



CWP-15644-2024

[1]

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP-15644-2024**Reserved on: 28.11.2024****Pronounced on: 13.12.2024**

Union of India and Others

.....Petitioners

Versus

No.14298699X Ex. Hav (Hony Naib Subedar) Om Parkash
and another

....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Argued by: Mr. Vibhor Bansal, Sr. Panel Counsel
for the petitioners.

Mr. Arshit Goel, Advocate and
Mr. Ajay Sheoran, Advocate and
Mr. Samavir Singh, Advocate for respondent No.1.

SURESHWAR THAKUR, J.(Oral)

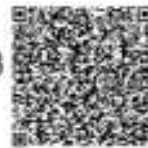
1. Through the instant writ petition, the petitioner herein prays for setting aside the order dated 03.10.2018 (Annexure P-1) as passed by the learned Armed Forces Tribunal concerned, whereby the respondent was granted the benefit of rounding off, thus for computing the disability element vis-a-vis disability pension.

Factual Background.

2. Respondent No.1 Ex. Hav (Hony Naib Subedar) Om Parkash was enrolled in the Army on 02.03.1978 and was discharged from service w.e.f. 31.07.2003. Consequent to his discharge from the service, the respondent was granted the following disability benefits alongwith other dues.

Disability Element of disability pension for life @ 20%.

3. It is pertinent to mention here that PCDA(P) Allahabad



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Payment Order (PPO) for disability element vide order dated 20.04.2004.

4. Respondent No.1 was then brought before a Resurvey Medical Board (RSMB) and disability was accepted @50% for life w.e.f. 03.09.2004 vide order dated 19.01.2005.

5. Thereafter, after a lapse of around 15 years from the date of his discharge and from issuance of a policy which introduced the benefit of Broad-Banding/Rounding off, respondent No.1 served a legal notice dated 07.12.2017 through his counsel for benefit of Broad-Banding/Rounding off disability element to 75% as against 50% w.e.f. date of discharge. The same was replied vide Records Signals letter dated 11.01.2018.

6. Thereafter, the respondent filed O.A., before the Tribunal concerned rather for the grant of benefit of rounding off disability element @75% as against 50% for life w.e.f. 01.08.2003. The said application was allowed vide order dated 03.10.2018 (Annexure P-1). The operative part of the said order is extracted hereinafter.

“In the present case, the applicant is already getting disability element of disability pension w.e.f. 24.09.2012 @ 50% for life. Therefore, he is entitled for the benefit of rounding off by computing his disability element of disability pension to the extent of 75% as against 50% with effect from 1.8.2003, Accordingly, the petition is allowed on the same terms as in Ram Avtar’s case (supra).”

7. Feeling aggrieved from the afore order, the petitioner-Union of India has filed thereagainst the instant writ petition.



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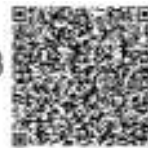
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Submissions of the learned counsel for the petitioners.

8. At the outset, the learned counsel for the petitioners-Union of India refers to the rendition(s) of various judgments by the Hon'ble Apex Court, wherebys, there has been a restriction of the apposite arrears for a period of three years. He further submits that in view of the expostulations of law made therein, the learned Tribunal concerned should have restricted the grant of arrears to the respondent for three years.

9. Initially, a reference is required to be made to paragraphs No. 5 and 6 of the verdict rendered by the Hon'ble Apex Court in case titled as ***Civil Appeal No. 5151-5152 of 2008 (Arising out of SLP (C) Nos.3820-3821 of 2008 titled as Union of India and Others Vs. Tarsem Singh***, decided on 13.08.2008. The said paragraphs No. 5 and 6 become extracted hereinafter.

“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



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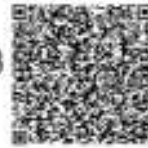
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the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to 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 this case, the delay of 16 years would affect the consequential claim for arrears. The High Court was not justified in directing payment of arrears relating to 16 years, and that too with interest. It ought to have restricted the relief relating to arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser. It ought not to have granted interest on arrears in such circumstances.”

