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

Date of hearing & Order: November 24, 2014

+ W.P.(C) 6538/2013

EX-SIGMN PRADEEP KUMAR SAHU

..... Petitioner

Through: Mr.A.K. Trivedi, Advocate

versus

UNION OF INDIA & ORS.

..... Respondent

Through: Mr. A.K. Gautam, Advocate

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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KAILASH GAMBHIR, J. (ORAL)

1. The instant petition has been filed under Article 226 of the Constitution of India, whereby the petitioner seeks quashing of the Order dated 21.09.2011 passed by the learned Armed Forces Tribunal (Principal Bench), in O.A. No.129/2011.

2. Mr. A.K. Trivedi, the learned counsel for the petitioner submits that the judgment of the Hon'ble Supreme Court of India in the case of *Union of*

India & Ors. v. Tarsem Singh (2008) 8 SCC 648, has laid down the principle that underlines continuing wrongs and recurring/successive wrongs which have been applied to service law disputes. It also held that the non payment of the pensionary benefits of the employee is a continuing wrong. However, at best the relief that can be granted to the employee is the pension for the period of three years immediately preceding the date of filing of this petition.

3. The learned counsel for the petitioner submits that the petitioner was enrolled in the Indian Army as a Signalmn/MT/Dvr in the Corps of Signals on 1.1.2000; he was allotted service No.15669156 and at the time of entering into service; he was not found suffering from any kind of medical ailment; he was an outstanding sportsman and had received various awards in boxing and weightlifting. However, while he was posted in 14 CESR at Leh, he developed psychological problems like depression and anxiety. The learned counsel submits that the petitioner was admitted to the Hospital on 5.9.2003 and discharged on 15.9.2003, with the remarks – *‘there is no evidence of mental illness at present’*. Thereafter, the petitioner was once again admitted to the Command Hospital, Chandimandir for psychiatric evaluation and this time, he was found in Shape 5 low medical category, as

he was suffering from Dissocial Personality Disorder and due to this problem, he was invalidated out from service. He also submits that the petitioner was not considered fit for the grant of disability pension and because of the denial of this right to him, he sent a legal notice dated 16.12.2010 and thereafter filed an O.A. No.129/2011 before the learned Armed Forces Tribunal. He also submits that the learned Armed Forces Tribunal has dismissed his O.A. due to inordinate delay and laches on the part of the petitioner without taking into consideration the merit of the claim of the petitioner.

4. We have heard the learned counsel for the parties.

5. We are of the view that the case of the petitioner is squarely covered by the judgment of the Supreme Court in the case of ***Dharamvir Singh v. Union of India***, (2013) 7 SCC 316 which held:-

“28. A conjoint reading of various provisions, reproduced above, makes it clear that:

- (i) Disability pension to be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable or*

aggravated by military service to be determined under "Entitlement Rules for Casualty Pensionary Awards, 1982" of Appendix-II (Regulation 173).

- (ii) A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service. [Rule 5 r/w Rule 14(b)].*
- (iii) Onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally. (Rule 9).*
- (iv) If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service. [Rule 14(c)].*
- (v) If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service. [14(b)].*
- (vi) If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed*

to have arisen during service, the Medical Board is required to state the reasons. [14(b)]; and

(vii) It is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II of the "Guide to Medical (Military Pension), 2002-"Entitlement: General Principles", including paragraph 7, 8 and 9 as referred to above.

29. *We, accordingly, answer both the questions in affirmative in favour of the Appellant and against the Respondents.*

30. *In the present case it is undisputed that no note of any disease has been recorded at the time of Appellant's acceptance for military service. The Respondents have failed to bring on record any document to suggest that the Appellant was under treatment for such a disease or by hereditary he is suffering from such disease. In absence of any note in the service record at the time of acceptance of joining of Appellant it was incumbent on the part of the Medical Board to call for records and look into the same before coming to an opinion that the disease could not have been detected on medical examination prior to the acceptance for military service, but nothing is on the record to suggest that any such record was called for by the Medical Board or looked into it and no reasons have been recorded in writing to come to the conclusion that the disability is not due to military service. In fact, non-application of mind of Medical Board is apparent from Clause (d) of paragraph 2 of the opinion of the Medical Board, which is as follows:*

(d) *In the case of a disability under C the board should state what exactly in their opinion is the cause thereof.*

YES Disability is not related to mil service

6. On the point of limitation, we find that the case of the petitioner is covered by the judgment of ***Tarsem Singh*** (*supra*) since the petitioner is claiming disability pension after being invalidated out from service on 26.08.2004 and at best, the relief that can be granted to an employee is pension for a period of three years prior to the date of filing of the petition. However, arrears relating to a period beyond three years from the date of filing the said O.A. before the learned Armed Forces Tribunal can be denied.

7. We now advert back to the facts of the present case. It has not been denied by the respondents that at the time of entering into military service, the petitioner was not suffering from any kind of ailment, but later after he had served for four years, 239 days in a Hard Area posting in Leh, he developed and started suffering from Dissocial Personality Disorder. Since the disease for which the petitioner was boarded out was not on him at the time of his joining his employment but came about after serving in extreme geographical conditions and strenuous regime in a Hard Area he would be entitled for disability pension.

8. In the above circumstances, we allow the present petition and direct the respondents to grant disability pension to the petitioner in the light of the principles laid down by the Supreme Court in *Dharamvir's case* (supra).

9. We accordingly direct the respondents to release the pensionary benefits to the petitioner after assessing his disability and the arrears thereof, restricting it to a period of three years from the date of filing the O.A., alongwith the interest @ 9% p.a within a period of two months from the date of this order.

10. With aforesaid directions, the present petition stands disposed off.

KAILASH GAMBHIR, J

NAJMI WAZIRI, J

NOVEMBER 24, 2014

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