

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A. 49 of 2014

Tuesday, the 23rd day of September 2014

THE HONOURABLE JUSTICE V. PERIYA KARUPPIAH
(MEMBER - JUDICIAL)

AND

THE HONOURABLE LT GEN K. SURENDRA NATH
(MEMBER – ADMINISTRATIVE)

Rank-Ex-Spr, Name-S.Rahamathullah
Service No.15304241-H
S/o Late S.Shumudeen
Aged about 47 years
No.6/33, MAPP Main Road, Sadras
Post-Kalpakkam, District-Kanchipuram
Tamil Nadu, Pin-603102.

... Applicant

By Legal Practitioners:
Mr. M.K. Sikdar & S.Biju

VS.

1. Union of India
Through the Secretary,
Government of India
Ministry of Defence
New Delhi-110 011.
2. The Chief of the Army Staff
Rep. by The Addl Dte Gen Pers Services
Adjutant General's Branch
IHQ of MOD (Army), 'A' Wing
Sena Bhavan, New Delhi-110 105.
3. The Officer-in-Charge
Record Office, MEG & Centre
Bangalore-560 042.
4. The PCDA (P)
Draupadi Ghat
Allahabad (U.P.)
Pin-211 014.

... Respondents

Mr. B.Shanthakumar, SPC
Assisted by Major Suchithra Chellappan
JAG Officer

ORDER

[Order of the Tribunal made by
Hon'ble Justice V. Periya Karuppiyah, Member-Judicial]

1. This is an application filed by the applicant for the reliefs and directions to call upon the respondents to produce the records in respect of the impugned order dated 20.02.2014 in rejecting the invalid pension passed by the 3rd respondent and to quash the same and thereby pass an order of condonation of shortfall of 99 days for 10 years of service of the applicant towards the grant of invalid pension and to direct the respondents to grant invalid pension for life in favour of the applicant with effect from 22.05.1997 with interest and costs.

2. The case of the applicant as stated in the application would be as follows:

The applicant was enrolled in Indian Army on 01.09.1987 as Sapper and he had undergone strenuous training. He was posted in field area and in high altitude area, namely Kargil and Udampur respectively in Jammu & Kashmir. The applicant volunteered to accept the assignments and maintained excellent service records with no adverse remarks during his service. The applicant was admitted in military hospital on 04.12.1996 and he was diagnosed for the disability, "Depression". He was given treatment in military hospital and was discharged on 09.05.1997. To the dismay of the applicant, the respondents without serving any Invaliding Medical Board proceedings, invalidated him out from service on 21.05.1997 under Rule 13 (3) (III) (iii) of Army Rule, 1954. However, disability pension was refused to the applicant. The applicant served

9 years 8 months and 21 days in Indian Army and the said disability was caused due to stress and strain in the military service and therefore, he applied for disability pension which was rejected by PCDA as not attributable to or aggravated by military service. The appeal preferred before the first respondent against the rejection of disability pension was kept pending for a longer period. Therefore, he filed writ petitions in W.P.Nos.7812 and 7813 of 2000 before the Hon'ble High Court of Madras and they were ordered by issuing a direction against the respondents to dispose of the said appeal within three months. The first respondent had mechanically rejected the said appeal on 20.09.2000. Against the said order, a second appeal was preferred before the second respondent and the same was also rejected vide their letter dated 15.04.2002. Therefore, he challenged the said orders of the respondents before this Tribunal in O.A.No.85 of 2012 and this Tribunal had passed an order of dismissal with an observation that the applicant had not asked for the relief of invalid pension or for any condonation of shortfall in service for the grant of invalid pension and the applicant may be considered for invalid pension in the event of the respondents condoned the shortfall of service towards the grant of invalid pension. As per the said observation, the applicant represented before the respondents on 03.06.2013 for condonation of shortfall in service and to grant invalid pension, but the 3rd respondent passed the impugned order on 20.02.2014 rejecting the invalid pension on untenable grounds. Such action of the respondents is biased, arbitrary, and unlawful with mala fide intention. Therefore, the impugned order may be quashed and the application for condonation of shortfall of 99 days for the service of 10 years required for the

grant of invalid pension may be ordered and invalid pension be granted to the applicant. Thus, the application may be allowed.

