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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-5928-2022
Reserved on: 16.09.2024
Pronounced on: 30.09.2024

Jagdeep SinghPetitioner

Versus

Union of India and OthersRespondents

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

Argued by: Mr. Rajesh Sehgal, Advocate
for the petitioner.

Mr. Anil Chawla, Senior Panel Counsel
for the respondent – UOI with Major Partho Katyayan.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner herein prays for setting aside the relevant part of the order dated 30.01.2018 (Annexure P-1) as passed by the learned Armed Forces Tribunal concerned, wherebys, the arrears of disability pension have been restricted to three years from the date of filing of the Original Application, by the petitioner.

Factual Background

2. The applicant was enrolled in the Army on 29.12.2008 as Recruit. While undergoing basic military training, he sustained tongue bite injury. He was admitted to Military Hospital Kirkee where the applicant's disease was diagnosed as Seizure which was changed to

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Generalized Tonic Clonic Seizure. The petitioner was brought before a duly constituted Invalided Medical Board, where his disability was assessed at 20 % for life and was declared as neither attributable to nor aggravated by military service. The applicant was invalided from service w.e.f. 22.11.2009. Resultantly, the disability pension case of the petitioner was rejected on the ground that the disability was neither attributable nor aggravated by military service.

3. The petitioner preferred an appeal against the rejection of disability pension claim on 15.11.2010. Moreover, against the afore orders, the petitioner also filed O.A., before the Tribunal concerned, on 05.04.2011. However, during the pendency of the said O.A., his appeal became rejected on 30.12.2011 (Annexure P-8). Thereafter, the petitioner withdrew the O.A. (supra) but with liberty to file afresh challenging the dis-affirmative order passed in the appeal (supra).

4. Thereafter, the petitioner filed second appeal against the rejection order dated 30.12.2011 alongwith an application for condonation of delay. The said appeal became returned to the petitioner by the respondent by asking him to send the appeal as per format attached and also justifying the delay.

5. Subsequently, the petitioner filed the second O.A. No. 50 of 2015 before the Tribunal concerned. The said O.A. became allowed vide order dated 30.01.2018. The operative part of the order is extracted hereinafter.

“ On the basis of the above case law of the Hon'ble

Supreme Court and Regulations, we are of the opinion that the

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applicant is entitled to disability. The disability has been assessed by the IMB at 20 % for life which is rounded off to 50 % in view of the judgment of the Hon'ble Supreme Court in Civil Appeal No. 418 of 2012, titled Union of India and Ors. Vs. Ram Avtar, decided on 10th December, 2014. Since the applicant has approached this Court/Tribunal after a lapse of about 6 years of his discharge from service, therefore the arrears of disability pension are restricted to three years preceding the date of filing of the present OA i.e. 15.01.2015.”

6. Aggrieved from the afore part of the relevant order, whereby the arrears of disability pension have been restricted to three years from the date of filing the application, the petitioner has filed the instant writ petition.

Submissions of the learned counsel for the petitioner.

7. The learned counsel for the petitioner submits that, in the instant case, despite their existing a vested right qua the petitioner, thus under the then existing rules, whereby he was entitled to receive a particular statutory benefit, yet the same became illegally held back or became rejected by the respondents. In such cases, the Hon'ble Supreme Court has held that arrears cannot be restricted and the respondents cannot be allowed to take the benefit of their own wrong. In support of his arguments, the learned counsel for the petitioner 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.

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“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.”

Submissions of the learned counsel for the respondent.

8. The learned State counsel has placed reliance upon a judgment rendered by the Hon'ble Supreme Court in case titled as ***State of Uttar Pradesh and Others Vs. Arvind Kumar Srivastava and Others***, reported in ***2014 (3) Apex Court Judgments (SC) 598***. The relevant paragraphs whereof, are extracted hereinafter.

23. *The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:*

(1) *Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.*

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(2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

(3) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma & Ors. v. Union of India (supra). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.

9. The expostulations of law, as set forth in the above extracted paragraphs, is that, in case the relevant challenge is hit by the vices of delay and laches, thereupon, thus, the further inference therefroms, is that, the aggrieved thus acquiescing to the validity of the

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rejection order. Resultantly in the wake of the above, the espoused claim became amenable to become partly dismissed.

Inferences of this Court.

10. Before proceeding to decide the instant *lis*, it is necessary to refer 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, since the filing of the time barred petition, and it is also further necessary to determine, whether the case of the petitioner falls in any of the exceptions theretos, if any.

11. Initially, for rendering an answer to the above, 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

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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.”*

12. A reading of paragraph No. 5 of the verdict (supra) clearly underscores the fact that in case any delay or claim is hit by 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.

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

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14. 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.*

15. Be that as it may, since initially, a communication dated 08.07.2010 was made to the petitioner about his becoming encumbered with disability of 20 % for life and the same became declared to be neither attributable nor become aggravated by the service rendered by him in the Army. Moreover, when the said made communication is not being proven to be suffering from any falsity. However, yet the petitioner preferred an appeal against the said rejection order dated

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08.07.2010, rather on 15.11.2010, and, the said appeal became rejected on 30.12.2011.

16. Further, the petitioner filed second appeal against the said rejection order dated 30.12.2011, in the year 2014. The said second appeal was returned by the respondent to the petitioner with an objection to file the same in proper format alongwith the reasons justifying the delay in filing the same. The petitioner did not removed the said objections and instead filed O.A. No. 50 of 2015, before the Tribunal concerned, which became allowed vide order dated 30.01.2018. However, it was held by the Tribunal that *since the petitioner approached the Tribunal after a lapse of about six years, therefore, the arrears of disability pension were restricted to three years.*

17. For the reasons to be assigned hereinafter, this Court finds no infirmity with the impugned order passed by the Tribunal concerned.

18. Primarily, since the petitioner was required to be promptly raising a motion against the rejection order dated 30.12.2011 (first appeal), through his either filing an appeal thereagainst or filing an O.A., before the Tribunal concerned. However, he filed a second appeal thereagainst only in the year 2014, and, the papers of the said second appeal were returned to him by the respondent concerned, but with certain objections which evidently, did not became rectified by him. Moreover, he filed O.A. 50 of 2015 before the Tribunal concerned, in the year 2015. Therefore, when the O.A. was filed after almost about

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four years since the passing of the rejection order 30.12.2011, in the first appeal. Therefore, in view of the declaration of law, as made in verdicts (supra) that upon a truthful communication becoming made to any member of the defence personnel, yet his omitting to promptly raise a challenge thereagainst. In sequel, when it is also expounded in the verdicts (supra) that therebys any belated challenge becomes hit by the vices of gross delays and laches, but yet when it is further declared in verdicts (supra) that the arrears of pension are to be restricted to three years.

19. Resultantly, this Court finds no reason to interfere with the order passed by the learned Tribunal concerned, qua its restricting the arrears to three years preceding the date of filing of the O.A.

Final Order of this Court.

20. In aftermath, this Court finds no merit in the writ petition, and, with the above observations, the same is dismissed.

21. The impugned order, as passed by the learned Armed Forces Tribunal concerned, 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

(SUDEEPTI SHARMA)
JUDGE

30.09.2024
kavneet singh

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