ARMED FORCES TRIBUNAL, CHANDIGARH
REGIONAL BENCH AT CHANDIMANDIR

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OA 1763 of 2011

Smt. Kamla Devi ..... Petitioner(s)
Vs
Union of India and others ..... Respondent(s)

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For the Petitioner (s) : Mr. Surinder Sheoran, Advocate
For the Respondent(s) : Mr. Vibhor Bansal, CGC

Coram: Justice Prakash Krishna, Judicial Member.
Lt Gen (Retd) NS Brar, Administrative Member.

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ORDER
15.01.2014

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This petition has been filed by the widow of late Signalman Dilbag Singh who had joined the Army on 9.12.1974 and was invalided out from the Army w.e.f. 26.07.1982 after completion of 8 years and 230 days of service in the rank of Signalman. Dilbag Singh (the husband of the present petitioner) during his life time raised a dispute with regard to grant of disability pension which was rejected by the CCDA(P), Allahabad vide order dated 13.10.1983. The petitioner's husband was advised to file an appeal within a period of six months if so desired from the date of receipt of the order dated 13.10.1983. An appeal was filed which was dismissed by the appellate authority vide order dated 13.06.2000. It appears the matter was not agitated any further by the husband of the petitioner who died subsequently on 25.06.2004. After lapse of considerable period of time, petitioner now laid a claim for family pension which was denied by the Respondent No. 4 vide his letter dated 22.03.2011. Hence the present petition.

When the matter was taken up earlier, it was pointed out to the learned counsel for the petitioner that claim of the petitioner for family pension is apparently barred by time. He was asked to address us on the question of limitation first.

Heard the learned counsel for the parties on the question of limitation. The facts are not much in dispute.

The learned counsel for the petitioner has placed reliance upon certain decisions of Apex Court and of the High Courts in support of the submission that the cause of action claiming pension is a recurring cause of action and as such it is not correct to say that claim is barred by time.

Strong reliance was placed on SK Mastan Bee Vs General Manager South Central Railway and another, in Appeal (Civil) No. 8089 of 2002 decided on 4th December, 2002. It was a case by a widow of Railway employee who died in harness and was a Gangman. The employee had died on 21st November, 1969 and the widow claimed the family pension on 12.3.1991. Her claim was rejected by the Central Administrative Tribunal as barred by time. The matter travelled to the Apex Court. The Apex Court took the view that the appellant is an illiterate lady who did not know of her legal right and had no access to any information as to her right to family pension and to enforce her such right. It was obligatory for the employer, viz Railways to have calculated the family pension payable to the appellant. The relevant portion is reproduced below:-

> "We notice that the appellant's husband was working as a Gangman who died while in service. It is on record that the appellant is an illiterate who at that time did not know

> of her legal right and had no access to any information as to her right to family pension and to enforce her such right. On the death of the husband of the appellant, it was obligatory for her husband's employer, viz. Railways, in this case to have computed the family pension payable to the appellant and offered the same to her without her having to make a claim or without driving her to a litigation. The very denial of her right to family pension as held by the learned Single Judge as well as the Division Bench is an erroneous decision on the part of the Railways and in fact amounting to a violation of the guarantee assured to the appellant under Article 21 of the Constitution. The factum of the appellant's lack of resources to approach the legal forum timely is not disputed by the Railways."

It would show that the case was decided on its peculiar facts that the widow was an illiterate lady and had no information about her legal right as also it was the obligation of the employer to compute and pay the family pension to the family of the deceased employee. On an examination of facts of that case, it would show that it has no application to the facts of the case on hand.

In the case of SK Mastan Bee the husband of the petitioner died in harness and the widow was entitled to family pension which was payable to her by the employer which had not been done. It was thus clearly a continuing wrong related to pension which was upheld by the Hon'ble Supreme Court, notwithstanding the long delay by the widow in claiming it. In the case of the petitioner, her husband had been held not entitled to pension as his disability was held to be neither attributable to nor aggravated by military service by the Invaliding Medical Board. This had been accepted by her husband during his lifetime and had attained finality. As he was not entitled to any

pension, and the petitioner thereafter to family pension, it cannot be said to be a continuing wrong.

In the case on hand, it cannot be said that the Army Authorities failed to discharge their obligation. On the contrary, they expressly found that the employee is not entitled to get the pension and the petitioner's husband carried the matter before the Appellate Authority unsuccessfully. Thereafter he accepted the order of the appellate authority as it was not challenged any further and it attained the finality. The relied upon judgment by the petitioner is, therefore, distinguishable on facts and is not of any assistance.

The petitioner has then relied upon another judgment. The dispute in the case of M.R. Gupta Vs Union of India and others, 1995 SCC(5) 628 was with regard to fixation of petitioner's pay, which is not so here.

