



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21-02-2025

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**THE HONOURABLE MR JUSTICE S.M. SUBRAMANIAM
AND
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

WP No. 13502 of 2024

1. Ex-10329400-1 Gdsm Sreenivasa Reddy
S/o Venkata Reddy, Aged 46 years,
Records Brigade Of Guards,
(Vill)-Kasana Palli (PO) H R Palli,
Giddalur (Tk), Prakasam (DIST),
Andhra Pradesh

Petitioner

Vs

1. Union Of India
Represented By its Secretary To Government
Of India,
Ministry Of Defence,
South Block New Delhi 110 011

2.Chief Of Army Staff
Army Head Quarters (AHQ),
Defence Head Quarters (DHQ),
Integrated Head Quarters (IHQ),
New Delhi 110 001

3.Principal Controller Defence Accounts
(pension),
Droupati Ghat, Allahabad, Uttar Pradesh,
Pin 211 014.



4. The Officer I/C Records,
RECORDS BRIGADE OF THE GUARDS,
PIN 900746, c/o 56 APO.

Respondent(s)

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PRAYER

Call for the records pertaining to the passing of the order dated 12.10.2023 in O.A. No 95 of 2020 with M.A. No. 89 of 2020 on the file of the Armed Forces Tribunal Regional Bench Chennai and quash the same consequently direct the respondents to grant the disability pension or invalid pension with all attendant benefits from the date of invalidation.

For Petitioner(s): Mr.M. Selvaraj And Ms.S. Sivaranjani

For Respondent(s): M/s. V.T. Balaji,SPC For R1 To R4

ORDER

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

Under assail is the order dated 12.10.2023 passed in O.A.No.95 of 2025 on the file of Armed Forces Tribunal, Regional Bench at Chennai.

2. The Original Applicant is the Writ Petitioner before this Court. The relief sought for before the Tribunal is challenging the rejection order dated 13.10.2005 passed by the 4th respondent, declining grant of disability pension to the petitioner and to direct the respondent to grant disability pension in Broadbanding Benefits from 20% to 50% with effect from 01.08.2001 with all attended benefits.



Tribunal reveals that he was enrolled in the Territorial Army on 15.09.1996.

While on duty at Srinagar, the petitioner suffered the disability “CNS (INV) Seizures (L) Frontalssel”. He was invalidated out of service on 31.07.2001, after rendering 4 years and 11 months (including 1 year and 148 days of Unembodied service) of service. The Release Medical Board assessed the ID “CNS (INV) Seizures (L) Frontalssel” at 20% for life and opined that the disability is neither attributable nor aggravated by military service. Thus, the petitioner was denied disability pension.

4. First appeal was preferred on 18.09.2005, seeking grant of disability pension. However, the 4th respondent rejected the appeal vide letter dated 13.10.2005, stating that the petitioner's disability was neither attributable to nor aggravated by military service, but rather constitutional in nature and unrelated to service. Consequently, the petitioner filed the Original Application.

5. It is contended that the Original Application filed before the Tribunal is not maintainable, due to the limitation period prescribed under Section 22 of the Armed Forces Tribunal Act, 2007. The petitioner was discharged from service on 31.07.2001, and his appeal was rejected on 13.10.2005. However, the Original Application was filed in the year 2020, which is beyond the prescribed limitation period. Further, the Medical Board assessed that the petitioner's disability is neither attributable to nor aggravated by military service, but rather constitutional in nature and unrelated to service.



Therefore, the petitioner is not entitled to disability pension. Consequently, the Tribunal rightly dismissed the Original Application filed by the petitioner.

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6. Considered the rival submissions made on behalf of the parties to the lis on hand.

7. The facts remain that the Writ Petitioner was enrolled in the 125 Infantry Battalion (TA) (Guards) on 15.09.1996. He was subsequently placed in Low Medical Category CEE (T) with effect from 06.11.1999 for the disease “CNS (INV) Seizures (L) Frontalssel”. Further on review, he was placed in Low Medical Category for effect from 06.05.2001. Thus, he was discharged from service on 31.07.2001 under the Item 14(b)(iv) of TA Rule 1948 being found medically unfit for further service after rendering 3 years and 211 days for embodied service. The Release Medical Board held at Military Hospital Secunderabad on 26.07.2001 assessed the ID at 20% for life and opined that the ID is neither attributable to nor aggravated by military service. The application submitted for disability pension was rejected by the 3rd respondent. The appeal filed before the 4th respondent was also rejected vide order dated 13.10.2005. Pertinently, the said order dated 13.10.2005 was challenged before Armed Forces Tribunal in the year 2020 after a lapse about 15 years.

