



Shakuntala

IN THE HIGH COURT OF BOMBAY AT GOA

CONTEMPT PETITION NO. 16 OF 2024

WITH

WRIT PETITION NO.557 OF 2024

CONTEMPT PETITION NO. 16 OF 2024

IN

WRIT PETITION NO.557 OF 2024

Major Piyush Shandilya(ret'd),

Age 65 years, S/o Late Mr. T.N. Shandilya,

R/o: House No: 1096/2,

Ward-Adan, Village:-Marcaim,

PO: MARDOL, GOA-403404

... PETITIONER

VERSUS

1. Mr. Giridhar Armane

The Defense Secretary,

Representing – Union of India

101-a, South Block, New Delhi-110011

2. Gen Manoj Pande

Chief of the Army Staff

Integrated Head Quarters

of Ministry of Defense (Army)

South Block, New Delhi – 110011

3. General Arindam Chatterjee

The Director General Medical Services (Army)

Integrated HQ of MOD, “L” Block,
New Delhi – 110011

4. Col Rajvinder Kaur
Administrative Commandant
Military Hospital, Near Signal Training
Center Bambolim - Goa

... RESPONDENTS

**WITH
WRIT PETITION NO.557 OF 2024**

Union of India Through
Secretary Ministry of Defence (Army)
Having office at Room No 155, E,
Block New Delhi

.....PETITIONER.

VERSUS

Maj. Piyush Shandillya, (Retd.)
Age : 65 Yrs, Son of Late Mr. T. N. Shandillya,
Residing at : House 1096/2
Ward Adan Village Marcaim Post
Magdol, Goa, 403404

.....RESPONDENT

Mr Veerendra Mohan (Through V.C.), Mr. Pranav Dessai and Mr. Sahil Sardesai (Through V.C.) Advocates for Petitioner in CP No.16/2024 and Respondent in Writ Petition No.557/2024.

Mr Somnath Karpe, standing counsel for Central Government and Mr Anand Shirodkar, Advocate for Respondents in CP No.16/2024 and for Petitioner in Writ Petition No.557/2024.

**CORAM:- BHARATI DANGRE &
NIVEDITA P. MEHTA, JJ.**

DATED :- 23rd April, 2025

ORAL ORDER (Per Bharati Dangre, J.)

1. The present petition is filed being aggrieved by the order passed by the Armed Forces Tribunal, Regional Bench, Mumbai on 22/12/2022, deciding the original application filed by Major Piyush Shandillya, the petition praying for his entitlement to disability pension and making a grievance that at the time when he took voluntary retirement on 07/05/1995, he had already sustained the injury while in service and this had prompted the authorities to put him in SHAPE-2 category.

After almost 22 years, that is to be precise on 30/06/2017, he preferred an application claiming disability pension attributing the disability to the injury sustained by him while in service.

2. On the original application being listed before the Tribunal, on 12/04/2022, the Tribunal considered multiple reliefs in the application and taking note of the fact that on rendering 15 years, 10 months and 28 days of service, he opted for voluntary retirement on 07/05/1995 but claimed that he had sustained a severe right knee injury in long march while he was posted in

Arunachal Pradesh, it was noted that he received treatment from the Air Force Hospital and was even hospitalised a number of times. Considering his medical history he was downgraded to S1H1A23P1E1, with a restriction on the duties to be discharged by him, and he was found fit for sedentary duties, but not fit for duties in combat, hilly terrain and extreme cold climate involving sustained climbing to prevent worsening of the disability. However, he came to be discharged from service at his own request after being categorised as SHAPE-1.

3. Since petitioner claimed before the Tribunal that after his retirement, he was treated consistently and referred to Goa Medical College and he claimed that he did not receive proper treatment for his injury, which had a wide impact and as a result, the Tribunal deemed it appropriate to refer him for medical examination, once again, to assess his present disability.

4. In the wake of the aforesaid, the Re-survey Medical Board ("RSMB" for short) was directed to examine the applicant and the Tribunal directed that his entitlement to disability element will depend upon the outcome of the report of the Board.

Accordingly, the applicant underwent the medical examination before the Re-assessment Review Medical Board and the Board assessed his disability to be 30%. It also made a specific reference to the disability in the form of “Patellar Tendinitis”, which was upgraded to SHAPE 1 in 1994 and it also made reference to the IDK (Right Knee) with the lateral and meniscus tear with ACL sprain, which was evident from the MRI Report.

The petitioner was declared as with 30% disability and the duration of the assessment was stated to be lifelong.

5. Upon the report of disability being placed before the Tribunal on 22/12/2022, the Tribunal took note of the same by specifically stating that on examination, the applicant is declared to be disabled at the rate of 30 % for life. However, it records that no pension pay order was issued to him.

Upon this observation, the counsel for the respondents, made a statement before the Tribunal that steps are being taken up for issuance of pension payment order.

6. Since there was no contest on the eligibility of the petitioner for availing the disability pension, on his disability of

30% being recorded in the recent report of the RSMB, the Tribunal disposed of the original application with a direction to the respondents to issue pension payment order for disability pension for life from three years prior to filing of the original application, with the benefit of broad-banding etc., to be paid within a period of 4 months from the date of order. It also ordered that default will invite interest @ 8% per annum.

7. It is this order, which is assailed before us by the Union of India through Secretary, Ministry of Defense and we have extensively heard Mr. Karpe in support of the petitioner.

