

Reserved
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 770 of 2023

Thursday, this the 16th day of May, 2024

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

No. 14948628M Sepoy Rajat Thapa (Retd.), S/o Shri Ram Bahadur Thapa, R/o House No. 422, New Ram Mandir, Chandrabadni, Village Sewalakala, P.O. – Mohabewala, Tehsil – Sadar, District – Dehradun-248002 (Uttarakhand).

..... **Applicant**

Ld. Counsel for the : **Lt. Col. Nidhikant Dhyani (Retd.)**, Advocate
Applicant **Ms. Upasna Mishra**, Advocate
Shri Raj Kumar Mishra, Advocate

Versus

1. The Union of India through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. The Chief of the Army Staff, IHQ of MoD (Army), South Block, New Delhi-110011.
3. The Additional Directorate General Personnel Services/PS-4, AG’s Branch, IHQ of MoD (Army), Territorial Army, IHQ of MoD (Army), Defence Office Complex, 5th Floor, ‘A’ Block, K.G. Marg, New Delhi-110001.
4. The Records Office, The Mechanised Infantry Regiment, Pin-900476, C/o 56 APO.
5. The Principal Controller of Defence Accounts (Pensions), Draupadi Ghat, Allahabad-211014 (UP).

.....**Respondents**

Ld. Counsel for the : **Shri Rajeev Narayan Pandey**, Advocate
Respondents. Central Govt. Standing Counsel

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:-

- 8.1 *To issue order and direction to grant of disability pension to the applicant from 20 Sep 2018 onwards for the disability “Moderate Depressive Episode” assessed permanent disablement for 40% for life sustained and aggravated to the applicant while in military service.*
- 8.2 *To quash the impugned order issued by the Additional Directorate General of Personnel services/Adjutant General’s Branch, IHQ of MoD (Army) letter No. B/38046A/171/2022/AG/PS-4 (2nd Apepal) dated 02 Aug 2022, annexed as Annexure A-1.*
- 8.3 *Issue an order or direction to the release the arrears and consequential benefits arise out of disability pension to the applicant with 12% simple interest with effect from 20 sep 2018.*
- 8.4 *Any other relief which the Hon’ble Court may deem fit and proper in the circumstances of the case.*
- 8.5 *To award the cost of this petition to the applicant.*

2. Briefly stated facts of the case are that applicant was enrolled in the 3 Mechanised Infantry Regiment of Indian Army on 18.03.2017 and was invalided out from service on 19.09.2018 in Low Medical Category under Rule 13 (3) Item III (iii) of the Army Rules, 1954. At the time of invalidation from service, the Invaliding Medical Board (IMB) held at Military Hospital, Kirkee on 07.09.2018

assessed his disability '**MODERATE DEPRESSIVE EPISODE WITH DELIBERATE SELF HARM (F-32.1)**' @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 28.12.2018. The applicant preferred First Appeal dated 10.06.2019 which too was rejected vide letter dated 05.03.2020 which was communicated to the applicant vide letter dated 19.05.2020. The applicant preferred Second Appeal which too was rejected vide letter dated 02.08.2022 which was communicated to the applicant vide letter dated 30.08.2022. The applicant served Legal Notice dated 12.04.2023 through his Counsel which too was rejected vide letter dated 28.04.2023. 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 pension to be granted to the applicant.

4. During the course of arguments, Ld. Counsel for the applicant submitted that in case this Tribunal found that the applicant is not entitled for the grant of disability pension, the applicant may be granted Invalid Pension as he was invalided out from service before completion of terms of engagement.

5. 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 81 of Pension Regulations for the Army, 2008 (Part-I). Accordingly, the applicant was informed about the rejection/non-entitlement of disability pension. He further submitted that the Regulation 59 of the Pension Regulations for the Army, 2008 (Part-I) provides that *"The minimum period of qualifying service actually rendered and required for invalid pension is 10 years or more. For less than 10 years' qualifying service, invalid gratuity shall be admissible"* as such the applicant is not entitled for the grant of Invalid Pension as he has served only 01 year, 06 months and 01 day of service. He further submitted that Policy 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 is applicable to those Armed Forces Personnel who were/are in service on or after 04.01.2019. He further submitted that the IMB has not opined that

the disability of the applicant permanently incapacitates him from military service as well as civil reemployment. 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. On careful perusal of the documents, it has been observed that the applicant was enrolled on 18.03.2017, and the disease applicant was found to be suffering with in medical test first started in May, 2018, i.e. within one year and three months of joining the service. Further, in Summary and Opinion of Lt. Col. Nidhi Kumar, Classified Specialist in Psychiatry of Military Hospital, Kirkee dated 23.07.2018 in the heading of "History of Past Illness" it is mentioned that "*There is no history of substance abuse, Seizures, lack of consciousness. He gave past h/o taken treatment from civil Psychiatrist when about 4 yrs back mother took him to Psychiatrist, he was allegedly diagnosed as depression.*"

8. In the above scenario, we are of the opinion that since the disease has started in less than one year and 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 disorder 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 one year and three months of enrolment, we are in agreement with the opinion of IMB that the disease is NANA.

9. 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.

10. 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 although 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. Relevant part of the aforesaid judgment as given in para 21 are as below :-

“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.”

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

12. 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.

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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”

13. 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.”

14. Although the IMB held on 07.09.2018 has not opined that the disability of the applicant permanently incapacitates him from military service as well as civil reemployment, 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 view that the applicant is entitled for Invalid Pension as he was invalided out from service before completion of terms of engagement.

15. In view of the above, the **Original Application No. 770 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 from the next day of his invalidation. 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 04.07.2023. 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.

16. No order as to costs.

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

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

(Justice Anil Kumar)
Member (J)

Dated : 16 May, 2024

AKD/-