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W.P.No.23316 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2024

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE K. KUMARESH BABU

W.P.No.23316 of 2023

S.No.2573638-K, Ex-Sepoy Mudra Gadda Ranga ... Petitioner

Vs.

1. Union of India, rep by its
Secretary to Govt. of India,
Ministry of Defence, South Block, New Delhi-110 011
- 2.Chief of Army Staff,
Army Head Quarters (AHQ)
Defence Head Quarters (DHQ), Integrated Head Quarters(IHQ)
New Delhi-110 011.
- 3.Principal Controller Defence Accounts (Pension),
Droupati Ghat, Allahabad, Uttar Pradesh, PIN-211014
4. The officer In charge Records
Records Madras Regiment,
Wellington-643 231.
5. The President Medical Board,
Military Hospital, Wellington
The Nilgiris District
Tamil Nadu-643 231.



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6. The Registrar,
Armed Forces Tribunal Regional Bench,
No.1A, Rudhra Road, St.Thomas Mount,
Chennai-16

... Respondents

PRAYER: Writ petition is filed under Article 226 of Constitution of India, for issuance of a writ of Certiorari and Mandamus, to call for the records pertaining to the passing of the order dated 30.03.2022 in O.A.No.123 of 2019 with M.A.No.145 of 2019 on the file of the 6th respondent and quash the same consequently allow the O.A.No.123 of 2019 with M.A.No.145 of 2019 as prayed for.

For Petitioner : Mr.M.Selvaraj

For Respondents : Mr.A.R.Sakthivel for R1 to R5
Senior Panel Counsel
R6-Tribunal

ORDER

(Order of the Court was delivered by D.KRISHNAKUMAR, J.)

This writ petition has been filed, challenging the order passed by the Tribunal in O.A.No.123/2019, dated 30.03.2022, in and by which, the claim of the petitioner *for granting disability pension with broadbanding of disability element of pension* was rejected.



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2. The brief facts leading to the filing of the writ petition are as follows.

The petitioner was enrolled in the Indian Army on 17.09.1974 and subsequently, in the year 1981, he was suffered from head ache and double vision. Hence, he was treated from 05.05.1981 to 04.05.1981 for Neurosis Psychosis and Diplopia in the Command Hospital Bangalore, wherein, the Medical Board examined the petitioner and invalidated him with 40% disability and he was invalided out of service on 23.11.1981, after service of more than 7 years. According to the petitioner, the Medical Board had assessed his disability percentage as 40% only on Neurosis, but on Diplopia, the disability was not assessed by the Board and hence, there is material irregularity in invaliding medical board opinion. According to the petitioner, he is entitled for disability pension, since the decease arose while he was in field service and aggravated due to military service. The petitioner filed original application seeking disability pension before the Tribunal, however, the same was rejected without assigning any valid reason. Hence, this writ petition has been filed.



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3. The learned counsel for the petitioner submitted that , the petitioner is protected under the Rule 5 of the Entitlement Rules 1982, in which, the presumption is in favour of the petitioner, however, the Tribunal without perusing the records and proper consideration of the relevant rules, has passed the impugned order and hence, the same is liable to be set aside.

4. The learned counsel for the respondents submitted that, the petitioner had rendered 7 years and 37 days of qualifying service and subsequent to his invaliding out from service, his disability pension claim was forwarded to the Pension Sanctioning Authority i.e. CDA(P) Allahabad for adjudication, vide letter dated 19.01.1982, who in turn, had rejected the claim, vide letter dated 25.03.1982, stating that the invalid disability is not attributable to Military service. This was communicated to the petitioner, vide letter dated 11.04.1982, with an advice to prefer an appeal against the decision to Government of India. The petitioner submitted his first appeal against the rejection of disability pension, vide his application dated 04.06.1982 and the same was forwarded to the Government of India through CDA(P), Allahabad, vide letter dated 8.12.1982. The appellate



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Committee, after careful consideration, has rejected the first appeal on 26.11.1983, against which, the second appeal filed by the petitioner was also rejected by the competent authority, vide letter dated 30.04.1985. In such circumstances, the petitioner filed the O.A.No.123/2019, to grant disability pension with broadbanding benefit, w.e.f. 24.11.1981, and also to conduct re-assessment medical board, after a lapse of 34 years, from the date of rejection of second appeal. The Tribunal, in the light of the decisions rendered by the Hon'ble Supreme Court, referred therein, has rightly observed that the decease suffered by the first respondent fall outside the purview of attributability to military service and dismissed the original application filed by the first respondent. Therefore, the above order passed by the Tribunal does not warrant any interference by this Court and hence he seeks for dismissal of the writ petition.

