

2024:PHHC:168120-DB



IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH.

CWP-29977-2024

Date of Decision : 12.12.2024

No. 1555769W, Ex. Sapper Gurbax Singh

.....Petitioner

Versus

Union of India and Others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR  
HON'BLE MS. JUSTICE KIRTI SINGH**

Argued by: Mr. Jagjit Singh, Advocate  
for the petitioner.

Ms. Bhavana Datta, Advocate  
for the respondent(s)/UOI.

\*\*\*\*

**SURESHWAR THAKUR, J.**

1. Through the instant writ petition, the petitioner herein prays for setting aside the relevant part of the order dated 28.11.2019 (Annexure P-2), as passed by the learned Armed Forces Tribunal concerned, whereby the arrears of service pension have been restricted to three years preceding the date of passing of the impugned order.

**Factual Background**

2. The petitioner was enrolled in the Army on 08.01.1981 and was discharged from service on 19.07.1993 post rendering 12 years, six months and 11 days of service, being an *undesirable soldier*. The petitioner was not granted any service pension for his service rendered in the Army.

2024:PHHC:168120-DB



3. Aggrieved from the afore order of discharge, the petitioner filed thereagainst CWP No. 17381 of 1994 before this Court. The said writ petition was transferred for adjudication before the learned Armed Forces Tribunal, Chandigarh vide TA No. 04 of 2019. The said O.A. was disposed of vide order dated 28.11.2019. The relevant part of the said order is extracted hereinafter.

*“9. In the result, this CWP/TA is allowed and the order of discharge dated 19.07.1993 (Annexure P-1) passed against the applicant is hereby set aside. Since the applicant has already crossed the age of superannuation, interest of justice will be sufficiently served if we direct that the applicant shall be treated to have been in service till the date he would have completed qualifying service i.e. 07.01.1996 for grant of service pension. No back wages shall, however, be admissible to him on the principles of 'no work no pay'. Benefit of continuity of service for all other purpose shall, however, be granted to the applicant including service pension.....”*

4. Aggrieved from the afore part of the relevant order, whereby the arrears of service pension have been restricted to three years preceding the date of passing of the order (supra), thereupon, the petitioner has filed the instant writ petition.

**Submissions of the learned counsel for the petitioner.**

5. 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, wherebys, 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

2024:PHHC:168120-DB



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.

*“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.**

6. At the outset, the learned counsel for the respondents- Union of India refers to the rendition(s) of various judgments by the Hon'ble Apex Court, whereby, 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 has rightly restricted the grant of arrears to the respondent for three years preceding the date of passing of the impugned order.

**Inferences of this Court.**

7. Initially, a reference is required to be made to paragraphs

2024:PHHC:168120-DB



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 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*

2024:PHHC:168120-DB



*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, thereby, 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 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.*

2024:PHHC:168120-DB



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.*

11. Be that as it may, the instant case does not fall in the category whereby, the petitioner herein delaying his making an espousal against the order of discharge (supra). Contrarily, he raised a prompt challenge thereagainst, inasmuch as, the petitioner was discharged from Army Service being an undesirable soldier vide order dated 19.07.1993 and he filed a civil writ petition before this Court in the year 1994. Moreover, the said CWP became decided by the Tribunal in the year 2019 whereby, the Tribunal set aside the order of discharge qua the petitioner, as made by the Army Authorities. Further, the Tribunal held that the petitioner was entitled for benefit of continuity of service for all the purposes including service pension but with a fetter that he would not be entitled for any back wages on the principle of 'no work no pay'.

12. Consequently, when the petitioner was entitled to service pension from the date when he would have completed the requisite qualifying period of service to earn service pension, thereby but naturally he became conferred with an indefeasible right. Therefore, when the said indefeasible right invested in the present petitioner rather

2024:PHHC:168120-DB



through the impugned order (supra) but concomitantly also conferred a continuous and recurring cause of action qua the present petitioner, therebys, the Tribunal ought not have restricted the grant of arrears of service pension to the petitioner, for three years preceding the date of passing of the impugned order.

**Final Order of this Court.**

13. 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 service pension upto three years since the passing of the impugned order, is quashed and set aside.

14. The petitioner is declared to become entitled to the fullest complement of service pension from the date when he completed the requisite qualifying period of service to earn service pension, alongwith with interest @ 7% per annum.

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

**(SURESHWAR THAKUR)**  
**JUDGE**

**12.12.2024**  
kavneet singh

**(KIRTI SINGH)**  
**JUDGE**

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