

Unreportable
IN THE HIGH COURT OF DELHI AT NEW DELHI
+ WP (C) No. 1595 of 2007

Reserved on : January 09, 2008
Pronounced on : January 28, 2008

Shashi Bala

.....Petitioner

!

through :

Mr. R. Nanavaty, Advocate

VERSUS

\$ Union of India & Anr.

.....Respondents

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through :

Mr. Hemant Gupta, Advocate

CORAM :-

*** THE HON'BLE MR.JUSTICE A.K.SIKRI**

THE HON'BLE MR. JUSTICE J.M. MALIK

1. Whether Reporters of Local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

A.K. SIKRI, J.

1. The petitioner herein is the widow of Corporal R.N. Singh (hereinafter referred to as the 'deceased'). According to the averments made in the petition, the deceased served the Indian Air Force from 15.3.1962 to 23.5.1971. Thereafter he was in the Reserve Service from 25.5.1971 to 31.3.1977. The petitioner is claiming reservist pension for the deceased and family pension for herself after the demise of her husband, who expired on 16.4.1991.
2. Before the entitlement of the deceased for reservist pension and that of the petitioner for family pension is considered, she has to cross a formidable hurdle which is coming her way, namely,

abnormal laches and delays in filing the present petition.

3. As mentioned above, even as per the averments made in the petition, the deceased was in Reserve Service till 31.3.1977. He died on 16.4.1991. During his lifetime, he was not given any reservist pension. Even when the petitioner's husband died on 16.4.1991, there was no attempt on the part of the petitioner to rake up the issue and as per the averments made in the petition she started corresponding with the respondents authorities with claim for family pension from March 2001 and filed the present petition in November 2006, which was listed for the first time for preliminary hearing on 16.3.2007 as between November 2006 and March 2007, the petition came under objections number of times, which were finally removed only in March 2007. There is, thus, a delay on the part of the petitioner in filing the present petition at three levels which are as under :-

(i) **From 1977 to 1991**

As per the petitioner, on the discharge from service on 31.3.1977 the deceased became entitled to receive reservist pension. However, in the entire petition nothing is stated as to whether the deceased even made an attempt to claim the said pension by writing even a single letter. Practically, two page petition, which is in five paragraphs, excluding formal paragraphs, does not even mention that the deceased had made any request for reservist pension. Para 3 contains the necessary averments as per which the petitioner is claiming reservist pension for the deceased and family pension for herself, which reads as under :-

"3. That said CPL R.N. Singh of Service No. 24003 was

discharged from Indian Air Force on 31 Mar 1977 and as such became entitled to receive reservist pension for life and after his demise his wife/widow became entitled to Family Pension as per rules."

In para 4 it is only stated that the deceased was not paid reservist pension in his lifetime and, therefore, the petitioner is entitled to arrears of reservist pension from 1.4.1977 to 16.4.1991 and for family pension from 17.4.1991 till her lifetime. When the deceased, namely, the husband of the petitioner, who was allegedly entitled to reservist pension did not even make any demand for the same during his lifetime and did not take any legal steps to enforce the claim, the prayer for payment of arrears of reservist pension from 1.4.1977 to 16.4.1991 would be highly belated for which the petitioner has not even preferred any explanation, what to talk of satisfactory explanation.

(ii) Even after the death of the petitioner's husband on 16.4.1991, the petitioner did not take any steps for more than 10 years. Her first representation claiming family pension is dated 23.3.2001, i.e. after 10 years after the demise of her husband. This delay is also not at all explained.

(iii) After the first representation dated 23.3.2001, the petitioner gave another reminder dated 21.1.2002. No doubt, some correspondence from the Air Force Record Office addressed to the petitioner is filed as per which she was asked to supply certain certificates/documents to consider as to whether she was entitled to the family pension, but deficiencies in the documents supplied by her are pointed out by subsequent communications from the authorities. However, after going through the said documents, the respondents found that as the

late husband of the petitioner was not a service pensioner, she was not entitled to family pension and the case was treated as closed vide letter dated 24.8.2004. Vide communication dated 15.10.2004, the authorities also pointed out that since the deceased was not paid the reservist pension, it could be presumed that he must have opted for one time gratuity and was not a pensioner. Even after these communications, the petition is filed only in November 2006.

