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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-26076-2022
Reserved on: 21.10.2024
Pronounced on: 13.11.2024

JC-183400-Y Ex Sub Maj (Hon Lt) Karan SinghPetitioner

Versus

Union of India and OthersRespondents

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

Argued by: Mr. Narender Singh Kamboj, Advocate
for the petitioner.

Mr. Rohit Verma, Advocate
for the respondent – UOI.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner herein prays for modification of the order dated 12.07.2021 (Annexure P-A), as passed in Original Application No.59 of 2021, by the learned Armed Forces Tribunal, Regional Bench Chandigarh, at Chandimandir (hereinafter for short called as the Tribunal) whereby the claim of the petitioner for grant of disability pension has been restricted to three years prior to the filing of the application before the Tribunal.

Factual Background

2. The applicant was enrolled in the Army service on 27.05.1968 and was discharged from service on 31.12.1997 on account

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of disability 'Primary Hypertension'. Before release from service, the petitioner was brought before the Release Medical Board and his disability "Primary Hypertension" was assessed as 20% for two years and was held as aggravated by military service.

3. Accordingly, the claim for grant of disability element of disability pension of the petitioner was forwarded to PCDA (P) Allahabad. However, the PCDA(P) Allahabad vide letter dated 20.08.1998 rejected the claim for grant of disability pension by overriding the opinion of the Release Medical Board concerned.

4. That the appeal filed by the petitioner was also rejected by the First Appellate Authority vide letter dated 18.07.2000 by declaring that the disability was neither attributable to nor aggravated by military service. Subsequently, the petitioner sent a representation dated 20.01.2020 for release of disability pension from the date of retirement with rounding of benefits as applicable. However, no decision on the said representation was made by the authorities concerned.

5. Aggrieved from the afore, the petitioner filed application before the learned Armed Forces Tribunal concerned, for grant of disability pension. The said O.A. was disposed of vide order dated 12.7.2021. The relevant part of the order is extracted hereinafter.

"In the circumstance, we dispose of this Original Application with a direction to the respondents to process applicant's claim for disability pension in terms of the aforesaid judgments and if required by invoking the provisions of Ministry of Defence letter No.16(a)2009-D(Pen/Pol) dated 10.11.2010 subject to an RSMB in case

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*the disability was not assessed as permanent and for life, and release it together with benefits as per the above pronouncements to the applicant, subject to verification, as expeditiously as possible but not later than four months from the date of receipt of certified copy of this order by learned Government counsel/OIC Legal Cell. While doing so respondents shall also keep in mind the judgment of the Hon'ble Supreme Court rendered in **Civil Appeal No.418 of 2012 Union of India and Others Vs. Ram Avtar** decided on 10.12.2010.*

In view of the delay, the arrears shall be restricted to three years prior to filing of the instant petition, i.e. 11.01.2021”.

6. Aggrieved from the afore part of the relevant order, whereby the arrears of disability pension have been restricted to three years prior to the date of filing the application, thereupon, 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

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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.”

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*

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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.

(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, the further inference therefroms,

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is that, the aggrieved thus acquiescing to the validity of the 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,*

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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.”*

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

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

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, the instant case does not fall in the category whereby, despite a truthful communication becoming made vis-a-vis the encumbrance of the relevant disability, qua the defence personnel, yet the petitioner herein delaying his making an espousal thereagainst.

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16. Contrarily to the considered mind of this Court, since an evident mis-communication or an untruthful communication became made to the petitioner about his dis-entitlement to disability pension, on the ground that the same was neither attributable to nor aggravated by military service. Therefore, when only in the event, qua upon an evident truthful communication becoming made to him, but yet there being a delay on the part of the present petitioner to make a motion thereagainst. Resultantly, therebys may be the appositely reared delayed motion may become construable to be hit by the vices of delay and laches. Moreover, therebys an order for, thus restricting the arrears for three years but would be construable to be an aptly recorded order.

17. Be that as it may, since at the very inception, an evidently completely untruthful communication became rendered to the petitioner. 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 petitioner, through his obtaining information in the year 2020, under the RTI Act, wherebys 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 disability being aggravated or being attributable to active military service.

18. Conspicuously the sequel therefroms but, is that, the earlier mis-communication or untruthful communication, when became

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subsequently unmasked, through the petitioner receiving the said information, whereafter, 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 2020, whereafter, he promptly accessed the Tribunal concerned. Therebys, reiteratedly the ratio decidendi propounded in the judgments (supra), are not applicable to the facts at hand.

19. 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 petitioner, 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 the present petitioner was neither attributable to nor aggravated by rendition of military service. The acceptance of the opinion of the

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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 petitioner in the percentum, wherebys, he became conferred with an indefeasible right to receive the fullest complement of the disability pension. Therefore, in the respondent concerned, accepting an unacceptable review by the Medical Advisor (Pension), of the otherwise revereable opinion, as became formed by the medical board concerned. In consequence, the initially made declining order by the respondents concerned, is required to be interfered with.

20. Conspicuously the respondent though, 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, therebys 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.

21. Emphatically since therebys, there is an absolute incurrings of financial detriment to the petitioner, 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

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of its powers of judicial review, can overcome the opinion of the expert medical board, therefore, the instant petition is required to be allowed.

Final Order of this Court.

22. For all the reasons aforesaid, this Court finds merit in the writ petition and the same is allowed. The relevant part of the impugned order qua restricting the arrears of pension upto three years since the filing of the petition, is quashed and set aside.

23. The petitioner is declared to become entitled to the fullest complement of disability pension from the date whereons the same accrued to him, but in terms of the opinion of the medical board, alongwith with interest @ 7% per annum.

24. 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

13.11.2024
kavneet singh

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