Nothing was decided in un-reported judgment of the Delhi High Court given in W.P(C) No. 4817 of 2011-Ram Niwas Bedharak Vs Union of India and another decided on 13.7.2011.

Then reliance was placed on Union of India Vs Tarsem Singh 2008(8) SCC 648. It is a case of Indian Army. The respondent while working in the Army service was invalided out in medical category on 13.11.1983 and approached the High Court seeking a direction to the Union of India to pay him disability pension. In this connection, question arose as to whether the claim of the person qua disability pension is barred by time or not. The Apex Court taking into consideration its earlier judgments in the case of Balakrishna S.P. Waghmare Vs Shree Dhyaneshwar Maharaj Sansthan, AIR 1959 SC

798, M.R. Gupta Vs Union of India, 1995(5) SCC 628 and Shiv Dass Vs Union of India, 2007(9) SCC 274, held :-

> "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 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."

The aforesaid judgment proceeds on the footing that claim for pension is based on a continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. This appears to be the crux of the case. In that case, there appears to be no express order denying the claim of disability pension. The report does not show that any such order was passed denying the claim of disability pension. The decision laid down in the above case is distinguishable on facts of the case on hand. It is admitted case of the petitioner that her husband's claim for disability pension was denied

during his life time and that denial was confirmed by the Appellate Authority. The denial was communicated through the letter dated 13.6.2000. The husband of the petitioner expired after about expiry of four years period, on 25.6.2004. It is not the case of the petitioner that the husband of the petitioner challenged the said order before any authority, Court or Tribunal. Meaning thereby, the order dated 13.6.2000 refuting the claim for disability pension was passed which was not challenged any further and it had attained finality during the life time of husband of the petitioner. This being so, it cannot be said that right to claim disability pension or family pension on the facts of the present case is a 'continuing wrong'. In our considered opinion, when the order denying the disability pension has attained finality by express order during the life time of the Army personnel, after his death, the widow can not claim family pension.

In Shiv Dass Vs Union of India and others, (2007) 9 SCC 274, the entitlement of the pension was negated by the High Court on the ground of delay. The matter was carried to the Apex Court. The Apex Court held that normally, in the case of belated approach writ petition has to be dismissed. Delay or laches is one of the factors to be borne in mind by the High Courts when they exercise their discretionary powers under Article 226 of the Constitution. In Para 10 of the report, it has been observed that 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." It may be noted that there is no prescribed period of limitation for filing a writ petition which is a constitutional remedy, provided under the Constitution of India. So far as right to approach Armed Forces Tribunal is concerned, it is a statutory right also governed by Section 22 of the Armed Forces Tribunal Act. Before discussing Section 22 of the Armed Forces Act, we may point out that the decision of Shiv Dass (Supra) was rendered by the Apex Court in the 'peculiar circumstances' as noted in Para 11 of the report. Therefore, it should be understood in that context.

Section 22 of the Armed Forces Tribunal Act, 2007 provides the period of limitation for filing a petition. For the sake of convenience, the aforesaid section is reproduced below :-

> "22. Limitation. – (1) The Tribunal shall not admit an application –
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> (a) in a case where a final order such as is mentioned in clause(a) of sub-section(2) of section 21 has been made within six months from the date on which such final order has been made;
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> (b) in a case where a petition or a representation such as is mentioned in clause (b) of sub-section (2) of section 21 has been made and the period of six months has expired thereafter without such final order having been made;
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> (c) in a case where the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which jurisdiction, powers and authority of the Tribunal became exercisable under this Act, in respect of the matter to which such order relates and no proceedings for the redressal of such grievance had been commenced before the said date before the High Court.

> (2) Notwithstanding anything contained in sub-section(1), the Tribunal may admit an application after the period of six months referred to in clause (a) or clause (b) of sub-section (1), as the case may be, or prior to the period of three years specified in clause (c), if the Tribunal is satisfied that the applicant had sufficient cause for not making the application within such period."

These are the three contingencies which have been laid down in respect of limitation. Section 22(2) clearly says that Tribunal shall not admit an application after the period of six months referred to in clause (a) or clause (b) of sub-section (1), as the case may be or prior to the period of three years specified in clause (c), if the Tribunal is satisfied that the applicant had sufficient cause for not making the application within such period. So far as Section 22(a) and (b) are concerned, the period of limitation is six months. Sub Clause (C) of Section 22 only applies for the cases in which grievance had arisen by reason of any order preceding three years the date of jurisdiction, powers and authority of the Tribunal became exercisable i.e. three years prior to constitution of the Tribunal. But so far as approaching this Tribunal is concerned, the period is six months.

