pay Commission and from 01.01.2006, soldiers proceeding on pre-mature discharge on their own request, before completion of terms of engagement, are also eligible for disability pension. This aspect was settled by the decision of Hon'ble Apex Court in ***Civil Appeals No 3101-3102 of 2015, Ex Lt Col RK Rain Vs Union of India and Others***, decided on 16.02.2018 and decision of Armed Forces Tribunal, Principal Bench in ***O.A. No 336 of 2011 Maj (Retd) Rajesh Kumar Bhardwaj vs. Union of India and Others*** decided on 19.05.2017.

10. A policy letter dated 03.06.2009 was issued by Govt of India, Min of Def stating that Havildars granted Honorary rank of Nb Sub after retirement shall be granted pension of Naib Subedar to those Havildars who retired on or after 01.01.2006. The matter was challenged by filing ***O.A. No 42 of 2010, Virendra Singh and Ors Vs. Union of India and Ors***, before Armed Forces Tribunal, Chandigarh. The Tribunal held that the date **"01.01.2006"** is the date when this letter came into effect and it does not carry connotation that the persons who retired pre- 01.01.2006 would not be entitled to these benefits. It thus follows from the above decision that the benefits, as extended by that decision, apply to all whether they were pre-01.01.2006 retirees or post -01.01.2006 retirees. It is worthy of notice here that the above order of the Armed Forces Tribunal Chandigarh Bench in ***Virendra Singh's*** case (supra) was assailed by the Union of India and upon scrutiny of the matter, Hon'ble the Apex Court dismissed the S.L.P. by means of order dated 13.12.2010. Finally, Govt of India, Min of Def issued clarification vide letter dated 16.06.2009 and 21.02.2020 for revision of pension of Hony Nb sub in the pay band and higher grade pay of Nb Sub.

11. Govt of India, Min of Def issued a policy letter/ Circular No 8(3)/86/A/D(Pension/Services) dated 19.02.1987 to the extent that it

grants the benefit of pro rata pension only to the Commissioned Officers of the Defence Services and not to the Non Commissioned Officers (NCOs)/ persons Below Officer Rank (PBOR) of the defence services. The matter was challenged in Hon'ble High Court of Delhi vide WP (c) 98/2020, Brijlal Kumar & Ors versus Union of India & Ors decided on 24.11.2020 wherein, Hon'ble High Court of Delhi quashed the policy letter and granted pro rata pension to Non Commissioned Officers (NCOs). Various Benches of Armed Forces Tribunal have also passed number of judgments quashing the policy letter dated 19.02.1987.

12. For grant of invalid pension, the relevant portions of Pension Regulations for the Army 1961 (Part -1) and Entitlement Rules for Casualty Pension Award, 1982 are reproduced as under:-

(a) ***Para 173 of Pension Regulations for the Army 1961 (Part I)***

"Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20 percent or over.

(b) ***Para 197 of Pension Regulations for the Army 1961 (Part- 1) - (Invalid Pention/Graduity 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.

(c) ***Para 198 of Pension Regulations for the Army 1961 (Part- 1) –(Minimum Qualifying Service)***

198. The minimum period of qualifying service actually rendered and required for grant of invalid pension is 10 years. For less than 10 years actual qualifying service invalid gratuity shall be admissible.

"(d) ***Entitlement Rules for Casualty Pensionary Awards, 1982***

4. *Invaliding from service is necessary condition for grant of a disability pension. An individual who, at the time of his release under the Release Regulation, is in a lower medical category than that in which he was recruited, will be treated as invalided from service. JCOs/ORs & equivalents 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.*

10. A plain reading of the provisions of relevant portion of Pension Regulations clearly lay down conditions for grant of disability pension and invalid pension. Both pensions are governed by different provisions of Pension Regulations. Grant of invalid pension is governed by para 197, 198 and 200 of Pension Regulations for the Army 1961.

13. A plain reading of the provisions reveal that Invalid Pension is governed by para 197, 198 and 200 of Pension Regulations for the Army, 1961. In case a person is discharged in lower medical category other than in which he was recruited, he was treated to be

invalided out of service. There are two conditions for grant of invalid pension. Initially, invalid pension was being granted to those armed forces personnel who were invalided out from service **after completion of terms of 10 years**. Now Govt of India, Min of Defence has issued policy letter dated 16.07.2020 which allows grant of invalid pension to those also who are invalided out of service **before completing terms of 10 years also.**

14. In the instant case, the applicant has challenged para 4 of Govt of India, Min of Defence letter dated 16.07.2020. The letter is reproduced as under:-

> ***Subject: Provision of Invalid Pension to Armed Forces Personnel before completion of 10 years of qualifying service- Reg.***
>
> *Sir,*
>
> *1. Government of India, Ministry of Personnel, Public Grievances & pensions, Department of Pension & Pensioners 'Welfare vide their O.M 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 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 provisions of Department of Pension & Pensioners Welfare O.M No. 21/01/2016 –P&OW(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 incapacities 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 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.

