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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CWP-19867-2024

Reserved on: 28.11.2024

Pronounced on: 18.01.2025

Union of India and Others

.....Petitioners

Versus

Service No. 89697 Ex LM (E) Baldev Raj @ Baldev Raj Bedi & Anr.

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Argued by: Ms. Anita Balyan, Advocate
for the petitioners – UOI.

Mr. Navdeep Singh, Advocate ;
Ms. Roopan Atwal, Advocate and
Ms. Srishti Sharma, Advocate
for respondent No. 1.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner herein-
Union of India, prays for the setting aside of the order dated 19.08.2019
(Annexure P-1) as passed by the learned Armed Forces Tribunal
concerned.

Factual Background.

2. Respondent No. 1 was enrolled in the Indian Navy on
10.03.1964 as a 'Boy' and was discharged/invalided out from service
w.e.f. 15.09.1971 on completion of seven years, six months and five
days of service on account of a disability '*Hepatosplenomegaly with
Lymphadenopathy*'. Initially respondent No. 1 was granted disability

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pension @ 30 % from the year 1971 till 1973. Thereafter, respondent No. 1 was subjected to periodic medical boards which then assessed his disability from the year 1973 to 1975 @ 50 % and @ 20 % with effect from 1975 for two years. Thereafter, respondent No. 1 was informed that his disability percentage had been declared as less than 20 % with effect from 07.07.1978 which resulted in release of only the service element and denial of disability element to respondent No. 1.

3. Respondent No. 1 filed O.A., before the Tribunal concerned rather for the grant of disability element of disability pension. The said application was disposed of vide order dated 19.08.2019 (Annexure P-1). The operative part of the said order is extracted hereinafter.

This is an application under Section 14 of the Armed Forces Tribunal Act, 2007, praying for the grant of disability pension.

With the consent of the parties, the matter is taken on record for final disposal.

It is agreed between both the parties that the case of the applicant is covered by the judgment dated 23.02.2015 passed by Hon'ble High Court of Punjab and Haryana in CWP No. 16086 of 2014, titled as Jaswant Singh Vs. Union of India and others.

Consequently, we dispose of this OA with a direction to the respondents to process applicant's claim in terms of aforesaid judgment and if found entitled to, release the claimed relief together with arrears as expeditiously as possible but not later than four months from the date of

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receipt of copy of this order by learned Government Counsel/representative.

4. Feeling aggrieved from the afore order, the petitioner-Union of India has filed thereagainst the instant writ petition.

Submissions of the learned counsel for the petitioners.

5. At the outset, the learned counsel for the petitioners-Union of India refers to the rendition(s) of various judgments by the Hon'ble Apex Court, wherebys, there has been a restriction of the apposite arrears for a period of three years. He further submits that in view of the expostulations of law made therein, the learned Tribunal concerned should have restricted the grant of arrears to the respondent for three years.

6. Initially, a reference is required to be made to paragraphs No. 5 and 6 of the verdict rendered by the Hon'ble Apex Court in case titled as ***Civil Appeal No. 5151-5152 of 2008 (Arising out of SLP (C) Nos. 3820-3821 of 2008 titled as Union of India and Others Vs. Tarsem Singh***, decided on 13.08.2008. The said paragraphs No. 5 and 6 become extracted hereinafter.

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 commenced, if such continuing*

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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.

6. *In this case, the delay of 16 years would affect the consequential claim for arrears. The High Court was not justified in directing payment of arrears relating to 16 years, and that too with interest. It ought to have restricted the relief relating to arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser. It ought not to have granted interest on arrears in such circumstances.”*

7. A reading of paragraph No. 5 of the verdict (supra) clearly underscores the fact that in case any claim is hit by the vices of delay and laches, thus ultimately affecting the apposite invested indefeasible right qua the army personnel, but relating only to payment or re-fixation of pay or pension, therebys, the said delayed claim, rather than becoming straightway rejected, thus, is required to be allowed, but with a fetter that the arrears of pension being restricted upto a period of three years prior to the date of filing of the writ petition.

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8. In the said case in paragraph No. 6 thereof, the Apex Court declared that the High Court was not justified to direct the release of arrears of pension covering a period of 16 years and that too with interest.

9. The said view also appears to have been accepted in a judgment bearing Civil Appeal No. 274 of 2007 (Arising out of SLP (Civil) No. 881 of 2006) titled as Shiv Dass Vs. Union of India and Others, decided on 18.01.2007. The relevant paragraphs whereof are extracted hereinafter.

