ARMED FORCES TRIBUNAL, CHANDIGARH
REGIONAL BENCH AT CHANDIMANDIR

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OA 708 of 2010

Raghunath …… Petitioner(s)
Vs
Union of India and others …… Respondent(s)

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For the Petitioner (s) : Mr Anand Singh, Advocate
For the Respondent(s) : Mrs. Geeta singhwal, Sr. PC.

Coram: Justice Prakash Krishna, Judicial Member.
Air Marshal (Retd) Naresh Verma, Administrative Member

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ORDER
3.03.2014

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The present petition has been filed under Section 14/15 of the Armed Forces Tribunal Act, 2007 and was presented before the Registry on 15.10.2010 challenging the orders dated 16.4.71, 21.4.72 and 3.5.76 whereby the petitioner has been denied the disability pension. The petition is not accompanied with any application for condonation of delay.

On notice, the respondents while giving the reply, raised a plea that the case has attained finality vide order dated 3.5.76 and the present petition after a period of about 34 years i.e. after the rejection of the second appeal, is barred by time and laches and the same is not maintainable. We are refraining ourselves from noticing the pleas raised in the reply on the merits of the case, for the time being.

On the basis of the pleadings of the parties, it was considered necessary to decide the plea of limitation first. Suffice it to say that the petitioner in the rejoinder/replication vide Para 6 has stated that "Pension is recurring cause which arise every day. The law has been very well settled by the Hon'ble Supreme Court as well as Hon'ble High Court in number of judgments……."

The learned counsel for the parties were heard on the question as to whether the petitioner was prevented by sufficient cause in not filing the present petition within the prescribed period of limitation or not. Presently, this is the only point for our consideration in this order.

The facts of the case which are almost undisputed, may be noticed in brief.

The petitioner was enrolled in the Indian Army on 7.4.1962 and was discharged on 22.6.1970 from military service by the Invaliding Medical Board due to disease – **Depressive reaction (Neurotic).** He was placed earlier in low medical category. The claim for disability pension was rejected initially by the PCDA(P), Allahabad vide order dated 16.4.1971 and the said order has been confirmed by the Government of India, Ministry of Defence on 21.4.1972. The matter was carried in second appeal and the second appeal met the same fate by the Government of India, Ministry of Defence vide order dated 3.5.1976. Thereafter according to the petitioner, he presented a mercy petition on 14.2.2008 which has been dismissed by the Record Officer vide order dated 28.1.2010 informing that the petitioner has been informed about the non-entitlement of disability pension earlier vide letter dated 3.5.76 and thereafter vide letter dated 9.3.2009.

Learned counsel for the petitioner submits that the right to receive pension is a recurring cause of action and therefore, it cannot be said that the present petition is barred by time. Learned counsel for the respondents, on the other hand submits that on the facts of the

particular case, the right to receive disability pension was denied to the petitioner even by the second appellate authority vide order dated 3.5.1976 which remained unchallenged and it shall be deemed that the petitioner was not at all aggrieved by the said order, and hence cannot be heard now on the question of grant of disability pension.

Considered the respective submissions of the learned counsel for the parties and perused the record.

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.

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 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.

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 unless the application is 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.
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> (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 of 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 laches. Petition is accordingly dismissed. No order as to costs."

Reverting back to the facts of the case which are not in dispute. It is crystal clear that the claim for disability pension was negated by the respondents, their first and second appellate authorities vide orders dated 16.4.71, 21.4.72 and 3.5.76, challenged in the present petition. There is no such plea that the petitioner did not receive copies of any of these orders in the normal course. The respondents have come out with crystal clear case in their written statement that the petitioner was informed about the outcome of the First Appellate Committee by the Government of India, Ministry of Defence vide letter dated 3.5.76 vide Para 2 of the written statement (Preliminary Objections). The said fact has not been disputed in the replication to written statement filed by the petitioner. Reference can be made to paras 1 to 3 to the Replication wherein the petitioner has stated that Para No. 1 to 3 need no replication being matter of record. Logically it follows that the petitioner was made aware about the fact that disability pension has been denied to him vide letter dated 3.5.1976. The petitioner should have challenged the said order by taking recourse to legal proceeding,

which he failed. The Dates and Events chart is completely silent with regard to steps, if any, taken by the petitioner for redressal of his grievance after the year 1976. Some mercy petition was filed in the year 2008 after about 32 years which was suitably replied by informing him that the matter has already attained finality long ago in the year 1976. It also follows that the cause of action for redressal of grievance did arise in the year 1976.

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, gave rise to the cause of action and the period of limitation had begun to run. Non-action on the part of the petitioner to challenge those orders in the year 1976 or shortly thereafter will not give any fresh period of limitation to file the present petition. He slept over the matter, may be deliberately or due to the negligence. Be that as it may, it is not open to the petitioner now to say that he should be heard at this distance of time. At least no circumstance could be pointed out either in the petition or in the replication to show that he was prevented by sufficient cause to take legal recourse before filing of the present petition.

The disability pension was ultimately refused vide order dated 3.5.1976. The Courts have held that even if an order is passed against any person affected by any such order ought to seek redress against the same within the period permissible for doing so.

The learned counsel for the petitioner also relied upon Dalip Singh Vs Union of India (2007) 1 RSJ 403, Para 12 in particular. In paragraph 12 thereof, the High Court has placed reliance of the judgment of the Apex Court in case S.K.Mastan Bee Vs. General Manager South-Central Railway and another(Supra). We have considered the aforesaid decision in the earlier part of the order. Reliance was also placed on Hoshiar Singh Vs. Union of India and others, (2006) 4 RSJ 166 (Punjab & Haryana), paragraph 10 in particular. Besides the fact that in this case also, S.K. Mastan Bee Vs General Manager South-Central Railway and another has been relied upon and the matter was disposed of on the ground that the delay and laches is not a rule of law but it is a rule prudence which may not be used to defeat the cases like payment of pension, especially to army personnel. The above observation should be understood in the context of writ petitions filed under Article 226 of the Constitution of India where no period of limitation for filing a writ is prescribed. Here the position is different. The remedy under the Act is a statutory remedy and the Statute not only provides period of limitation but directs Tribunal not to admit an application except it is filed within the period of limitation as provided under clause (a), (b) and (c) in Section 22(1) of the Act.