15. The policy letter dated 16.07.2020 restricts grant of invalid pension to only such persons who were in service on or after 04.01.2019 and not for those who invalided out from service prior to 04.01.2019. This policy letter also clarifies that an individual is entitled for invalid pension irrespective of the length of service even if the disability is held to be neither attributable nor aggravated by service condition and even in the case where it is held to be attributable or aggravated by service condition but assessed at less than 20%. In view of this policy letter, the requirement of the percentage being 20% or above also gets militated and now even 1% of disability would entitle an individual to get invalid pension

subject to condition that the individual should be in service on or after 04.01.2019.

16. Hon'ble Apex Court in the case of ***D.S. Nakara and Others Vs Union of India,*** (1983), SCC 305 has held that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer. The Hon'ble Apex Court held that Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation, which classification must satisfy the twin test of classification, being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are held out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question.

17. Paragraph 9, 49 and 50 of the above judgment of the Hon'ble Apex Court reads as under:-

> *9. Is this class of pensioners further divisible for the purpose of entitlement and payment of pension into those who retired by certain date and those who retired after that date? If date of retirement can be accepted as a valid criterion for classification on retirement each individual Government servant would form a class by himself because the date of retirement of each is correlated to his birth date and on attaining a certain age he had to retire. It is only after the recommendations of the third Central Pay Commission were accepted by the Government of India that the retirement dates have been specified to be 12 in number being last day of each month in which the birth date of the individual Government servant happens to fail. In other*

words, all Government servants who retire correlated to birth date on attaining the age of superannuation in a given month shall not retire on that date but shall retire on the last day of the month. Now, if date of retirement is a valid criterion of classification, those who retire at the end of every month shall form a class by themselves. This is too microscopic a classification to be upheld for any valid purpose. It is permissible or is it violative of Art. 14?

49. But we make it abundantly clear that arrears are not required to be made because to that extent the scheme is prospective. All pensioners wherever they retired would be covered by the liberalised pension scheme, because the scheme is a scheme for payment of pension to a pensioner governed by 1972 Rules. The date of retirement is irrelevant. But the revised scheme would be operative from the date mentioned in the scheme and would bring under its umbrella all existing pensioners and those who retired subsequent to that date. In case of pensioners, who retired prior to the specified date, their pension would be computed afresh and would be payable in future commencing from the specified date. No arrears would be payable. And that would take care of the grievance of retrospectivity. In our opinion, it would make a marginal difference in the case of past pensioners because the emoluments are not revised. The last revision of emoluments was as per the recommendation of the Third Pay Commission (Raghubir Dayal Commission). If the emoluments remain the same, the computation of average emoluments under amended Rule 34 may raise the average emoluments, the period for averaging being reduced from last 36 months to last 10 months. The slab will provide slightly higher pension and if someone reaches the maximum the old lower ceiling will not deny him what is otherwise justly due on computation. The words "who were in service on 31st March, 1979 and retiring from service on or after the date" excluding the date for commencement of revision are words of limitation introducing the mischief and are vulnerable as denying equality and introducing an arbitrary fortuitous circumstance can be severed without impairing the formula.

Therefore, there is absolutely no difficulty in removing the arbitrary and discriminatory portion of the scheme and it can be easily severed.

50. There is nothing immutable about the choosing of an event as an eligibility criteria subsequent to a specified date. If the event is certain but its occurrence at a point of time is considered wholly irrelevant and arbitrarily selected having no rationale for selecting it an having an undesirable effect of undesirable effect if dividing homogeneous class and of introducing the discrimination, the same can be easily severed and set aside. While examining the case under Art. 14, the approach is not : either take it or leave it, the approach is removal of arbitrariness and it that can be brought about by serving the mischievous portion the court ought to remove the discriminatory part retaining the beneficial portion. The pensioners do not challenge the liberalised pension scheme. They seek the benefit of it. Their grievance is of the denial to them of the same by arbitrary introduction of words of limitation and we find no difficulty in serving and quashing the same. This approach can be legitimated on the ground that every Government servant retires. State grants upward revision on pension undoubtedly from a date. Event has occurred revision has been earned. Date is merely to avoid payment of arrears which may impose a heavy burden. If the date is wholly removed, revised pensions will have to be paid from the actual date of retirement of each pensioner. That is impermissible. The State cannot be burdened with arrears commencing from the date of retirement of each pensioner. But effective from the specified date future pension of earlier retired Government servants can be computed and paid on the analogy of fitments in revised pay-scales becoming prospectively operative. That removes the nefarious unconstitutional part and retains their beneficial portion. It does not adversely affect future pensioners and their presence in these petitions becomes irrelevant. But before we do so, we must look into the reasons assigned for eligibility criteria, namely, reasons assigned for eligibility criteria, namely., in service on the specified date and retiring after the date.