4. The question that falls for consideration is as to what should be the approach of the Court in cases where pension is claimed even when such a claim is preferred belatedly. No doubt, claim of pension is a continuing cause of action and if an individual is found entitled to the said claim, it should not be denied merely because he approached the Court belatedly. If the claim is found to be legitimately proved, the relief can be moulded by depriving the petitioner from getting arrears of past period and limit it from the date three years prior to the filing of the petition.
5. A Division Bench of this Court in the case of ***Ajaib Kaur & Ors. v. Union of India & Ors.***, 2002 (64) DRJ 132, while holding that normally plea of laches in such pension matters is not to be entertained, but in the fact situation of a particular case such plea can be accepted and on that ground prayer for claiming pension would be rejected.
6. A recent judgment of the Supreme Court, in fact, enlightens us on this issue as it lays down the principle of law on the question of delay and laches in a claim for disability pension in lucid terms. The judgment in question is ***Shiv Dass v. Union of India***

& Ors., 2007 (2) SCT 72. The Apex Court in that case restated the approach which the High Court is to adopt in case of belated petitions. Para 5 of the said judgment may be quoted in this behalf :-

“5. Normally, in case of belated approach writ petition has to be dismissed. Delay or laches is one of the factors to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution of India, 1950 (in short the 'Constitution'). In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in ***Durga Prasad v. Chief Controller of Imports and Exports and Ors.*** (AIR 1970 SC 769). Of course, the discretion has to be exercised judicially and reasonably.”

In para 6 & 7, reference is made to various other judgments in support of the aforesaid proposition. It is also observed that such belated petitions are not to be entertained as it is likely to cause confusion and public inconvenience and bring in its train new injustices and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. The Court also pointed out that mere making of representations would not be adequate explanation to take care of delay. After stating the law in these general terms, in respect of pension cases the Supreme Court laid down the following approach :-

“9. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about

three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”

It is clear from the above that each case has to be dealt with on its own merits. No doubt, if the claim is well founded it is not to be rejected merely on the ground of delay. However, if delay prejudices the other side, it becomes relevant factor to dismiss the petition.

7. Applying the aforesaid principles to the present case, we find that there are various difficulties in the way of the petitioner to claim family pension and the entitlement is very doubtful, to say the least. We may point out that the petitioner has placed on record letter dated 1.4.1977 written by the respondents and addressed to the late husband of the petitioner wherein it was accepted by the respondents that the husband of the petitioner was eligible for reservist pension for life if he was not already in receipt of service pension. This letter also mentions that necessary action in this regard would be initiated by *Vayu Sena Abhilekh Karyalaya* and, therefore, he should make further correspondence on this subject with the said office directly. Apart from this letter, nothing is produced on record to show as to what happened thereafter. It is not in dispute that an Ex-Serviceman, who is entitled to reservist pension, can opt for one time gratuity. Since the matter was raked up in the year 2004, by that time the respondents had weeded out the service record of the deceased. Under these circumstances, the respondents addressed letter dated 13.9.2004 to the PCDA(P), PS Authority, Allahabad to verify the records of the deceased and confirm

whether he had been granted with reservist pension or one time gratuity. The said pension office replied the respondents by informing that the PPO authorising service pension could not be traced. In these circumstances, vide communication dated 15.10.2004, the petitioner was informed as under :-

"2. Now this office has received reply form O/O PCDA (P) Allahabad stating that PPO authorising service pension could not be traced. It can, therefore, be clearly presumed that the above named individual must have been opted for one time gratuity and was not a pensioner. Since your husband was not a pensioner, you automatically become ineligible for family pension from Air Force side."

8. Thus, it is because of not taking up the matter for substantial number of years that the respondents are now unable to find as to whether the deceased had opted for one time gratuity. The petitioner has herself produced copy of letter dated 1.4.1977 as per which the deceased was held eligible for reservist pension for life. If there is no PPO, i.e. necessary order sanctioning the pension, and the deceased also did not lay any claim for this pension during his lifetime, in the absence of records now, it is the legitimate presumption of the respondents that the deceased may have opted for one time gratuity. It can be so said as even when the deceased was informed that he was entitled to pension, it is highly unlikely that he would not claim pension. There is, thus, a great possibility that the deceased would have opted for one time gratuity. It is for this reason we opine that the claim for reservist pension has not been made out in clear terms.
9. It cannot be disputed that if the deceased was not in receipt of service pension, the petitioner cannot claim family pension. We, therefore, feel constrained in rejecting this petition as we do not

find any merit therein.

10. This petition is accordingly dismissed with no order as to costs.

(A.K. SIKRI)
JUDGE

(J.M. MALIK)
JUDGE

January 28, 2008
nsk