

(2014) 12 J&K CK 0049
In the Jammu And Kashmir High Court
Case No : LPASW No. 104 Of 2002

Balwant Singh	Vs	APPELLANT
Union of India and Others		RESPONDENT

Date of Decision : 01-12-2014

Acts Referred:

Citation : (2015) 1 JKJ 240

Hon'ble Judges : M.M. Kumar, CJ; Tashi Rabstan, J

Bench : Division Bench

Advocate : Deepika Mahajan, CGSC, for the Respondent

Final Decision : Dismissed

Judgement

Tashi Rabstan, J.â?"This Letters Patent Appeal is directed against the judgment dated 19.12.2001 passed by the learned Writ Court in SWP No.

3013/2001 titled Balwant Singh, v. Union of India and others by which the learned Single Judge has dismissed the writ petition. The Writ

petitioner-appellant herein filed writ petition thereby seeking writ of mandamus directing the respondents to grant disability pension in his favour.

2. Learned Writ Court after considering the arguments advanced by learned counsel for the parties and perusal of the records, dismissed the writ

petition, relevant portion whereof, is reproduced hereunder:-

The petitioner was enrolled as Rifleman in the J&K Rifles Unit-9, bearing registration No. 13730011 on 5-2-1966. He was discharged on

disability ground on 8-3-1972. He has filed this Civil Rule, seeking a writ of mandamus directing the respondents to consider the case of the

petitioner and release disability pension with arrears from the date of discharge.

This petition has been filed after almost thirty years. This appears to be an

afterthought. From the record, it appears that discharge on disability ground has been made on his own request. No effective relief can be granted at this belated stage. It must be bear in mind that the remedy available under Article 226 of the Constitution is an equitable remedy. The petitioner is claiming equitable remedy after a long delay. Delay defeats the equity and this is exactly what has happened in the present case. This petition is devoid of any merit and is accordingly dismissed. It is, however, open to the petitioner to file representation before the appropriate authority, if so advised.

3. The learned Writ Court has taken note of the fact that the writ petitioner/appellant's discharge on disability has been made on his own request.

Be that as it may, the writ petitioner/appellant is even otherwise not entitled to disability pension as per Army Regulations for Pension.

4. The Apex Court in case titled Union of India (UOI) and Others Vs. Ajay Wahi, held as under:

12. From a plain reading of Regulation 48 of the Regulations it is evident that unless otherwise specifically provided, a disability pension shall be

granted to an officer who is invalided out of service on account of disability attributable to or aggravated by military service, whereas Regulation 50

in no uncertain terms provides that an officer who retires voluntarily shall not be eligible for any award on account of any disability. Undisputedly,

writ petitioner has not been invalided out of service on account of any disability attributable or aggravated by military service and further his

disability has not been determined under the Rules in Appendix II. Writ petitioner had sought voluntary retirement on medical ground which was

granted. In face of the language of Regulation 50 there is no escape from the conclusion that an officer retiring voluntarily shall not be eligible for

disability pension.

5. Keeping in view the law laid down by the Apex Court in case Union of India. V. Ajay Wahi (Supra) and the facts and circumstances of the

case, we do not find any reason to upset the judgment of the learned Single Judge. Accordingly, this Appeal is dismissed and the judgment of

learned Single Judge is upheld. Parties to bear their own costs.