
(2014) 07 DEL CK 0177
In the Delhi High Court
Case No : W.P. (C) 3755/2013

Rakesh Kumar Aggarwal

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 22-07-2014

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19, 21
Armed Forces Tribunals Act, 2007 — Section 22
Constitution Of India, 1950 — Article 226
Limitation Act, 1963 — Section 22
Limitation Act, 1908 — Section 23

Citation : (2014) 07 DEL CK 0177

Hon'ble Judges : Najmi Waziri, J; Kailash Gambhir, J

Bench : Division Bench

Advocate : Archana Ramesh, Advocate for the Appellant; Ankur Chhibber, Advocate for the Respondent

Final Decision : Allowed

Judgement

Kailash Gambhir, J.—By this petition filed under Article 226 of the Constitution of India, the petitioner seeks to challenge the order dated 17th February, 2012 passed by the learned Armed Forces Tribunal whereby the learned Armed Forces Tribunal dismissed the OA filed by the petitioner on the ground that there was an inordinate delay on the part of the petitioner in challenging the order dated 23rd April, 2004 passed by the respondents.

2. Addressing arguments in support of the present petition, Ms. Archana Ramesh, counsel for the petitioner has taken a stand that the case of the petitioner relates to grant of disability pension which he has claimed from the date of his discharge, i.e., 26th February, 1981 till the year 2006 @ 20% and from 2006 till date @ 50% of the disability pension in terms of the recommendations of the Sixth Pay Commission. Counsel for the petitioner also submits that in the OA filed by the petitioner, the petitioner had taken the ground of limitation but the learned Armed Forces Tribunal without considering the fact

that the right to claim pension is a continuing cause of action, therefore, the delay if any taken place on the part of any employee cannot defeat his right.

3. Learned counsel for the petitioner also submits that the petitioner had earlier approached this Court in the year 2000 and this Court vide order dated 15th November, 2002 directed the respondents to de novo consider the case of the petitioner for the grant of disability pension. Counsel for the petitioner further submits that in compliance of the direction given by this Court, the respondents passed an order dated 23rd April, 2004 and the same was challenged by the petitioner by the said OA in the year 2012. Counsel for the petitioner thus submits that there was a delay on the part of the petitioner in approaching the learned Armed Forces Tribunal but the learned Armed Forces Tribunal was well within its power to condone the delay of the said period considering the fact that the case of the petitioner relates to grant of disability pension and pension being a continuing cause of action as per the settled legal position.

4. Counsel for the petitioner in support of her arguments placed reliance on a judgment of the Apex Court in the case of Union of India (UOI) and Others Vs. Tarsem Singh, and the judgment of the Division Bench of this Court in Yadhu Nath Singh v. Union of India & Ors., W.P.(C) No.4857/2012 decided on 09.08.2012.

5. Mr. Ankur Chhibber, counsel for the respondents, on the other hand, has placed reliance on Section 22 of the Armed Force Tribunal Act, 2007 and the judgment of Supreme Court in the case of D.C.S. Negi v. Union of India & Ors., SLP (Civil) C.C. No.3709/2011 dated 07.03.2011.

6. We have heard learned counsel for the parties.

7. As per the case set up by the petitioner in the present petition, he was enrolled in the Indian Navy on 9th August, 1973 and at the time of his enrolment he was medically fit. The petitioner was, however, boarded out of the Indian Navy on 26th February, 1981 on being found suffering from Epilepsy. At the time of his discharge a Release Medical Board was held and as per the Release Medical Board, the disability of the petitioner was assessed as 30%. The petitioner was, however, not found entitled to the grant of disability pension as the said ailment of Epilepsy was held to be neither attributable nor aggravated due to his service in the Indian Navy.

8. Aggrieved by the said decision of the Bureau of Sailors, respondent No.3 herein, the petitioner had filed a writ petition being W.P.(C.) 3746/2000 before Delhi High Court and vide order dated 15th November, 2002 Delhi High Court directed the Naval Headquarters to reconsider the case of the petitioner afresh. In compliance of the said direction, the matter was reconsidered by the competent authority and the same was again rejected on the ground of Epilepsy not being attributable and aggravated due to military service.

9. After about a gap of 8 years, the petitioner had moved the Armed Forces

Tribunal and vide order dated 17th February, 2012 the OA bearing No.55/2012 filed by the petitioner was dismissed on the ground of inordinate delay and laches on the part of the petitioner in approaching the learned Armed Forces Tribunal almost after 8 years and not providing any justification for condonation of delay.

