

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.26735 of 2013

Ex-Rect Debendra Bijay Upadhyaya ***Petitioner***
Mr. B. Pradhan, Advocate

-versus-

Union of India and others ***Opposite Parties***
Mr. K.C. Kar, CGC

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAİK

ORDER
06.07.2022

Order No.

09. 1. The sole ground on which relief of considering the case of the Petitioner for disability pension was denied by the Armed Forces Tribunal, Regional Bench, Kolkata (AFT) by the impugned order was that of delay.
2. The Petitioner was discharged from the Army on 18th May, 1962 under Army Rule 13 (3) (iv). The discharge certificate shows that he was discharged on medical grounds. The offered by the Petitioner for not approaching the Army for disability pension earlier than 2007 was that he was not aware of his right to receive disability pension.
3. An earlier W.P.(C) No.18836 of 2008 filed in this Court by the Petitioner was disposed of by this Court by an order dated 6th January, 2009 permitting to Petitioner to make a representation and for the Opposite Party to consider it in accordance with law. The representation so made was rejected on 15th December, 2009 by

the Opposite Parties. The Original Application No.9 of 2013 was filed by the Petitioner thereafter before the AFT Kolkata was dismissed by the impugned order dated 10th January, 2013 only on the ground of delay.

4. The Supreme Court of India has emphasized that in matters concerning claim for pension a liberal approach has to be adopted on the aspect of limitation. Reference may be made to the decision in *Shiv Das v. Union of India AIR 2007 SC 1330* where in para 10 it was held as under:

“10. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”

5. In *Union of India v. Tarsem Singh (2008) 8 SSC 648* the legal position was summarized as under:

“5. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a

continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.”

6. In the present case, the Court is satisfied with the bona fides in the grievance of the Petitioner and his explanation for not having approached the Opposite Parties earlier than 2007 for disability pension. Entertaining his plea would not cause any prejudice to the Opposite Parties. He is an octogenarian now and his claim if allowed will not disturb anyone claims or seniority. Further considering that the Petitioner approached this Court first in 2008, his claim for disability pension can be considered for a period beginning three years prior to the filing of the said petition i.e. 2005 onwards.

7. The Petitioner’s case now be considered by the Opposite Parties in accordance with law without raising an objection as to limitation in the above terms. The Petitioner will be communicated the decision of the Opposite Parties as regards his claim for disability

pension from 1st January 2005 onwards, on or before 3rd October, 2022. If the Petitioner as aggrieved by such decision it will be open to the Petitioner to seeks appropriate remedies in accordance with law. The impugned order of the AFT, Regional Bench, Kolkata is hereby set aside.

8. The writ petition is disposed of in the above terms.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge



TUDU