

**COURT No.2, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA 956/2016

Ex Sep Naginder Singh

..... Applicant

Versus

Union of India & Ors

..... Respondents

For Applicant

:Mr. NK Ghai, Advocate

For Respondents

:Mr. Avdhesh Kumar Singh, Advocate

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA, MEMBER (J)

HON'BLE AIR MARSHAL BBP SINHA, MEMBER (A)

ORDER

Being aggrieved by denial of disability/invalid pension, the applicant has filed the present Original Application under Section 14 of the Armed Forces Tribunal Act, 2007 wherein he has sought the reliefs as under:-

"By quashing orders Annx A-1 to A-3, the applicant be reinstated in service with consequential benefits. If not, be granted disability pension (duly rounded, for Flame Burn Injury on Back and Rt upper limbs), if not feasible, then Invalid Pension be paid; all with interest @ 12% pa and Fixed Medical Allowance be paid until free medical treatment is given."

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 21.03.2004 and being habitual offender of intoxication, he was discharged from service on 28.07.2014 as undesirable soldier after having rendered 10 years, 04 months and 08 days of military service. At the time of discharge, the applicant was in low medical category. Before discharge from

service, RMB of the applicant was held on 03.07.2014 at Military Hospital, Kasauli which had assessed his two disabilities, viz., (i) 'Mixed flame burns back and right upper limb (Optd)' @ 15-19% and (ii) 'Alcohol Dependence Syndrome' @ 1-10%, and composite disability @ 30% for life. The RMB considered both the diseases as neither attributable to nor aggravated by military service (NANA). Being undesirable soldier with more than 10 years of service, the applicant was discharged. His claim for disability pension was rejected vide order dated 19.05.2015, hence this O.A. has been filed.

3. Ld. Counsel for the applicant pleaded that while posted in Siachen Glacier in 2005-06, the applicant started drinking liquor which was issued free on the advice of unit medical officer while deployed there to keep him protected from the extreme weather conditions. On 04.06.2010, while on a field posting in J&K, he suffered flame burn injury on back and right upper limbs. The Ld. Counsel submitted that the applicant had a series of postings to field area. Out of his eight postings, his five postings are in field area with difficult living conditions and CI conditions in J&K state. The prolonged posting to field and non

availability of family accommodation led to strained relationship with wife. To overcome stress and strain of military service as well as strained relationship with wife, the applicant became alcoholic and this led to the six minor punishments under the power of Commanding Officer, which led to his being declared an undesirable soldier and consequent discharge. The Ld. Counsel stated that the respondents had an option to discharge the applicant on medical grounds of burn injuries (operated) and Alcohol dependence but they chose to discharge him as undesirable soldier. He pleaded that the respondents have done great injustice to the applicant because had they discharged him on medical grounds, the applicant would have become eligible for invalid pension for rendering more than 10 years service. He concluded by pleading for grant of disability/invalid pension to the applicant.

4. On the other hand, Ld. Counsel for the respondents submitted that the applicant was a habitual offender with poor military discipline and proved himself an undesirable soldier and a bad example among troops for which he was punished for six times under various sections of the Army Act. Before discharge from service, a preliminary impartial

inquiry was conducted at 20 SIKH, which recommended to issue a Show Cause Notice by the competent authority as to why the applicant should not be discharged from service being undesirable soldier in terms of the provisions of IHQ of MoD (Army) letter A/13210/159/AG/PS-2(C) dated 28.12.1988. The Show Cause Notice was issued on 07.05.2014 by Commander 95 Infantry Brigade to the applicant and the applicant replied that he had committed offences six times due to his own mistakes. The applicant's discharge from service was approved by Commander 95 Infantry Brigade vide order dated 11.07.2014 in terms of Army Rule 13(3) Item III (v). Therefore, proper procedure had been followed before discharge of the applicant from service. As regards disability, the Release Medical Board assessed the composite disability @ 30% for life and Nil % for disability pension being NANA case. Ld. Counsel for the respondents has submitted that the disability of the applicant has no casual connection with military service and was considered as NANA, hence applicant is not entitled for disability pension. He further submitted that since the applicant was discharged from service as undesirable soldier and not on medical grounds, hence

he is not entitled for invalid pension/gratuity. He pleaded that the OA may be dismissed.

