

ARMED FORCES TRIBUNAL, REGIONAL BENCH CHENNAI

M.A.No.89 of 2014

and

O.A.No.50 of 2014

Thursday, the 11th day of September 2014

THE HONOURABLE JUSTICE V. PERIYA KARUPPIAH
(MEMBER - JUDICIAL)

AND

THE HONOURABLE LT GEN K. SURENDRA NATH
(MEMBER – ADMINISTRATIVE)

Rank-Ex-Spr, Name-P. Palani
Service No.1327023
S/o late Perumal Samy
Aged about 70 years
No.6, 2nd Lane, Naidu Street
Kottur, Chennai-600 085.

.. Applicant/Applicant

By Legal Practitioners:
Mr. M.K. Sikdar & S.Biju

vs.

1. Union of India
Rep. by The Secretary
Government of India, Ministry of Defence
New Delhi-110 011.

2. The Chief of the Army Staff
Integrated HQs of MOD (Army)
Post-DHO, New Delhi-110 011.

3. The Officer-in-Charge
Abhilekh Karyalaya Record Office
Madras Engineer Group
Pin-900 493, C/o 56 APO.

4. The PCDA (P)
Draupadi Ghat
Allahabad (U.P)
Pin-211014.

.. Respondents/Respondents

By Mr. B.Shanthakumar, SPC

ORDER

[(Order of the Tribunal made by
Hon'ble Justice V. Periya Karuppiah, Member (Judicial)]

1. This application is filed by the applicant/applicant praying to condone the delay of 15355 days caused in filing the Original Application for the relief of disability pension.
2. The case of the applicant would be that he was enrolled in Indian Army on 01.10.1962 and was invalided out of service on 15.09.1971 after serving for a period of 8 years 11 months and 15 days under Rule 3 III (iii) of Army Rules 1954. He would further submit that the disability caused to him was diagnosed as "Anxiety State" and the said disability was assessed at 30%, but he was not granted any disability pension on the ground that it was not attributable to or aggravated by military service and thus his claim was rejected by an impugned order dated 15.12.1989. The applicant came to know that this Tribunal is delivering speedy justice and therefore, he decided to approach this Tribunal, but due to unavoidable circumstances and failing health, he could not approach his counsel in time and therefore, a delay of

15355 days has been crept in filing this application and the said delay is neither wilful nor wanton, but for the reasons stated supra. He would therefore request for condoning the delay of 15355 days and thereby take the application to grant disability pension from three years prior to the date of filing of the Original Application, if he is found entitled to the same.

3. The respondents would state in their objections that the records relating to the applicant Ex Sapper Perumal Samy Palani have already been destroyed during the year 2009 after the statutory preservation period of 25 years lapsed, the applicant being a non-pensioner, as per provisions contained in Para-595 of Regulations for the Army 1987. The only documentary evidence is the entries recorded in the Long Roll maintained by the Record Office, Madras Engineer Group. According to the said document, the applicant was enrolled in the army on 01.10.1962 and was invalided out of service on 15.09.1971 under Rule 13 III (iii) of Army Rules 1954. The claim of the applicant is also hopelessly barred by law of limitation and the relief cannot be granted due to the delay and laches on the part of the applicant. The applicant never approached any Court of law well within the time. The inordinate delay has never been explained. Due to the absence of documents with regard to the applicant, no comments can be offered on the merit of the case. The disability pension is not a regular pension and the claim for the same could be accepted, if it is attributable to or aggravated by military service and not otherwise. The said point cannot be decided without

any medical document in relation to the applicant. The Hon'ble Tribunals of Lucknow Bench and Principal Bench and also Hon'ble High Court of Delhi have come down heavily in their judgments on the unexplained delay caused in the cases where the documents are not available against the applicant and therefore, the application may be dismissed on those lines.

4. We heard the arguments of Mr. M.K. Sikdar, learned counsel for the applicant and Mr. B.Shanthakumar, learned Senior Panel Counsel assisted by Major Suchithra Chellappan, learned JAG Officer appearing for the respondents.