It would not be out of place to note another judgment of the Apex Court U.P. Jal Nigam and another Vs Jaswant Singh and another, (2006) 11 Supreme Court Cases 464, where a relief which was granted by the High Court on the basis of judgment of the Apex Court, has been denied by the Apex Court in appeal on the ground of delay and laches. It is interesting to note the facts of the case in brief. A dispute had arisen with regard to the age of superannuation of U.P. Jal Nigam employees. The employees contended that the age of superannuation in their case is 60 years as applicable to State

Government employees. The said claim was negated by the High Court and it was held that age of superannuation of such employees is 58 years. The judgment of the High Court was reversed by the Apex Court in the case of Harwinder Kumar, (2005) 13 SCC 300. Thereafter the employees who had retired at the age of 58 years filed the writ petitions claiming the salary etc. on the ground that they were wrongly retired at the age of 58 years instead of 60 years. The High Court, following the judgment of the Apex Court in case Harwinder Kumar (Supra) issued the writs. On appeal, the Apex Court held that delay and laches is important factor in exercise of the discretionary relief under Article 226 of the Constitution of India. When a person is not vigilant of his rights and acquiesces with the situation, his writ petition cannot be heard after a couple of years on the ground that the same relief should be granted to him as was granted to a person similarly situated who was vigilant about his rights and challenged his retirement. It was held that such person who is not vigilant, is not entitled to get the relief. The delay disentitles a party to discretionary relief under Article 226 or Article 32 of the Constitution.

In OA No. 55 of 2012 ERA Rakesh Kumar Aggarwal Vs Union of India and others decided by the Principal Bench at New Delhi on 17.2.2012, a somewhat similar controversy was under consideration. It was also a case of pension of a Army personnel. The Army authorities passed an order against the petitioner therein on 23.4.2004. After about 8 years, the said order was challenged before the Principal Bench of Armed Forces Tribunal. The Tribunal took note of Supreme

Court decision in the case of Union of India and others Vs Tarsem Singh (Supra) and held as follows :-

> "In the present case, petitioner was discharged way back in 1981 and he approached the Hon'ble Delhi High Court somewhere in 2000 and Hon'ble Delhi High Court passed the order in 2002. In compliance of order of Hon'ble Delhi High Court dated 15.11.2002, respondents passed an order dated 23.04.2004. Now almost after eight years, the order passed by the respondents on 23.4.2004 has been challenged vide present petition. This kind of inordinate delay cannot be entertained. More so, there is no justification for condonation of delay in this case. Hence, we hold that objection taken by the respondents is correct and petition suffers from inordinate delay and latches. Petition is accordingly dismissed. No order as to costs."

We can reach to the same conclusion through different route. 'Cause of action' means, right and infringement of the right. Where a right of a person is infringed, cause of action at once accrues to him. When it is so accrued, time begins to run against him. Once period of limitation begins to run, it does not stop. The passing of the orders by the Army officials denying the disability pension to the petitioner's husband, gave rise to the cause of action and the limitation had begun to run. After the death of the husband of the petitioner, no fresh cause of action to claim any pension arisen as the payment of family pension is dependent and subject to the admissibility of pension to her husband. Looked from any angle, it is not correct to say, on the facts of the present case that the petitioner has any surviving cause of action, what to say recurring cause of action.

It does not give any fresh period of limitation to the time barred claims. The claim for pension had become time barred during the life

time of the petitioner's husband thus, after his death, no cause of action survives for the widow. The final order was passed in the year 2000 and therefore, the present application/petition is barred by time.

There is one more aspect of the case. The petitioner has not challenged the orders which were passed against her husband denying the claim of disability pension or the order of the Appellate Authority confirming the denial of pension. These orders have not been placed on record before us. Now the petitioner is indirectly seeking to set at naught those orders. The petitioner in fairness should have brought those orders on record. Secondly, a thing which cannot be done directly, cannot be done indirectly. The quashing of those orders have not been sought for the obvious reason that the present petition is highly barred by time as the last order was passed way back on 13.6.2000 and present petition has been filed on 9.11.2011.

The pension was refused by an order dated 13.6.2000 which the petitioner's husband or the petitioner ought to get rid of by having the same set aside, or declared invalid for whatever reasons, it may be permissible to do so. No order bears a label of its being valid or invalid on its forehead. Any one affected by any such order ought to seek redress against the same within the period permissible for doing so. We may in this regard refer to the following oft quoted passage in Smith v. East Elloe Rural District Council (1956) 1 All ER 855. The following are the observationsregarding the necessity of recourse to the Court for getting the invalidity of an order established:

> "An order, even if not made in good faith is still an act capable of legal consequences. It bears no brand of invalidity on its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders.

This must be equally true even where the brand of invalidity is plainly visible : for there also the order can effectively be resisted in law only by obtaining the decision of the court. The necessity of recourse to the court has been pointed put repeatedly in the House of Lords and Privy Council without distinction between patent and latent defects."