8. Section 22 of Armed Forces Tribunal Act contemplates the period of limitation. Specifically, Section 22(1)(c) applies to orders passed by

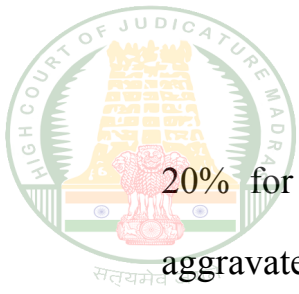


authorities prior to the commencement of the Act. In such cases, the application must be filed before the Tribunal within three years from the date of the order.

However, in the present case, the application was filed approximately 15 years after the rejection order passed by the appellate Authority. Therefore, the Original Application is clearly barred by the limitation period contemplated under Section 22 of the Armed Forces Tribunal Act. Thus, the Tribunal erred in entertaining the Original Application beyond the prescribed period of limitation.

9. Undoubtedly pension is a continuing cause of action, but in the present case the disability pension is rejected by the Original authority and the appellate authority also confirmed the said order, thereafter, the challenge is to be made before the Court of law within the period of limitation contemplated under the statutes and rules in force. The cause of action arose on the date when the appellate authority rejected the said claim of the petitioner. Thus, the principles regarding continuing cause of action would have no application with reference to the cases where orders are passed by the authorities rejecting the claim. In any angle, the Original Application filed by this petitioner before the Tribunal is not maintainable and hit by limitation period as contemplated under Section 22 of the Act.

10. Regarding merits raised, the Armed Forces Tribunal considered the report of the Release Medical Board, which was convened at Military Hospital Secunderabad on 26.07.2001. The Board assessed the petitioner's disability at

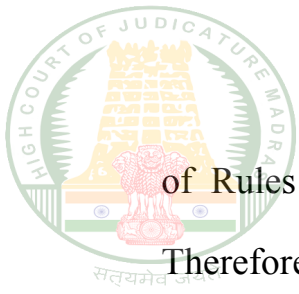


20% for life and opined that the disability was neither attributable to nor aggravated by military service.

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11. Regarding the issue of Primacy of the Medical report, this Court is of the considered opinion that it is an expert report and to be taken into consideration by the Court, unless such report is directly in violation of statute and an error apparent has been identified. In other circumstances, the Court, not being an expert body, cannot interpret the opinion of the Medical Board or take a different view based on the submissions made between the parties. Such opinion of the experts are binding, and more so, in the present case, the Medical Board assessment was not challenged at the earliest point of time by the petitioner.

12. Learned counsel for the petitioner relied on the regulations for grant of disability pension. However, none of the rules referred would fall under the umbrella of the findings made by the Medical Board nor the claim of the petitioner are found to be within the permissible limits. The minimum qualifying service for disability pension was fixed as 10 years originally in the rules, which was subsequently amended in the year 2019. However, the said rule was not amended in retrospective effect, so as to consider the cases where the individuals were discharged from services. In the absence of any rule granting retrospective effect, the Court cannot consider granting disability pension with retrospective effect. The Court cannot read down the amendment



of Rules made by the respondents, unless the said rule is under challenge.

Therefore, the amended rules would have no application in respect of the facts in the present case.

13. Admittedly, the petitioner had not completed 10 years of qualifying service as per the rules in force at the time of his discharge from service. That being so, this Court do not find any infirmity in respect of the order passed by the Armed Forces Tribunal.

14. Thus, the order passed by the Armed Forces Tribunal dated 12.10.2023 in O.A. No 95 of 2020 is confirmed. Accordingly, the Writ Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petitions, if any, are closed.

[S.M.S., J.]

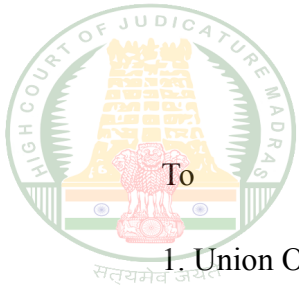
[K.R.S., J.]

21.02.2025

Index: Yes/No

Speaking/Non-speaking order

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To

1. Union Of India

Represented By Its Secretary To Government
Of India,

Ministry Of Defence,
South Block New Delhi 110 011

2.Chief Of Army Staff

Army Head Quarters (AHQ),
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