10. A reading of paragraph No. 5 of the verdict (supra) clearly underscores the fact that in case any claim is hit by the vices of delay and laches, thus ultimately affecting the apposite invested indefeasible right qua the army personnel, but relating only to payment or re-fixation of pay or pension, therebys, the said delayed claim, rather than becoming straightway rejected, thus, is required to be allowed, but with a fetter that the arrears of pension being restricted upto a period of three years prior to the date of filing of the writ petition.

11. In the said case in paragraph No. 6 thereof, the Apex Court



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arrears of pension covering a period of 16 years and that too with interest.

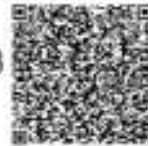
12. The said view also appears to have been accepted in a judgment bearing *Civil Appeal No. 274 of 2007 (Arising out of SLP (Civil) No. 881 of 2006) titled as Shiv Dass Vs. Union of India and Others, decided on 18.01.2007.* The relevant paragraphs whereof are extracted hereinafter.

9. *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.*

10. *In the peculiar circumstances, we remit the matter to the High Court to hear the writ petition on merits. If it is found that the claim for disability pension is sustainable in law, then it would mould the relief **but in no event grant any relief for a period exceeding three years from the date of presentation of the writ petition.** We make it clear that we have not expressed any opinion on the merits as to whether appellant's claim for disability pension is maintainable or not. If it is sans merit, the High Court naturally would dismiss the writ petition. The appeal is disposed of accordingly without any order as to costs.*

Submissions of the learned counsel for the respondent.

13. On the other hand, the learned counsel for the respondent submits that the afore said judgments are not applicable to the instant case, as the member of the defence combatant establishment was already in receipt of the disability pension and that the endowments of the apposite benefits hence through makings of rounding(s) off, thus would only result in a justifiable increase in pension.



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14. In support of his arguments, he placed reliance on a three Judge Bench judgment passed by the Hon'ble Apex Court, on 20.09.2016, in case titled as **Davinder Singh Vs. Union of India and Others**, to which **Civil Appeal No. 9946 of 2016** is assigned. The relevant paragraphs of the said verdict are extracted hereinafter.

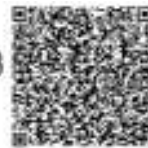
“This appeal arises out of an Order dated 04.11.2011 passed by the Armed Forces Tribunal, Regional Bench, Chandigarh whereby O.A. No. 1289 of 2011 has been allowed in part and the appellant held entitled to the benefit of rounding off w.e.f. 01.01.1996. The Tribunal has however directed that the appellant shall be entitled to claim arrears subject to adjustment of the amount already paid to him only for a period of three years prior to the filing of the application moved by him before the Tribunal. It is that part of the order only which has been assailed before us in the present appeal.

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We accordingly allow this appeal and modify the order passed by the Tribunal to the extent that the appellant shall also on the analogy of the order passed by the Tribunal in Jai Singh's case supra be entitled to arrears payable to him by reason of rounding off of disability pension w.e.f. 01.01.1996 with interest @ 8% p.a. subject to adjustment of any amount already received by him for the said period. We are told by learned counsel for the respondent that the appellant has already received the benefit of arrears w.e.f. 01.01.1996 to 01.07.2009. If that be so, arrears will be confined only to the period that has not already been paid for. No costs.”

Inferences of this Court.

15. Though, visibly in case any delayed motion is raised by the aggrieved wherebys a challenge is caused to a declining order passed



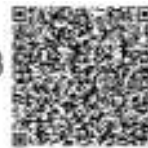
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by the concerned, thereupon, the raising of a delayed motion but makes the same to be hit by the vice of delay and laches. However, the exception to the above principle, as settled through verdicts recorded by the Apex Court in case titled as *Union of India and Others Vs. Tarsem Singh (supra)* and in case titled as *Shiv Dass Vs. Union of India and Others (supra)*, is that, yet the defence personnel concerned, becoming entitled to re-fixation of pension vis-a-vis him, but with a further rider that the said is to be restricted only for a period of three years from the date of filing of the petition.