3. The objections raised by the respondents would be that the applicant was enrolled in the army on 04.09.1987 and was invalided out of service with effect from 22.05.1997 under Rule 13 (3) Item IV of Army Rules on medical grounds due to the disease, "Depression". The degree of disability was assessed at 30% which was not attributable to service factors and unconnected with service. Thus the applicant served in the army for 9 years 251 days only. The applicant was sanctioned with a sum of Rs.25,567/- as invalid gratuity. The claim of the applicant towards disability pension was rejected by every forum including this Tribunal as told by the applicant. However, the application dated 03.06.2013 was submitted by the applicant for condonation of 99 days required for grant of invalid pension to the Office of Integrated Headquarters of Ministry of Defence for consideration which was rejected. A speaking order was issued to the applicant vide letter No.15304241/Pen/LC/61, dated 20.02.2014 stating that he was not eligible for the grant of invalid pension as per Para 198 of Pension Regulations for the Army 1961 Part-I. For the grant of invalid pension, 10 years of service is mandatory as required in Rule 198 of Pension Regulations for the Army Part-I. Since the applicant did not complete 10 years of service, he was not entitled to invalid pension. In view of the non-entitlement of the disability pension and invalid pension as per rules, the applicant was granted invalid gratuity for a sum of Rs.25,567/- at the time of discharge. Therefore, the application filed by the applicant seeking for

condonation of 99 days towards his service of 10 years and for the grant of invalid pension, may be dismissed as devoid of any merit.

4. On the above pleadings, the following points were framed for consideration:

- 1. Whether the applicant is entitled for condonation of 99 days towards completion of 10 years of service required for the grant of invalid pension?*
- 2. Whether the applicant is entitled for the grant of invalid pension as prayed for?*
- 3. To what relief, the applicant is entitled for ?*

5. We heard Mr. M.K. Sikdar, learned counsel for the applicant and Mr. B.Shanthakumar, learned Senior Panel Counsel assisted by Major Suchithra Chellappan, learned JAG Officer, appearing for the respondents. We also perused the written arguments submitted by the applicant. No written arguments of respondents filed as directed.

6. The learned counsel for the applicant would submit in his arguments that the applicant challenged the impugned order dated 20.02.2014 in rejecting the invalid pension passed by the 3rd respondent by refusing to condone the period of shortfall of a 99 days in qualifying for the service of 10 years required for the grant of invalid pension. He would further submit that the rejection of condonation of 99 days in service is arbitrary in nature. He would also submit that the claim of the applicant for the disability pension was rejected by every forum and lastly in this Hon'ble Tribunal in O.A.No.85 of 2012 dated

23.04.2013 but there was an observation by this Tribunal directing the respondents to consider the condonation of shortfall of 99 days in service towards 10 years of qualifying service of the applicant to get invalid pension. He would also submit that the applicant was not found entitled to disability pension on the ground that it was not attributable to or aggravated by military service and therefore, the next criteria would be the completion of period of 10 years for the grant of invalid pension to which 99 days were short and therefore, he has asked for condonation of shortfall in qualifying service. He would also submit that Para 125 of Pension Regulations for the Army 1961 Part-I had given power to the authorities for condoning the deficiency in service and reservist pension. However by virtue of a letter dated 21.07.2004 vide GO in MOD ID No.12 (2)/04/Den/Sers, shortfall in qualifying service for the grant of pensionary benefits in respect of personnel below officer ranks was extended beyond six months, upto twelve months. He would insist in his argument that the reference as to pensionary benefits in the said letter would categorically apply to all types of pensions including the invalid pension where minimum of 10 years of qualifying service upto 15 years has been fixed as per Regulation 198 of Pension Regulations for the Army 1961 Part-I for the grant of invalid pension. He would also cite a judgment of this Tribunal made in O.A.No.54 of 2013 dated 5.9.2013 between **Kuppusamy Elumalai** and **UOI & Ors** in which condonation was ordered towards 10 years of service required for the grant of invalid pension. He would again cite another judgment reported in **2012 (2) AFLJ 311 (M. Arputham vs. UOI & Ors)** and yet another judgment of this Tribunal made in O.A.No.79 of 2012 dated **27th February 2013 (Ex-NC (E))**

Yacob Johnson vs. UOI & Ors) where the same rule has been dealt with and was similarly ordered. He would further submit that this Tribunal had directed the respondents to consider the condonation of shortfall of 99 days in favour of the applicant in the order made in O.A.No.85 of 2012 which was not respected by the respondents. Therefore, he would request us to invoke the benefit granted by the Government in its letter dated 21.07.2004 empowering the authorities to condone shortfall upto an extent of 12 months so as to get pensionary benefits thus and the shortfall of 99 days towards 10 years of qualifying service for the grant of invalid pension and the applicant be granted with invalid pension.

