

2024:PHHC:141063-DB



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-18289-2024

Date of Decision on: 24.10.2024

UNION OF INDIA AND OTHERS

.....Petitioners

Versus

EX RECT/NA MOHINDER SINGH AND ANOTHERRespondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE ALOK JAIN**

Argued by: Ms. Sonia Sharma, Senior Panel Counsel
for the petitioners/UOI.

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

SURESHWAR THAKUR, J. (ORAL)

1. Through the instant writ petition, the petitioner herein-Union of India prays for the setting aside of the order dated 09.03.2016 (Annexure P-1) as passed by the learned Armed Forces Tribunal concerned, whereby the petitioners herein were directed to process the case for grant of disability pension to respondent No. 1.

Factual Background.

2. Respondent No. 1 was enrolled in the Army on 28.05.1984 and was invalided out from service w.e.f. 21.12.1985. The invalid Medical Board of respondent No. 1 was held on 18.10.1985 in which his disability "***Cogestive Cardio Mypothy (425)***" was considered as '***Attributable to but not aggravated by Military Service***' and was assessed @ 40 % for two years. The claim for disability pension to

2024:PHHC:141063-DB



respondent No.1 was forwarded to PCDA Allahabad vide letter dated 20.01.1986, however, the same was rejected vide letter dated 20.03.1986. Thereafter, respondent No. 1 filed an Original Application No. 661 of 2015 before the Tribunal concerned, for grant of disability pension @ 40 % w.e.f. 22.12.1985 to 31.12.1995 and thereafter rounding off the same to 50 % w.e.f. 01.01.1996. The said application became allowed vide order dated 09.03.2016 (Annexure P-1). The operative part of the said order is extracted hereinafter.

“ The learned counsel for the respondents has no objection for the aforesaid request, therefore, against the aforesaid facets the matter is disposed of with the direction to the respondents to process the case of the petitioner for the grant of disability pension in the light of the letter aforesaid if he found entitled.”

3. In view of the aforesaid orders, the petitioners issued PPO No. D/0175/2016 by granting disability element of disability pension to respondent No. 1 w.e.f. 21.12.1985 by restricting the arrears of service element w.e.f. 03.07.2012 i.e. three years preceding to the date of filing of OA.

4. Thereafter, respondent No. 1 filed an MA (E) No. 1540 of 2018 in OA No. 661 of 2015 before the Ld. Armed Forces Tribunal concerned for execution of the order dated 09.03.2016 (Annexure P-1), as passed by the Tribunal concerned in O.A. No. 661 of 2015. Subsequently, the MA (E) came up for hearing and the ld. Tribunal directed the petitioners as to why the arrears for grant of disability pension to respondent No. 1 have been restricted.

2024:PHHC:141063-DB



5. It is the above posed query by the learned Tribunal during the pendency of the execution petition, which has led the petitioners herein to file the instant writ petition.

Submissions of the learned counsel for the petitioners.

6. 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.

7. 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*

2024:PHHC:141063-DB



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 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.”*

8. 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.

9. In the said case in paragraph No. 6 thereof, the Apex Court declared that the High Court was not justified to direct the release of

2024:PHHC:141063-DB



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

10. 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.*

2024:PHHC:141063-DB



Submissions of the learned counsel for the respondent.

11. The learned counsel for respondent No. 1 submits that, in the instant case, despite their existing a vested right qua respondent No. 1, thus, under the then existing rules, wherebys he was entitled to receive a particular statutory benefit, yet the same became illegally held back or became rejected by the petitioners. In such cases, the Hon'ble Supreme Court has held that arrears cannot be restricted and the authorities cannot be allowed to take the benefit of their own wrong. In support of his arguments, the learned counsel for the respondent places reliance upon a judgment rendered by the Hon'ble Apex Court in case titled as '**Balbir Singh Vs. Union of India and Others**' to which Civil Appeal No. 3086 of 2012 became assigned, decided on 08.04.2016. The relevant paragraph of the said judgment is extracted hereinafter.

“The Tribunal was therefore justified in restoring the service element of the pension in favour of the appellant. The question however is whether the arrears could have been restricted to three years only. The Tribunal in our view need not have done so. That is because the appellant had a right to receive service element of the pension in light of Regulation 186 (supra), which right was valuable and ought to have been protected. The fact that the appellant had approached the Tribunal for redress belatedly was in the peculiar circumstances of the case, no reason for the Tribunal to reduce the payment of arrears to three years only.”