In addition to above, the Apex Court in the case of **Anshul Aggarwal Vs Noida, (2011) 14 SCC 578** has laid down that where the Tribunal and Courts have been constituted in order to provide expeditious remedy, the Tribunal or Special Court must keep in mind the special period of limitation prescribed under the Statute. The

aforesaid decision has been referred by the Apex Court in case CICILY KALLARACKAL Vs VEHICLE FACTORY, (2012) 8 SCC 524 wherein the question of condonation of delay of 1314 days in filing the appeal was in issue. The Supreme Court has held that condonation of such inordinate delay without any sufficient cause would amount to substitution of period of limitation prescribed by the Court in place of period prescribed by the Legislature for filing Special Leave Petition.

It may not be out of place to mention that the Apex Court in case MANIBEN DEVRAJ SHAH vs MUNICIPAL CORPORATION OF BRIHAN MUMBAI, (2012) 5 SCC 157, after having considered its various previous pronouncements held that even though a liberal and just approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the courts can neither lose sight of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and lot of time is consumed at various stages of litigation apart from the cost. What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.

In Bala Krishanan v. M. Krishnamurthy (1998) 7 SCC 123, the Apex Court in Para 11 has held as follows :-

> "Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy for approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae up sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time."

The aforesaid judgment has been relied upon and referred in a recent case of the Apex Court in B. MADHURI GOUD Vs B. DAMODAR REDDY, (2012) 12 SCC 693 wherein the judgment of the High Court condoning the delay in filing the appeal has been set aside. Condonation of delay was sought on the point that the file was misplaced in the office of the Advocate, which was held to be vague to the core and the Single Judge committed grave error by entertaining the fanciful explanation given for 1236 days' delay.

Under Section 22(2) of the Act, power has been given to the Tribunal that if the Tribunal is satisfied that the applicant had sufficient cause for not making the application within such time, may admit an application after the period of limitation as provided for in

such section 22(1) of the Act. The words "sufficient cause" will receive the same interpretation as it is received under Section 5 of the Limitation Act. The provision of condonation of delay or in other words to entertain a petition as contained in Section 22(2) of the Act, is pare-materia to Section 5 of the Limitation Act. We have already delineated, how the said expression has received judicial interpretation by the highest Court of the Land from time to time. These decisions have laid down a fine line of distinction in the cases where a party is negligent in prosecuting his case and where a party has been prevented by sufficient cause in not approaching the court within the prescribed period of limitation. The rules of limitation are not meant to destroy the rights of the parties. The law of limitation fixes a life span for legal remedy for the redress of the legal injury so suffered. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time. As said in the case Bal Krishanan (Supra) that law helps a person who approaches the court with promptitude. There is public policy behind it. The relevant evidence may be lost and the memory of the witness may fail with the passage of time which has actually happened in the present case.

The original medical record which was asked to be produced by the Tribunal has been destroyed. The Tribunal on 13.9.2011 passed the order directing the respondents to procure medical record of the petitioner, if available. A serious search to locate the medical record was made by the respondents to comply with the said order. The order could not be complied with within the time-frame and the Tribunal made a strong observation that the documents are Government public

record, not expected to be handled with that carelessness so as to not to be traceable vide order dated 28.5.2012. An affidavit on behalf of PCDA(P) has been filed in the light of the order dated 26.3.2012 deposing that a team of Board of Officers has been constituted to search out the medical documents as directed by the Tribunal vide Para 6 and the said team could not locate/trace the time barred medical documents of the applicant. The findings of the Board dated 25.5.2012 which consisting of five officers of the rank of ACDA, Sr.AO(G-3), Sr. A.O(G-3), AAO(G-3) and AAO(G-3) have given the following findings:-

> "4. Methodology:
> 4.1. The team in the first instance to search the file of above named individual visited all the barracks of old Records where the old records of Grants-3 Section have been placed, the available binders of the files of Signals Records were thoroughly searched by the team. Next the team visited the Grants-3 Section and other sections also and searched thoroughly to locate the AFMSF-16 and other medical documents.
>
> 5. Result:
> After thorough search the team could not locate/trace AFMSF-16 and other medical documents of No. 6802415 NK Raghunath of Signals Records."

This is also one of the factors which weighs heavily not to entertain the present petition. The respondents are not expected to maintain all the service record for indefinite period or in perpetuity. Needless to say that every attempt was made by the respondents to locate the record and the helplessness pleaded by them in locating the medical record of the petitioner is bona fide.

The off-shoot of the above discussion is that on the facts and circumstances of the case, noticed herein above, we are of the

considered opinion that in the present case, no good ground for condoning the delay in filing the petition, has been made out. It is a fact that condonation of delay is a matter of discretion of the court. Explanation offered by the petitioner, is not convincing and lacks bona fide. Permission to raise such stale issues at the sweet will of an individual, would cause irreparable loss and injury and will promote dishonesty in litigation.

In short, no case for condonation of delay has been made out. In the result, we are of the view that the present petition is liable to be dismissed on the ground of laches being barred by time. The petition is dismissed as barred by time. No order as to costs.

(Justice Prakash Krishna)

(Air Marshal (Retd) Naresh Verma)

3.03.2014
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Whether the judgment for reference to be put up on website – Yes/No