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W.P.No.21627 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2025

CORAM :

THE HONOURABLE MR. MANINDRA MOHAN SHRIVASTAVA,
CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.P.No.21627 of 2025

and W.M.P.Nos.24403 and 24407 of 2025

- 1.Union of India
through the Secretary,
Government of India,
Ministry of Defence,
South Block,
New Delhi 110 011
- 2.The Chief of the Air Staff
Air HQrs, Vayu Bhawan,
Rafi Marg,
New Delhi - 110 105
- 3.The Directorate of Air Veterans
Air Headquarters,
Subroto Park,
New Delhi - 110 010
- 4.JCDA (Air Force)
Subroto Park,
New Delhi - 110 010

Petitioners

Vs



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S.No 617873-A
Ex WO S. Stephen
S/o TMJ Soundrarajan,
East Shunmugapuram PO,
Villupuram
Tamil Nadu 605 602

Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari calling for the records relating to the order passed by the Armed Forces Tribunal, Regional Bench, Chennai in R.A.No.15 of 2023 dated 31.10.2023 confirming the order passed in O.A.No.182 of 2021 dated 23.11.2022 quash the same and consequently restrict the arrears for three years form date of filing the O.A.

For Petitioners: Mr.V.Chandrasekaran

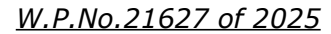
For Respondent: Mr.A.Q.Choudhury

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

Heard learned counsel for the parties.

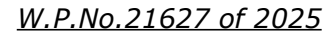
2. This petition filed under Article 226 of the Constitution of India



Forc

Forc

4. Learned Tribunal, taking into consideration the earlier decisions in the matter of claim of pension attached to the rank from



6.1. Learned counsel for the Union of India contended before us that in so far as grant of relief of revised pension in the rank of Warrant Officer is concerned, the Union of India would not dispute the same, because it had itself taken a decision to grant the benefit with effect from 01.01.2006 to all the retired employees, which includes the respondent/original applicant as well. However, the challenge is confined only to that part of the order, by which relief has been extended with effect from 01.01.1996, which is not only 10 years before the date with effect from which the relief was granted under a



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policy decision dated 13.10.2016, but beyond the period of three years prior to the date of filing of the OA.

6.2. Relying upon a decision of the Hon'ble Supreme Court in the case of *Union of India and others v. Tarsem Singh*¹, he would submit that the benefit, in any case, could not be granted with effect from the date prior to three years preceding the date of filing of the OA. Therefore, to that extent, the order of the Tribunal is bad and warrants interference.

7.1. On the other hand, learned counsel for the respondent/original applicant would submit that the respondent/original applicant retired while serving in the rank of Warrant Officer and the petitioners while wrongly denying pension applicable to the rank of Warrant Officer, granted pension associated with the lower rank. It was a continuing wrong and, in fact, the petitioners were obliged to take proactive steps to grant the benefit even without any petition being filed in the Court. Therefore, merely because there was some delay in filing the OA before the Tribunal, the benefit to which he was entitled

¹ Civil Appeal No.5151-5152 of 2008, dated 13.08.2008



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to from the initial date could not have been denied.

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7.2. Referring to the Circular dated 09.02.2001, he would submit that policy decision was taken to grant the benefit with effect from 01.01.1996. It was in the light of this Circular that the Tribunal granted the benefit with effect from 01.01.1996. He also placed reliance upon an order of this Court in the case of *Union of India and others v. The Registrar Armed Forces Tribunal and another*² and another order in the case of *Union of India and others v. Vedanabhatla Satish Kumar and another*³.

8. We have heard learned counsel for the parties and also perused the records, including the order impugned.

9. The respondent/original applicant, after having served for about two months in the rank of Warrant Officer, was discharged on 31.05.1993. It has never been the case of the respondent/original applicant that, on the date of his retirement, the then rules applicable permitted grant of pension of the rank of Warrant Officer, i.e., the post

² W.P.No.15088 of 2024, dated 11.06.2024

³ W.P.Nos.30478 of 2023 and 7884 of 2024, dated 29.10.2024



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from which he was discharged. It is undisputed position, therefore, on record that the rules prevailing at that point of time only allowed grant of pension from the rank from which an army personnel was discharged, subject to the condition that he had worked at least 10 months in that rank. Therefore, it is quite clear that, on the date of discharge, the respondent/original applicant was not entitled to the benefit of pension in the rank of Warrant Officer. He was, however, granted pension applicable to the lower rank i.e., Junior Warrant Officer.

10. While the matter stood thus, a Circular came to be issued on 09.02.2001, which implemented Government's decision on the recommendations of the 5th Central Pay Commission relating to pensionary benefits in respect of Commissioned Officers and Personnel below the Officer rank. It was clarified that pension of all pre-96 retiree armed forces personnel will be revised on the basis of the rank/group last held by the individual and the revised pay scale connected thereto, even if the rank/group was held for less than 10 months before retirement. The further clarification made was that such pension will be reduced proportionately if the qualifying service is less



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than 33 years.

