



IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

THE HON'BLE CHIEF JUSTICE MR. G. NARENDAR

AND

THE HON'BLE JUSTICE MR. SUBHASH UPADHYAY

Writ Petition (S/B) No. 420 of 2024

30th October, 2025

No. 4043429F. Ex Rifleman/Asar Singh Chauhan
-----Petitioner

Versus

Union of India and others -----Respondents

Presence:-

Mr. Kishor Rai, learned counsel for the petitioner.
Mr. Manoj Kumar, learned Standing Counsel for the Union of India

JUDGMENT : (per Mr. SUBHASH UPADHYAY, J.)

Petitioner has filed the present Writ Petition
with the following prayers:

“(i) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 03.05.2019 passed by Hon’ble Armed Forces Tribunal, Regional Bench, Laucknow, Circuit Bench, Nainital in O.A. No. 295 of 2022, “No. 4043429F Ex. Rifleman/Asar Singh Chauhan vs. Union of India and others, whereby the learned Tribunal has dismissed the Original Application which the petitioner has sought direction to grant disability pension to the petitioner (contained as Annexure No.



1 to the writ petition).

(ii) Issue a writ, order or direction in the nature of mandamus commanding and directing the respondents to grant disability pension to the petitioner from the date discharge.”

2. As per the case of the petitioner, he was appointed in the Assam Rifles and served there for 8 years and, thereafter, the petitioner was enrolled in Garhwal Rifles on 28.05.1963 after having been found medically fit. The petitioner had served in the Garhwal Rifles for 2 years 03 months and 01 day and was invalidated from service on 29.08.1965 under Low Medical Category Shape-S-2 (permanent) with 50% disability for SCHIZOPHRENIA for life. The claim of the petitioner for grant of disability pension, w.e.f., 29.08.1965 was rejected by the learned Armed Force Tribunal, though, it was the case of the petitioner that at the time of entry into service he was not suffering from any disability and that disability has accrued during the course of service. The petitioner has filed Original Application No. 295 of 2022 seeking grant of disability pension, w.e.f., 29.08.1965. The said Original Application was dismissed on the ground of delay, which led to filing of the present Writ Petition.



3. Leaned counsel for the petitioner submits that claim of pension and arrears of pension is a continuous cause of action and the claim of the petitioner ought to have been considered on merits and dismissal of the Original Application on the ground of delay and laches has caused irreparable loss to the petitioner as pension is a property as defined in the Article 300A of the Constitution of India and the petitioner cannot be deprived of the said right except by authority of law. Learned counsel further submits that the case of the petitioner is covered from the Judgment of the Hon'ble Apex Court in the case of ***Dharam Singh vs. Union of India and others, reported in (2013) 7 Supreme Court Case 316*** and *Ex. GNR. Laxman Poonia vs. Union of India and others, reported in (2017) 4 SCC 697*, wherein the Hon'ble Apex Court has held in para 16 as hereunder:

“16. We have extensively quoted the judgment from Dharamvir Singh's case as it has referred and quoted almost all the governing regulations and rules like Pension Regulations for the Army, 1961, the Entitlement Rules for Casualty Pensionary Awards, 1982 and General Rules of Guide to Medical Officers (Military Pensions) 2002. After referring to the above Regulations and Rules in Dharamvir Singh (supra) in para (29), this Court summarized the legal position as under:-



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

29.1. Disability pension to be granted to an individual who is invalided 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 to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).

29.2. 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 read with Rule 14(b)].

29.3. The 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).

29.4. 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)].

29.5. 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 [Rule 14(b)].

29.6. 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 [Rule 14(b)]; and

29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 — “Entitlement: General Principles”, including Paras 7, 8 and 9 as referred to above (para 27).”

4. Learned counsel for the petitioner thus submits that the matter is liable to be remanded and the learned Tribunal may be directed to re-consider the case of the petitioner on merits.

5. Learned counsel for the Union of India/respondents submits that he has no objection, in case, the matter is remanded back to the learned Tribunal for re-consideration on merits.

6. Submission of learned counsel for Union of India/respondents is taken on record.

7. The Hon’ble Apex Court in catena of



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judgments has held that claim of pension is a continuous cause of action, as such, the dismissal of the original application on the ground of delay and latches warrants interference. The impugned order passed by the learned Tribunal is set aside and the matter is remitted back to the learned Tribunal for re-consideration of the case of the petitioner on merits. We make it clear that this Court has not examined the case of the petitioner on merits and the learned Tribunal shall consider the case of the petitioner on its own merit.

8. With the above said observations, the Writ Petition is disposed of.

No order as to costs.

(G. NARENDAR, C. J.)

(SUBHASH UPADHYAY, J.)

Dated: 30.10.2025
Kaushal