7. Per contra, the learned Senior Panel Counsel assisted by learned JAG Officer Major Suchithra Chellappan would submit in his arguments that the minimum period of qualifying service actually rendered for the grant of invalid pension is for 10 years and those persons who have not completed the said qualifying service would be entitled for an invalid gratuity as per the provisions of Regulation 198 of Pension Regulations for the Army 1961 Part-I. He would further submit in his argument that the applicant having failed in his attempt to get disability pension for the disability "Depression" has come forward with the plea that he is entitled for invalid pension after condonation of shortfall of 99 days in his service towards 10 years of qualifying service. He would also submit that the condonation of shortfall of service has been regulated in Para-125 of Pension Regulations for the Army 1961 Part-I and it deals with service pension/reservist pension only and the extension of the condonation of shortfall of service from 6 months to 12 months was intended to apply to those category

of pension, i.e., service pension/reservist pension and not for any other pension including invalid pension. He would further submit that this Hon'ble Tribunal has directed the respondents to consider the condonation of shortfall of service towards 10 years of service required for the grant of invalid pension. As per direction after following rules and procedures, the respondents found that the applicant was not entitled for condonation of shortfall of 99 days for 10 years of service and accordingly, the application was rejected. He would also submit that the order passed by this Tribunal was complied with and there was no deviation. He would also submit that the applicant was given invalid gratuity at the time of his invalidation and he had also received the same and did not ask for invalid pension. The application has been filed by the applicant after he failed to get disability pension for the disability "Depression" which was neither attributable to nor aggravated by military service. He would therefore request us to dismiss the application as vexatious and devoid of merit.

8. We have given our anxious thoughts to the arguments advanced on either side. We have thoroughly perused the documents produced on either side and the written arguments submitted by the applicant.

9. Point Nos.1 & 2: The facts that the applicant served in the army for 9 years 8 months and 21 days after he was enrolled in the army on 01.09.1987 as Sapper and was invalided out of service on 21.05.1997 are not disputed. Similarly, the claim of the applicant for disability pension was rejected by the PCDA on the ground that the disability, "Depression" was not attributable to nor aggravated by military service and against the said decision, he preferred first appeal and he filed writ petitions before the Hon'ble High Court of Madras which

were ordered with directions to dispose of the said appeal within a time frame of three months and the first appeal was dismissed and thereafter, he preferred second appeal and the same was also dismissed and against which the applicant filed O.A.No.85 of 2012 before this Tribunal and the said application was also dismissed by this Tribunal on the finding that the applicant was not entitled to the disability pension are undisputed facts. From the aforesaid admitted facts, we could understand that the applicant was boarded out of service on invalidation for the disability "Depression" which was assessed at 30% and was not attributable to, or aggravated by military service and thus the applicant was not entitled to disability pension. There is no dispute that the applicant was granted with invalid gratuity for a sum of Rs.25,567/-.

10. Now the claim of the applicant is towards invalid pension as per Rules 197 and 198 of Pension Regulations for the Army 1961 Part-I. The respondents' case would be that the applicant should have completed 10 years of service for claiming/getting invalid pension and the disability was not attributable to or aggravated by military service, and since he had completed only 9 years 251 days of service, he was not eligible. Regulation 198 of Regulations for the Army runs as follows:

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. "

11. According to Regulation 198, the period fixed is no doubt 10 years of qualifying service. The applicant had therefore requested the respondents to condone the shortfall of 99 days towards the 10 years of qualifying service required for the grant of invalid pension, but it was refused. In an earlier occasion, this Tribunal had passed an order while dismissing the claim of disability pension of the applicant in O.A.No.85 of 2012, dated 23.04.2013 which reads as follows:

"12. The petitioner in the instant case has not asked for the relief of Invalid pension or condonation of shortfall in service for grant of invalid pension. In the application, however, he has mentioned that he was discharged in a hastened manner to deprive him of invalid pension. Even though the petitioner has not asked for invalid pension, we are of the view that in the event the respondents condone the shortfall in service for the grant of invalid pension he may be considered for such pension."

12. The substance of the direction of this Tribunal, would be that the applicant is entitled to invalid pension in the event of the respondents condone the shortfall in service 10 years required for the grant of invalid pension. According to the respondents, Para 125 of Pension Regulations for the Army 1961 Part-I deals with service pension and reservist pension only and the condonation of shortfall in service is meant only for grant of service pension and reservist pension and

therefore the qualifying service should be in respect of service pension/reservist pension only. According to them, the letter of GO MOD dated 21.07.2004 would not apply to condone the shortfall of service towards the invalid pension. The crucial point in this case would be that whether the benefit given in the above referred policy letter for condonation of shortfall of service would also be extended to the qualifying service regarding invalid pension. For the purpose of deciding the said point, the letter dated 21.07.2004 issued by the Government of India MOD is extracted as below:

"Ministry of Defence

Subject: Condonation of short fall in qualifying service for grant of pensionary benefits in respect of personnel below officer ranks beyond six months and up to twelve months-clarification regarding.