5. On the pleadings submitted on either side and the arguments advanced by their counsel, we could understand that the applicant was enrolled in the army on 01.10.1962 and was invalided out of service on 15.09.1971 after rendering service of 8 years 11 months and 15 days, under Rule 13 III (iii) of Army Rules 1954. It is candidly proved by the Long Roll as well as the Discharge Certificate produced by the applicant. The claim for disability pension of the applicant was denied by the 4th respondent in their letter dated 28.12.1971 which was communicated to the applicant on 12.01.1972 by the 3rd respondent. On further enquiry made by the applicant, the 3rd respondent had reiterated the denial of disability pension as per communication dated 12.01.1972 sent by 3rd respondent to the applicant, in his letter dated 15.12.1989. Both these letters and the order passed by the

4th respondent on 28.12.1971 are produced and the applicant sought for quashment of those orders.

6. On a careful perusal of the said orders, we could understand that the disability sustained by the applicant for his invalidment on 15.09.1971 was not attributable to or aggravated by military service or connected to military service and therefore, he was found not eligible for grant of disability pension. As regards the identity of the disability, there is no mention in any of these letters nor the applicant produced any letter addressed by him to the respondents mentioning or referring the name of the disability. The applicant has mentioned the disability caused to him as "Anxiety State" in his applications. But no document supports his statement with reference to the date of enrolment, date of discharge, cause of discharge, character as written in the letter dated 12.01.1972 at its bottom with a fountain pen which was not signed by any competent person. If really those particulars were part and parcel of the said letter, it ought to have been found place in the body of the letter, but it was additionally written at the foot of the letter by somebody. It could have been written by anybody for the purpose of the case. Therefore, the writing in ink (as seen in xerox copy) should be an unauthorized one. As rightly submitted by the respondents, there is no medical document available for considering the case of the applicant that he was invalided out of service for the disability "Anxiety State".

7. The learned counsel for the applicant drew our attention to an order passed by this Tribunal in **O.A.No.25 of 2010** dated 9.3.2011 in between **Ex Sepoy M. Sundaram (No.2547740)** and **The Chief Record Officer** in which this Tribunal had relegated the matter to find out the attributability or aggravability of the disability "Psychosis" to a Review Medical Board where the medical documents were not available in respect of the said applicant. On a careful perusal of the judgment, we could find that this Tribunal was satisfied with the mention of the disability of "Psychosis" in his application dated 5.3.2007 addressed to His Excellency the President of India and thus it was relegated to a Review Medical Board. So far as this case is concerned, the applicant did not produce any letter addressed to the respondents claiming that his disability was "Anxiety State" nor preferred any appeal against the rejection of the disability pension to the applicant. The scribbling made in Annexure-3 with a fountain pen cannot be said to be written by the respondents mentioning the disability of the applicant as "Anxiety State". Furthermore, the referral to Review Medical Board in this case is not possible because the doctors constituting the present Medical Board cannot determine the attributability and aggravability of the alleged disability of "Anxiety State" at the time of his invaliding from the service in the year 1971. More so, the said doctors cannot examine a person to find out a disability after a long period of 43 years without naming the disability as to its attributability or aggravability by military service of the applicant in

the year 1971. Therefore, the reference to Review Medical Board for the purpose of finding out the particulars regarding the disability of the applicant existed at the time of his invaliding is not possible since there were no documents available with the respondents in order to produce before the Review Medical Board. Therefore, the judgment of this Tribunal made in O.A.No.25 of 2010 is not applicable to the present facts of this case since they are different from the facts of this case. This Tribunal in that order had laid down the onus of proof on the applicant as per provisions of Para-7 of Entitlement Rules. We have found that the applicant has not produced any document in respect of identity of his disability and the opinion of the medical board invaliding him from service and therefore, we do not find any *prima facie* case for entertaining the Original Application.