5. Heard the learned counsel for the petitioner and the learned counsel for the respondent and we have perused the materials on record.



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6. The following facts are not disputed by both the petitioner as well as the first respondent.

- i) The petitioner was invalided out from the Military Service as early as on 23.11.1981, in view of his 40% of disability.
- ii) His pension claim was rejected on 19.01.1982.
- iii) The first respondent's first appeal and the second appeal were also ended against him on 26.11.1983 and 30.04.1985 respectively.

In such circumstances, the petitioner had filed the above original application before the Tribunal seeking disability pension, with a delay of 34 years, from the date of rejection of the second appeal. The Tribunal after considering the materials on record, has observed that there is no evidence to find any remote casual link to any service related trauma, which can be considered to be a contributory factor to the mental condition of the petitioner. Apart from making observation that the disease "Neurosis Psycholisis" suffered by the petitioner fall outside the purview of attributability to military service, the Tribunal also felt that the application stands barred by inordinate delay and laches with no cogent reason for the inexplicable delay of 13,475 days. However, without giving any proper



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explanation for the above said inordinate delay, the petitioner has filed the instant writ petition seeking to quash the above impugned order and to grant disability pension.

7. In ***Karnataka Power Corpn. Ltd. v. K.Thangappan reported in (2006) 4 SCC 322***, the Hon'ble Supreme Court, at Paragraph 6, held as follows:

“6. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party'.....

16. There is another aspect of the matter which cannot be lost sight of. The respondents herein filed a writ petition after 17 years. They did not agitate their grievances for a long time. They, as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the writ petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be



exercised in favour of those who approach the court after a long time
Delay and laches are relevant factors for exercise of equitable jurisdiction.

8. In ***Chennai Metropolitan Water Supply and Sewerage Board v. T.T.Murali Babu reported in (2014) 4 SCC 108***, at Paragraphs 16 and 17, the Hon'ble Supreme Court held as follows:

“16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant - a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.”



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9. The Hon'ble Division Bench of this Court, in the case of

S.Vaidhyanathan Vs.Government of Tamil Nadu reported in 2018 SCC

OnLine, in para 14, it is held as under ;

“14. There is an inordinate delay and laches on the part of the appellant. What is laches is as follows:

“Laches or reasonable time are not defined under any statute or Rules. “Laches” or “Lashes” is an old french word for slackness or negligence or not doing. In general sense, it means neglect to do what in the law should have been done for an unreasonable or unexplained length of time. What could be the laches in one case might not constitute in another. The laches to non-suit, an aggrieved person from challenging the acquisition proceedings should be inferred from the conduct of the land owner or an interested person and that there should be a passive inaction for a reasonable length of time. What is reasonable time has not been explained in any of the enactment. Reasonable time depends upon the facts and circumstances of each case.”

In para 16 of the judgment cited supra, it is held as under;

16. Delay defeats discretion and loss of limitation destroys the remedy itself. Delay amounting to laches results in benefit of discretionary power being denied on principles of equity. Loss of limitation resulting into depriving of the remedy, is a principle based on public policy and utility and not equity alone.....”

In the light of the above discussion, and also keeping in mind the ratio laid



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down in the above cited decisions, we are of the view that the first respondent is not entitled to get the relief as prayed for in the original application, since he has approached the Tribunal with an inordinate and huge delay. Hence, the writ petition is liable to be dismissed on the ground of delay an laches.

10. Accordingly, this writ petition is dismissed and the order passed by the Tribunal is confirmed. No costs.

(D.K.K.J.)

(K.B.J.)

01.04.2024

Internet: Yes/No

Index : Yes/No

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To

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Union of India, Ministry of Defence,
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Defence Head Quarters (DHQ),
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