



W.P.No.3069 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2025

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CORAM :

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

W.P.No.3069 of 2025

S.No.C/6877122

Ex Hav D J Jaya Paul

S/o S D Deva Dass

.. Petitioner

v.

1. Union of India represented by its
Secretary to Government of India
Ministry of Defence
South Block
New Delhi 110 011

2. Chief of the Army Staff
Army Hqrs, IHQ, DHQ Post
Janth Block
New Delhi 110 011

3. Principal Controller Defence Accounts (Pension)
Allahabad, (UP), PIN-211 014

4. The Officer in charge
ADC Records, Trimulgherry Post
Secunderabad (AP) 500 015

.. Respondents



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Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the passing of the order dated 17.06.2022 in O.A.No.12 of 2021 with M.A.No.13 of 2021 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 :: Mr.M.Selvaraj

For Respondents :: Mr.V.Balasubramanian
Senior Panel Counsel

ORDER

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

Under assail is the order dated 17th June, 2022 passed by the Armed Forces Tribunal, Regional Bench at Chennai in O.A.No.12 of 2021.

2. The original applicant is the writ petitioner before this Court. The relief sought for before the Tribunal is challenging the rejection order dated 29.02.2020 passed by the fourth respondent in the first appeal, declining grant of disability pension to the petitioner and to direct the respondents to



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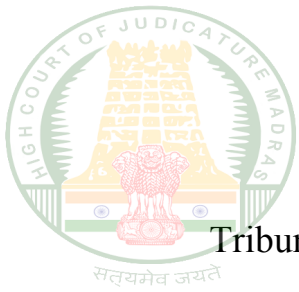
grant disability pension with effect from 24.07.1970, the date of discharge.

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3. The facts in brief, as stated by the original applicant before the Tribunal, would reveal that he was enrolled in the Indian Army on 12.09.1962 and discharged from service on 24.07.1970, after rendering 7 years, 10 months and 12 days of service. The Invaliding Medical Board assessed the petitioner's disability due to “Neurosis” at 20% for one year and opined that the disability is neither attributable to nor aggravated by military service. Thus, the petitioner's claim for disability pension was rejected by the competent authority as early as on 07.01.1971 itself.

4. First appeal was preferred on 07.01.2020 seeking grant of disability pension. However, the 4th respondent rejected the appeal vide letter dated 29.02.2020, stating that the petitioner's claim is not entertainable, as it is more than five years old. The second appeal also was rejected on the same lines. Consequently, the petitioner filed the original application.

5. It is contended that the original application filed before the



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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 24.07.1970 and his claim was rejected on 07.01.1971 by the competent authority. After a lapse of more than 50 years, the petitioner preferred the first appeal on 07.01.2020, which came to be rejected in the year 2020. Thereafter, the original application was filed in the year 2021, 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. Therefore, the Tribunal rightly dismissed the Original Application filed by the petitioner.

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 Indian Army on 12.09.1962. While the petitioner was serving with 10 Ordnance Battalion, he was downgraded to Low Medical Category 'B' (BEE) temporary for six months for the disability "Neurosis 300" with effect from



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27.11.1969. Thus, he was discharged from service on 24.07.1970 after rendering 7 years, 10 months and 12 days of service. The Invaliding Medical Board held at Military Hospital, Dehu Road on 30.07.1970 assessed the ID at 20% for one year and opined that the ID is neither attributable to nor aggravated by military service. The application submitted for disability pension was rejected by the competent authority on 07.01.1971. The appeal filed before the 4th respondent after a period of more than 50 years was rejected vide order dated 29.02.2020. Pertinently, the said order dated 29.02.2020 was challenged before Armed Forces Tribunal in the year 2021.

8. Section 22 of Armed Forces Tribunal Act contemplates 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 50 years after the rejection order passed by the competent authority, challenging the order of the appellate authority. Therefore, the



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original application is clearly barred by the limitation period contemplated under Section 22 of the Armed Forces Tribunal Act.

9. Undoubtedly pension is a continuing cause of action, but in the present case the disability pension came to be rejected by the original authority as early as in the year 1971 itself. The cause of action arose on the date when the authority rejected the said claim of the petitioner. Thus, the principles regarding continuing cause of action would have no application with reference to cases, where orders are passed by the authorities rejecting the claim. In any angle, the original application filed by the 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, Dehu Road on 30.06.1970. The Board assessed the petitioner's disability due to Neurosis at 20% for one year 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 substitute the opinion of the Medical Board or take a different view based on the submissions made between the parties. The opinion of the experts are binding, and more so, in the present case, the Medical Board assessment was not challenged 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 is 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 to have retrospective effect so as to consider the cases where the individuals were discharged from services. In the absence



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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.

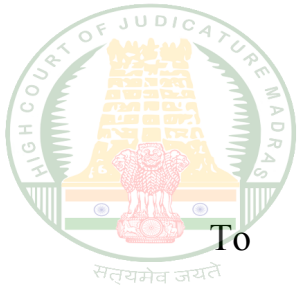
13. Admittedly, the petitioner had not completed 10 years of qualifying service as per the rules in force at the time of his discharge from service. That being so, this Court do not find any infirmity in respect of the order passed by the Armed Forces Tribunal.

14. Thus, the order passed by the Armed Forces Tribunal dated 17.06.2022 in O.A.No.12 of 2021 stands confirmed and the writ petition is dismissed. No costs.

Index : yes
Neutral citation : yes

(S.M.S.,J.) (K.R.S.,J.)
05.03.2025

SS



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To

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