



2025:DHC:5505-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 8183/2025 & CM APPL. 35838/2025, CM APPL. 35839/2025

UNION OF INDIA & ORS. Petitioners
Through: Mr. Raj Kumar, CGSC with
Mr. Ankit Choudhary, Adv. with Major
Anish Muralidhar Army

versus

EX RECT FATEH SINGH NO 2866593 Respondent
Through: Mr. J P Sharma and Mr. Sahil
Sharma, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

% **07.07.2025**

C. HARI SHANKAR, J.

1. This writ petition, at the instance of the Union of India¹, assails order dated 9 October 2023, in OA 218/2018², order dated 26 April 2024 in RA 17/2024 and order dated 7 February 2025 in MA 807/2024 passed by the Armed Forces Tribunal³, Principal Bench, New Delhi.

2. OA 218/2018 was preferred by the respondent Fateh Singh, seeking disability pension on the ground that he was suffering from

¹ "UI" hereinafter

² **Ex Rect Fateh Singh v UI & Ors**

³ "the AFT" hereinafter



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Idiopathic Grandmal Epilepsy @ 20% for two years, which was a disability that entitled him to disability pension.

3. The AFT, by order dated 9 October 2023, allowed the OA, holding that the respondent is deemed to be invalided out of service, as he had rendered 11 months and 2 days' service from 28 December 1971 to 2 December 1972, the dates on which the respondent was enrolled and invalided out of service, respectively. Therefore, he was entitled to invalid pension even though he had not completed the requisite term required to claim invalid pension, which is ten years as per Rule 198⁴ of the Pension Regulation for the Army, 1961.⁵

4. During the course of oral arguments in OA 218/2018, learned counsel for the applicant, respondent before us, submitted that he is entitled to invalid pension if not disability pension as per Regulation 197⁶ of the Pension Regulation. Later during submissions, the counsel limited his prayer and pressed only for the grant of invalid pension. AFT by its order dated 9 October 2023 granted invalid pension to the respondent on the ground that the respondent was indeed invalided from service in low medical category due to Idiopathic Grandmal Epilepsy which was as per order dated 24 August 2017, neither attributable to nor aggravated by military service, and whereby

⁴ 198. 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.

⁵ 'Pension Regulation' hereinafter

⁶ 197. Invalid Pension/Gratuity when Admissible- 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 service, but the disability is assessed at 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.



respondent was found not eligible for grant of disability pension.

5. Aggrieved thereby, UOI preferred RA 17/2024 seeking review of the aforementioned order dated 9 October 2023 in OA 218/2018. By order dated 26 April 2024, the AFT dismissed RA 17/2024.

6. The AFT dismissed the RA on the ground that the review sought of the order dated 9 October 2023 did not fall within the ambit of Section 14(4)⁷ of the Armed Forces Tribunal Act, 2007 and Order XLVII of Rule 1⁸ of Code of Civil Procedure, 1908. Hence, the prayer seeking review was dismissed as it did not fall within the aforesaid statutory frameworks.

7. Aggrieved thereby, the UOI is before us in the present writ petition.

⁷ 14. Jurisdiction, powers and authority in service matters-

(4) For the purpose of adjudicating an application, the Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) reviewing its decisions;
- (g) dismissing an application for default or deciding it ex parte;
- (h) setting aside any order of dismissal of any application for default or any order passed by it ex parte; and
- (i) any other matter which may be prescribed by the Central Government.

⁸ Application for review of judgment— (1) Any person considering himself aggrieved—

- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,
- (b) by a decree or order from which no appeal is allowed, or
- (c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply



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8. We have heard Mr. Raj Kumar, learned CGSC for the petitioners and Mr. J P Sharma, learned Counsel for the respondent.

9. Mr. Kumar sought to place reliance on Regulation 198 reproduced *supra* of the Pension Regulations which fixed the minimum period of qualifying service actually rendered for grant of invalid pension as ten years. Inasmuch as the respondent had not serviced for ten years before being invalided out of service, Mr. Kumar sought to submit that he was not entitled to invalid pension, and would be entitled only to invalid gratuity.

10. Our attention was, however, was drawn by learned Counsel for the respondent to a Circular dated 16 July 2020, whereby the Department of Ex-Servicemen Welfare, Ministry of Defence conveyed the proposal to extend the benefit of invalid pension to Armed Forces Personnel with less than ten years of qualifying service in cases where the personnel were invalided out of service on account of bodily or mental infirmity which was neither attributable to nor aggravated by military service and which permanently incapacitated them from military service as well as civil employment. The relevant paragraph, from the Circular, reads thus:

“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

for a review of judgment of the Court which passed the decree or made the order.



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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&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 invalidated 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.”

11. Clearly, the case of the respondent falls within this clause.

12. However, Mr. Kumar sought to place reliance on para 4 of the same letter which reads thus:

“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 invalidated out from service before 04.01.2019 will not be re-opened.”

13. As it transpires, para 4 of the letter dated 16 July 2020 stands struck down as unconstitutional by a judgment of the Lucknow Bench of the AFT in *Ex. Recruit Chhote Lal v UOI*⁹.

14. Mr. Kumar submits that an SLP has been preferred in the Supreme Court against the said decision. However, it appears that no interim order has been passed in the said case till date.

⁹ Order dated 11 March 2022 in OA 368/2021



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15. As on date, therefore, para 4 of the letter dated 16 July 2020 stands struck down.

16. In that view of the matter, no exception can be taken to the impugned order passed by the AFT, holding the respondent to be entitled to invalid pension.

17. We, therefore, are not inclined to interfere in the present writ petition, least of all in the limited exercise of our jurisdiction under Article 226 of the Constitution of India.

18. The writ petition is accordingly dismissed in *limine*.

19. We record our appreciation for the fairness shown by Major Anish Muralidhar.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

JULY 7, 2025

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Click here to check corrigendum, if any