

10.06.2026
Item No.11
Ct. No. 1
RP

WP.CT/114/2026
UNION OF INDIA AND ORS
VS
NO.1075759L EX Dfr SAMIR KUMAR
GHOSH

Mr. Atarup Banerjee, Sr. Adv.
Mr. Subrata Santra
....For Petitioners

Dictated by SUJOY PAUL, CJ.:-

1. Mr. Banerjee, learned senior advocate appears for the petitioners.
2. Heard on admission.
3. This petition filed under Article 226/227 of the Constitution of India takes exception to the order of the Armed Forces Tribunal, Kolkata Bench dated 3rd October, 2024 passed in OA No.78/2019 with MA No.58/2019. The Tribunal by the impugned order entertained the original application (OA) filed by the respondent/employee and directed to grant benefit of disability element of pension at the rate of 20% and by rounding it off to 50% for life as per the policy and the law laid down by the Hon'ble

Supreme Court in Civil Appeal No.418/2012 (**Union of India** vs. **Ram Avtar**) decided on 10.12.2014. The due and admissible arrears were restricted to three years preceding the date of institution of OA i.e. 30.07.2019 and payment arising therefrom be directed to be paid with 8% per annum.

4. Aggrieved, the department has filed the present petition.
5. Learned counsel for the petitioner has raised three-fold submissions.
6. Firstly, he submits that the communication regarding disability pension was made to the respondent on 11th October, 2007. The OA was filed belatedly in the year 2019. The OA was barred by time and, accordingly, the learned Tribunal ought to have rejected it solely on the ground of inordinate delay.
7. Secondly, it is urged that the applicant therein had a statutory alternative remedy, which could have been exhausted by him at appropriate time. After having failed to avail the said statutory remedy, he directly approached the Tribunal and on that ground

alone the Tribunal should have rejected the OA.

8. Thirdly, it is submitted that the Tribunal should not have disbelieved the medical board's report and such expert opinion should not have been discouraged. The Tribunal erred in disbelieving the said report and thereby committed an error of law. It is submitted that for these reasons, the impugned order may be interfered with.
9. No other point is pressed by the learned senior advocate for the petitioners.
10. We have heard the learned counsel for the petitioners at length.
11. So far as the delay in approaching the Tribunal is concerned, the Tribunal has taken care of this aspect on the basis of the judgement of the Supreme Court in the case of **Union of India vs. Tarsem Singh** reported in **2008 (8) SCC 648** and the on the basis of *ratio decidendi* of the said case opined that the applicant therein is not entitled to get arrears beyond three years from the date of filing of the original applicant. This is trite that pension accrues

in favour of an employee every month and, therefore, it is a recurring cause of action. Thus, we are unable to persuade ourselves with the line of argument that OA should have been dismissed on the ground of delay and laches.

12. So far as the question of non-exhausting the statutory alternative remedy is concerned, it is a procedural aspect and merely because somebody has not exhausted the said remedy, the right of judicial review is not completely taken away. Thus, on this technical ground we are unable to agree with the argument of the learned senior counsel for the petitioners, more so when the Tribunal has decided the matter on merits.
13. So far as the third point is concerned, the Tribunal has given findings in this regard in paragraph 19 of the impugned order, which reads as follows:-

“It is established beyond all reasonable doubt that when the applicant entered the military service this type of disease/disability was not in existence or could be detected. Therefore, we are not satisfied with the findings that the

disability is not attributable to or aggravated by military service given by the Medical Board examined him medically. We are also not in agreement with the submissions made that he was young when enrolled in the Army and for this reason the disease could not be detected. How the disease is not connected with military service the Board has failed to record any cogent and plausible reasons. Therefore, the opinion of the Board is not sustainable. The applicant is not afflicted with the disease overnight but is afflicted after having rendered 24 years and 8 days' service in the Army. Therefore, it lies ill in the mouth of the respondents to say that he is not entitled to disability element of pension. The present rather is a case squarely covered in favour of the applicant by the ratio of the judgment of the Hon'ble Apex Court in Dharamvir Singh's case supra."

(Emphasis Supplied)

14. This finding of Tribunal was examined in juxtaposition to the report of medical board proceeding annexed at page 47 of the petition. A minute reading of the document shows that there exists no iota of reason in support of the conclusion that the ailment was not directly attributable to nor

aggravated by Military Service. Column 20 of the report at page 48 of the writ petition shows a bald conclusion “No. Neoplastic origin”. Such conclusion, in our opinion, is not based on any cogent reason. Thus, the Tribunal has not committed any error of law in not believing the said conclusion. The conclusion must be founded upon some cogent reason. The Apex Court in the case of **Kranti Associates Pvt. Ltd. & Anr. vs. Masood Ahmed Khan & Ors.** reported in **(2010) 9 SCC 496** emphasized the need of assigning reasons even in administrative orders. In absence of any such reasons, the Tribunal had taken a plausible view which does not warrant interference by us.

15. Apart from this, it is noticed that in page 108 filed with affidavit-in-opposition before the Tribunal in column 21 it is mentioned that “disability pension is recommended in favour of the respondent employee”.
16. Furthermore, the Tribunal has followed the dicta of the judgment of the Supreme Court in **Ram Avtar (supra)**. On a specific query from the Bench the learned senior counsel

for the petitioners fairly submitted that the rules applicable and considered in **Ram Avtar (supra)** were indeed applicable in the instant case. As per the relevant rules, there exists a “presumption” clause. As per the said clause if at the time of entry of an employee/officer in armed/military services, no ailment is detected and no such report is given by the medical board, any such ailment reported later on shall be presumed to be arising out of the army services. The learned senior counsel for the petitioners fairly submitted that the said ratio of **Ram Avtar (supra)** is otherwise applicable in the instant case.

17. In view of above, we find no reason to entertain this petition. Admission is declined and the petition is dismissed.
18. Urgent photostat certified copy of this order, if applied for, be delivered to the learned advocates for the parties, upon compliance of all formalities.

(SUJOY PAUL, CJ.)

(PARTHA SARATHI SEN, J.)