The only reasons we could find in affidavit of Shri Mathur is the following statement in paragraph 5:-

> *"The date of effect of the impugned order has been selected on the basis of relevant and valid considerations."*

18. Hon'ble Apex Court held that the rule which said that the new rate is applicable to those Govt servants who are retired on or after April 1, 1979, is unconstitutional. After removing the unconstitutional part it was declared that all pensioners governed by the 1972 rules irrespective of their retirement date are entitled to receive pension according to this liberalized scheme from the specified date. The reason behind this was that the classification is not right because it is not related to the objective of the statute which is sought to be achieved through its implementation, so it violates the Article 14 of Constitution of India which say that equals should not be treated differently and so it is unconstitutional and deserved to be struck down. In this case the Hon'ble Apex Court expands the horizons of socio economic justice and has struck down the statute which discriminates between the same class of people on an unreasonable ground. It also emphasizes that all the statutes or laws must have some rational nexus with the object of the law. The principle aim of the state is to eliminate inequities in income, status and standard of life. The basic frame work of

socialism is to provide a proper standard of life to the people, especially security from cradle to grave. Amongst other things, it envisaged economic equality and equitable distribution of income.

19. Article 14 of the Constitution of India talks about equality; that the state shall not deny equality and give equal protection of law to everyone and prohibit the discrimination on the grounds of religion, race, caste, sex or place of birth. In case of ***Maneka Gandhi V. Union of India***, Article 14 was examined and Hon'ble Apex Court stated that 'Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. Article 14 strikes at arbitrariness in state action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non arbitrariness pervades Article 14 like a brooding omnipresence. Hon'ble Apex Court in the case of **Sriram Krishna Dalmia v. Sri Justice S.R. Tendolkar and Others** has held that**,** *"there can be classification in making scheme or laws but those classifications must be reasonable. The classification may be founded on differential basis according to objects sought to be achieved but there is contained in this reasoning that there ought to be a nexus (means a causal*

connection) between the basis of classification and object of the statute under consideration. Article 14 forbids class legislation but it does not forbid reasonable classification for the purpose of legislation. And two tests are there to check the reasonableness of the classification; ***(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*". Hon'ble Apex Court in the case of ***Ramana Dayaram Shetty v. The International Airport Authority of India &Ors*** has held that "*if governments take any discriminatory action against any class or individual then that action is liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory*". Hon'ble Apex Court in the case of ***State of Punjab &Anr. V. Iqbal Singh*** has held that *"pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension and the grant of pension does not depend upon any one's discretion. It is only for the purpose of*

quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules". In the case of ***Jaila Singh &Anr. V. State of Rajasthan &Ors the*** Court struck down the provision as discriminatory the division of pre-1955 and post-1955 tenants for the purpose of allotment of land made by the Rules under the Rajasthan Colonisation Act, 1954 observing that the various provisions indicate that the pre-1955 and post-1955 tenants stand on the same footing and therefore do not form different classes and hence the division was held to be based on wholly irrelevant consideration.

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 04.01.2019. There cannot be any difference on the ground of invalidment as in both the cases of personnel invalided out **before** and **after 04.01.2019**, they are faced with similar consequences. In fact, the persons who have retired prior to 04.01.2019 have faced more difficulties as compared to the persons invalided out on or

after 04.01.2019. 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 **'CUBITUS VALGUS BOTHSIDE'** and was invalided out from service. He 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.

24. Having concluded thus, we now proceed to examine whether the applicant is eligible for the grant of invalid pension for the disease in question?

25. As per para 2 of this policy letter invalid pension shall be granted to those personnel who are invalided out from service on account of any bodily or mental infirmity which permanently incapacitates him from the service before completing qualifying service of ten years. The applicant was declared permanently unfit for military service and he was recommended to be invalided out of service in low medical category. Thus he meets the service criteria. In medical board proceeding, however there is no mention of whether the applicant is unfit or fit for civil

employment. Further the applicant has not produced any document to prove that he tried for civil job/ employment and he was rejected due to the disease that he is suffering from.

26. In this regard it is relevant to mention the condition in para 2 of the letter i.e. '***which permanently incapacities them from military service as well as civil reemployment'.*** Only those personnel who cannot get civil reemployment will be eligible for the grant of invalid pension and not otherwise. In the instant case the applicant has not been successful in showing that he was not able to get any civil reemployment after discharge and therefore he cannot claim the benefit of this policy.

27. In view of the above the applicant is not meeting criteria for grant of invalid pension mentioned in para 2 of policy letter dated 16.07.2020 hence, the Original Application is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

28. No order as to costs.

29. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve) Member (A)

(Justice Umesh Chandra Srivastava) Member (J)

Dated: 04 May, 2022

UKT/-