

(Reserved Judgment)

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(Circuit Bench at Nainital)**

M.A. No. 440 of 2019 In re: O.A. No. Nil of 2019

Friday, this the 03rd day of May, 2019

**“Hon’ble Mr. Justice V.K. Shali, Member (J)
Hon’ble Air Marshal BBP Sinha, Member (A)”**

No. 4043429F Ex. Rifleman/ Asar Singh Chauhan, S/o Late Kala Singh Chauhan, R/o Village Dever, P.O. Guptakashi, District Rudraprayag, Zip. 246439, Uttarakhand.

..... Applicant

Ld. Counsel for the Applicant : **Shri Surendra Kumar Posti, Advocate.**

Versus

1. Union of India through Secretary, Ministry of Defence, Central Civil Secretariat, New Delhi.
2. Chief of the Army Staff, Integrated Headquarters, Ministry of Defence (Army), New Delhi.
3. Director Pension/Policy, Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare, New Delhi.
4. Senior Record Officer, Record Office Garhwal Rifles, Lansdowne, District Pauri Garhwal.
5. P.C.D.A. (Pension), Allahabad.

.....Respondents

Ld. Counsel for the Respondents. : **Shri Rajesh Sharma, Advocate**

ORDER

(“Per Hon’ble Mr Justice V.K. Shali, Member (J)”)

1. This is an application filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 seeking the grant of disability pension w.e.f. 29.08.1965.

2. Briefly stated the facts of the case are that the applicant is claiming to be a resident of Dever, Post Office – Guptakashi, District Rudraprayag and is stated to be 75 years of age. It is the case of the applicant that he served Assam Rifles for 08 years upto 28.05.1963, where his service number was 101390. The applicant is also claiming that thereafter he applied in Army and was selected in Garhwal Rifles, where his service number was 4043429. He served Garhwal Rifles for 02 years, 03 months and 01 day and thereafter he was alleged to have been invalidated out from service on the ground of disability of “**Schizophrenia**”, which was assessed according to him by the Medical Board at 50%. The disability with which he was alleged to have been afflicted was “**Schizophrenia**”.

3. It is the case of the applicant that he gradually recovered from his ailment as he got his treatment in District Hospital Rudraprayag but the Chief Medical Officer has thereafter issued him a certificate to the effect that his condition is progressive and his condition will deteriorate with passage of time. The disability reported by him pertains to his mental ill health, which deteriorates with passes of time. The applicant has stated that since he was not educated and was afflicted by “**Schizophrenia**”, which he calls “**unsoundness of mind**” at some places, therefore, he was not aware of the fact that he was denied invalidating pension by the respondents. It is stated by him that he learnt only in 2016 about the rejection of his claim by the respondents for grant of invalidating pension. Hence, he has

filed the present application for grant of disability pension w.e.f. 29.08.1965.

4. Alongwith the Original Application, the applicant has filed an application seeking the condonation of delay. In the said application the number of years of delay has not been mentioned to indicate as to how much is the period of quantum of delay. The averments made by the applicant in the main petition in effect are summed up again in concise manner in the application and it is stated that since denial of pension to the applicant is recurring cause of action, therefore, the delay may be condoned and the application be entertained. We have heard the learned counsel at the stage of admission.

5. The learned counsel for the applicant with regard to the condonation of delay has stated that the same was occasioned on account of applicant being a patient of "Schizophrenia". Therefore, he was unable to comprehend the fact that he has been denied the disability pension, which was the basis of his discharge from service. In this regard the applicant has referred to the judgment of the Hon'ble Apex Court in **Basanti Prasad vs. Chairman, Bihar School Examination Board and others** reported in (2009) 6 SCC 791 wherein the delay was condoned by the Hon'ble Supreme Court, as the same was satisfactorily explained.

6. In **Basanti Prasad's** judgment (supra) the facts of the case were that the husband of Basanti Prasad was an employee of Bihar School Examination Board and in the year 1976 he was suspended

on account of initiation of criminal proceedings for having tampered with the marksheet of several candidates. A case under Sections 467, 468, 471 and 120-B IPC was registered against petitioner's husband and some other persons and they were put to trial. The husband of the applicant in the said case was convicted by the Judicial Magistrate on 07.02.1989 and consequently it resulted in filing an appeal by him to the Court of Sessions.

7. The Court of Sessions acquitted the husband of the applicant Basanti Prasad. After disposal of the criminal appeal, the petitioner approached the Bihar School Examination Committee, inter alia representing since her husband has been acquitted by the Sessions' Court in the criminal appeal, her husband be notionally treated to be reinstated till retirement, he is entitled for all the retiral benefits of her late husband. The High Court rejected the writ petition of the applicant on the ground that since the applicant's husband had not challenged the order of termination dated 04.08.1992 during his life time, therefore, the challenge laid to the said order by the widow i.e. Basanti Devi was highly belated and accordingly the writ petition was dismissed. It may be pertinent to mention that the writ in the High Court was filed in the year 2007.

