

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI

O A No.66 of 2011

FRIDAY, THE 4TH DAY OF JANUARY, 2013/14TH POUSHA, 1934

CORAM:

HON'BLE MR. JUSTICE SHRI KANT TRIPATHI, MEMBER (J)

HON'BLE LT.GEN.THOMAS MATHEW, PVSM, AVSM, MEMBER (A)

APPLICANT:

NO.2778828 K, EX. HAV. BHUNJINGA JOTI DAVARI,
AGED 46 YEARS, VILLAGE AND POST – RASAISHENDUR,
TEHSIL – CHIKODI, DISTRICT – BELGAUM, '
KARNATAKA STATE, PIN – 591 237.

BY ADV. SRI. RAMESH C.R.

versus

RESPONDENTS:

1. UNION OF INDIA, THROUGH THE SECRETARY,
MINISTRY OF DEFENCE, (ARMY), SOUTH BLOCK,
NEW DELHI – 110 001.
2. THE CHIEF OF ARMY STAFF, DHQ P.O.,
INTEGRATED HQRS., MINISTRY OF DEFENCE,
SOUTH BLOCK, NEW DELHI – 110 001.
3. THE ADJUTANT GENERAL, AG'S BRANCH,
ARMY HEADQUARTERS, DHQ P.O.,
NEW DELHI – 110 011.
4. THE PRINCIPAL CONTROLLER OF DEFENCE ACCOUNTS (PENSION),
DRAUPADI GHAT, ALLAHABAD, UTTARPRADESH – 211 014.
5. THE RECORDS, THE MARATHA LIGHT INFANTRY,
BELGAUM, KARNATAKA, PIN – 590 009.

R1 TO R5 BY ADV. SRI. TOJAN J. VATHIKULAM, CENTRAL GOVT. COUNSEL

ORDER

Shri Kant Tripathi, Member (J):

Heard Mr. Ramesh C.R. for the applicant and Mr.Tojan. J.

Vathikulam, for the respondents.

2. The applicant, No.2778828 K, Ex.Hav. Bhunjinga Joti Davari, has filed the instant O.A. for disability pension. The applicant was enrolled in the Indian Army as an infantry soldier on 1st August, 1983. The applicant, due to some medical problems, showed his unwillingness to continue in service and requested for his discharge. Consequently, his request was accepted and discharge was allowed. At the time of release, the applicant was required to appear before a Release Medical Board which opined that the applicant had the disability of 'Supra Sellar Meningioma (Optd) assessed as 20% and Blindness of Left Eye assessed as 40% and the composite disability was assessed as 50%. However, the claim for disability pension was denied on the ground that the disability was neither attributable to nor aggravated by military service. The applicant preferred first appeal, which was rejected by the Appellate Committee on First Appeals on 22nd January, 2002. Since the applicant had rendered 16 years and 4 months of qualifying service before his discharge, he was sanctioned service pension vide PPO No.S/053189/1999 issued by the Principal Controller of Defence Accounts (Pension), Allahabad.

3. Counsel for the applicant submitted that the applicant was found suffering from Supra Sellar Meningioma and was operated upon in

July 1997 for partial excretion of tumor. He further submitted that blindness occurred as a consequence of the operation, therefore, it was attributable to service. But the Pension Sanctioning Authority as also the first appellate authority failed to appreciate this aspect of the matter that blindness occurred due to operation and passed the order rejecting the claim for disability pension on the ground that disability was neither attributable to nor aggravated by military service.

4. Mr.Tojan J.Vathikulam, learned counsel for the respondents submitted that the first appellate order was passed on 22nd January, 2002 and the applicant kept mum for about nine years and did not prefer any appeal. After the rejection of the first appeal, the applicant moved the representation dated 6th January 2011 (Annexure A20) after a gap of nine years, which was rejected by the Record Officer, OIC Records, vide letter dated 1st July 2011.

5. Mr.Tojan next submitted that the O.A. was liable to be dismissed on the ground of laches and also on the ground of non availing of the remedy of second appeal.

6. In reply, Mr. Ramesh submitted that the question of limitation has no relevance in the present matter, in view of the fact that the pension is a continuing and recurring cause of action and this principle has been laid down by the Apex court in the case of **Union of India**

and Others vs. Tarsem Singh, (2008) 8 SCC 648. Mr.Ramesh next submitted that the Record Office had no authority to pass any order on the representation dated 6th June 2011 (Annexure A20) submitted by the applicant and the proper course by the Record Office was to forward his representation to the appropriate authority for decision, but the Record Officer undertook the matter itself and rejected the same which was not proper. Mr.Ramesh, however, made it clear that applicant was ready to prefer second appeal, therefore, he may be granted some time to file appeal and a direction may be issued to the second appellate authority to consider the second appeal.

7. In our view, in the matter of **Tarsem Singh (supra)**, the Apex Court has already settled the legal position with regard to limitation in pension matters and has very specifically held that pension matter is a recurring/continuing cause of action occurring monthwise. The observation of the Apex Court on the point are reproduced as follows:

"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”.

8. In view of the fact that the applicant is willing to file second appeal, We do not consider it proper to express any opinion on the merits of the claim. However, the second appellate authority is expected to consider the question of limitation as per the principles laid down by the Apex Court in Tarsem Singh's case (supra) while considering the appeal .

9. In view of the aforesaid, the Original Application is disposed of with the direction that the applicant may prefer second appeal to the appropriate authority possibly within two months from today explaining the reasons for the delay. If any such appeal is preferred the same may

be given due consideration in accordance with law and appropriate orders thereon may be passed as expeditiously as possible, preferably within four months from the date of receipt of the appeal.

9. No order as to costs.

10. Issue free copy of this order to both sides.

Sd/-
LT. GEN. THOMAS MATHEW,
MEMBER (A)

Sd/-
JUSTICE SHRI KANT TRIPATHI,
MEMBER (J)

DK.

(True copy)

Prl. Private Secretary