16. Be that as it may, a further exception even to the supra extracted paragraphs, as occur in the verdicts (supra) rendered by the Apex Court, is to the extent, that in case an indefeasible right becomes vested in the aggrieved, thereupon, the said vestment of an indefeasible right in the aggrieved, thus would fuel a recurring or a continuous cause of action vis-a-vis the aggrieved. Resultantly, thereby the delayed raising of a claim, thus would not attract theretos rather the bar of limitation nor thereby any purported vice of delays and laches would effectively function as a stumbling block against the granting of the fullest relief to the aggrieved.

17. For determining whether the cause of action which accrued vis-a-vis the present respondent thus was a recurring or a continuous cause of action besides for determining whether at the very inception, an indefeasible right vested in the present respondent, thereby, it is necessary to bear in mind the factum that, the relevant cause of action accrued to the present respondent, upon, the making of a verdict by the



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reported in **2014 SCC Online 1761**, decided on 10.12.2014, wherein, a declaration is made to the extent, that the benefit of rounding off, rather has to become endowed to the concerned. The relevant paragraphs as occur in the verdict (supra) are extracted hereinafter.

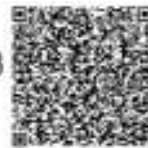
4. By the present set of appeals the appellant(s) raise the question, whether or not, an individual, who has retired on attaining the age of superannuation or on completion of his tenure of engagement, if found to be suffering from some disability which is attributable to or aggravated by the military service, is entitled to be granted the benefit of rounding-off of disability pension. The appellant(s) herein would contend that, on the basis of Circular No. 1(2)/97/D(Pen-C) issued by the Ministry of Defence, Government of India, dated 31.01.2001, the aforesaid benefit is made available only to an Armed Forces Personnel who is invalidated out of service, and not to any other category of Armed Forces Personnel mentioned hereinabove.

5. We have heard learned counsel for the parties to the lis.

6. We do not see any error in the impugned judgment(s) and order(s) and therefore all the appeals which pertain to the concept of rounding-off of the disability pension are dismissed, with no order as to costs.

7. The dismissal of these matters will be taken note of by the High Courts as well as by the Tribunals in granting appropriate relief to the pensioners before them, if any, who are getting or are entitled to the disability pension.

18. Therefore, since the said indefeasible right became vested in the present respondent, upon, the makings of the verdict by the Apex Court, in case titled as '**Union of India Vs. Ram Avtar (supra)**'. In sequel, the declaration of law made in the verdict (supra), whereunders



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an effective right becomes endowed vis-a-vis the concerned, thus is to be revered. Resultantly, the endowment of the said right, vis-a-vis the concerned, thus becomes the cornerstone for thus therefrom determining, whether in prompt sequel thereto rather the present respondent raised a claim, and, in tandem therewith.

19. Since the verdict (supra) became pronounced on 10.12.2014 and the respondent raised in terms of the said verdict, thus a motion before the Tribunal concerned, in the year 2018. Though, the respondent in terms of the verdict (supra) did not raise a prompt motion in pursuance theretos, but raised a motion only after a delay of about 3½ years taking place. However, when the endowments made thereunders vis-a-vis the present respondent, but naturally conferred an indefeasible right qua him. Therefore, when the indefeasible right invested in the present respondent rather through verdict (supra) but concomitantly also conferred a continuous and recurring cause of action qua the present respondent. Resultantly also thereunders an indefeasible right became vested in the present respondent for his seeking qua the apposite roundings off being made in his favour.

20. Even otherwise since the declaration of law made in verdict (supra) makes the said declaration to be an expostulation of law in rem, thereby, the expostulation of law in rem, as made in verdict (supra) also makes the thereunders conferred benefits vis-a-vis the defence personnel concerned, to, *prima facie*, entitle the concerned, thus to at any time, seek the granting of the endowments as made thereunders, and that too, in the fullest complement, as spelt

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Final Order of this Court.

21. In aftermath, this Court finds no merit in the writ petition and with the observations aforesaid, the same is dismissed. The impugned order is maintained and affirmed.
22. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

13.12.2024

ANJAL

(SUDEEPTI SHARMA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No