

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7752 OF 2015

Madhukar Dnyanoba Telange .. Petitioner

Versus

The Additional DTE General of Personnel Services
and another .. Respondents

Shri. Alok Sharma, Advocate for the Petitioner.

Shri. S.B. Deshpande, A.S.G. for Respondent No. 1.

**CORAM : S.V. GANGAPURWALA AND
A. M. DHAVALA, JJ.**

DATED : 19th March, 2018

PER COURT:

. Mr. Sharma, the learned advocate for the petitioner submits that on 28.08.1982, the petitioner was selected as a 'Gunner' with the Indian Armed Forces. The petitioner was found to be physically and mentally fit after undergoing the medical test. The learned advocate submits that after completion of the training period the petitioner had joined 289 Div- Loc Battalion. Because of the extreme service conditions, the petitioner

suffered periodical epileptic. Before joining the service the petitioner nor any member of his family had suffered any epileptic attack. On 01.08.1984, the petitioner was shifted at 'Devalali Camp in Maharashtra State' and thereafter, to the 'Poona Southern Command Hospital at Pune'. He was invalidated and discharged from the Armed Forces on 01.08.1984 on the ground that he was medically unfit on account of 'epileptic attack'.

2. The learned advocate further submits that the petitioner on 27.04.1989 filed an application for medical pension. The petitioner was informed that his proposal is rejected. The petitioner made several communications for sanction and release of disability pension. The petitioner preferred Original Application 70 of 2013. The learned advocate submits that Rules 5 and 9 of the Entitlement Rules for Casualty Pensionary Awards, 1982 (Appendix-II) and Pension Regulations for the Army, 1961 gives presumption that the deterioration in the health is due to service conditions and the benefit of presumption goes in favour of the petitioner. Onus of proof is not upon the petitioner. The petitioner is entitled for the pensionary benefits. The learned advocate relies on the judgment and order of this court in Writ Petition No. 2425 of 2000 dated 08.10.2014. The learned advocate submits that the Tribunal has taken a very technical approach in rejecting the application of the petitioner on

the ground of delay. The petitioner was not to gain by delay. The aspect of delay ought to have been liberally construed. The delay in itself could not have been ground to reject the legitimate claim of the petitioner. The learned advocate relies on the judgment of the Apex Court in a case of **"Ramchandra Shankar Deodhar and others Vs. State of Maharashtra and others** reported in **AIR 1974 Supreme Court 259.wp15339**

3. Mr. Deshpande, the learned A.S.G. supports the order.

4. The factum of the petitioner being appointed as a 'Gunner' on or about 28.08.1982 is not disputed. It is also not disputed that on 01.08.1984 the petitioner was discharged and invalidated from the Armed Forces on the ground that he was medically unfit on account of 'epileptic attack'.

5. It is also observed by the Tribunal that the application for disability pension was rejected under order dated 24.04.1985. According to the petitioner this order was communicated to him in the year 1988. The cause of action for the petitioner to approach the tribunal arose in the

year 1985 viz the date his application for disability pension was rejected. The petitioner approached the tribunal on 30.10.2013.

6. The delay is inordinate and abnormal. No plausible justification appears on record for delay of about 28 years in approaching the Tribunal. The tribunal has rightly not exercised the discretion in condoning the delay. The said order does not appear to be irrational or unreasonable. We would have considered the case of the petitioner had it not been the case of an inordinate and abnormal delay.

7. The tribunal has not made any error. In the light of that no case for interference is made out.

8. The writ petition is dismissed. No costs.

[A. M. DHAVAL, J.]

[S. V. GANGAPURWALA, J.]