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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 20th December, 2021

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W.P.(C) 14209/2021

EX RECT LAXMAN SINGH (TC-54727) Petitioner

Through: Mr.Ajit Kakkar & Ms.Tanya,
Advts.

versus

UNION OF INDIA & ORS. Respondents

Through: Ms.Archana Gaur &
Ms.Ridhima Gaur, Advts. for
UOI.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. The present petition has been filed by the petitioner challenging the reply dated 23.07.2021 to the legal notice dated 16.06.2021 served by the petitioner on the respondent, denying grant of 'Invalid Pension' to the petitioner. The petitioner further prays for grant of Invalid Pension to the petitioner from the date of his discharge from service, that is 01.03.1999, alongwith interest at the rate of 12% per annum.

2. It is the case of the petitioner that the petitioner was enrolled in the Assam Rifles on 23.12.1997 in SHAPE-1 medical category, after clearing all the medical and physical

tests which are part of the screening process. On 14.02.1998, while the petitioner was on training, he was diagnosed with 'Traumatic Perforation TM (Rt) Severe'. The petitioner was invalided out from the service in the medical category 'EEE' on 28.02.1999.

3. The petitioner himself discloses in the petition that the Invalidment Medical Board of the petitioner had opined that his disability is neither attributable to nor aggravated by the service and his disability was assessed at 70% for life.

4. In paragraph 4 and 5 of the petition, the petitioner asserts that the petitioner suffered the disability due to an incident in the service where the training instructor slapped the petitioner due to which he lost an eardrum.

5. The learned counsel for the petitioner submits that the petitioner is entitled to receive Invalid Pension under Rule 38 of the Central Civil Services (Pension) Rules, 1972 and in terms of the Office Memorandum no. 21/01/2016-P&PW(F) GOI, Ministry of Personnel Public Grievances & Pensions (Department of Pension & Pensioners' Welfare) dated 12.02.2019. In support of the claim, the learned counsel for the petitioner places reliance on the judgment of the Supreme Court in *Dharamvir Singh vs. Union of India and Others*, (2013) 7 SCC 316 and the judgment dated 25.06.2014 passed by the Supreme Court in *Sukhvinder Singh vs. Union of India*, Civil Appeal No. 5606/2010.

6. As far as the delay in filing of the present petition is concerned, the learned counsel for the petitioner places reliance on the judgment of the Supreme Court in ***Union of India and Others vs. Tarsem Singh***, (2008) 8 SCC 648 to submit that as the denial of Invalid Pension is a continuing wrong, the same cannot be stated to be barred by limitation, though in the given facts the Court may grant relief to the petitioner only for the period starting from the last three years of filing of the petition.

7. We have considered the submissions made by the learned counsel for the petitioner, however, find no merit in the same.

8. At the outset, it is noticed that in the legal notice dated 16.06.2021 the petitioner did not attribute any cause to his suffering from 'Traumatic Perforation TM (Rt) Severe' for which he was invalided out from service. The cause now being attributed in paragraph 4 and 5 of the petition is, therefore, clearly an afterthought and cannot be accepted.

9. As far as the submission of the learned counsel for the petitioner that in terms of the judgment of the Supreme Court in ***Dharamvir Singh*** (supra) and ***Sukhvinder Singh*** (supra), as the petitioner was found in SHAPE-1 medical category at the time of enrolment, his subsequent ailment can only be attributed to service, cannot also be accepted. As noted hereinabove, the petitioner himself disclosed that at the time of his invalidment, the Invalidment Medical Board had opined that his disability is neither attributable to nor aggravated by the service. The

petitioner did not put this opinion in challenge for more than twenty one years.

10. In *No. 14666828M Ex CFN Narsingh Yadav vs. Union of India and Others.*, (2019) 9 SCC 667, the Supreme Court has held that “it is not mechanical application of the principle that any disorder not mentioned at the time of enrolment is presumed to be attributed to or aggravated by military service. The question is as to whether the person was posted in harsh and adverse conditions which led to mental imbalance”. It was further held that “though, the opinion of the Medical Board is subject to judicial review, the Courts are not possessed of expertise to dispute such report unless there is strong medical evidence on record to dispute the opinion of the Medical Board, which may warrant the constitution of the Review Medical Board”.

11. In the present case, as noted hereinabove, the petitioner did not challenge the opinion of the Invalidment Medical Board for a period of twenty one years. Even in the present writ petition, barring relying upon the presumption that the cause of disease was attributable to service and assigning a reason thereto, which was earlier never put to the respondent, no medical document has been placed on record by the petitioner to cast a doubt on the decision of the Invalidment Medical Board. Therefore, no such presumption of disease being attributable to service or being aggravated due to service can be

drawn in the present case. Nor can a challenge to the Invalidment Medical Board be accepted after such huge delay.

12. The reliance of the petitioner on the judgment of the Supreme Court **Tarsem Singh** (supra), is also ill-founded. A Coordinate Division Bench of this Court in its judgment dated 08.09.2020 in W.P.(C) 6093/2020 titled **EX JWO Kewal Krishan Vij vs. Union of India & Ors.** has held the following:

*“.... The claim for disability pension cannot be equated to a claim for pay / emoluments in accordance with Rules or claim for other recurring payments which if not in accordance with law or contract can be claimed at any time. Disability pension, though payable month-by-month, payment thereof is dependent on a finding of disability attributable to or aggravated by service and in the absence of a finding of disability attributable to or aggravated by service, there can be no claim for disability pension; such finding is a finding of fact and not of law or contract, claim wherefor even if highly belated can be made at any time and granted with arrears for the period within limitation; on the contrary finding, even if erroneous, of “no disability attributable to or aggravated by service” if not challenged within reasonable time attains finality and a claim for disability pension cannot be made at any time, after decades, claiming the same to be a recurring payment. The counsel for the petitioner is misapplying **Tarsem Singh supra**”.*

13. In view of the above. We find no merit in the present petition. The same is dismissed.

NAVIN CHAWLA, J

MANMOHAN, J

DECEMBER 20, 2021/rv/A