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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 17.02.2025

+ W.P.(C) 1985/2025

UNION OF INDIA & ORS.

.....Petitioners

Through: Mr. Pradeep Kumar Jha, SPC
with Major Anish Muralidhar.

versus

EX CFN PRABHAKAR SINGH

.....Respondent

Through: Mr. Praveen & Mr. Harish
Kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

SHALINDER KAUR, J (ORAL)

CM APPL. 9297/2025 (Exemption)

1. Allowed, subject to all just exceptions.

W.P.(C) 1985/2025 & CM APPL. 9296/2025

2. This petition has been filed by the petitioners under Article 226 of the Constitution of India, Impugning the Order dated 17.08.2023 passed by the Armed Forces Tribunal, Principal Bench, New Delhi ('Tribunal') in Original Application (OA) No.669 of 2019 titled, '*Ex. CFN Prabhakar Singh v. Union of India & Ors.*' whereby the respondent has been granted invalid pension.



3. The factual matrix necessary for the disposal of the present petition is that the respondent was enrolled in the Indian Army on 28.03.1972. After serving for about 8 years and 8 months, the respondent was invalidated out from Service on 23.12.1980, on account of being medically 'Unfit' for further service under Item III(iii) of the table annexed to Rule 13(3) of the Army Rules, 1954. The respondent was placed in a Low Medical Category 'EEE' for the disability 'Grandmal Epilepsy', which was assessed by the Invaliding Medical Board (IMB) at 20% for two years. It was also opined that the disability was 'neither attributable to nor aggravated' (NANA) by the Service conditions.

4. The respondent's claim for disability pension was rejected by the PDCA (P), Allahabad *vide* the letter No. G3/81/35471/IX/152 dated 09.06.1981, stating that the disability of the respondent was NANA. The said decision was communicated to the respondent *vide* the letter dated 03.07.1981, wherein it was stated that the respondent may prefer an appeal against the rejection of disability pension within 6 months of the communication. Thereafter, the respondent preferred an appeal dated 17.07.1981, which also came to be dismissed *vide* the letter dated 01.08.1983 passed by the Government of India, Ministry of Defence (MoD).

5. Subsequently, the respondent filed a second appeal against the rejection of disability pension on 19.04.2017. The said appeal was rejected by the Competent Authority *vide* its letter dated 31.05.2017 on the ground that appeals filed belatedly, being beyond 5 years,



would not be entertained in terms of Paragraph 2 of the IHQ of MoD's letter dated 17.05.2016.

6. Aggrieved by the rejection of his second appeal, the respondent filed an OA before the learned Tribunal on 08.04.2019.

7. *Vide* the Impugned Order, the learned Tribunal granted the respondent invalid pension, challenging which the petitioners have filed the present writ petition.

8. The learned counsel for the petitioners submits that the learned Tribunal has failed to consider that the minimum period of 10 years of qualifying service is required for grant of invalid pension; however, the respondent was in service only for a period of 8 years and 8 months. Therefore, he could not qualify the minimum period of Service required for grant of invalid pension.

9. The learned counsel further contends that a disease has to have arisen during the period of military service or has to be caused by the conditions of employment in the military service, which is not the case in the present situation.

10. On the other hand, the learned counsel for the respondent, in support of the Impugned Order, submits that as per Rule 197 of the Pension Regulations of the Army, 1961, the respondent is entitled to Invalid Pension.

11. He further submits that a Force Personnel with less than 10 years of qualifying service on account of any bodily or mental infirmity which is NANA and permanently incapacitates him/her from military service as well as civil employment, can also be given this



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invalid pension. He refers to the MoD's letter No.12(06)/2019/D(Pen-Pol) dated 16.07.2020 and submits that the said MoD letter has been relied upon by the learned Tribunal. Thus, even though the respondent had not completed 10 years in Service, he has been correctly awarded the invalid pension.

12. Having considered the submissions of the learned counsel for the parties, at the outset it is relevant to note that it is not in dispute that the respondent was invalidated out from the service under Item (iii) of Table annexed to Rule 13(3) of the Army Rules, 1954, in the Low Medical Category 'EEE' due to 'Grandmal Epilepsy' which was assessed by the IMB @ 20% for two years.

13. The Respondent herein, before the learned Tribunal, had raised the claim for Disability pension, however, the learned Tribunal granted the relief of only Invalid Pension, and declined the claim for Disability pension. The learned Tribunal, while relying on Rule 197 of the Pension Regulations for the Army, 1961, which states that invalid pension will be granted to an individual who is invalidated out of service on account of a disability which is NANA, granted the respondent invalid pension. The learned Tribunal has also rejected the submission of the petitioners that the respondent was not entitled to invalid pension as he had not completed 10 years of service. In this regard, the learned Tribunal has made reference to the MoD's letter No.12 (06)/2019/D (Pen-Pol) dated 16.07.2020, and the decision of the Armed Forces Tribunal (Regional Bench), Lucknow Bench in **Ex. Recruit. Chote Lal v. Union of India and Ors.** in OA No. 368/2021,



the learned Tribunal awarded invalid pension to the respondent, by observing as under:

18. ... it is apposite to mention the order of the Armed Forces Tribunal (Regional Bench) Lucknow in Ex. Recruit. Chhote Lal Vs. Union Of India & Ors. in OA No.368 of 2021, wherein the MoD letter No. 12(06)/2019/D(Pen-Pol) dated 16.07.2020 has been examined in detail. The said MoD letter is reproduced below:

“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&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 incapacities



them from military service as well as ciult 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."

*The AFT, Regional Bench, Lucknow Bench while disposing off the OA No. 368 of 2021 has examined Para 4 of the MoD letter dated 16.07.2020 and has held the said Para 4 of the letter as unconstitutional on the grounds that:
" 20.*

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.

22. As per policy letter of Gout 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.

....."

The Tribunal in reaching such a conclusion with respect to Para 4 of MoD letter No. 12(06)/2019/D(Pen-Pol) dated 16.07.2020 has placed reliance on the verdicts of the Hon'ble Apex Court in the cases of :

- > D.S. Nakara and Others Vs Union of India, (1983), SCC 305 ;*
- > Maneka Gandhi V. Union of India ;*
- > Sriram Krishna Dalmia v. Sri Justice S.R. Tendolkar and Others 1958 AIR 538 1959 SCR 279 ;*
- > Ramana Dayaram Shetty v. The International Airport Authority of India & Ors 1979 AIR 1628 ;*
- > State of Punjab & Anr. V. Iqbal Singh 1991 AIR 1532 1991 SCR (2) 790 ;*
- > Jaila Singh & Anr. V. State of Rajasthan & Ors. 1975 AIR 1436 1975 SCR 428 1976 SCC (1) 602. "*



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14. The petitioners do not appear to have challenged the decision in *Ex. Recruit. Chote Lal* (supra).

15. In view of the aforesaid references, we find that the learned Tribunal has passed a detailed reasoned Order after considering the relevant provisions and MoD's letters, and has rightly observed that the respondent was entitled to invalid pension only.

16. In the light of the above, the Impugned Order does not warrant any interference by this Court and we find no merit in the petition.

17. The petition is, accordingly, dismissed.

SHALINDER KAUR, J

NAVIN CHAWLA, J

FEBRUARY 17, 2025

Ab/FRK/IK

Click here to check corrigendum, if any