12. Further, the learned counsel for respondent No. 1 refers to the recommendations made by the Invaliding Medical Board vis-a-vis

2024:PHHC:141063-DB



respondent No. 1, held on 18.10.1985, recommendations whereof are extracted hereinafter.

“ The disease is post infective in origin which individual contracted while in service and declared the same as attributable to military service.”

13. Thereafter, the claim for grant of disability pension of respondent No. 1 was forwarded to PCDA (P) Allahabad, who however, altered the findings of the release medical board, without physically examining respondent No. 1 and accordingly vide letter dated 20.03.1986, rather rejected the claim for grant of disability pension to respondent No. 1. The said alteration made by the MAP PCDA (P) is against the settled position of law as the opinion given by the medical board, who is an expert body has to be given weightage, than to the opinion rendered by the Pension sanctioning authority. Therefore, the instant writ petition requires dismissal.

Inferences of this Court.

14. Be that as it may, since at the very inception, an evidently completely untruthful communication became rendered to the respondent. In sequel, when he believed the truth of the said rendered mis-communication to him, and/or thus did not promptly raise a motion thereagainst. Nonetheless, when upon falsity of the said earlier made communication becoming unmasked by the respondent, through his obtaining information on 10.03.2015 under the RTI Act, whereby he discovered that as a matter of fact, the disability as became encumbered upon him, was a sequel of the medical board, declaring the said

2024:PHHC:141063-DB



15. Conspicuously the sequel therefroms but, is that, the earlier mis-communication or untruthful communication, when became subsequently unmasked, through the respondent receiving the said information, whereafters, he promptly availed his lawful remedies. Therefore, the judgments (supra) restricting the arrears of pension upto three years on account of the relevant delay emerging to the forefront, is not applicable to the facts at hand. The said judgments were only applicable when initially, thus evidently correct or truthful information was provided and despite the initially correct or truthful communication becoming purveyed to the defence personnel, yet the latter being indolent or his slumbering over his invested indefeasible rights, if any. However, when reiteratedly the initial information was ridden with complete falsity and when the said falsity became unmasked in the year 2015, whereafters, he promptly accessed the Tribunal concerned. Therebys, reiteratedly the ratio decidendi propounded in the judgments (supra), are not applicable to the facts at hand.

16. Moreover, it is also extremely alarming that though the opinion of the medical board, thus evidently falls within the domain of an expert opinion, wherebys, it may be impermissible to be reviewed. Moreover, when therebys an indefeasible right became vested in the respondent, to claim the fullest complement of the disability pension. However, again and that too enigmatically, the apposite expert opinion was discarded. Contrarily, the opinion of the Medical Advisor (Pension) was accepted, wherebys, he declared that the disability entailed upon

2024:PHHC:141063-DB



the present respondent was not attributable to military service. The acceptance of the opinion of the Medical Advisor (Pension) when he is not shown to be an expert, whereas, the expert opinion rather was the opinion of the medical board, which assessed the disability of the present respondent being attributable to military service, whereby, he became conferred with an indefeasible right to receive the fullest complement of the disability pension. Therefore, the petitioner, accepting an unacceptable review by the Medical Advisor (Pension), of the otherwise reverable opinion, as became formed by the medical board concerned. In consequence, the initially made declining order by the petitioners, is required to be interfered with.

17. Conspicuously the petitioners through, evidently practicing the vices of *Suggestio Falsi*, and *Suppressio Veri*, that too at the very inception, rather cannot subsequently encumber vis-a-vis the defence personnel, the ill factor of estoppel, as, thereby the subsequent emergence(s) of untruth of the earlier communication, rather would not only give premium to falsity, but would also ill bar the defence personnel.

18. Emphatically since thereby, there is an absolute incurrings of financial detriment to the respondent, despite his holding an indefeasible right to become the able recipient of disability pension, thus in terms of the relevant rules besides to the fullest complement. As such, the opinion of the medical board is required to revered, especially when no challenge thereto is made nor also when this Court in exercise

2024:PHHC:141063-DB



medical board, therefore, the instant petition is required to be dismissed.

Final Order of this Court.

19. 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.

20. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

24.10.2024
kavneet singh

(ALOK JAIN)
JUDGE

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