

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU
(Through Virtual Mode From Srinagar)

WP(C) No. 726/2024

Reserved on 08.05.2025
Pronounced on: 30.08.2025

Kamlesh Kaur

.... Petitioner/Appellant(s)

Through:- Mr. Arjun Bhatia, Advocate.

V/s

Union of India and others

.....Respondent(s)

Through:- Mr. Sumant Sudan, Advocate vice
Mr. Vishal Sharma, DSGI.

CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE
HON'BLE MR. JUSTICE SHAHZAD AZEEM, JUDGE

JUDGMENT

Per: Sindhu Sharma-J

01. The petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution of India, seeking quashment of impugned order dated 24.01.2023, passed by the Armed Forces Tribunal, Regional Bench Srinagar at Jammu (hereinafter referred to as '*AFT, Jammu*') in OA No. 218/2019 titled '*Kamlesh Kaur vs. Union of India and others*'. The petitioner has also sought a direction to the respondents to grant family pension in her favour with effect from the date of discharge of her husband from Army service, i.e., 08.04.2017, along with interest at the rate of 8% per annum.

02. The petitioner, Kamlesh Kaur, had approached the AFT, Jammu under Section 14(2) of the Armed Forces Tribunal Act, 2007, seeking grant of family pension on account of invalidation of her husband from the Army. The reliefs sought in OA were as under: -

- (a) That, Respondent No.1 to 4 be directed commanded or ordered to set-aside/quashed impugned Order-1 and impugned Order-2

being violative of Regulation 181 read with Regulation 173 of Pension Regulation for the Army, 1961 (Part-1); &

- (b) Further, the late husband of the applicant be granted disability pension consisting of service element and disability element w.e.f. 29-05-1978 till 22-11-1995. Further, the applicant be granted ordinary family pension w.e.f. 23-11-1995 for life.

03. The husband of the petitioner, Late Rect. Manjit Singh, Army No. 2468810, joined the Army as Sepoy on 01.09.1977 and was invalidated out of service on 29.05.1978 due to being placed in a low medical category. The disability pension claim of late Manjit Singh was rejected by PCDA (P) Allahabad i.e., vide letter dated 17.07.1979, on the ground that the injury/disease was neither attributable to nor aggravated by military service. The rejection order also specified that an appeal against the said decision could be preferred within six months from 30.06.1979. The petitioner's husband died in motor accident on 22.11.1995. Subsequently, the petitioner issued several legal notices and thereafter, issued a legal notice dated 20.02.2019 through her counsel, seeking grant of disability pension and ordinary family pension in her favour. This notice was replied to by the respondents on 14.03.2019 denying the same.

04. The petitioner thereafter filed O.A. No. 218/2019 before the AFT, Jammu, seeking grant of disability pension to her late husband and family pension in respect of the service element of the disability pension. The said O.A. was decided by the AFT, Jammu on 24.01.2023, by holding that the husband of the petitioner, during his lifetime, did not raise any grievance that he had been invalidated out of service due to a disability attributable to or aggravated by military service, and therefore, was entitled to disability pension. It was further noted that his wife, after more

than 23 years of her husband's death, had submitted a claim for lifetime arrears of disability pension on behalf of her husband, and thereafter, for family pension in respect of the service element of the disability pension, contending that the disability for which her husband was invalided out was assumably attributable to or aggravated by military service. The Tribunal held that a pensionary claim cannot be adjudicated based on mere assumptions, especially when no material evidence, except for a long-delayed recollection, is available and accordingly dismissed the case and claim of the petitioner as being without merit.

