

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

M.A.No.363 of 2014
and
O.A. No.135 of 2014

Friday, the 27th day of March 2015

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

AND

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

No.266331 Ex-CPL
L.J.S.Marian, aged 69 years
Thirukalli, Kallathidal Post
Sivagangai District
Tamil Nadu-623401.

... Applicant/Applicant

By Legal Practitioner:
Mr. S.Pasupathi

vs.

1. Union of India, rep. by its
Secretary to the Government
Ministry of Defence (Air Force)
South Block, New Delhi-110 011.

2. The Chief of the Air Staff
Air Headquarters, Vayu Bhavan
Integrated Head Quarters
New Delhi-110 011.

3. Air Force Record Office
Subroto Park
New Delhi-110 010.

4. Air Headquarters
Dte of Air Veterans
AFRO Building
Subroto Park, New Delhi-110 010.

5. Joint Controller of Defence Accounts
Subroto Park, New Delhi, Cantt. ... Respondents/Respondents

By Mr. E.Arasu, CGSC

ORDER

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

1. This application is filed by the applicant seeking to condone the delay of **14770** days caused in filing O.A. 135 of 2014 within time.
2. Heard Mr. S.Pasupathi, learned counsel for the applicant and Mr. E. Arasu, learned CGSC appearing for respondents.
3. The Original Application is filed by the applicant to set aside the order of 3rd respondent dated 21.11.1973 and also the order of 4th respondent dated 7.7.2014 and thereby to grant disability pension including service element of pension or invalid pension for life to the applicant with effect from the date of discharge of the applicant, i.e., 12.09.1973 and for costs.
4. The applicant submits that he was discharged from service on 12.09.1973 on medical grounds and his claim for disability pension was rejected by the AFRO vide its letter dated 21.11.1973. He was advised to prefer an appeal, but he did not so. Subsequently, he joined in civil service on 03.10.1979 and retired on 31.01.2003. He was under the

impression that he should not prefer any appeal against the rejection of disability pension while in civil service. After coming to know that he could prefer an appeal, he sent a petition on 01.07.2013 to the 4th respondent for the grant of disability pension or atleast invalid pension. The 4th respondent rejected the request of the applicant vide reply dated 19.09.2013. Thereafter, the applicant preferred a First Appeal on 23.04.2014 before the First Appellate Authority for grant of disability pension including service element of pension or invalid pension for life, with effect from the date of discharge of his service from the Air Force, i.e., 12.09.1973 along with a petition to condone the delay of 40 years and 22 days in preferring the First Appeal. The said First Appeal was rejected on the ground that the delay of 40 years could not be condoned as the documents having been already destroyed. He preferred a Second Appeal dated 12.06.2014 before the Defence Minister's Appellate Committee on Pension, Ministry of Defence, New Delhi, but it was also rejected for the same reasons. The applicant submits that the delay was due to he being mentally upset in 1973 when he was discharged from service and also due to his ignorance that he should not prefer any appeal during his civil employment from 03.10.1979 to 31.01.2003. Therefore, the delay is neither wilful nor wanton but only due to the above said circumstances. The applicant therefore requests that this application may be allowed.

5. The respondents filed a counter affidavit stating that the original service records of the applicant were destroyed after the stipulated period of retention of 25 years in accordance with Section 6, Chapter XVIII of Regulation 1026 of Regulations for the Air Force. This application is barred by law of limitation and therefore, it is not maintainable in view of the exorbitant delay of 14770 days in filing the Original Application. The respondents also cited judgments of Hon'ble AFT Principal Bench in *O.A.No.541 of 2011 (15.12.2011)* in the case of *Cpl Pritam Singh* and AFT Kochi Regional Bench in *T.A.No.74 of 2010 (16.09.2010)* in the case of *Cpl George Mathew* and AFT Chandimandir Regional Bench in *O.A.No.1557 of 2011* for the proposition that the long delay in filing the application for condoning the delay that too without any valid records cannot be allowed and on that ground the case of applicants in the respective cases was dismissed. Therefore, the respondents request that this application may be dismissed.

6. On the above submissions, we find the following points for consideration in this application:

(1) Whether the reasons stated by the applicant for condoning the delay in filing the Original Application are acceptable?

(2) Whether the delay of 14770 days can be condoned?

(3) To what relief the applicant is entitled for?