10. In support of its reasoning, the learned Armed Forces Tribunal placed reliance on the decision of the Hon"ble Supreme Court in the case of D.C.S. Negi v. Union of India & Ors., SLP (Civil) C.C. No.3709/2011 dated 07.03.2011 and on Section 22 of the Armed Forces Tribunal Act, 2007.

11. The concept of pension has been explained time and again by the Supreme Court and we may again reiterate the same, that the pension cannot be treated as a charity or bounty nor is a gratuitous solely dependent on the whims or sweet will of the employer. It is earned from rendering long service and is often described as deferred portion of compensation for the past service.

12. The Division Bench of this Court in Yadhu Nath Singh v. Union of India & Ors., W.P.(C) No.4857/2012 while dealing with the issue of limitation in so far a claim for pension was concerned, took a view that a claim for pension is a recurring cause which accrues each month as and when pension is paid. The relevant paras of the judgment are reproduced as under:-

As regards claims for pension, law is clear that a claim for pension is a recurring cause which accrues each month as and when pension is paid. Of-course, where a claim is adjudicated upon, under said circumstances repeated claims cannot be filed each month. The reason is that the earlier adjudications would act as res judicata for the reason subsequent claims would relate to the same facts upon which a Tribunal or a Court has rendered an opinion.

10. Even with respect to the stale monetary claims where right accrues each month, the Courts have held that at best, if the claims succeed, relief can be appropriately moulded by not granting monetary benefits preceding three years reckoned.

13. In the above case also the Armed Forces Tribunal has rejected the claim of the petitioner on the premise that the claim was highly belated and thus was barred by limitation and there being no application seeking delay to be condoned.

14. Principles underlying continuing wrong and recurring/successive wrongs as applied to service law disputes have been very aptly explained by the Apex Court in the case of Union of India (UOI) and Others Vs. Tarsem Singh, . Relevant paras of the judgment are reproduced as under

The principles underlying continuing wrongs and recurring/successive wrongs have been applied to service law disputes. A `continuing wrong" refers to a single wrongful act which causes a continuing injury. `Recurring/successive wrongs" are those which occur periodically, each wrong giving rise to a distinct and separate cause of action. This Court in Balkrishna Savalram Pujari and

Others Vs. Shree Dnyaneshwar Maharaj Sansthan and Others, , explained the concept of continuing wrong (in the context of Section 23 of Limitation Act, 1908 corresponding to section 22 of Limitation Act, 1963) :

It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection, it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury.

In M.R. Gupta Vs. Union of India and others, , the appellant approached the High Court in 1989 with a grievance in regard to his initial pay fixation with effect from 1.8.1978. The claim was rejected as it was raised after 11 years. This Court applied the principles of continuing wrong and recurring wrongs and reversed the decision. This Court held :

The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc., would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation, the application cannot be treated as time barred....

In Shiv Dass Vs. Union of India (UOI) and Others, , this Court held:

The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but

also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.

In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition.... If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years.

5. 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.

15. As can be seen from the legal principles crystallized in the judgment cited above that a service related claim is based on a continuing wrong and relief can be granted even if there is a long delay in seeking remedy. The Court also took a view that a grievance in support of any order or administrative decision which related to or affected several others and if, the reopening of the issue would affect the settled right of a third party, the claim shall not be entertained. There is no gainsaying that the issue of pension does not affect the rights of the third party. The judgment of the Apex Court in Tarsem Singh (supra) was referred to by the Armed Forces Tribunal in the order under challenge but the learned Armed Forces Tribunal overlooked the principles settled therein. So far the judgment in the case of D.C.S. Negi (supra) is concerned, the issue therein related to promotion matter where the rights of third party was also involved and in the background of these facts the Court took a view that the Administrative Tribunals established under the Administrative Tribunal Act, 1985 have been entertaining

and deciding the application filed u/s 19 of the Act in complete disregard and mandate of Section 21 of the Act dealing with limitation.

16. In the facts of the present case, the learned Armed Forces Tribunal and this Court are concerned with the claim of the petitioner for the grant of disability pension which is a continuing wrong unlike the case of promotion which was the subject matter in D.C.S. Negi (Supra) where the doctrine of latches/limitations have to be applied.

17. For not approaching the learned Armed Forces Tribunal within the time period laid down u/s 22 of the Armed Forces Tribunal Act, 2007, the Apex Court in the case of Tarsem Singh (supra) and the Division Bench of this Court in Yadhu Nath Singh (supra) clearly took a view that in such cases the court will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the petition.

18. In the light of the above settled legal position, we allow the present petition and remand the matter back to the learned Armed Forces Tribunal for deciding the OA filed by the petitioner on its merits.

19. Both the parties are directed to appear before the learned Armed Forces Tribunal on 5th August, 2014.

20. The present petition is allowed in above terms.