Though Mr. Dessai representing the respondent in the petition has raised an objection about the maintainability of the petition, in the wake of the decision of Apex Court in ***Union of India V/s Parashotam Dass, 2023 SCC OnLine SC 314***, we are not inclined to entertain the objection as in no uncertain words, the Apex Court has categorically held that the power of judicial review to be exercised by the High Court under Article 226 of the Constitution of India cannot be ousted in the wake of the sub-clause (4) of Article 227 of the Constitution of India, posing an embargo in respect of the High Court exercising power of

superintendence over any Court or Tribunal, constituted by or under any law relating to Armed Forces. Specifically dealing with this very submission, and an argument advanced that under Article 226, the embargo would be imposed in respect of all cases relating to Court of inquiry, Court Martial and discipline as well as related to pension and other retirement benefits, promotion, etc., but the argument was turned down, by holding that in no contingency the power of judicial review to be exercised under Article 226 of the Constitution of India can be ousted.

8. Upon turning down the aforesaid objection raised by the learned counsel, Mr. Desai, we have heard Mr. Karpe for petitioner, who has invited our attention to various aspects of the matter including the relevant provisions of the Pension Regulations for the Army, 1961, and his specific contention that it is only in certain contingencies stipulated therein, an officer is entitled for disability pension and he has also raised a serious objection about the delay on the part of the respondent in approaching the Tribunal i.e. almost after a lapse of two decades, when for the first time in the month of June, 2017, a representation was made claiming the disability pension and the Tribunal was approached in the year

2018 by filing OA/32/2018.

9. Mr. Karpe has also invited our attention to the decisions of the Apex Court, specifically dealing with similar situation, when the officer applied for voluntary retirement and claimed disability pension and in one case, when he was dismissed and a distinction was sought to be drawn between dismissal and voluntary retirement, upon which the Apex Court pronounced in great detail.

10. When we turned our attention to the impugned order, we have noted that the Tribunal did not had an opportunity to look into this facet of the matter and to consider the arguments advanced on behalf of the Union of India, since on 22/12/2022, when the report from the RSMB was placed before it, which had assessed his disability to the extent of 30% for life, it recorded that no pension payment order has been issued, the learned counsel representing Union of India made a categorical statement that steps are being taken up for issuance of pension payment order. Resultantly, the Tribunal found it unnecessary to get into the merits of the matter since no contest was posed to the claim of the petitioner and rather a categorical statement was made that the pension payment order shall be issued immediately. The Tribunal, therefore, directed

compliance to be ensured within a period of 4 months or else, also directed interest to accrue upon the delayed payment.

11. Upon the said order being passed by the Tribunal, the Union of India filed an application under Section 31 of the Armed Forces Tribunal Act, 2007, seeking leave to appeal, but noting that no point of law of general public importance is involved, the leave was refused.

12. The applicant thereafter filed an application for execution of the order passed by the Tribunal but since there was no compliance, he was constrained to approach this Court by filing Writ Petition No.1380/2023(F) and on 12/12/2023, the Division Bench of this Court by expressing its anguish over non adherence to the directions issued by the Tribunal and specifically by recording that, there is no challenge to the order passed by the Tribunal, directed the respondents to comply with the Tribunal's order in its entirety, including issuance of a pension payment order within two weeks from the date of the passing of the order.

13. Instead of complying with the said order, the Union of India chose to prefer a Writ Petition Lodging No.27316/2023

before the Principal Seat of the High Court of Judicature at Bombay and on 04/10/2023, the Division Bench issued notice for final disposal, however, found merit in the submissions advanced on behalf of the petitioner and directed that these shall be stayed to the effect and operation of the order of the Tribunal till the next date.

14. On 05/07/2024, when the writ petition filed by Union of India came before the Principal Seat, a preliminary objection was raised on behalf of the respondent about the maintainability of the writ petition on the basis of territorial jurisdiction. Accepting the said objection, it was ordered that the proceedings of the petition be transferred to the Goa Bench to be tagged along with the contempt petition, which was already filed alleging disobedience of the order dated 12/09/2023 in which notices were already issued.

15. This is how the writ petition was thereafter renumbered as Writ Petition No. 557/2024 and placed before us along with the Contempt Petition.

At the outset, we must note that the contempt petition was filed, alleging disobedience of the order dated 12/09/2023 wherein the Division Bench of this Court clearly noted that in absence of

any challenge been raised to an order passed by the Tribunal, and a statement being made that the pay order shall be issued, it was not open for the respondents to sway away from its statement and deny the benefits to the petitioner. However, subsequently, we find that the Union of India has raised a challenge to the order passed by the Tribunal dated and on 05/07/2024, the order has been stayed.

16. On hearing rival contentions advanced before us today, since we are of the opinion that the Tribunal, was persuaded to issue the direction, since the counsel for the Union of India, did not contest that the petitioner's disability was declared at the rate of 30 % for life, on he being examined by the RSMB in the wake of the interim order passed by the Tribunal. However, today it is submitted by Mr. Karpe that the Union of India had raised a contest by filing a detailed reply opposing the stand raised in the original application and therefore, merely because a statement was made on behalf of the counsel, the Union of India should not be denied an opportunity of raising a contest to the pleadings in the original application and we find substance in the said submission.

We are, therefore, of the opinion that by affording an opportunity to the Union of India to raise a contest to the relief

sought by Mr. Shandillya in the original application, including extending the benefits of the disability pension payment along with the ancillary reliefs, we deem it appropriate to remand the proceedings in OA No. 32/2018 to the Armed Forces Tribunal, Regional Branch, at Mumbai, Circuit Bench in Goa, with a request that since the applicant is a sexagenarian, waiting for the benefits which he claims he is entitled to, we request the Tribunal to decide the OA, expeditiously and in any case within period of three months.

We must clarify that we have not expressed any opinion on the merits of the matter and the contentions of the respective parties are kept open.

17. In the wake of the aforesaid order, the proceedings initiated in Contempt Petition No. 16/2024 are dropped.

NIVEDITA P. MEHTA, J.

BHARATI DANGRE, J.