

*

%

+

Chandreshwar Prasad Singh

... Petitioner

Versus

Union of India & Ors.

... Respondents

Advocates who appeared in this case:

For the Petitioner

: Mr.I.C.Mishra & Ms.Swati Chakraborty

For Respondent

: Mr.Sumeet Pushkarna & Mr.Gaurav Verma

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

ANIL KUMAR, J.

CM No.2458/2012

Allowed subject to all just exceptions.

The application stands disposed of.

W.P.(C) No.1133/2012

1. The petitioner has challenged the order dated 20th October, 2011 passed by the Armed Force Tribunal, Principal Bench, New Delhi in OA No.432/2011, titled as ‘Chandreshwar Prasad Singh v. Union of India & Ors.’, dismissing his petition seeking pension, though he was short of 101 days out of 10 years of service for becoming entitled for pension, after he was discharged from service w.e.f. 19th September, 1974 on the ground that it was extremely belated since the petition was filed in the year 2011.

2. Brief facts to comprehend the disputes are that the petitioner joined the Army in 1964, and he was discharged on 19th September, 1974. The

petitioner was recruited in the Army under special drive, and he was entitled for pension after completion of 10 years of service. The petitioner was short of 101 days out of 10 years of service to become entitled for pension and according to him, he was pursuing his case for pension even though he was short of the requisite 10 years of service since 1974.

3. The petitioner asserted that he gave his last request to Commandant Single Records Jabalpur (MP) on 7th March, 2008. However, his representation/appeal was not decided and is still pending. The petitioner, therefore, filed an original application, being OA No.432/2011, which was dismissed by the Tribunal holding it to be extremely belated. The Tribunal while dismissing the petition of the petitioner held as under:-

“1. The petitioner is making a grievance that he should be granted service pension waiving the delay of 101 days out of 10 years of service with effect from 19th September 1974 when he was discharged from service. This petition in 2011 is extremely belated and it cannot be entertained. Learned counsel for the Petitioner submits that he has filed an appeal in 2008 which is still pending with the respondents. We are not concerned with that as the Petitioner has been discharged way back in 1974 and he is now ventilating his grievance in 2011.

2. Consequently, the petition is extremely belated and it cannot be entertained and the same is dismissed with no order as to costs.”

4. The learned counsel for the petitioner has contended that the petitioner is entitled for pension and that it is a continuing cause of action and therefore, the Tribunal could not have dismissed his petition. Learned counsel relies on a decision of the Supreme Court reported as VII (2008) SLT 303, titled as ‘Union of India & Ors. v. Tarsem Singh’ to contend that belated service related claim is normally rejected on the ground of delay

and laches, however, there is one exception to the said rule which is if the claim is based on a continuing wrong. Learned counsel contends that since the claim of the petitioner is based on continuing wrong, the Tribunal ought to have granted relief to the petitioner even if there was a long delay in seeking the remedy with reference to the date on which the continuing wrong commenced.

5. Learned counsel for the respondents who appears on advanced notice has refuted the claims of the petitioner and has contended that since the petitioner had not become entitled for pension as he was short of 101 days in 10 years of service so as to be entitled for pension, therefore, he cannot contend that his claim is based on continuing wrong.

6. Learned counsel for the respondents has relied on Ex.Gunner Hoshiyar Singh v. Union of India & Ors, 115 (2004) DLT 207,; Sushila v. Union of India & Ors, 139 (2007) DLT 1,; Panchi Devi v. State of Rajasthan & Ors, (2009) 2 SCC 589, and Ex. Rect./Rfn. Nahar Singh v. Union of India, Manu/DE/2760/2006 to contend that the claim for pension for which the petitioner has not been entitled as he did not have requisite service is barred by delay and laches.

7. This Court has heard the learned counsel for the parties. The facts which are not in dispute are that the petitioner had joined the Army in special drive and that he would have become entitled for pension after 10 years of his service. The petitioner was, however, discharged from the Army

and at that time he was short of 101 days to have become entitled for pension. The petitioner retired w.e.f. 19th September, 1974 and thus the petitioner had sought the waving of the shortage of 101 days out of the 10 years of service required to entitle him for pension.