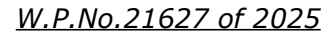
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11. Though policy decision was taken on 09.02.2001 and so implemented, it appears that the respondent/original applicant was not granted that relief. The respondent/original applicant, however, did not take recourse to any remedy of law.

12. It appears that later on a decision was taken vide Circular dated 13.10.2016 to grant such benefit to all the pensioners irrespective of any cut-off date. However, for the purpose of granting actual benefits, the benefits were confined only with effect from 01.01.2006. Even, at this stage, the respondent/original applicant did not approach the Tribunal.

13. It was as late as in 2021 that the respondent/original applicant knocked the doors of justice by moving OA before the Armed Forces Tribunal, Regional Bench, Chennai.

14. After having gone through the Circulars dated 09.02.2001 and 13.10.2016, it is explicitly clear that, initially in 2001, a decision



17. The principle applicable in such cases where relief is sought from the initial date in cases of continuing wrong has been elaborately



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considered by their Lordships in the Hon'ble Supreme Court in the case of *Union of India and others v. Tarsem Singh (supra)*.

18. Explaining the principle underlying “*continuing wrong*”, in the aforesaid decision, it was held as follows:

"4. The principles underlying continuing wrongs and recurring/successive wrongs have been applied to service law disputes. A 'continuing wrong' refers to a single wrongful act which causes a continuing injury. 'Recurring/successive wrong' are those which occur periodically, each wrong giving rise to a distinct and separate cause of action. This Court in Balakrishna S.P. Waghmare vs. Shree Dhyaneshwar Maharaj Sansthan – [AIR 1959 SC 798], explained the concept of continuing wrong (in the context of section 23 of the Limitation Act, 1908 corresponding to section 22 of Limitation act, 1963):

"It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by its itself continues, then the act constitutes a continuing wrong. In this connection, it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury."



In M.R.Gupta vs. Union of India [1995 (5) SCC 628], the appellant approached the High Court in 1989 with a grievance in regard to his initial pay fixation with effect from 1.8.1978. The claim was rejected as it was raised after 11 years. This Court applied the principles of continuing wrong and recurring wrongs and reversed the decision. This Court held:

"The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as promotion etc., would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is at this limited extent of proper pay fixation, the application cannot be treated as time barred."



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In Shiv Dass v. Union of India – 2007 (9) SCC 274, this Court held:

"The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.

In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years."

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



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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/limitation 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."

19. Applying the aforesaid principle to the facts and circumstances of the present case, what we find is that, though the respondent/original applicant's claim for grant of pension on the rank of Warrant Officer was justified in view of the Circular which was



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issued on 09.02.2001 and thereafter, every month this claim continued, to what extent the back wages or arrears of pension could be granted would essentially be governed by the other set of principle discussed in the aforesaid judgment. It has been clearly stated therein that the effect of delay and laches would not be that the claim of pension is to be altogether rejected, but the same would have to be confined ordinarily to a period three years prior to the date of filing of the OA. If the aforesaid principle is applied in the present case, the respondent/original applicant is not entitled to claim arrears of pension on the claim of he being entitled to pension attached to the rank of Warrant Officer, in respect of the period prior to three years preceding the date of filing of the OA.

20. However, but for the Government's own decision taken vide its Circular dated 13.10.2016 to grant actual benefit from 01.01.2006, we are of the view that the respondent/original applicant was not entitled to that benefit in respect of the period prior to three years preceding the date of filing of the OA.

21. But then, since the petitioners themselves have granted the



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relief of actual benefit/arrears of pension with effect from 01.01.2006 in the light of the Circular dated 13.10.2016, we are inclined to interfere with the order of the Tribunal only to that extent. We hold that the order granting benefit from 01.01.1996 is bad in law and in violation of the law declared by the Hon'ble Supreme Court in the case of *Union of India and others v. Tarsem Singh* (supra). However, the policy decision does entitle the respondent/original applicant to get the actual benefit and arrears of pension from 01.01.2006.

22. Reliance placed by the respondent/original applicant on two decisions, one rendered by this Court and the other by the High Court of Telangana, are distinguishable on facts. The decisions did not turn on the principles involved in this case, but are only on the ground of parity in relation to some other cases.

23. In the light of the principles which have been laid by the Hon'ble Supreme Court in the case of *Union of India and others v. Tarsem Singh* (supra), those decisions cannot be relied upon to grant the benefit as claimed by the respondent/original applicant.



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24. In the result, the petition filed by the Union of India is partly allowed in the manner and to the extent stated above. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(MANINDRA MOHAN SHRIVASTAVA, CJ) (G.ARUL MURUGAN,J)
28.10.2025

Index : Yes
Neutral Citation : Yes
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To:

- 1.The Secretary,
Union of India
Government of India,
Ministry of Defence,
South Block,
New Delhi 110 011
- 2.The Chief of the Air Staff
Air HQrs, Vayu Bhawan,
Rafi Marg,
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- 3.The Directorate of Air Veterans
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THE HON'BLE CHIEF JUSTICE
AND
G.ARUL MURUGAN,J.

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