7. **Point Nos.1 to 3:** It is not disputed that the applicant was enrolled in Army and was discharged from service on 12.09.1973 on medical grounds and his claim for disability pension was rejected by AFRO in its letter dated 21.11.1973 and that the applicant did not prefer any appeal against the rejection of disability pension, but he joined in civil service with effect from 03.10.1979 and retired from there on 31.01.2003. Subsequent to his retirement after a long gap of 40 years, he preferred a First Appeal against the order of rejection of disability pension dated 21.11.1973. The said appeal was rejected since the period of 40 years and 22 days could not be condoned owing to the non-availability of the records. The Second Appeal preferred by him on 12.06.2014 was also rejected for the same reasons. Now the applicant has come before us with the application to condone the delay in challenging the orders passed by the respondents. The long delay of more than 40 years was sought to be explained by the applicant that he was under the premise that he being a civil servant after his discharge from Army should not prefer any appeal against the order of the rejection of disability pension in the Army and therefore, he kept quite all these days. The reason was not accepted by the respondents in the First Appeal and the Second Appeal. The further reasons assigned by the respondents for not allowing the appeals would be that the medical records relating to the applicant were not available since they were

weeded out as per the procedures contemplated on the subject. As per the procedures governing the maintenance of records, the respondents are under the obligation to weed out or destroy the records after the stipulated period of 25 years in accordance with Section 6, Chapter XVIII of Regulation 1026 of Regulations for the Air Force. The respondents cannot be blamed for the destruction of those records since they did their duty as per their rules.

8. When these vital medical records of the applicant are not available for perusal of this Court since they were weeded out as per rules, the case of the applicant that he was under the impression that he should not prefer any appeal against the rejection of disability pension while he was in civil service till the year 2003 cannot be decided. He also kept quiet from the year 2003 and only in the year 2013, he requested the 4th respondent for grant of disability pension or atleast invalid pension. This shows severe laches in his claim for disability pension. The respondents have acted in accordance with the rules and have weeded out the records as per the appropriate rules and the said act of the respondents will not give rise to any adverse inference against their act or towards their case.

9. In the said circumstances, the judgment of Hon'ble High Court of Delhi made in **Hans Ram and Union of India (CM No.2063 of 1993**

and CW No.1267 of 1993, dated 31.07.1995), is much relevant on this aspect. The relevant passage would be 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.621/89) decided on 13.4.85, 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. However 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."

10. Similarly, a judgment of Punjab and Haryana High Court in the case between **Ex Naik Chander Singh** and **UOI & others** decided on 04th November 2007 is also on this point in which the service records destroyed after the retention of 15 years from the date of discharge would be sufficient to reject the claim of the applicant based on those records.

11. Applying the principles laid down in the above said judgments, the court would be handicapped to condone the exorbitant delay of 14770 days in the absence of any relevant medical records. No adverse inference can be taken against the respondents especially when the documents of the applicant were weeded out as per rules. No document has been produced by the applicant to prove any ill-health which prevented him from launching a claim before an appropriate forum. If at all, condonation of delay is ordered on humanitarian consideration, it would be amounting to opening of Pandora's Box which would not in any way help the applicant also. Therefore, the delay of **14770** days cannot be condoned by this Tribunal in order to enable the Original Application to be taken on file. No purpose will be served even if the condonation of such a huge delay is ordered on equitable grounds.

Therefore, we are not inclined to condone the delay of 14770 days caused in filing the Original Application.

12. The applicant has also failed to explain the delay of 11 years after his retirement from the civil employment for not taking any action for the grant of disability pension.

13. Accordingly, the application is dismissed. In view of the dismissal of the application for condonation, the Original Application deserves dismissal and accordingly, the Original Application is also dismissed. No costs.

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

Sd/
JUSTICE V.PERIYA KARUPPIAH
MEMBER (JUDICIAL)

27.03.2015
(True copy)

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

Internet : Yes/No
Internet : Yes/No

VS

To:

1. Secretary to the Government
Ministry of Defence (Air Force)
South Block, New Delhi-110 011.
2. The Chief of the Air Staff
Air Headquarters, Vayu Bhavan
Integrated Head Quarters
New Delhi-110 011.
3. Air Force Record Office
Subroto Park
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4. Air Headquarters
Dte of Air Veterans
AFRO Building
Subroto Park, New Delhi-110 010.
5. Joint Controller of Defence Accounts
Subroto Park, New Delhi, Cantt.
6. Mr. S.Pasupathi,
Counsel for applicant.
7. Mr. E.Arasu, CGSC
For respondents.
8. OIC, Legal Cell, Air Force, Chennai.
19. Library, AFT, Chennai.

HON'BLE MR.JUSTICE V. PERIYA KARUPPIAH
MEMBER (JUDICIAL)
AND
HON'BLE LT GEN K. SURENDRA NATH
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