

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI**

T.A.NO.120 OF 2010

[W.P.(C) No.31015 of 2006 of the Hon'ble High Court of Kerala at Ernakulam]

WEDNESDAY, THE 18TH DAY OF JANUARY, 2012/28th POUSHA, 1933

CORAM:

HON'BLE MR. JUSTICE JANARDAN SAHAI, MEMBER (J)

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

EBHRAHIMKUTTY SIDHIK, NELLIKAPARAMPIL,  
KULASEKHARAMANGALAM P.O.,  
VAIKOM, KOTTAYAM – 686 608.  
(DRIVER, ARMY SERVICE)

**APPLICANT/PETITIONER:**

BY ADV. SRI. P. SIVARAJ.

***versus***

1. UNION OF INDIA, REPRESENTED BY THE SECRETARY,  
MINISTRY OF DEFENCE, NEW DELHI.

2. THE CHIEF RECORD OFFICER,  
ARMY SERVICE CORE (ASC) (SOUTH),  
BANGALORE - 560 007.

**RESPONDENTS/RESPONDENTS:**

3. THE CONTROLLER OF DEFENCE ACCOUNTS,,  
PERSONNEL (CDAP), ALAHHABAD.

4. THE DIRECTORATE GENERAL OF SUPPLY AND TRANSPORTS,  
QUARTER MASTER GENERAL'S BRANCH,  
ARMY HEADQUARTERS, DHQ P.O., NEW DELHI – 110 011.

R1 TO R4 BY SRI. P.J. PHILIP, CENTRAL GOVERNMENT COUNSEL.

**ORDER**

**Janardan Sahai, Member (J):**

The dispute in this case relates to the grant of disability pension.

According to the applicant, he had suffered disability of 20% attributable to

military service. The case of the applicant as set out in the writ petition (present T.A.) is that he entered the Army service as a Driver on 19.3.1963. In para 3 of the petition, he has stated that while he was on duty as a driver at a Border Camp when unloading fuel barrels, one of them fell on his foot and he lost his toe and another finger of the right leg and he was declared temporarily handicapped and declared as Medical Category "C" (CEE) 40% unfit for six months. He was withdrawn from the Border Camp and was posted at a non-operational area to a unit at Meerut. On completion of six months of declaration as "C" category, he was produced before the Army Medical Board for reassessment of his disability at Medical Hospital, Devlali and the Medical Board declared him Category "B"(BEE) 20% unfit. He was then posted at Ferozpur and he was thereafter discharged on 30.12.1967. He has also stated in paragraph 4 that he had applied for disability pension in the year 1998 and was informed that the matter has been forwarded to the Joint Secretary, Ministry of Defence for necessary action. In paragraph 5 he has stated that he has submitted representations before the President of India, Army Chief etc. and the President's Office informed him that his representation has been forwarded to the concerned department, but the concerned department is refusing the claim of the applicant. In paragraph 7 he has stated that he received intimation dated 17.2.2005 from the office of the 4<sup>th</sup> respondent that his petition dated 22.1.2005 addressed to the

Chief of Army Staff was acknowledged and that he would get further communication in due course and in paragraph 8 he stated that he received intimation dated 2.3.2005 from the office of the 2<sup>nd</sup> respondent that his disability pension claim had been rejected by the P.C.D.A.(P), Allahabad vide their letter dated 30.4.1968. In the writ petition (present T.A.), the applicant has prayed for issuance of a direction declaring that the applicant is entitled to get disability pension from the date of his discharge from military service, i.e. with effect from 30.12.1967.

