



W.P.No.19238 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2025

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CORAM :

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
AND
THE HON'BLE MR.JUSTICE K.RAJASEKAR

W.P.No.19238 of 2024

S.No.13938143

Ex Sep Pallikonda Sivappa

.. Petitioner

-VS-

1. Union of India
represented by its Secretary
Government of India
Ministry of Defence
South Block, New Delhi 110 011
 2. The Chief of Army Staff
Integrated Hqs of MoD (Army)
C/o 56 APO 900256
 3. The Officer-in-Charge
Army Medical Corps Records
C/o 56 APO 900450
 4. The Principal Controller of Defence Accounts (Pension)
Draupadi Ghat
Allahabad (UP) – 211014
- .. Respondents



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Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, by calling for the records in respect of the impugned orders passed in O.A.No.108 of 2020 with M.A.No.98 of 2020 dated 30th March 2022 and RA No.22/2022 in O.A.No.108 of 2020 dated 17.06.2022 passed by the Hon'ble Armed Forces Tribunal, Regional Bench, Chennai and quash the same and further directing the 1st to 4th respondents to grant Disability Pension (Service Element + Disability Element) to the petitioner w.e.f. 19th March 1983 for life, with benefit of broad banding @ 75% w.e.f. 1st January 1996 with all consequential benefits, as per Regulation 186(2) of Pension Regulations for the Army, 1961 with all consequential benefits (or) in alternate to constitute Re-survey Medical Board to assess present percentage of disability of the petitioner with duration and grant Disability Pension (Service Element + Disability Element) to the petitioner @ 20% or more as the case may be with all consequential benefits.

For Petitioner :: Mr.M.K.Sikdar

For Respondents :: Mr.A.R.Sakthivel
Senior Panel Counsel

ORDER

(Order of the Court was made by S.M.SUBRAMANIAM,J.)

The writ on hand has been instituted by the original applicant before the Armed Forces Tribunal aggrieved by the impugned orders.

2. The petitioner was enrolled in the Indian Army on 29.08.1974 and invalided out from service on 11.03.1983, after serving 8 years, 6 months



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and 14 days of qualifying service. The Medical Board assessed the disability due to Psychotic Depressive Reaction (Affective Psychosis) @ 60% for two years and opined that the disability was aggravated by military service. However, the claim of the petitioner for disability pension was rejected on 12.07.2019.

3. Mr.M.K.Sikdar, learned counsel appearing for the petitioner would mainly contend that when the Medical Board opined that the disability was aggravated by military service, then the authorities, who are not medical experts, cannot adopt a contra opinion. The opinion of the Medical Board is binding on the authorities, unless they refer the matter for review before the Medical Board based on some other incriminating documents or the authorities have other factors to establish their case. In all other circumstances, the opinion of the Medical Board became final and to be considered by the competent authorities. Thus, in the present case, the differing view taken by the authorities contra to the opinion of the Medical Board is untenable.



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4. Regarding the limitation as contemplated under Section 22 of the

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Armed Forces Tribunal Act, undoubtedly the applications are to be instituted within the time limit prescribed under Section 22 of the Act. Pension no doubt is a continuing cause of action. However, the order of rejection would provide a cause for filing an appeal or to approach the Tribunal/Courts. In the present case, the claim of disability pension was rejected long before and admittedly the writ petitioner has not approached the appellate authority or the Armed Forces Tribunal during the relevant point of time. Therefore, in normal circumstances, the Courts are bound to reject the claim on the ground of limitation as contemplated under Section 22 of the Act.

5. But in the present case, this Court finds that the writ petitioner is eligible for disability pension. When the aggrieved person approached the High Court and the Court found that he is otherwise eligible for disability pension, then it would be harsh on the part of the Court to reject the claim merely on the ground of limitation. When the disability is ascertained by the High Court in writ proceedings and when the claimant has served in



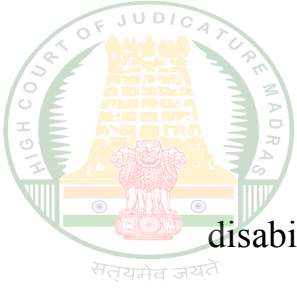
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Indian Army, the benefit need not be denied merely on the ground of delay.

WEB COPY However, the said principle cannot be adopted in all cases nor this judgment to be followed as precedent in the matter of determining the period of limitation in accordance with Section 22 of the Act. The case on hand is an exception, since the medical opinion was not considered by the competent authorities. Considering these exceptional circumstances, this Court is inclined to intervene.

6. In the case of *Union of India and others v. Tarsem Singh, 2008 INSC 1369*, the Hon'ble Supreme Court, while granting relief, restricted the arrears only for a period of three years from the date of filing of the original application.

7. In view of the fact that the writ petitioner is found to be eligible for disability pension, we are inclined to consider the present writ petition. Accordingly, the impugned orders of the Armed Forces Tribunal, Regional Bench, Chennai dated 30.03.2022 in O.A.No.108 of 2020 and 17.06.2022 in R.A.No.22 of 2022 are set aside. The respondents are directed to settle the



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disability pension to the writ petitioner and pay the arrears for a period of three years from the date of filing of the original application, within a period of four months from the date of receipt of a copy of this order. The writ petition stands allowed to the extent as indicated above. No costs.

Index : yes

(S.M.S.,J.) (K.R.S.,J.)

Neutral citation : yes

07.03.2025

SS

To

1. The Secretary to Union of India
Ministry of Defence
South Block, New Delhi 110 011
2. The Chief of Army Staff
Integrated Hqs of MoD (Army)
C/o 56 APO 900256
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