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W.P.No.3961 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2025

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THE HON'BLE MR. JUSTICE S. M. SUBRAMANIAM

AND

THE HON'BLE MR. JUSTICE K. RAJASEKAR

Writ Petition No.3961 of 2025

and

Writ Miscellaneous Petition No.4407 of 2025

1. Union of India,
Rep by the Secretary,
Ministry of Defence,
South Block, New Delhi 110 011.
2. The Chief of the Army Staff,
Army Hqrs, South Block,
IHQ PO, New Delhi – 110 011.
3. Officer-in-Charge, Records,
Brigade of Guards,
Pin 900 746, C/o 56 APO
4. Principal Controller of Defence Accounts (Pensions)
Draupadi Ghat, Allahabad – 211 014.
5. The Commanding Officer,
117, TA Infantry Battalion, The Guards
Tiruchirapalli, C/o 56 APO

... Petitioners

Vs.

Ex HAV R Karthikeyan Nair

... Respondent



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Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the record of the order passed by Armed Forces Tribunal, Regional Bench, Chennai in O.A.No.299 of 2018 dated 25.08.2022 and quash the same.

For Petitioners : Mr.T.Chandrasekaran,
Senior Panel Counsel

For Respondent : Mr.V.Ganesan

ORDER

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

Under assail is the order dated 25.08.2022 in O.A.No.299 of 2018 with M.A.No.346 of 2018, on the file of the Armed Forces Tribunal, Regional Bench, Chennai.

2. The Union of India, Ministry of Defence is the writ petitioner. The respondent filed Original Application before the Armed Forces Tribunal seeking the relief of medical invalidating pension. The respondent was enrolled in the Infantry Battalion of Territorial Army - Brigade of Guards on 19.11.1985 and discharged from service on 16.12.2001 under Regulation 16 of TA Regulations, 1948 read in conjunction with Army Rule 13(3)(iii) (iv) at his own request. The respondent requested to discharge him from service therefore, he



was referred to medical board for examination. The medical board opined that the respondent was healthy at the time of discharge. The said document has been doubted by the respondent. However, fact remains that the respondent was discharged from service in the year 2001 at his own request and the medical board opined that he was healthy during that relevant point of time.

3. The learned counsel for the respondent would submit that the respondent is continuously taking treatment for psychotic disorder (Schizophrenia) and therefore, the opinion of the medical board of the Ministry of Defence is incorrect.

4. The fact remains that the respondent neither approached the competent authority during the relevant point of time nor filed any case before the Armed Forces Tribunal or before the High Court. He submitted a representation in the year 2017, after a lapse of about 16 years from the date of discharge on his own request. Thereafter, filed original application in the year 2018 with a delay of about 6000 days. The delay was condoned by the Armed Forces Tribunal and the relief of invalidating pension was granted.

5. Challenging the said order, the present writ petition came to be



instituted.

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6. This Court is of the considered opinion that the condonation of delay *per se* itself is not in consonance with Section 22(1) (c) of Armed Forces Tribunal Act.

7. No doubt, pension is a recurring cause of action as held by the Hon'ble Supreme Court of India in several Judgments including in the case of ***Union of India and Others vs. Tarsem Singh*** reported in ***(2008) 8 SCC 648***. However, the eligibility for pension has been determined by the competent authority by passing an order in the present case and the said order remains unchallenged for several years. Therefore, the limitation as contemplated under the Armed Forces Tribunal Act should be applied and, in such circumstances, it cannot be construed as recurring cause of action. If a decision has been taken by the competent authority and an order has been passed and communicated to the employee, the aggrieved person has to approach the Armed Forces Tribunal within the time line contemplated under the Act.

8. It is made clear that merely submitting a representation after a lapse of several years would not provide a fresh cause of action for challenging the



order communicated to the employee long before. Such an attempt to reopen the dead cause of action at no circumstances be admitted by the Courts. A recent practice of the litigants is to submit a representation to the authority and file a writ petition or original application before the High Court or Armed Forces Tribunal seeking a direction to dispose of the representation, such directions are granted in a routine manner by the Courts on some occasions. Such orders are taken undue advantage and based on the order passed in pursuance to the directions issued by the Courts to dispose of the representation, cause of action already dead has been restored and such a practice is to be deprecated and Courts in the event of encouraging such practice would be forced to decide the issues, wherein the causes are already lapsed. Therefore, a representation submitted beyond the permissible limit need not be entertained by the competent authorities and even if it is entertained and an order has been passed, the said order would not provide a fresh cause of action for institution of proceeding before the Courts. The decision originally taken alone should be considered for the purpose of calculating the period of limitation under the Armed Forces Tribunal Act.

9. The medical records produced by the respondent was also from the year 2015 onwards. It seems that the respondent was taking treatment in



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Kanyakumari Government Medical College and Hospital, Asaripallam,

Nagercoil and there is no medical records produced even before this Court from the date of discharge, till the year 2015. That being so, the claim made now beyond the period of limitation is stale and cannot be entertained. The respondent has slept over for several years and now he cannot suddenly wake up and approach the Armed Forces Tribunal merely based on the representation submitted in the year 2017.

10. The facts and circumstances established would be sufficient to arrive at a conclusion that the Armed Forces Tribunal has proceeded without considering the legal principles settled and the applicable Pension Regulations. The facts itself would be sufficient to arrive an irresistible conclusion that the respondent is not entitled for any relief either from the hands of the Armed Forces Tribunal or from this Court. Consequently, the order impugned passed by the Armed Forces Tribunal in O.A.No.299 of 20081 with M.A.No.346 of 2018 dated 25.08.2022 is set aside and the writ petition stands allowed. There shall be no order as to costs. Consequently, the connected miscellaneous petition also stands closed.

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

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Index: Yes

Speaking Order: Yes/No

Neutral Citation Case : Yes/No

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