



W.P.(MD).No.8792 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 13.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.8792 of 2023

and

W.M.P(MD) No.8058 of 2023

A.Ammavasi

... Petitioner

Vs.

1. The Armed Forces Tribunal,
Regional Bench,
Chennai.
2. The Union of India
Represented by its
Secretary, Ministry of Defence,
New Delhi – 110 011
3. The Principal Controller of Defence,
Allahabad – 211 01.
4. The Chief Army Staff,
DHQ PO, New Delhi-11.
5. The Commandant,
Madras Engineering Group & Centre,
Bangalore – 560 042.



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6. The Senior Record Officer,
(for OIC Records)
Madras Engineering Group,
PIN-900 493 c/o 56 APO.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the first respondent in O.A.No.49 of 2018, dated 18.02.2020 and quash the same as illegal in so far as the order restricting the arrears of Disability Pension three years prior to the date of filing of above original application i.e., 19.09.2017 w.e.f 19.09.2014 alone is concerned and consequential impugned order passed by the sixth respondent vide proceedings No.15313470/Pen (D) dated 31.10.2022 and quash the same as illegal and consequently direct the respondents 2 to 6 to disburse the arrears of disability service element of pension from the date of the petitioner's discharge from service on medical invalidation i.e., 18.09.1995.

For Petitioner : Mr.J.Lawrance

For Respondents : Mr.K.Govindarajan
Deputy Solicitor General of India

ORDER

The instant writ petition has been filed by an Indian Army Personnel, challenging the order passed by the Armed Forces Tribunal, Regional Bench, Chennai, passed in O.A.No.49 of 2018, dated 18.02.2020.



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2. The petitioner while in service had sustained 14% of disability and an order of invalidation was passed on 18.09.1995 and he was discharged from service. In view of the fact that the petitioner has not suffered 20% or more disability, the petitioner was not granted any disability pension.

3. The Hon'ble Supreme Court in ***Civil Appeal No.5605 of 2010, in the case of Sukhvinder Singh Vs. Union of India and others, dated 25.06.2014*** in paragraph No. 9 has categorically held that in all cases, where a member of Armed Forces is invalidated and discharged from service owing to the disability, the issue that they have suffered 20% disability has been decided and they would be eligible for disability pension. Based upon the above said judgment, the petitioner has made several representations to the authorities concerned which were rejected by them. Challenging those orders, the petitioner has filed O.A.No.49 of 2018, before the first respondent. The Tribunal, by its order dated 18.02.2020 had accepted the case of the petitioner to the effect that the petitioner is entitled to disability pension, however, restricted the payment of arrears to the writ petitioner for a period of three years prior to the date of filing of the Original Application. It is the grievance of the writ petitioner that the disability pension should have been granted to



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him from the date of invalidation that is from 18.09.1995. However, in the order impugned in the writ petition, the disability pension has been directed to be given only from 19.09.2014. It is the further contention of the learned counsel appearing for the writ petitioner that the payment of disability pension or request for payment of such pension is a continuing cause of action and therefore, the right of the petitioner to receive the arrears of disability pension cannot be restricted for a period of three years prior to the filing of the original application before the Armed Forces Tribunal. He had further contended that the right to receive disability pension is not arising out of judgment of the Hon'ble Supreme Court, but it has arisen from the date on which the petitioner was invalidated.

4. Per contra, the learned Deputy Solicitor General of India appearing for the respondents herein relying upon paragraph No.11 of the order of the first respondent had contended that though the petitioner was invalidated in September 1995, the petitioner has approached the Tribunal only in September 2017. Therefore, the Tribunal was right in restricting the payment of arrears for a period of three years prior to the filing of original application. He also relied upon the judgment of the Hon'ble Supreme Court and



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contended that when arrears of monetary benefits are sought for after belated period, the payment would be restricted for a period of three years prior to the filing of the writ petition. Hence, he prayed for dismissing the writ petition on the ground that belatedly the petitioner has approached the Tribunal and therefore, the Tribunal was right in restricting the arrears for a period of three years.

5. He further relied upon paragraph No.11 of the judgment of the Hon'ble Supreme Court reported in *AIR2007 SC 1330 (Shiv Dass Vs.Union of India and others)* and had contended that the grant of relief cannot exceed for a period of three years from the date of presentation of the writ petition.

6. I have carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

7. The limited scope of this writ petition is to whether the petitioner would be entitled to receive disability pension from the date of invalidation or only from 19.09.2014 onwards, which is three years prior to the date of filing of the application before the Armed Forces Tribunal.



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8. It is an admitted fact that the petitioner was discharged from service on the ground of medical invalidation on 18.09.1995 and the petitioner has not chosen to approach any one of the forums seeking disability pension knowing fully well that there is no provision under the concerned Rule for payment of disability pension for a member of service, who has been invalidated with less than 20% disability. Only after the Hon'ble Supreme Court pronounced the orders in ***Sukhvinder Singh*** case (2014 (14) SCC 364), invalidation was interpreted to have the disability of 20%. Therefore, the petitioner had approached the authorities for payment of disability pension only after three years from the date of the order of the Hon'ble Supreme Court. The authorities continuously rejected the request of the petitioner. The petitioner was not successful in getting favourable orders before the authorities, when he had approached them prior to the order of the Hon'ble Supreme Court in Sukhvinder Singh case. Taking advantage of the orders of the Hon'ble Supreme Court, the petitioner had chosen to challenge those orders before the Armed Forces Tribunal only on 19.09.2017. The first respondent Tribunal, in paragraph No. 11 had restricted the arrears payable to the writ petitioner for three years prior to the said date namely from 19.09.2014.



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9. In view of the judgment of the Hon'ble Supreme Court in ***Civil Appeal No.5151-5152 of 2008 (Union of India and others Vs.Tarsem Singh)*** case, this Court is of the considered opinion that the first respondent Tribunal was right in restricting the arrears payable to the writ petitioner for a period of three years prior to the filing of the original application.

10. In view of the above said deliberations, there are no merits in this Writ Petition. Accordingly, this Writ Petition stands dismissed. There shall be no order as to costs. Consequently connected Miscellaneous Petition stands closed.

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NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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