

Neutral Citation No. - 2023:AHC-LKO:81975-DB

Court No. - 1

Case :- WRIT - A No. - 6256 of 2014

Petitioner :- No. 6606778 Sepoy Girja Shankar Tiwari

Respondent :- Armed Forces Tribunal Regional Bench Lko. And Ors.

Counsel for Petitioner :- Pankaj Kumar Tiwari, Dwijendra

Mishra, Vishva Deep Pandey

Counsel for Respondent :- A.S.G., Gaurav Tripathi, Savitra Vardhan Singh

Hon'ble Attau Rahman Masoodi, J.

Hon'ble Om Prakash Shukla, J.

- (1) Heard Sri Pankaj Kumar Tiwari, learned Counsel for the petitioner and Sri Gaurav Tripathi, learned Counsel appearing for the opposite parties.
- (2) The instant writ petition has been filed challenging the judgment and order dated 10.07.2014 passed by the Armed Forces Tribunal, Regional Bench, Lucknow in Original Application No. 123 of 2011, whereby the O.A. has been dismissed on the ground of inordinate delay as also the impugned order dated 17.12.2008 passed by the Major, Senior Record Officer whereby the request for grant of disability pension after lapse of 40 years has been rejected.
- (3) Briefly, it is stated that the petitioner was enrolled in the Army on 28th November, 1961 and invalidated out of service on 15th June, 1968 after serving the department a little more than 6½ years. When the claim of the disability pension was claimed by the petitioner, it was forwarded to the Principal Controller of Defence Accounts (PCDA), Prayagraj (erstwhile Allahabad) was rejected as his disability regarded as neither attributable to nor aggravated by Military Service vide order dated 27th September, 1968. The said communication was also sent to the petitioner vide office letter dated 25th October, 1968. When the petitioner has raised his claim after 40 years in the year 2008, vide impugned order dated 17.12.2008, it was rejected on the ground that the individual is requesting for grant of disability

pension after a lapse of 40 years. Hence, case of the individual cannot be verified for any action without his service documents as the same has already been destroyed after the mandatory retention period in terms of Para 595 of Regulations for the Army, 1987.

- (4) As the petitioner was not satisfied with the order passed by the rejection order dated 17.12.2008, the petitioner approached the Armed Forces Tribunal, Regional Bench, Lucknow vide O.A. No. 123 of 2011 with O.A. No. 40 of 2011 which has been dismissed vide impugned order dated 10.07.2014. The order passed by the Tribunal reads as under:-

“This Original Application No. 123 of 2011 has been filed by the applicant claiming disability pension.

The applicant had been discharged from service on 15.6.1968 after being enrolled on 28.11.1961 and he had not rendered pensionable service. He served the Indian Army only for 6 years, 6 months and 18 days.

The claim of the applicant for disability pension was forwarded to the PCDA (P), Allahabad, who rejected the claim in pursuance of the observation made by the Release Medical Board observing that the disability of the applicant was neither attributable to nor aggravated by military service, vide rejection memo No. G-3/68/5819/III dated 27.9.1968, which was duly received by the applicant.

After a gap of more than 40 years, the applicant suddenly woke up and approached this Tribunal by means of filing the aforementioned Original Application with the prayer that he be granted disability pension. Along with this Original Application the applicant also moved an application for condoning the delay in filing the Original Application.

Counter and rejoinder affidavits on applications have been exchanged in this case.

Along with the counter affidavit the respondents also moved an application praying therein that the Original Application be dismissed.

From the counter affidavit of the respondents it comes out that the applicant was suffering from Hysterical Reaction and his claim for disability pension was rejected by the PCDA (P), Allahabad, on the basis of observation made by the Release Medical Board, who regarded the disability of the applicant as neither attributable to nor aggravated by military service, vide rejection memo dated 27.9.1968, referred to above.

The reasons for the delay in filing the Original Application after a gap of more than 40 years have not properly been explained.

*Further, at this juncture, the claim of the applicant cannot be considered for the reasons as stated in para 4 of the counter affidavit, filed by the respondents, that **the service documents in respect of the applicant have already been destroyed on expiry of mandatory rejection period of 25 years being a non-pensioner in terms of para 595 of Regulations for the Army 1987.***

In the aforesaid circumstances, we hereby reject the application for condoning the delay in filing the Original Application. In consequence thereof the Original Application No. 123 of 2011 also stands dismissed.”

- (5) Learned Counsel for the petitioner has submitted that the Tribunal has not considered the relevant material placed on record and it has mechanically dismissed the Original Application filed by the petitioner. While dismissing the Original Application, the Tribunal has not considered the judgment and order passed by the Co-ordinate Bench of Armed Forces Tribunal, Regional Bench, Chandigarh and Armed Forces Tribunal, Chennai, which are binding upon the Tribunal of Regional Bench, Lucknow. However, the learned Tribunal has rejected the Original Application solely on the ground of delay of 40 years whereas the Co-ordinate Bench of Chandigarh has allowed the claim of the petitioner for disability pension

after delay of 44 years. Lastly, he has submitted that the petitioner is entitled for getting the disability pension as the Medial Board has observed 40% disability.