8. Learned counsel for the petitioner has contended that it is a continuing wrong and relying on Tarsem Singh (supra), it is contended that the petitioner is entitled for pension and that the Tribunal ought not to have dismissed his original application on the ground that it was belated as after being discharged from service in the year 1974, the petitioner had approached the Armed Force Tribunal only in 2011.

9. The case of Tarsem Singh (supra), relied on by the petitioner is apparently distinguishable. In Tarsem Singh (supra), the said Army personnel was invalidated from the Army on 13th November, 1983 and he had approached the High Court seeking directions to pay him disability pension. The Single Judge had directed the Union of India and other respondents to grant disability pension at the rate permissible, however, the arrears were restricted to 38 months prior to filing of the writ petition. This was not disputed that the said army personnel was entitled for disability pension. The Army personnel, Tarsem Singh was also directed to appear before the re-survey medical board as and when called upon by the Army Authorities. The Army Authorities had not contested the grant of disability pension to Tarsem Singh rather, they had released the arrears of disability pension for 38 months. Tarsem Singh was, however, not satisfied

with the disability pension which was released to him for 38 months and sought that he should be paid from the date it fell due that is on 13th November, 1983, and therefore, he filed a Letters Patent Appeal. In LPA, a Division Bench held that Tarsem Singh was entitled for pension from the date it fell due and that it could not be restricted to 3 years and two months prior to filing of the writ petition. The Division Bench also granted interest on the arrears at the rate of 6% per annum. The said decision of the Division Bench was challenged by the Army Authorities in a petition before the Supreme Court.

10. The Supreme Court elaborated the distinction between the continuing wrong and recurring/successive wrong by holding that continuing wrong refers to a single wrong act which causes the continuing injury while the recurring/successive wrong are those which occur periodically, each wrong giving rise to a distinct and separate cause of action. Relying on *Shiv Das v. Union of India*, (2007) 9 SCC 274, it was held that in case of pension, the cause of action actually continues from month to month and if the petition is filed beyond a reasonable period of three years, normally the court will reject the same and restrict the relief which could be granted for a reasonable period of about three years. In this case, the Supreme Court had set aside the order of the Division Bench of the High Court granting arrears of pension for 16 years with interest and had restricted the relief relating to arrears to only three years before the date of writ petition, or from the date of demand, whichever was lesser and it was also held that the Court ought not to have granted interest on

arrears in such circumstances. However, the fact that Tarsem Singh was entitled for disability pension was not disputed by the Army Authorities.

11. In the said case, Tarsem Singh had fulfilled the conditions to be entitled for disability pension, however he had not claimed pension for a number of years, which is why it was construed to be a continuing wrong as it was observed that the cause of action would arise from month to month and that the claim of the petitioner in such circumstances could not be thrown out on account of the delay and laches as he would have become entitled for pension for the three years before filing the original application before the Armed Force Tribunal or from the date he raised the demand for the pension and despite the demand, the pension had not been paid to him. However, in the case of the petitioner he is not entitled for pension as in his case the requisite period of 10 years, which would entitle him for pension had not been completed, since he was short by 101 days. In these circumstances, it cannot be construed that the issue of whether the petitioner is entitled for pension or not would be a continuing wrong giving rise to a cause of action from month to month.

12. Learned counsel for the respondents have relied on Ex.Rect/Rfn Nahar Singh (supra), in which case the employee was placed in a low medical category by the medical board and discharged from the service in February, 1967. The said employee was not supplied with the copies of the medical record or other documents except the certificate of service. The said employee coming to know that he was entitled to receive benefits w.e.f.

13th February, 1967, the date of his discharge and that similarly placed persons were granted disability pension, had approached the Court on 6th January, 2005 for the supply of the medical record. The Army Authorities, however, took the stand that the said employee was not entitled for disability pension and aggrieved by the decision of the Army Authorities, the writ petition was filed seeking quashing of letter dated 24th January, 2005 declining to grant him disability pension. The Division Bench of this Court had declined to grant any relief holding that the disability was not attributable to the service and that it existed prior to he joined the army as there was an admission by the claimant himself in his medical record that he was suffering even one year prior to his placement to the training center. The writ petition was also dismissed on the ground that the petition suffered from delay and laches as the said employee was discharged from the Army in the year 1967, but he had attempted to approach the Court only in the year 2005. The Court had held that the remedy under Article 226 of the Constitution of India is discretionary and an equitable remedy and therefore, had accepted the objection of delay raised by the respondents, and had consequently dismissed the writ petition.