8. Feeling aggrieved by said order the petitioner filed special leave petition and Hon'ble Supreme Court. The Hon'ble Supreme Court set aside the order passed by the Patna Bench of the High Court and directed them to decide the matter on merits. The reason for setting aside the judgment of the High Court was that the widow

was fighting litigation with limited resources before different forums and since the termination of the petitioner's husband was purely on the ground of his having suffered conviction, therefore, it was only after acquittal that the lady could have come to the Court as by that time her husband had died. Accordingly, the Hon'ble Supreme Court set aside the order of the High Court of Patna and remanded the matter back with the direction to decide the same on merits.

9. The aforesaid judgment with regard to the condonation of delay in the case of the applicant would not be helpful for the simple reason that there are material differences in the facts of the two cases, including quantum of delay. In the reported case the order of termination was passed in the year 1992 and was challenged in the year 2007. Thus, there was a delay of approximately of 15-16 years, which by no stretch of imagination can be equated with the facts of the present case wherein there is a delay of more than 50 years. It has also been observed by the Hon'ble Supreme Court reinstatement could be deemed only after acquittal. It was observed that the order of termination was being challenged by the affected persons, thus, the Hon'ble Supreme Court was with passage of time from 1962 liberalised the concept of condonation of delay, starting from Ram Lal Rewa Coal Field where each day delay after the period of limitation came to an end it shifted to the concept of quantum of delay in the bonafides of the parties in approaching the Court.

10. If the bonafides of the party are doubtful or suspect that whatever be the quantum of delay, it does not deserve to be condoned.

11. In the present case firstly the applicant gives impression as if he has served Army for more than 10 years, whereas he served only slightly over two years. The period of 08 years services is with Assam Rifles, which is a Para-Military Force over which the Tribunal does not have any jurisdiction. The year of joining Assam Rifles or Army is given as 1963, which is not possible. Record in respect of both his services period must have been destroyed while the disability pension is being claimed from 1965.

12. Secondly the filing of the case is an after effect of **Dharambir judgment** where the Hon'ble Supreme Court has observed that if nothing is written in the medical record at the time of recruitment then the disability with which a person has been boarded out has to be presumed that he was not affected by the same at the time of his enrolment. Same was attributable to or aggravated by military service. But this judgment will not be prospective in operation. Cases which are more than 50 years old will be opened on the strength of Dharambir Singh's judgment cannot be done and they cannot be given the benefit of disability pension or invalidating pension. Moreover the disability with which the applicant was suffering was constitutional in nature which would be only controlled by medicines and it is certainly different than a case of unsound mind.

13. We feel that we will be failing in our duty in case we put in such cases burden on the state exchequer for the whole of the life of an individual by examining and granting them the benefit of invalidating or disability pension.

14. Thus, in the instant case there is a considerable length of delay but no sufficient cause has been shown by the applicant for condoning the delay. Sufficient cause has been interpreted to be a cause which is beyond human control. Therefore, the judgment which has been relied upon by the applicant is distinguishable from the facts of the present case. We feel that the present case is not a case where the application of the applicant deserves to be entertained or that it deserves to be allowed for hearing of main matter on merits. In this regard, we would like to refer a judgment of Hon'ble Supreme Court in the case of **Haryana Financial Corporation and another vs. Jagdamba Oil Mills and another** AIR 2002 SC 834 wherein the Hon'ble Supreme Court has observed that before law laid down in the given case is made applicable to the case in hand, the Court, which obviously includes Tribunal, also must co-relate the facts of the two cases. The law laid in one case cannot be applied like mathematical proposition.

15. The second submission made by the learned counsel is that in **Ex. GNR. Laxmanram Poonia (dead) Legal Representatitves vs. Union of India and others**, reported in (2017) 4 SCC 697 the Hon'ble Supreme Court while placing reliance on **Dharamvir Singh vs. Union of India** (2013) 7 SCC 316 has granted the benefit of

disability pension by saying that if the applicant is shown to have not suffered from any medical ailment at the time of entrance, in the medical examination paper, then it is presumed that it has been suffered by him during the course of military service.

16. Further when the Tribunal was constituted in 2009 on the basis of Armed Forces Tribunal Act, 2007, Section 22 gave a limitation of 03 years only to challenge the orders. Meaning thereby that, orders passed only three years prior to the passing of the Act could be assailed.

17. For the reasons mentioned above, we are of the firm view that the case of the applicant is hopelessly barred by time and the petition is liable to be **dismissed**.

18. Ordered accordingly.

(Air Marshal BBP Sinha)
Member (A)

(Justice V.K. Shali)
Member (J)

Dated: May 03, 2019
JPT