Kindly refer to CGDA ID Note No. 5669/ATP/Contempt/R.H.Ghatak dated 16.07.2004 on the subject cited above and to state that the matter has been considered in consultation with IFA (def) in the Ministry of Defence. It is clarified that the services Hqrs are empowered to exercise the powers delegated to them vide order No. 4684/Dir (P)/2001 dated 14.08.2001 even to the cases which were pending with prior to issue of the orders. However they are required to exercise the power in the interest of justice, equity and fair play. "

13. In the said letter it is categorically referred that the condonation of shortfall in respect of the service of PBORs could be condoned from 6 months to 12 months in the qualifying service for pensionary benefits. On a careful understanding of the said letter, we are of the view that the pensionary benefits referred to in the said letter would include every type of pension in respect of Personnel Below Officer Ranks which would include the invalid pension also. There is no express restriction as to pensionary benefits only regarding service/reservist pension so as to make the said letter an explanation to Para 125 of Pension Regulations for the Army 1961 Part-I.

14. On an earlier occasion, this Tribunal had an occasion to consider similar questions and accepted the view taken by the applicant in O.A.No.54 of 2013 in between **Kuppusamy Elumalai** and **UOI**. In yet another case in O.A.No.79 of 2012 in between **Yacob Johnson** and **UOI & others**, this Tribunal has expressed the view that the letter dated 21st July 2004 regarding condonation of shortfall in qualifying service should be considered liberally when the personnel had unblemished service, integrity and sincerity towards their service. Applying these principles rendered by this Tribunal in those cases, when we approach this case, we find that the applicant served in the army for 9 years 8 months 21 days with an unblemished service. He served in field areas, i.e., Kargil and Udhampur (J & K) and he had no adverse remarks during his tenure of service. Considering these circumstances, the 3rd respondent ought to have considered the request of the applicant and should have condoned the shortfall of 99 days or 114 days in service and should have made him eligible

for a qualifying service of 10 years so as to get the invalid pension. The refusal on the part of the 3rd respondent to which we consider it is not in consonance with the tenor of the policy letter of the government. For these reasons, we are inclined to accept the case of the applicant and accordingly, both the points are decided in favour of the applicant.

15. **Point No.3:** In view of the discussions on the above point, the applicant is entitled for invalid pension for the disability he had as per the provisions made in Rules 197 and 198 of Pension Regulations for the Army Part-I. The applicant pursued the claim of disability pension which was rejected by the authorities in the year 2002 and thereafter he preferred an application before this Tribunal after a long gap of 10 years. In the said application, this Tribunal ordered that the applicant may be found entitled to invalid pension if for any reason the respondents have condoned the shortfall of service towards 10 years of qualifying service. The said Original Application in O.A.No.85 of 2012 was admitted after the condonation of delay caused in filing the said application in M.A.No. 70 of 2012. In this application, we found that the applicant is entitled for invalid pension. The claim of pension is having continuous and recurring cause of action and it could be granted from 3 years prior to the date of application in accordance with the principles laid down by the Hon'ble Apex Court in **Tarsem Singh's** case. The applicant laid his claim for disability pension which was rejected by this Tribunal in O.A.No.85 of 2012 dated 23.04.2013 and therefore, the period of restriction could be taken for 3 years prior to the date of filing of O.A.No.85 of 2012, on 08.11.2012 for the grant of invalid pension. Accordingly, the applicant is entitled to invalid pension

only from 08.11.2009 with interest at 9% per annum. The PPO shall be issued accordingly and the arrears shall be paid within a period of three months. In default to pay, the applicant is entitled to 12% per annum till the date of payment and the PPO shall be issued. Thus the application is allowed as indicated above. No order as to costs.

LT GEN K. SURENDRA NATH
MEMBER (ADMINISTRATIVE)

JUSTICE V.PERIYA KARUPPIAH
MEMBER (JUDICIAL)

23.09.2014

Member (J) – Index : Yes/No
Member (A) – Index : Yes/No
VS

Internet : Yes/No
Internet : Yes/No

To:

1. The Secretary,
Government of India
Ministry of Defence
New Delhi-110 011.

2. The Chief of the Army Staff
Rep. by The Addl Dte Gen Pers Services
Adjutant General's Branch
IHQ of MOD (Army), 'A' Wing
Sena Bhavan, New Delhi-110 105.

3. The Officer-in-Charge
Record Office, MEG & Centre
Bangalore-560 042.

4. The PCDA (P)
Draupadi Ghat
Allahabad (U.P.)
Pin-211 014.

5. M/s. M.K. Sikdar & S.Biju
Counsel for applicant.

6. Mr. B.Shanthakumar, SPC
For respondents.

7. OIC, Legal Cell, ATNK & K Area, Chennai.

8. Library, AFT, Chennai.

HON'BLE MR.JUSTICE V. PERIYA KARUPPIAH
MEMBER (JUDICIAL)
AND
HON'BLE LT GEN K. SURENDRA NATH
MEMBER (ADMINISTRATIVE)

O.A. 49 of 2014

Dt: 23.09.2014