



WEB COPY



W.P.No.2756 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2024

CORAM :

THE HON'BLE MR. JUSTICE S.S.SUNDAR
AND
THE HON'BLE MR.JUSTICE N.SENTHILKUMAR

W.P.No.2756 of 2024

Ex Swr Jammula Ravindra Reddy
S.No.1071741

..

Petitioner

v.

1. Union of India
rep by its Secretary
Government of India
Ministry of Defence
South Block, New Delhi 110 011
2. The Chief of Army Staff
South Block, Integrated Hqs of MoD (Army)
New Delhi 110 011
3. The Officer-in-charge
Kavachit Corps Abhilekh, Armoured Corps Records
Pin – 900 476, C/o 56 APO
4. The Principal Controller of Defence Accounts (Pensions)
Draupadi Ghat, Allahabad
Pin – 211 014 (U.P.)

..

Respondents



W.P.No.2756 of 2024

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, by calling for the records in respect of the impugned orders passed in O.A.No.85 of 2019 with M.A.No.104 of 2019 dated 30th March 2022 and R.A.No.23 of 2022 in O.A.No.85 of 2019 dated 17.06.2022 passed by the Hon'ble Armed Forces Tribunal, Regional Bench, Chennai and quash the same and further directing the 1st to 4th respondents to constitute Re-Survey Medical Board to assess present percentage of disability of the petitioner with duration and grant Disability Pension (Service Element + Disability Element) to the petitioner @ 20% w.e.f., 01st January 1996, with all consequential benefits, or in alternate to grant Service Element of Disability Pension to the petitioner w.e.f., 08th May 1985 for life, as per Regulation 186(2) of Pension Regulations for the Army, 1961, with all consequential benefits, within the time frame as may be provided by this Hon'ble Court.

For Petitioner :: Mr.M.K.Sikdar

ORDER

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

This writ petition is filed by the petitioner challenging the impugned orders in O.A.No.85 of 2019 with M.A.No.104 of 2019 dated 30th March 2022 and R.A.No.23 of 2022 in O.A.No.85 of 2019 dated 17.06.2022 passed by the Hon'ble Armed Forces Tribunal, Regional Bench, Chennai.

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



W.P.No.2756 of 2024

(a) The petitioner was recruited in Army Service on 30.08.1982.

However, he was invalidated out from service on 07.05.1985 in Low Medical Category due to Invalid Disease “Adjustment Reaction (Psychiatric)” under Rule 13(3) III (iii) of Army Rules, 1954 after rendering 2 years, 2 months and 8 days of service. Very strangely, the petitioner requested a copy of the IMB vide RTI application dated 23.08.2018. Thereafter, on the basis of some records obtained by the petitioner several years after he was sent out, filed an application on 24.10.2018 for grant of disability pension. The same was rejected by the Officer In-Charge, Armoured Corps Records by order dated 11.12.2018. The further appeal preferred by the petitioner was also rejected in 2019.

(b) Thereafter, the petitioner filed an original application in O.A.No.85 of 2019 before the Armed Forces Tribunal, Regional Bench, Chennai with a prayer to quash the order passed by the third respondent dated 28.01.2019 and to direct the respondents to constitute Re-Survey Medical Board to assess the present degree of disability with duration and grant disability pension with effect from 07.05.1985, the date of invalidation from service with broadbanding benefits with effect from



W.P.No.2756 of 2024

01.01.1996 or for suitable alternate grant.

WEB COPY

(c) Since the facts are not in dispute that the petitioner was sent out on invalidation from service way back on 08.05.1985 due to medical grounds technically known as “Adjustment Reaction” and the petitioner was a non-pensioner, and his service records and medical documents were destroyed after the prescribed retention period of 25 years, the petitioner's original application was dismissed mainly on the ground of laches in tune with several judicial precedents. The merits of the petitioner's contentions were also gone into by the Tribunal and relying upon the judgment of the Hon'ble Supreme Court in Civil Appeal No.7672 of 2019, where the Hon'ble Supreme Court had an occasion to consider similar issue and held that it cannot be presumed that the mental disability is attributed to or aggravated to military service, came to the conclusion that the claim of the petitioner is a stale one and cannot be entertained.

(d) Aggrieved by the same, the petitioner filed a review application in R.A.No.23 of 2022. By order dated 17.06.2022, the Armed Forces Tribunal, Regional Bench, Chennai, holding that there is no error apparent on the face of the record warranting reconsideration of the matter, dismissed



W.P.No.2756 of 2024

the review application. Now the petitioner has preferred the above writ petition challenging the original order and the review order passed by the Tribunal.

