



WEB COPY



W.P.No.15088 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR

W.P.No.15088 of 2024

and

W.M.P.No.16399 of 2024

1. Union of India,
Represented by the Secretary,
Ministry of Defence,
Government of India,
New Delhi – 110 011.
2. The Chief of the Air Staff,
Air Headquarters, Vayu Bhavan,
New Delhi – 110 106.
3. The Directorate of Air Veterans,
Air Headquarters, Subroto Park,
New Delhi – 110 010.
4. The Jt. CDA (Air Force),
Subroto Park,
New Delhi – 110 010.

... Petitioners

Vs.



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1. The Registrar,
Armed Forces Tribunal,
Rudra Road,
St. Thomas Mount,
Chennai – 600 016.

2. Ex-MWO, N Rajagopal (S.No.257799-B)
S/o. Late Narayanasamy,
Residing at No.4, SRA Building,
Thiruvalluvar Nagar, Kadampadi,
Sullur, AERO, Coimbatore – 641 401.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records relating to the order passed by the 1st respondent in R.A.No.1 of 2019 dated 20.11.2023 with M.A.No.56 of 2019 and M.A.No.118 of 2013 confirming the order passed in O.A.No.40 of 2018 dated 28.09.2018, quash the same and consequently, to restrict the arrears for three years from the date of filing case.

For Petitioner : Mr.V.Chandrasekaran

ORDER

(Order of the Court was made by **S.S. SUNDAR, J.**)

This writ petition is filed challenging the order passed by the 1st respondent in R.A.No.1 of 2019 dated 20.11.2023 with M.A.No.56 of 2019 and M.A.No.118 of 2013, confirming the order passed in O.A.No.40 of 2018



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dated 28.09.2018, and consequently, to restrict the arrears for three years from the date of filing case.

2. Brief facts that are necessary for the disposal of this writ petition are as follows :

The 2nd respondent herein was enrolled in the Indian Air Force on 22.07.1963. He was discharged on 31.12.2000, while he was serving in the rank of Master Warrant Officer. It is not in dispute that the 2nd respondent was serving as Master Warrant Officer from 01.08.2000 to 31.12.2000. When pension was granted to the 2nd respondent, the pension applicable to the rank of Master Warrant Officer was not granted to the 2nd respondent on the ground that he had not put in 10 months of service in that rank. Even though the 2nd respondent retired on 31.12.2000, with an inordinate delay, the 2nd respondent preferred an Original Application in O.A.No.40 of 2018 to declare that the 2nd respondent is entitled to pension as applicable to the rank of Master Warrant Officer with effect from 01.01.2001.

3. The said Original Application was allowed by the Armed Forces



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Tribunal, Regional Bench, Chennai, by holding that the issue had already been decided in detail on the basis of the Government of India's Notification and the orders passed by the Tribunal in similar cases. Referring to the earlier decisions, the Tribunal was of the view that there is no valid reason to deviate from the findings and conclusions of the Tribunal while allowing the claim of several applicants who are similarly placed like the 2nd respondent. Therefore, the Tribunal directed the petitioner to issue necessary corrigendum Pension Payment Order granting revised pension to the 2nd respondent with effect from 01.01.2001 in accordance with the PCDA (P) Circular No.568, within a period of three months from the date of receipt of the order.

4.After receipt of order passed by the Tribunal in the Original Application, the petitioner filed an application to clarify the order. Thereafter, the petitioner filed a review application in R.A.No.1 of 2019. Both the review application as well as the petition filed for clarification of the order passed by the Tribunal were heard and dismissed by the Armed Forces Tribunal, Regional Bench, Chennai, by an order dated 20.11.2023



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with a cost of Rs.20,000/-, as the petitioner had not implemented the order as directed by the Tribunal.

5.Challenging the original order passed by the Tribunal in O.A.No.40 of 2018 and the orders passed by the Tribunal in the petition for clarification and review application filed by the petitioner, the above writ petition is filed.

6.Learned counsel appearing for the petitioner raised several grounds, particularly pointing out the inordinate delay in preferring the Original Application. Learned counsel submitted that the 2nd respondent, who had retired on 31.12.2000, filed the Original Application only in 2018. Since the Hon'ble Supreme Court in several cases has considered the position and held that such stale claims cannot be entertained ignoring the inordinate delay, the learned counsel submitted that the application ought not to have been considered by the Tribunal. He also submitted that the 2nd respondent is a fence-sitter and the Tribunal ought to have considered the serious prejudice and inconvenience caused to the petitioner in the matter. Learned counsel submitted that the claim application filed by the 2nd respondent before the Tribunal is a dead and stale claim and therefore, it cannot be permitted



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merely because the person is entitled to the relief in tune with the orders passed by the Tribunal in similar cases.

7.This Court is unable to countenance the arguments of the learned counsel for the petitioner. First of all, a grave injustice is caused to the 2nd respondent who is entitled to pension based on his last drawn salary as per the Rules. Despite the fact that the petitioner has admitted the eligibility of the 2nd respondent to get his pension re-fixed in accordance with the last drawn salary of the 2nd respondent, the petitioner appears to take advantage of their inaction or the illegality in denying the relief which the 2nd respondent is entitled to. The Tribunal has considered the claim in the light of the orders passed by the Tribunal in similar applications. The petitioner has not even brought before this Court any material to distinguish the order passed by the Tribunal in similar cases earlier and the present case in which the 2nd respondent is granted relief based on similar orders. When the entitlement of the 2nd respondent to get pension for the last held rank, i.e., Master Warrant Officer with effect from 01.01.2001 is not in question, this Court is unable to appreciate the contentions of the petitioner in this writ



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petition. The 2nd respondent, who has been granted relief in accordance with law, cannot be denied the statutory benefits merely because it was not given to the 2nd respondent on an erroneous interpretation of the Rules for a long period. This Court is unable to appreciate the contentions of the petitioner by applying any principles of law in equity.

8. Therefore, this writ petition is dismissed. No costs.

(S.S.S.R., J.) (N.S., J.)
10.06.2024

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Internet : Yes

Index : Yes / No

Neutral Citation : Yes / No

S.S. SUNDAR, J.
and
N. SENTHILKUMAR, J.

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To

The Registrar,
Armed Forces Tribunal,
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