5. We have heard Ld. Counsel for the parties and perused the material placed on record. The question before us is, two fold, ie., :-

(a) Is a soldier discharged as undesirable soldier entitled to disability pension/ invalid pension?

(b) Is the applicant entitled to disability/invalid pension?

6. As far as the first question is concerned, we are of the opinion that an undesirable soldier is a normal soldier who has been discharged to protect the general disciplinary atmosphere of the force because repetition of minor offences by a soldier, needs to be discouraged for maintaining the discipline of the Army. Thus the soldiers who are discharged as undesirable soldiers have not committed any heinous crime or any major offence, probably in civil life or under employment in any non military organisation, they would have faced no disciplinary action for the same acts for which they are discharged from Army as undesirable soldier. Thus, considering all issues, we are of the opinion that an undesirable soldier has all his rights as a soldier intact

even after discharge, in terms of his pension and other benefits and this includes disability pension and invalid pension.

7. Now coming to the second question, when we look at the eligibility of the applicant to disability pension/invalid pension, we find that since the applicant has not been removed on medical grounds, he is not entitled for either. However, it is well established that the law must lead to justice and hence the famous Judicial Quote 'The law must bend before justice'. In this case, when we look at this case we find the following irrefutable facts:-

(a) That right from his enrolment the applicant has been mostly in field areas. Out of his 08 postings, 05 are in field and all in J&K state (including 01 at Siachen Glacier), in inhospitable terrain and in counter insurgency conditions.

(b) That due to a series of field postings and non availability of family accommodation, the applicant had a strained relationship with his wife.

(c) That in these circumstances, the applicant gradually became Alcohol dependent and his punishment entries for alcohol dependence

related offences has started from 2010, ie., after six years of enrolment and in balance four years of service, he has completed five red ink and one black ink entry which have resulted in his discharge.

(d) That out of five red ink punishment/entries, four red ink entries are directly for **Intoxication** and the remaining are indirect result of **Intoxication**.

(e) That the respondents had an option to invalid out the applicant for 'Alcohol dependence'. However, they chose to discharge him from service as an undesirable soldier primarily for punishments given to applicant which were directly related to **Intoxication**.

(f) That the respondents failed to keep this fact in mind that the applicant has completed 10 years service and is in low medical category for two disabilities, ie., Burn injury and Alcohol dependence, thereby becoming eligible for invalid pension, if invalided on medical grounds of Alcohol dependence.

(g) The policy on undesirable soldier specifically advises that eligibility to pension must be kept in mind before deciding the option of discharge as undesirable soldier.

8. Thus, in view of the above facts, we are of the opinion that prima facie the applicant is eligible for Invalid Pension and his being an undesirable soldier does not bar him from this eligibility because he has been discharged in low medical category. Additionally, Rule 58 of Pension Regulations for the Army, 2008 reads as follows:-

"(a). An invalid pension or invalid gratuity in accordance with the Regulations in this Section may be granted to Service personnel invalided out of serviced on account of a disability incurred in the circumstances mentioned in Category A of Regulation 82 of these Regulations.

(b) A low medical category personnel who is retired/ discharged from service for want of alternative employment compatible with his low medical category shall also be eligible for invalid pension or invalid gratuity.

(c) Personnel below officer rank who is invalided out of service in consequence of any disorder (including sanity) resulting from indulgence in drugs or drinks which was within his control will be eligible for invalid pension/gratuity. Orders of the competent authority under Regulation 8 of these Regulations shall be obtained in each case."

9. In view of the above facts and in the interest of substantial justice, we are of the considered opinion that ends of justice will be met if the applicant is provided with invalid pension on grounds of having completed more than 10 years service and for being

in low medical category, with disabilities which are NANA.

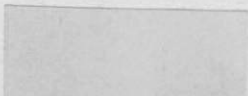
10. In view of the above, the OA is **partly allowed**.

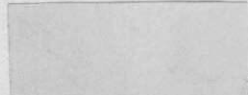
The applicant is entitled to Invalid Pension from the date of his discharge from service. Ordered accordingly. To be implemented by the respondents within four months from the date of receipt of a copy of this order. Default will invite interest @ 6% per annum till actual date of payment.

11. No order as to costs.

12. Pending applications, if any, also stand disposed of.

Pronounced in the open court on 6th March, 2020.


(JUSTICE SUNITA GUPTA)
MEMBER (J)


(AIR MARSHAL BBP SINHA)
MEMBER (A)

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