

232

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

LPA No.2137 of 2016 (O&M)

Date of decision: August 01, 2018

Harchand Singh

.....Appellant

Versus

Union of India and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE KULDIP SINGH**

Present: Mr. Balwinder Singh, Advocate for the appellant.

Mr. Vivek Singla, Advocate for the respondent-UOI.

A.B. CHAUDHARI, J

CM No.4435-LPA of 2016

Heard.

Application is allowed for the reasons stated therein. Delay of 441 days in filing the appeal, is condoned.

LPA No.2137 of 2016 (O&M)

Being aggrieved by the judgment and order dated 09.07.2015 passed by the learned Single Judge of this Court, in CWP No.15993 of 2011, by which the learned Single Judge awarded the arrears of disability pension restricted to a period of 3 years and 2 months, i.e. 38 months prior to the date of filing of the petition with interest at the rate of 8% per annum, the present appeal has been filed by the appellant.

The appellant is the original writ petitioner who filed writ petition stating therein that he had joined Border Security Force on

01.10.1968 as a Constable. During 1971 Indo-Pakistan war, the unit of the appellant/petitioner was deployed in Tangdhar sector in Jammu and Kashmir. During the operation 'Cactus Lily', on the orders of his company commander, he was clearing the mines in the enemy area and while doing so, on 10.07.1972, he sustained mine blast injuries. As a result thereof, the appellant/petitioner was evacuated to the Military Hospital, Sri Nagar and thereafter, to Military Hospital, Pathankot and then to Command Hospital, Pune. The Medical Board of the Command office, Pune declared him Battle Casualty and his disability was assessed as 40% permanent disability and accordingly, a certificate dated 15.01.1974 (Annexure P-1) was given to him. On 05.02.1974, the Medical Board directed that he should be released from service and discharged on invalidment medical ground w.e.f. the same date. Accordingly, the order dated 05.02.1974 (Annexure P-2) was passed by the Commandant of respondent No.4 declaring him unfit for further service. The appellant/petitioner was paid an amount of ₹349.40 on account of pay and allowances due to the appellant/petitioner on 25.04.1974 and ₹184.40 by respondent No.4 as pay and allowances for April 1974. the appellant/petitioner applied for ex-gratia grant and was called in the office of Civil Defence, DC Ludhiana, District Animal Husbandry Officer by issuing letter dated 09.11.1976 in that, amount as ex-gratia grant of ₹1,000/- was sanctioned to him. The correspondence continued from the appellant on the subject of resettlement project-vest making for boarded out BSF personnel. The appellant sent an application dated 22.11.2006 (Annexure P-23) by

registered post to the Commandant, Command Hospital, Chandigarh (U.T.) with all documents including disability pension certificate and then, reminder dated 28.12.2006 (Annexure P-24). The correspondence continued as the documents in the office since were not traceable. Respondent No.4 informed the appellant that the appellant had retired from the Unit on medical ground and his case was too old and the record was not available and was destroyed by burning. The appellant/petitioner again submitted an application dated 20.03.2010 (Annexure P-37) for grant of disability pension and battle casualty certificate because he was battle casualty by the Army Medical Board with permanent disability of 40%. His application was responded by respondent No.4 stating that since the records were destroyed and it was difficult to know whether he had completed 5-6 years of service, an information was being sought. The applicant/petitioner again submitted an application dated 25.04.2010 (Annexure P-39) that he was injured in the mine blast and was medically boarded out. He continued his correspondence and also served a notice dated 18.05.2011 (Annexure P-43) demanding justice. The appellant/petitioner also submitted, vide Para 43 of the writ petition, that his claim was of a recurring nature, namely that he was entitled to disability pension every month and the same having not been paid, the cause of action continued. At any rate, according to him, he had been in correspondence with the authorities for making his claims for number of years and atleast, upto the year 1982 and thereafter, from the year 2006, but then, in so far as the pension is concerned, the primary duty and

liability was of the respondents and therefore, it could not be said that he had made any stale claim.