13. In Sushila (supra) relied on by the respondents, the husband of the petitioner, Sushila was discharged from the service on compassionate grounds in the year 1973 and for almost 30 years until his death in the year 2003 no claim was raised for pension either before any of the authorities, or any of the proceedings before the Court and a writ petition was filed by the widow, Sushila two years after her husband's demise. The

Army Authorities had raised the plea of the delay and laches. The Court had noticed that there was no provision for payment of pension to any Ex.Army personnel upon his completing 10 years of service. Since there was no such provision, therefore, the recommendation made by the commission which was applicable to the Central Govt. employee, was extended even to personnel serving in Indian Army, Navy and Air Force which was applicable only in cases in which existing rule regulating grant of service pension provided for payment of pension upon completion of 10 years of qualifying service. It was held that the recommendation did not suggest that pension would become payable on completion of 10 years of service, even in cases where existing service rules regulating the grant of such benefit did not provide for such payment. The writ petition was also dismissed on account of delay and laches as the Court found the claim to be stale as the matter had attained finality with the passage of time.

14. The respondents had also placed reliance on Panchi Devi (supra), a decision of the Supreme Court to contend that the delay in exercising the option for seeking the pension after 14 years proved fatal for the claimant as the Supreme Court had rightly dismissed the writ petition on the ground of delay. In this case, the husband of the petitioner, Panchi Devi was working as a work charge employee in the Public Works Department and had died in the year 1978. The widow had claimed family pension after 14 years of her husband's death on the basis of a rule which had come into force w.e.f. 17th September, 1980. The Court noticed that the widow had approached the High Court after 14 years of her husband's death and

since all the dues admissible to her husband were duly settled during his lifetime and the widow of the deceased had received all the dues including gratuity, therefore, the entitlement for family pension had not arisen. On behalf of the widow, a plea was raised that benefits of the rule was given even to those widows whose husband's had died prior to coming into force of the said rules in the year 1980. The Court held that under the said rule the option had to be exercised for pension within a period of six months from the date the amended rule had come into force w.e.f. 17th August, 1980 and since the husband of Panchi Devi had died in the year 1978, the question of exercising of option could not arise as the rule could not be applied retrospectively. The Supreme Court upheld the decision of the High Court in declining the relief to the widow Panchi Devi even on the ground of delay and laches on her part.

15. Learned counsel for the respondents has also relied on the decision of the Division Bench of this Court, *Ex.Gunner Hoshier Singh (supra)*, in which it was held that the petitioner was not entitled for disability pension as he was discharged on his own request and not on medical grounds and the petition filed by him after 26 years of his discharge would be barred on account of the inordinate and unexplained delay and also since the records of the case had been destroyed by the respondents due to the long passage of time.

16. This is not disputed by the petitioner in the writ petition that the petitioner was short of 101 days for the requisite 10 years of service so as

to entitle him for pension. Had the petitioner completed 10 years of service and had become entitled for pension and not claimed the same for a number of years, in such circumstances on filing the original application claiming the pension he would have become entitled to claim arrears of pension for three years prior to filing of the petition. However, since the petitioner is not even entitled for pension as he had not completed 10 years of service and he was short of 101 days, the Tribunal has not permitted him to claim the pension pertaining to the period from 1974 in the year 2011, on the ground that the petitioner's claim being extremely belated. Perusal of the writ petition also reveals that no ground has been made out by the petitioner that he would be entitled for pension even though he was short of 101 days for the required 10 years of service to entitle him for pension under any regulation or any other scheme. In the circumstances, the decision of the Tribunal cannot be faulted in declining the application of the petitioner as being belated and dismissing the same. There are no grounds to interfere with the decision of the Tribunal in the facts and circumstances by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition is without any merit, and it is, therefore, dismissed.

ANIL KUMAR, J.

SUDERSHAN KUMAR MISRA, J.

MARCH 20, 2012

vk

W.P(C) No.1133/2012

Page 10 of 10