



2025:DHC:3302-DB



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

+ W.P.(C) 5793/2025

UNION OF INDIA AND ORS

.....Petitioners

Through: Mr. P S Singh, CGSC, Ms.
Minakshi Singh, Adv. with Major Anish
Muralidhar, Army

versus

EX SIGMNN SURENDER SINGH RATHORE ...Respondent

Through: Mr. Praveen Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

02.05.2025

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C. HARI SHANKAR, J.

1. This writ petition, at the instance of the Union of India, assails order dated 2 April 2024, passed by the Armed Forces Tribunal¹, Principal Bench, New Delhi in RA 13/2024 in OA 2037/2018 (Ex SIGMNN Surender Singh Rathore v UOI and Ors).

2. OA 2037/2018 was preferred by the respondent Surender Singh Rathore², seeking disability pension, on the ground that he was suffering from Maculopathy (RE) V67 @ 30% for life, which was a disability that entitled him to disability pension.

¹ "the AFT" hereinafter

² "Rathore" hereinafter



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3. The AFT did not agree and, by judgment dated 12 February 2024, dismissed the OA, holding that there was nothing to indicate that the conditions of military service determined or contributed to the onset of the disease or that the ailment was attributable to the military service undergone by the respondent. In other words, the Tribunal held that there was nothing to indicate that the Maculopathy from which the respondent suffered was attributable to, or aggravated by, military service.

4. The respondent preferred RA 13/2024, seeking review of the aforementioned order dated 12 February 2024 in OA 2037/2018. In RA 13/2024, the respondent contended that, during the course of oral arguments in OA 2037/2018, the respondent had prayed that he may be granted invalid pension, in case his claim to disability pension was found to be lacking in merit. However, as the Tribunal had not dealt with that claim, in its order dated 12 February 2024, review of the order was sought.

5. By order dated 2 April 2024, the Tribunal has allowed RA 13/2024.

6. While doing so, the Tribunal has acknowledged the contention of the respondent that, during the course of oral arguments in OA 2037/2018, the respondent had indeed raised an alternate prayer of invalid pension.

7. Holding that the respondent was entitled to invalid pension



under Regulation 197³ of the Army Pension Regulations 1961, the Tribunal has allowed the said claim.

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

9. We have heard Mr. P.S Singh, learned CGSC for the petitioner and Mr. Praveen Kumar, learned Counsel for the respondent.

10. It may be arguable as to whether, on the ground that a plea had been advanced in oral arguments during the course of hearing in the OA, which was not considered in the judgment that came to be rendered, a case for review could be said to have been made out.

11. We, however, are not inclined to decide this case on that technical aspect, as we are dealing with an army officer who was invalided out of service, and the only issue is as to whether he was, or was not, entitled to invalid pension.

12. Mr. Singh sought to place reliance on Regulation 198⁴ of the Army Pension Regulations which fixed the minimum period of

³ “197. 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.”

⁴ 198. The minimum period of qualifying service actually rendered and required for grant of invalid
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qualifying service actually rendered for grant of invalid pension as 10 years. Inasmuch as the respondent had not serviced for 10 years before being invalided out of service, Mr. Singh sought to submit that he was not entitled to invalid pension, and would be entitled only to invalid gratuity.

13. 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 10 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 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

pension is 10 years. For less than 10 years actual qualifying service invalid gratuity shall be admissible.



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.

14. Clearly, the case of the respondent falls within this clause.
15. However, Mr. Singh 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.”
16. 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*⁵.
17. Learned Counsel for the petitioner submits that an SLP has been preferred in the Supreme Court against the said decision.
18. However, it appears that no interim order has been passed in the said case till date.
19. As on date, therefore, para 4 of the letter dated 16 July 2020 also stands struck down.
20. In that view of the matter, no exception can be taken to the impugned order passed by the AFT, holding the respondent to be

⁵ Order dated 11 March 2022 in OA 368/2021



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entitled to invalid pension.

21. 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.

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

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

MAY 2, 2025/dsn

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