The above case was approved by the Apex Court in Krishnadevi Malchand Kamathia & Ors. v. Bombay Environmental Action Group and Ors. (2011) 3 SCC 363, where the Court observed:

> "19. Thus, from the above it emerges that even if the order/notification is void/voidable, the party aggrieved by the same cannot decide that the said order/notification is not binding upon it. It has to approach the court for seeking such declaration. The order may be hypothetically a nullity and even if its invalidity is challenged before the court in a given circumstance, the court may refuse to quash the same on various grounds including the standing of the Petitioner or on the ground of delay or on the doctrine of waiver or any other legal reason. The order may be void for one purpose or for one person, it may not be so for another purpose or another person."

To the same effect is the next decision Pune Municipal Corporation v. State of Maharashtra and Ors (2007) 5 SCC 211,

where the Court discussed the need for determination of invalidity of an order for public purposes:

> "36. It is well settled that no order can be ignored altogether unless a finding is recorded that it was illegal, void or not in consonance with law. As Prof. Wade states: "The principle must be equally true even where the 'brand of invalidity' is plainly visible: for there also the order can effectively be resisted in law only by obtaining the decision of the Court".

He further states:

> "The truth of the matter is that the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the Court may refuse to quash it because of the plaintiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the 'void' order remains effective and is, in reality, valid. It follows that an order may be void for one purpose and valid for another, and that it may be void against one person but valid against another."
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> 38. A similar question came up for consideration before this Court in State of Punjab and Ors. v. Gurdev Singh (1991) 4 S.C.C. 1.
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> 39. Setting aside the decree passed by all the Courts and referring to several cases, this Court held that if the party aggrieved by invalidity of the order intends to approach the Court for declaration that the order against him was inoperative, he must come before the Court within the period prescribed by limitation. "If the statutory time of limitation expires, the Court cannot give the declaration sought for"."

Reference may also be made to the decisions of Apex Court in R.Thiruvirkolam v. Presiding Officer and Anr. (1997) 1 SCC 9, State of Keralav. M.K. Kunhikannan Nambiar Manjeri Manikoth, Naduvil (dead) and Ors.(1996) 1 SCC 435 and Tayabbhai M. Bagasarwalla & Anr. v. Hind Rubber Industries Pvt. Ltd. etc. (1997) 3 SCC 443, where the Court has held that an order will remain effective and lead to legal consequences unless the same is declared to be invalid by a competent court.

One of the fundamental principles of limitation law is – where the remedy becomes barred under the law of limitation, the subsequent change in law giving a longer period of limitation will not by itself revive or create the remedy. Section 22 Sub-section 1(C) of the Act takes care of such grievances as discussed herein above, in respect of order passed immediately preceding the three years from the date of establishment of the Tribunal provided no proceedings for redressal of such grievance had been commenced before the establishment of the Tribunal, before the High Court. Even under the said provision, the case of the petitioner does not fall. The result of the discussion is that the petitioner's claim is barred by Section 22 of the Act.

For the reasons given above, we do not think it necessary to consider individually the other judgments in OA No. 1370 of 2011 – Labh Singh Vs Union of India and others decided on 22.12.2011 by this Tribunal, Ex. Sep. Trilochan Vs Union of India & Ors given in W.P(C) No. 173 of 2012 decided on 10.1.2012 by Delhi High Court, Kunwar Singh Kannaujiya Vs State of U.P. and others, 2007(4) SCT 14, Hoshiar Singh Vs Union of India and others, 2006(4) RSJ 166,

Bidhi Chand Vs State of Punjab, 1999(1) S.C.T. 481, Sanjay Kumar Vs State of Haryana and others, 2002(3) S.C.T. 653 and Kapoor Singh Sandhu Vs Union of India and others, 2008(2) S.C.T. 386 as they are distinguishable on facts as already discussed above.

One of the reliefs claimed is for quashing of the "Impugned order IMB dated 12.7.1982, letter dated 22.3.2011……..". The letter dated 22.3.2011 is reply to the legal notice under Section 80 CPC. Section 21 of the Armed Forces Act 2007 provides that Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of the remedies available to him under the Army Act, 1950. There is no averment in the petition that the petitioner availed any remedy under the Army Act for redressal of her grievance. The letter dated 22.3.2011 is reply to the legal notice under Section 80 CPC. Section 80 CPC provides for serving of notice before institution of suit and has nothing to do with the Army Act.

There is no material on record for condoning the long delay in filing the petition.

In view of above, the petition is dismissed as barred by time but no order as to costs.

(Justice Prakash Krishna)

(Lt Gen (Retd) NS Brar)

15.01.2014
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Whether the judgment for reference to be put up on website – Yes/No