8. Furthermore, the applicant has not placed any plausible reason to accept such a long delay of 15355 days occurred in filing this application. He has simply stated in his affidavit that due to unavoidable circumstances and failing health, he could not approach this Tribunal in time. What would be the period of such unavoidable circumstances and the failing health has not been explained. For applying the principles laid down by the Hon'ble Apex court for grant of disability pension three years prior to the date of filing of the application, there is no document produced to go through nor any feasibility for the Review Medical Board to identify the disability in order to find out the attributability or aggravability.

9. In the said circumstances, the judgment of Hon'ble Delhi High Court and the dictum made in the case between **Hans Ram** and **Union of India** reported in **1995 (34) DRJ 393** is squarely applicable to the present case. It lays down as follows:

".....The respondents have stated on oath that the service record of the petitioner is not available to verify the correct facts and place the same before the Court. It is also submitted that if such petitions are entertained it would tantamount to opening a pandora's box creating serious financial and other complications.

It is true that ordinarily in matters relating to pension the writ courts do not deny the relief on account of delay merely. A sympathetic and liberal view is always taken. Indulgence is invariably shown. In the case of Bachan Kaur Vs. Union of India (W.P.621/1989) decided on 13.4.1985, a Division Bench of this Court has taken the view that a writ petition claiming pension if the claim be otherwise just and legal may be entertained and allowed limiting the same to a period of three years before the date of filing of the petition. In the present case the petitioner has on account of culpable delay and laches extending over a period of 25 years himself created a situation which disentitles him to any relief. The service record of the petitioner is not available. It is not known as to why and in what circumstances the petitioner was paid merely the gratuity and yet felt satisfied therewith though no pension was allowed. If only the petitioner would

have approached the Court within a reasonable time, the respondents could have been directed to search and produce the relevant service record of the petitioner enabling a just decision of the petitioner's claim, which is not possible in the present case. The entire fault is of the petitioner. Howsoever sympathetic we may be with the petitioner, sitting as a writ court, we cannot grant relief of pension to the petitioner merely as a charity or bounty in the absence of relevant facts being determinable and relevant comments available. For the foregoing reasons the petition is dismissed though without any order as to costs."

Another judgment cited by the learned Senior Panel counsel in this regard is the judgment of the Hon'ble AFT Principal Bench in **O.A.No.55 of 2012** with **M.A.No.78 of 2012**, dated 17th February 2012 in the case between **ERA Rakesh Kumar Aggarwal** and **UOI & Ors.** The relevant passage is 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 23.04.2004 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. "

10. The above judgment would go to show that the long period of more than 40 years is amount to gross delay and laches and if at all such causes are admitted that would amount to open a pandora's box. When we apply the principles laid down in these judgments, it can be seen that the claim of the applicant is raised after a long delay of 43 years that too without any document to substantiate his case. Therefore, we are of the considered view that the delay caused in filing the application is not condonable in view of the fact that the applicant has no *prima facie* case which makes the case disqualified to apply the principles of **Tarsem Singh's** case.

11. Accordingly, the application for condonation of delay of 15355 days is dismissed. Consequently, the Original Application claiming disability pension is also dismissed. No order as to costs.

Sd/
LT GEN K. SURENDRA NATH
MEMBER (ADMINISTRATIVE)

Sd/
JUSTICE V. PERIYA KARUPPIAH
MEMBER (JUDICIAL)

11.09.2014
(True copy)

Member (J) – Index : Yes / No
Member (A) – Index : Yes / No

Internet : Yes / No
Internet : Yes / No

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To:

1. The Secretary
Government of India, Ministry of Defence
New Delhi-110 011.
2. The Chief of the Army Staff
Integrated HQs of MOD (Army)
Post-DHO, New Delhi-110 011.
3. The Officer-in-Charge
Abhilekh Karyalaya Record Office
Madras Engineer Group
Pin-900 493, C/o 56 APO.
4. The PCDA (P)
Draupadi Ghat
Allahabad (U.P)
Pin-211014.
5. M/s. M.K. Sikdar
& S.Biju
For applicant.
6. Mr. B.Shanthakumar, SPC
For Respondents.
7. OIC, Legal Cell, ATNK & K Area, Chennai
8. Library, AFT/RBC

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