3. The learned counsel appearing for the petitioner submitted that the delay cannot be cited as a reason to dismiss the petitioner's original application, as he is entitled to get the disability pension on the admitted facts. The learned counsel also relied upon a few judgments for the proposition that any disability not recorded at the time of recruitment, must be presumed to have been caused subsequently and unless proved to the contrary, must be taken as a consequence of military service. The learned counsel then submitted that preservation of the morale of Armed Forces personnel should be given due importance and that therefore any decision taken by the Tribunal should be in a way to protect the morale of the personnel in military service. The learned counsel also relied upon the judgment of the Hon'ble Supreme Court in the case of *Union of India & others v. Tarsem Singh, CDJ 2008 SC 1444*, wherein the Hon'ble Supreme Court has held as follows:-



W.P.No.2756 of 2024

“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



W.P.No.2756 of 2024

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.”

4. Again the learned counsel for petitioner relied upon another judgment of the Hon'ble Supreme Court in the case of *Dharamvir Singh v. Union of India & others*, CDJ 2013 SC 528, wherein the Hon'ble Supreme Court has held as follows:-

“30. In the present case it is undisputed that no note of any disease has been recorded at the time of appellant's acceptance for military service. The respondents have failed to bring on record any document to suggest that the appellant was under treatment for such a disease or by hereditary he is suffering from such disease. In absence of any note in the service record at the time of acceptance of joining of appellant it was incumbent on the part of the Medical Board to call for records and look into the same before coming to an opinion that the disease could not have been detected on medical examination prior to the acceptance for military service,



W.P.No.2756 of 2024

but nothing is on the record to suggest that any such record was called for by the Medical Board or looked into it and no reasons have been recorded in writing to come to the conclusion that the disability is not due to military service. In fact, non-application of mind of Medical Board is apparent from Clause (d) of paragraph 2 of the opinion of the Medical Board, which is as follows:

(d) In the case of a disability under C the board should state what exactly in their opinion is the cause thereof.”

5. This Court has no hesitation to follow the principles that were reiterated by the Hon'ble Supreme Court in the cases cited above as well in several other cases which we ourselves would follow in appropriate cases. It is true that a belated claim need not be always rejected, if such claim falls within any of exceptions cited by the Hon'ble Supreme Court. When a service related claim is based on a continuing wrong, it is true that relief can be denied even if there is a long delay in seeking remedy. However, there is an exception to such exception. It has been repeatedly held that any delay which is likely to cause prejudice to the respondents cannot be ignored.



W.P.No.2756 of 2024

WEB COPY

6. In the present case, the petitioner by his application seeks disability pension on the ground that the reason for his disability for invalidating him from service was on account of the reasons attributable to his service. The petitioner, who was sent out on invalidation in 1985, has come forward with a stale claim only in the year 2018. We cannot now direct the Medical Board to assess the reason for invalidation at the time when the petitioner was sent out on invalidation. Serious prejudice would be caused to the respondents. The petitioner cannot take advantage of the delay for getting his relief. Even on merits, there cannot be a presumption in every case. The petitioner was hardly in service for 2 ½ years before his invalidation. It is quite improbable for anyone to presume that the petitioner's degree of disability was attributable to nor aggravated by military service. The Tribunal followed a judgment of the Hon'ble Supreme Court in a similar case (in C.A.No.7672 of 2019), wherein it is held that this kind of mental disorder cannot be detected at the time of recruitment and hence disease like schizophrenia cannot be presumed to be attributed to or aggravated due to military service. Therefore, this Court is unable to find any merit in this writ



W.P.No.2756 of 2024

petition to interfere with the impugned orders of the Armed Forces Tribunal,

Regional Bench, Chennai. Accordingly, the writ petition stands dismissed.

Index : yes/no
Neutral citation : yes/no

(S.S.S.R.,J.) (N.S.,J.)
15.02.2024

SS

To

1. The Secretary to
Union of India
Ministry of Defence
South Block
New Delhi 110 011
2. The Chief of Army Staff
South Block, Integrated Hqs of MoD (Army)
New Delhi 110 011
3. The Officer-in-charge
Kavachit Corps Abhilekh, Armoured Corps Records
Pin – 900 476, C/o 56 APO
4. The Principal Controller of Defence Accounts (Pensions)
Draupadi Ghat, Allahabad
Pin – 211 014 (U.P.)



WEB COPY



W.P.No.2756 of 2024

S.S.SUNDAR,J.

AND

N.SENTHILKUMAR,J.

SS

W.P.No.2756 of 2024

15.02.2024