05. Learned counsel for the petitioner submits that the learned Tribunal failed to consider the petitioner's claim in light of the judgment passed by the Hon'ble Apex Court in Civil Appeal No. 5605 of 2010 titled '*Sukhwinder Singh vs. Union of India and others*', wherein it was held that whenever a member of the Armed Forces is invalided out of service, it must be presumed that the disability was assessed at more than twenty percent. He further submits that the Ministry of Defence, vide letter No. 12(06)/2019/D(Pen/Pol) dated 16.07.2020, introduced provisions for grant of invalid pension to Armed Forces personnel even before completion of 10 years of qualifying service, in cases where the injury is neither attributable to nor aggravated by service, therefore, according to the counsel, the husband of the petitioner was entitled to ordinary pension.

06. The respondents, *per contra*, have opposed the claim of the petitioner and supported the judgment of the AFT, Jammu, on the ground that there was an unexplained delay of more than 40 years in approaching this Court. They submitted that, in the absence of relevant documents

which have since been weeded out, it is not possible to examine the claim of the petitioner. It is submitted that the husband of the petitioner, after being discharged from service on 29.05.1978, had approached the respondents for disability pension, which was rejected vide order dated 17.07.1979. However, during his lifetime, he did not prefer any appeal against the said order nor did he approach any authority for redressal and the petitioner herself having remained silent for more than two decades after his death, cannot now be permitted to reopen the settled issues.

07. The petitioner has approached this Court after more than 40 years of her husband's invalidation from service and nearly 29 years after his death. Admittedly, the late husband of the petitioner, Rect. Manjit Singh, did not raise any grievance during his lifetime and appeared to have accepted the rejection of his disability pension claim. Therefore, no enforceable right at this belated stage can now accrue in favour of the petitioner to question the said rejection.

08. This apart, even if the submissions of the petitioner were to be given some consideration, the claim is hopelessly barred by delay and laches.

09. The Hon'ble Apex Court in '**Virender Chaudhary vs. Bharat Petroleum Corporation and others, (2009) 1 SCC 297**', held as under:

"In New Delhi Minicipal Council v. Pan Singh &Ors. [(2007) 9 SCC 278], this Court held:

16. There is another aspect of the matter which cannot be lost sight of. The respondents herein filed a writ petition after 17 years. They did not agitate their grievances for a long time. They, as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State

before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the writ petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the court after a long time. Delay and laches are relevant factors for exercise of equitable jurisdiction. (See Govt. of W.B. v. Tarun K. Roy, U.P. Jal Nigam v. Jaswant Singh and Karnataka Power Corp. Ltd. v. K. Thangappan.)

17. Although, there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution of India, ordinarily, writ petition should be filed within a reasonable time. (See Lipton India Ltd. v. Union of India and M. R. Gupta v. Union of India”

10. Similarly, in ‘State of Jammu and Kashmir vs. R.K. Zalpuri and others, (2015) 15 SCC 602’, the Hon’ble Apex Court held as under:

“21. In this regard reference to a passage from Karnataka Power Corp. Ltd Through its Chairman & Managing Director &Anr Vs. K. Thangappan and Anr. MANU/SC/8094/2006: (2006) 4 SCC 322 would be apposite: -

“Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of 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.”

After so stating the Court after referring to the authority in State of M.P. v. Nandalal Jaiswal MANU/SC/0034/1989: (1986) 4 SCC 566 restated the principle articulated in earlier pronouncements, which is to the following effect: -

“The High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The

High Court does not ordinarily permit a belated resort to the extraordinary remedy because 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. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction."

11. This Court cannot lose sight of the fact that the husband of the petitioner was invalided out of service on 29.05.1978, and he appeared to have accepted the same for almost 17 years during his lifetime. Therefore, there remains no occasion for the petitioner to agitate the matter after such an inordinate lapse of time. This petition, thus, suffers from gross delay and laches and is liable to be dismissed on this ground alone.

12. In view of the aforesaid facts and circumstances, the petition is found to be without merit and is accordingly dismissed, both on merits and on the ground of delay and laches.

(Shahzad Azeem)
Judge

(Sindhu Sharma)
Judge

Jammu:

30.08.2025

Michal Sharma/PS

Whether approved for reporting

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Yes/No