- (6) On the other hand, learned Counsel appearing for the opposite parties has submitted that as per available records, the petitioner was suffering from *Hysterical Reaction (FITS)*. After submission of his disability pension claim to the PCDA (P), Allahabad it was rejected vide rejection memo dated 27.09.1968 which was intimated to the petitioner vide erstwhile MT Depot Wing and Records ASC Aurangabad (Deccan) letter No. 6606778/DP/Pen dated 25.10.1968. After a long gap of 40 years, the petitioner had raised grievance for disbursement of disability pension in the year 2008 which was rejected by the impugned order dated 17.12.2008 on the grounds enumerated in paragraph – 3 of the order.
- (7) He next submitted that the petitioner has not brought on record to show that he sustained injury while in service hours. Since it is a fabricated statement and he has not approached the Court with clean hands, the claim putforth by the petitioner is liable to rejected. In support of his submissions, he has relied upon the Apex Court's judgment of ***Chancellor and another's v. Dr. Bijayanad Kar and othes [AIR 1964 SC 579]***, wherein it has been held that if a person does not come to the Court with clean hands, the petition could be thrown out on that ground alone.
- (8) His further submission is that upon expiry of mandatory retention period of 25 years being a non-prisoner in terms of Para 595 of Regulations for the Army 1987 (Revised Edition), the records pertaining to the petitioner were destroyed. More over, the petitioner has failed to substantiate the correspondence done with the authorities. Since the petitioner was found unfit for military service due to his disability *Hysterical Reaction (FITS)*, he was invalidated out of service by medical authorities.

Lastly, he has submitted that due to destruction of service documents, the factual position cannot be ascertained at the belated stage for which the petitioner himself is responsible.

- (9) Considered the submissions made by the learned counsel for the parties and perused the available records produced before us.
- (10) Admittedly, the claim for disability pension put forth by the petitioner was rejected way back in the year 1968, that too was communicated to the petitioner. For no valid reason, the petitioner woke from deep slumber in the year 2008 and approached the authorities for grant of disability pension. As per policy, the records were destroyed as the mandatory period of 25 years to keep the record has expired. Thus, the claim has been rejected by the authorities vide impugned order dated 17.12.2008 disclosing the reasons.
- (11) When the petitioner has approached the Tribunal, it has also considered the matter in detail and has rejected his claim vide impugned judgment and order dated 10.07.2014.
- (12) It is true that the petitioner has approached the authorities after lapse of four decades. There is no good explanation for delay and laches in approaching the military authorities in the year 2008. The law has long set its face against the indolent litigants to approach this Court after a long delay.
- (13) Law has long set its face against delay in approaching the court. The courts have consistently declined to condone the delay and denied relief to litigants who are guilty of laches. Litigants who are in long slumber and not vigilant about their rights are discouraged by the courts. Belated claims are rejected at the threshold.
- (14) All this is done on the foot of the rule of delay and laches. Statutes of limitation are ordained by the legislature, rule of

laches was evolved by the courts. Sources of the law differ but the purpose is congruent. Statutes of limitation and the law of delay and laches are rules of repose.

- (15) The rule of laches and delay is founded on sound policy and is supported by good authority. The rule of laches and delay is employed by the courts as a tool for efficient administration of justice and a bulwark against abuse of process of courts.
- (16) The above stated position of law on the question of delay and laches on part of a petitioner, controls the facts of the case. The explanation for laches and delay, being self serving and lacking in credibility is rejected. The petitioner cannot revive a stale cause of action.
- (17) Learned Counsel for the petitioner has submitted that the orders passed by the Co-ordinate Bench of the Regional Benches of Tribunal are binding on another Tribunal. Since the order 19.07.2011 passed by the Armed Forces Tribunal, Chandigarh Regional Bench in T.A. No. 1180 of 2010 is binding upon the Armed Forces Tribunal, Regional Bench, Lucknow where the Regional Bench, Tribunal while allowing the petition filed by the petitioner of the aforesaid case has condoned the delay of 44 years and granted the pension.
- (18) As the facts of the present petition are different from the facts of the case cited by the learned counsel for the petitioner, it will not help to him and the submission in this regard is rejected. In view of this, we see no reason to interfere in the order passed by the Tribunal and the writ petition is liable to be dismissed.
- (19) The writ petition is accordingly *dismissed*.

[Om Prakash Shukla, J.] [Attau Rahman Masoodi, J.]

Order Date :- 13.12.2023
Shubhankar/lakshman