

2024:PHHC:132105-DB



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

CWP-24556-2021

Reserved on: 16.09.2024

Pronounced on: 30.09.2024

Ex Sepoy Jagwinder Singh

.....Petitioner

Versus

Armed Forces Tribunal, Chandigarh and Others

.....Respondents

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

Argued by: Mr. Gautam Pathania, Advocate
for the petitioner.

Mr. Gaurav Pathak, Sr. Panel Counsel for UOI.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner herein prays for setting aside order dated 17.08.2012 (Annexure P-11) as passed by the learned Armed Forces Tribunal, Chandigarh, whereby the claim of the petitioner for grant of disability pension became declined.

2. Further, he also throws a challenge to the proceedings of the invalidating medical board (Annexure P-1) whereby the petitioner has been recommended to be invalidated out of Army service with 60 % disability. The said disability became declared to be neither attributable to nor becoming aggravated by rendition of military service.

2024:PHHC:132105-DB

**Factual Background**

3. The petitioner joined service in the Indian Army as a Sepoy on 08.08.1986 and was invalided from service w.e.f. 30.03.1993, on the recommendations/proceedings (Annexure P-1) of the invaliding Medical Board, on account of 60 % disability '*Alcoholic Psychosis*'.

4. The petitioner's claim for disability pension was rejected vide order dated 18.09.1995 (Annexure P-2), on the ground, that the disability was neither attributable to nor became aggravated by rendition of military service. The said decision was intimated to the petitioner vide letter dated 09.10.1995 (Annexure P-3). The petitioner preferred an appeal against the said rejection order. However, the said appeal became dismissed vide order dated 27.02.1998 (Annexure P-4). Thereafter, the petitioner filed second appeal and the same got dismissed vide order dated 14.09.2004 (Annexure P-9).

5. Feeling aggrieved, the petitioner filed O.A., before the Tribunal concerned raising an espousal for grant of disability pension. However, the said O.A. became dismissed vide order dated 17.08.2012. The operative part of the said order is extracted hereinafter.

“ A look at page 12, forming part of Annexure A-1, the Medical Board proceedings, being the opinion of the subject Specialist(s) shows, that the past history given out by the petitioner is of regular consumption of alcohol, 280 ML to 375 ML, five to six times a week, for previous 6 to 8 years, and he was found to be not in touch with reality. He exhibited unprovoked violence, irrelevant speech with marked loosening of association and thought block.

2024:PHHC:132105-DB



Obviously, from this it is clear that right from the time of enrollment, he had become alcoholic, and the disability is clearly the outcome of the alcoholic consumption. In that view of the matter, it has rightly been found to be not attributable to nor aggravated by Military service.”

6. Feeling dis-satisfied from the afore dis-affirmative order, the petitioner has filed the instant writ petition before this Court.

Inferences of this Court.

7. Initially, *prima facie*, the instant writ petition is completely time barred. Resultantly the instant time barred petition is hit by the vices of delay and laches and *prima facie* thus requires dismissal.

8. Moreover, though the counsel for the petitioner submits, that since in terms of the verdict rendered on 09.01.2020, by the Hon’ble Apex Court, in case titled as ***Balkrishna Ram Vs. Union of India and another***, to which Civil Appeal No. 131 of 2020 became assigned, the jurisdiction to challenge the orders rendered by the learned Armed Forces Tribunal became vested in the High Court. He further, submits that since in quick sequel to the making of the said verdict, thus the present petitioner did institute the instant writ petition. Therefore, he contends that since as of now, the writ petition is maintainable before this Court. Resultantly, the bar of the delay and laches does not work as a stumbling block against the present petitioner thus in his assailing the impugned decision recorded on 17.08.2012, by the learned Armed Forces Tribunal concerned.

9. Even the said argument *prima facie*, cannot be accepted by this Court, as unless in contemporaneity to the passing of the impugned

2024:PHHC:132105-DB



verdict in the year 2012, the Apex Court through passing any interim orders rather had permitted the High Courts to exercise jurisdiction upon verdicts pronounced by the learned Armed Forces Tribunal, thereupons, the remedy then available to the present petitioner, thus was to access the Hon'ble Apex Court rather for his therebys challenging the impugned order. However, he did not do so. Contrarily, subsequent to the passing of the decision by the Apex Court in case titled as ***Balkrishna Ram Vs. Union of India and another (supra)***, and, that too in the year 2020, thus after almost nine years elapsing since the passing of the impugned decision by the learned Armed Forces Tribunal, he has chosen to challenge the said decision made on 17.08.2012 by the learned Armed Forces Tribunal before this Court.

10. Importantly also when the decision rendered in case titled as ***Balkrishna Ram Vs. Union of India and another (supra)*** was made on 09.01.2020, over the SLP (*supra*) which became registered/filed before the Apex Court in the year 2017, whereas, the impugned order became passed in the year 2012. Resultantly theretos, thus a prompt challenge was required to be made, whereas, the challenge thereto became delayed upto 2021, whereupon an inference ensues, especially when no tangible explication, rather emanates from the petitioner qua his omission to promptly recourse his apt remedies against the impugned order, qua the writ petition being *prima facie*, stained with pervasive vices of delay and laches.

2024:PHHC:132105-DB



11. Be that as it may, even if assumingly the said bar is not applicable to the instant writ petition, yet since a detailed reason has been given by the medical board in the making of a conclusion, that the onsetting of the disease was not as a result of service conditions but was on account of excess consumption/intake of alcohol.

12. Resultantly, when the respondents concerned, in terms of the judgment rendered by the Hon'ble Apex Court, in case titled as ***Dharamvir Singh Vs. Union of India***, reported in ***(2013) 7 SCC 316***, wherein in the relevant paragraphs, the hereinafter extracted expostulations of law are borne, thus have discharged the evidence adducing onus, that the onsetting of the disease on to the defence personnel, but was not on account of rendition of military service by him.

29. A conjoint reading of various provisions, reproduced above, makes it clear that:

(i) Disability pension to be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable or aggravated by military service to be determined under "Entitlement Rules for Casualty Pensionary Awards, 1982" of Appendix-II (Regulation 173).

(ii) A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service. [Rule 5 r/w Rule 14(b)].

2024:PHHC:132105-DB



(iii) Onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally. (Rule 9).

(iv) If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service. [Rule 14(c)].

(v) If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service. [14(b)].

(vi) If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons. [14(b)]; and

(vii) It is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II of the "Guide to Medical (Military Pension), 2002 – "Entitlement : General Principles", including paragraph 7,8 and 9 as referred to above.

30. We, accordingly, answer both the questions in affirmative in favour of the appellant and against the respondents.

13. Therefore, the onsetting of the said disease is to be concluded to be neither attributable to nor the same becoming aggravated by rendition of military service. Contrarily besides reiteratedly the onsetting of the disease (supra) was only on account of the ill consumption or excess consumption of alcohol by the present

2024:PHHC:132105-DB



Final Order of this Court.

14. In aftermath, this Court finds no merit in the writ petition,
and with the observations aforesaid, the same is dismissed.
15. Disposed of alongwith all pending applications, if any.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

30.09.2024
kavneet singh

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