The respondents filed written statement to the writ petition and raised an objection about delay and laches on the part of the appellant/petitioner for seeking disability pension. At any rate, according to the respondents, he did not pursue his claim from 1982 to 2006 and therefore, the petition was liable to be dismissed for delay and laches. On merits, it was pointed out that the appellant/petitioner was detailed on guard duty at a forward post in Tangdhar area and was not involved in operation 'cactus lily'. It is admitted that he sustained mine blast injury on his left foot on 10.07.1972 and was, after treatment given special boots and his category was recommended as 'EEE' on 17.01.1974 and was discharged on 18.01.1974. His percentage of permanent disability was assessed as 20%, by medical board, on 05.02.1974. though, his pension case file was not found, initially, the same was found with much efforts by the Unit. He relied on the decision in the case of Ex Nk Manjit Singh 2000 (1) RSJ 154 that the delay and laches would not affect the disability pension liability. The respondents thus, prayed for dismissal of the writ petition.

Learned Single Judge thereafter, heard the writ petition filed by the appellant/petitioner and rendered the decision, which is impugned in the present appeal. Learned Single Judge in terms rejected the arguments regarding delay and laches by making following observations:-

“The respondents do not dispute the factum of injury but

they only seek to non-suit the petitioner on the ground of delay.

It is a case where the cause of action is continuing and the delay cannot erode the right of the claimant. In the circumstances, once the respondents have accepted that the petitioner received injury during his duty, his claim for disability pension on account of having suffered permanent disability of 20% cannot be denied completely.”

Thus, the issue regarding delay and latches has been closed and there is no need for us to go in the same as the judgment of the learned Single judge has been accepted by the respondents.

Learned Single judge then found that the appellant/petitioner was entitled to disability pension, at least, to the extent of 20% permanent disability assessed by the respondents. That finding has also been accepted by the respondents. However, the appellant/petitioner is aggrieved by the further part of the impugned judgment for restricting the arrears of pension by the following part of the order:-

“In view of the delay being caused by the petitioner, the arrears would be restricted to a period of three years and two months i.e. 38 months prior to the date of filing the petition.”

We are called upon to decide the validity of the above direction to restrict the period of 38 months.

At the outset, we find that the learned Single Judge having found entitlement of the appellant/petitioner to the disability pension, it must be deemed that the appellant/petitioner was entitled to the same right from the day the liability incurred. The cause of action as has been held by

this Court in the matters regarding making payment of pension every month, must be held to be a recurring cause of action as the making of payment of pension every month, was the duty of the employer, and therefore, merely because employee did not demand the same for number of years, cannot allowed to take a plea about delay and latches in making the claim. At any rate, we find that the learned Single Judge rejected the arguments regarding delay and latches in respect of the present case regarding disability pension and therefore, we find that restricting the arrears for a period of 38 months because of delay caused by the appellant/petitioner in filing the writ petition or making a claim, is inconsistent with the earlier finding on the same question. As held by us and as accepted by the respondents, the appellant/petitioner was entitled to pension every month and therefore, his petition for claiming pension cannot be thrown away. In the wake of the fact that the appellant/petitioner was not paid pension, and in the wake of the fact that it is the trite law that the pension is not a 'bounty', we find no justification in restricting the period of arrears of pension due to the appellant/petitioner for a period of 38 months. We however, in order to balance the equities and the fact that appellant waited for almost 26 years to make claim, would decline to grant any interest on the balance amount to which the appellant is held by us, in this appeal, to be entitled to. We think, it is our duty to interfere with the impugned judgment to that extent to subserve the ends of justice in respect of a soldier who while on duty suffered mine blast injury and lost his leg. In the result, we make the

following order:-

ORDER

- (i) **LPA No.2137 of 2016** is allowed;
- (ii) The impugned judgment dated 09.07.2015 passed by the learned Single Judge, in CWP No.15993 of 2011, to the extent of restricting the arrears of permanent disability pension due to the appellant/petitioner, is set aside; and it is directed that the respondents shall pay the arrears for the entire period for which the appellant/petitioner would be entitled to without any interest thereon;
- (iii) The remaining arrears shall be paid within a period of 3 months from today and thereafter, if not paid, there shall be simple interest at the rate of 8% per annum, till the actual remaining payments are made.

(A.B. CHAUDHARI)
JUDGE

(KULDIP SINGH)
JUDGE

August 01, 2018

mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No