



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: February 02, 2024

+ W.P.(C) 11036/2023

(3) EX JWO KRUSHNA CHANDRA MAHAPATRA..... Petitioner

Through: Dr. D. K. Sharma , Mr. O.S. Punia
and Mr. Ashish, Advocates

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Anshuman, SPC with Mr.
Jitendra Kr. Tripathi, Advocate

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

V. KAMESWAR RAO, J. (ORAL)

CM APPL. 42803/2023 & CM APPL. 42804/2023

Exemption allowed subject to all just exceptions.

Applications are disposed of.

W.P.(C) 11036/2023

1. The challenge in this petition is to an order dated May 31, 2023 passed by the Armed Forces Tribunal in OA No. 186/2022, whereby the Tribunal has rejected the OA filed by the petitioner herein, on the ground of delay by holding, in paragraphs 15 and 16, as under:-

“15. Noting that the applicant is approximately 63 years old at present, it is highly improbable for the medical experts to assess the accurate percentage of the disability which could be held attributed to or aggravated by the Air Force Service and an accurate medical opinion is not possible in this case, we find it relevant to observe that the beneficial provisions of the statutes or legislations which have been brought in for the benefit and welfare of armed forces cannot be used as a tool



to propagate unnecessary litigation after such unreasonable delay, without any reasonable and justifiable explanation to that effect and just because a beneficial provision exists in a statute, it cannot be taken refuge of by the applicant disregarding his own responsibility and duty behind the veil of such beneficial provision and therefore the Tribunals should itself from interfering in such cases.

16. In view of the aforesaid analysis, we are of the considered opinion that the relief asked for by the applicant is unsustainable on the grounds of unreasonable delay, and consequently, the O.A. 186/2022 is dismissed.”

2. The submission of the learned counsel for the petitioner is that the Tribunal could not have rejected the OA on the ground of delay as pension is a continuous cause of action and moreover, in view of the judgment in the case of ***Union of India & Ors. vs. Tarsem Singh in Civil Appeal No.5151-5152 /2008***, wherein, the Supreme Court in paragraph no.5, has held as under; the OA was maintainable.

“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/imitation 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.”

3. On the other hand, learned counsel for the respondents tried to justify the order of the Tribunal by stating that the claim of the petitioner was rejected by the respondents in the year 2000 and the OA having been filed in the year 2023 was hit by delay and laches.
4. We are in agreement with the submissions made by the counsel for the petitioner for the reason that the Tribunal while allowing M.A. 265/2022 had condoned the delay in filing the OA. If the delay in filing the OA was condoned, the Tribunal should have actually considered the claim of the petitioner for grant of the disability pension on merits and decided the same in accordance with law.
5. Having not done that, we set aside the order passed by the Tribunal and remand the matter back to the Tribunal to consider the claim of the petitioner for disability pension in accordance with law. For this purpose, we list the OA 186/2022 before the Tribunal on March 4, 2024.
6. The petition is disposed of.

V. KAMESWAR RAO, J

SAURABH BANERJEE, J

FEBRUARY 2, 2024/rr..