9. *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. It would depend upon the fact of each case. **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.** The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.*

10. *In the peculiar circumstances, we remit the matter to the High Court to hear the writ petition on merits. If it is found that the claim for disability pension is sustainable in law, then it would mould the relief **but in no event grant any relief for a period exceeding three years from the date of presentation of the writ petition.** We make it clear that we have not expressed any opinion on the merits as to whether appellant's claim for disability pension is maintainable or not. If it is sans merit, the High Court*

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naturally would dismiss the writ petition. The appeal is disposed of accordingly without any order as to costs.

Submissions of the learned counsel for the respondent.

10. On the other hand, the learned counsel for respondent No.1 submits that in the instant case, despite their existing a vested right qua respondent No. 1, wherebys he was entitled to receive a particular statutory benefit, yet the same became illegally held back or became untenably rejected by the petitioners. In such cases, the Hon'ble Supreme Court has held that arrears cannot be restricted and the respondents cannot be allowed to take the benefit of their own wrong.

11. In support of his arguments, the learned counsel for respondent No. 1 places reliance upon a judgment rendered by the Hon'ble Apex Court in case titled as '**Balbir Singh Vs. Union of India and Others'** to which Civil Appeal No. 3086 of 2012 became assigned. The relevant paragraph of the said judgment is extracted hereinafter.

“The Tribunal was therefore justified in restoring the service element of the pension in favour of the appellant. The question however is whether the arrears could have been restricted to three years only. The Tribunal in our view need not have done so. That is because the appellant had a right to receive service element of the pension in light of Regulation 186 (supra), which right was valuable and ought to have been protected. The fact that the appellant had approached the Tribunal for redress belatedly was in the peculiar circumstances of the case, no reason for the Tribunal to reduce the payment of arrears to three years only.”

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For the reasons to be assigned hereinafter, this Court finds no infirmity with the impugned order passed by the Tribunal concerned.

12. In the instant case, a perusal of the records reveal that respondent No. 1 was invalidated out from service on account of a disability '*Hepatosplenomegaly with Lymphadenopathy*' and thereafter he was granted disability pension @ 30 % from the year 1971 till 1973. Further, respondent No. 1 was subjected to periodic medical boards which then assessed his disability from the year 1973 to 1975 @ 50 % and @ 20 % with effect from 1975 for two years.

13. Thereafter, respondent No. 1 was informed that his disability percentage had been declared as less than 20 % with effect from 07.07.1978 which resulted in release of only the service element and denial of disability element to respondent No. 1.

14. In the said regard, it appears that no cogent reason has been given by the petitioners herein, as to how the disability of respondent No. 1 which was initially assessed @ 30 % was then enhanced to 50 % and thereafter was reduced to 20% and further it becoming less than 20 %. Resultantly the said vacillations become arbitrarily drawn vacillations.

15. Even otherwise, if the disability of respondent No. 1 was held as less than 20%, then also the expostulations of law as made by the Apex Court in case titled in case titled as **Sukhwinder Singh Vs.**

Union of India and Ors., to which Civil Appeal No. 5605 of 2010

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became assigned, thus would apply to the instant case. The relevant paragraphs as occur in the said verdict are extracted hereinafter.

“11. xxxxx

Thirdly, there appear to be no provisions authorising the discharge or invaliding out of service where the disability is below 20 percent and seems to us to be logically so.

Fourthly, whenever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above 20%.

Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of 50 percent disability pension.”

16. The import of the above, is that, since an indefeasible right became conferred upon respondent No. 1, to thus seek endowment of the benefits thereof. Moreover, since the said conferred indefeasible right vis-a-vis respondent No. 1, but was also a recurring and continuous cause of action, irrespective of delay, if any. Consequently, the further effect thereof, is that, even if there is some delay on the part of respondent No. 1 to make the instant espousal, yet the said delayed espousal rather was not required to be declared to be incapacitating the present respondent No. 1, to become a valid recipient of a recurring and continuous right, as otherwise became conferred upon him through the verdict (supra).

17. Even otherwise, since the declaration of law made in verdict (supra) makes the said declaration to be an expostulation of law in rem, therebys, the expostulation of law in rem, as made in verdict (supra) also makes the thereunders conferred benefits vis-a-vis the defence personnel concerned, to, *prima facie*, also entitle the

concerned, thus to at any time seek the granting of the endowments as

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made thereunders, and that too, in the fullest complement, as spelt thereunders, besides irrespective of the bar, if any, of delay and laches.

Final Order of this Court.

18. In aftermath, this Court finds no merit in the writ petition and with the observations aforesaid, the same is dismissed. The impugned order passed by the Tribunal concerned, is maintained and affirmed.

19. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

18.01.2025
kavneet singh

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No