



2024:DHC:9538-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 10.12.2024

(35)+ W.P.(C) 16192/2023
EX SWR ROHTASH SINGH

.....Petitioner

Through: Mr.Rai Kumar & Mr.Devendra
Kumar, Advs.

versus

UNION OF INDIA AND ORS

.....Respondents

Through: Mr.Syed Abdul Haseeb, CGSC
with Mr.Hilal Haider, GP along
with Major Anish Muralidhar,
Army.

(36)+ W.P.(C) 1329/2024
EX RECT BHUW ANESHW AR SAH

.....Petitioner

Through: Mr.Rai Kumar & Mr.Devendra
Kumar, Advs.

versus

UNION OF INDIA AND ORS

.....Respondents

Through: Mr.Tarveen Singh Nanda, GP
along with Major Anish
Muralidhar, Army

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J. (Oral)

1. These petitions have been filed challenging the orders dated 16.10.2023, passed by the learned Armed Forces Tribunal, Principal Bench, New Delhi, in OA No. 3224/2023 (titled *Ex Swr Rohtash Singh v. Union of India & Ors.*) and OA No.3123/2023 (titled *Ex*



Rect Bhuvaneshwar Sah v. Union of India & Ors.), dismissing the Original Applications filed by the petitioners herein on the ground of delay in filing the Original Applications.

2. The learned Tribunal, in its Impugned Orders, has observed that as the petitioners have slept over their claims for 37 years (in W.P.(C) 16192/2023) and 32 years (in W.P.(C) 1329/2024), and in accordance with Regulation 595 of the Pension Regulation for the Army revised edition, 1987 (in short, Army Regulation), the entire records had been destroyed by the respondents and no documents or other material to adjudicate the case is available with the respondents, therefore, the petitioners have been unable to make out a sufficient cause for condoning the delay.

3. The learned counsel for the petitioners, placing reliance on the Judgment dated 06.08.2024 of the Supreme Court in Civil Appeal No. 1320-1321/2019, titled ***Ex. CPL. Ranganathan Nair vs. Union of India & Ors.***, submits that in the matters of claim for pension, the claim cannot be denied only on the ground of delay and laches, or limitation; at best, it can be curtailed for a period of only three years from the date of filing the Original Application.

4. On the other hand, the learned counsel for the respondents reiterates that the entire service record of the petitioners has been destroyed in terms of Regulation 595 of the Army Regulation and, there would be no material before the learned Tribunal for adjudicating the petition and the claims of the petitioners. He further submits that, even otherwise, the petitioners would not be entitled to



the grant of invalid pension, having not served the Indian Army for the requisite period. He submits that there are other defences also open to the respondents against the claims of the petitioners.

5. We have considered the submissions made by the learned counsels for the parties.

6. In the present case, the learned Tribunal has not adjudicated on the claims of the petitioners on merits. Therefore, we do not wish to enter into this domain.

7. The learned Tribunal, as noted hereinabove, has dismissed the Original Applications filed by the petitioners only on the ground of their being a delay, which has not been explained by a sufficient cause by the petitioners. In **Ex. CPL. Ranganathan Nair** (supra), the Supreme Court, dealing with an appeal arising out of almost similar facts, held as under:

“3. Learned counsel appearing for the appellant relied upon various orders passed by this Court which take a view that as far as denial of pension is concerned, it is a continuing cause of action. In fact, she pointed out a case decided by this Court wherein on this ground, the delay of more than 38 years was condoned.

4. In view of the order referred above, the Tribunal ought to have condoned the delay and heard the original application on merits. Accordingly, by setting aside the impugned orders, we condone the delay in filing the original application no.186 of 2017. The Tribunal will hear the original application on merits. If the appellant is entitled to pension, the Tribunal can always mould the relief by directing payment of arrears of pension for a



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period of only three years prior to date of the filing of the original application.”

8. In view of the above judgment, we are of the view that the Impugned Orders cannot be sustained. The learned Tribunal, instead of dismissing the Original Applications filed by the petitioners, in case the petitioners are to succeed in their claims, could have confined the relief to the petitioners for a period of three years prior to the date of their filing the Original Applications.

9. Accordingly, the petitions are allowed. The Orders dated 16.10.2023 passed by the learned Tribunal in OA No.3224/2023 and OA No.3123/2023 are set aside. The said Original Applications are restored to their original numbers before the learned Tribunal.

10. However, we make it clear that we should not be understood to be saying that the petitioners are entitled to the relief as claimed. They will still have to make out their case before the learned Tribunal for the same.

11. The petitions are disposed of in the above terms.

NAVIN CHAWLA, J

SHALINDER KAUR, J

DECEMBER 10, 2024/rv/VS

Click here to check corrigendum, if any