2. In the reply affidavit filed by the respondents, they have stated that service documents of the applicant have been destroyed on expiry of the mandatory retention period of 25 years, but from the Long Roll No.31 maintained at ASC Records, Bangalore, it appears that applicant was enrolled on 13.3.1963 and discharged from service on 13.12.1967. The respondents have annexed as Ext.R1, the extract from the Register containing details of pensioners. The name of the applicant finds place at Sl.No.134 and against his name the date of discharge has been shown as 30.12.1967, nature of disability has been shown as traumatic amputation and the percentage of disablement has been shown as 20% and there is a recital under the column regarding grant or rejection of pension that his claim was rejected on 30.4.1968. In paragraph 4 of the reply affidavit, the

respondents have stated that when an individual sustains any type of injury whether on duty or on leave, a Court of Inquiry is invariably ordered to investigate the circumstances leading to the injury to find out whether the individual was to be blamed or not or the injury is attributable to military service. According to the respondents, the applicant would not have met one of the two conditions laid down in paragraph 173 of the Pension Regulations for the Army, 1961, Part I, i.e. (i) either the injury sustained was not attributable to military service or (ii) disability was held and assessed at less than 20%.

3. The matter was listed for hearing today, but none has turned up on behalf of the applicant, although he is represented by Mr.P.Sivaram. We have heard the departmental representative Major Varun Arora and have perused the petition and the counter affidavit. The writ petition (present T.A.) was filed in the year 2006 whereas the applicant was discharged in the year 1967. The applicant has no doubt stated in paragraph 3 that he had sustained the injury while unloading fuel barrels when one of the barrels fell on his foot and he lost his toe and another finger of the right leg. But the version of the applicant has not been corroborated by any documentary material. All that we have before us is the one sided version of the applicant regarding the circumstances in which the injury was

sustained. The extract of the register of pensioners maintained with the ASC Records, (Ext.R1) only indicates that the nature of his disability was traumatic amputation but in what circumstances the amputation had to be performed is not clear. In the absence of material to indicate the circumstances in which the injury was sustained, it is difficult to accept the applicant's case at this distance of time when the service records of the applicant have already been destroyed. We are aware that a claim for pension is a recurring cause of action and a good claim ought not be rejected on the ground of delay as the relief can be moulded and can be confined to the period which falls within limitation. But it is equally well settled that if prejudice is caused to the respondents on account of the delay on the part of the applicant, such as in the present case, as records have been destroyed, the pension claim can be rejected. The law upon the point has been stated by the Apex Court in **Shiv Dass vs. Union of India**, (Mil.L.J. 2007 SC 123). In that case, the Honourable Supreme Court approved the observations of Sir Barnes Peacock in **Lindsay Petroleum Company v. Prosper Armstrong Hurd etc.** (1874) 5 PC 221, which had also been approved by the Court in the **Moon Mills vs. M.R. Meher, President, Industrial Court, Bombay and Others**, (AIR 1967 SC 1450). We are quoting the observations of Sir Barnes Peacock, which read as follows:

*"Now the doctrine of laches in Courts of Equity is not an arbitrary or technical doctrine. Where it would be practically unjust to give a remedy either because the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But, in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases are, the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy."*

Apart from the fact that the respondents have been prejudiced on account of the delay on the part of the applicant, as his service records have, in the meanwhile, been destroyed, it is also to be noted that this is a case prior to 1982 and the onus according to the Entitlement Rules then prevailing lay upon the applicant to establish his claim. The bald averment of the applicant regarding the circumstances in which he sustained the injury cannot be accepted without corroboration or substantiation. No doubt, in paragraph 3

of the petition, the applicant has referred to certain correspondence relating to the correction in his discharge certificate and has made a vague and general averment that he has also applied to the authorities for disability pension, but none of them took any steps, but the said averment has not been substantiated by any material. Even the averment of the applicant that he had applied for disability pension in the year 1998 is sought to be supported by Ext.P4. But we find on a perusal of Ext.P4 that it is a copy of the letter dated 29.9.1988 addressed to the applicant and it is not clear whether it relates to grant of disability pension or to the correction of discharge certificate, which the applicant was also seeking. The letter dated 2.3.2005, Ext.P6, of the ASC Records relating to disability pension refers to the petition filed as late as 22.1.2005 by the applicant. In our opinion, the delay in the present case has caused prejudice to the respondents in their defence. The applicant is also guilty of laches.

For the reasons given above, the Transferred Application lacks merit and it is dismissed.

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

DK.

(True copy)

Sd/-  
JUSTICE JANARDAN SAHAI,  
MEMBER (J)

Prl. Private Secretary