
(1998) 02 PAT CK 0017
In the Patna High Court
Case No : C.W.J.C. No. 7110 of 1996

Shyam Chandra Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 06-02-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 1 BLJR 111 : (1998) 2 PLJR 462

Hon'ble Judges : Nagendra Rai, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Nagendra Rai, J.—The petitioner has filed the present writ application for quashing the order dated 23.8.75 passed by the respondent No. 2 Commandant, Bihar Regimental Centre, Dinapur Cant, Danapur and issued under the signature of respondent No. 3 by which the petitioner's claim for disability pension has been rejected and the order dated 23rd June, 1977 by which the petitioner has been informed that his appeal has not been considered because it is time barred. Copies of the said orders have been annexed as Annexures-1 and 2 to this writ application.

2. The facts necessary for disposal of the present writ application are that the petitioner was enrolled in the Army on 20th December, 1965. On completion of training he was posted to 9, Bihar. While the petitioner was in service, he suffered ailment and it was detected that he was suffering from "Juvenile Moderately Severe DEC. & Non Keotonic Diabetes Melditus Y-34 (150)". The Medical Board examined the petitioner and recommended for 40% disability. However, the authorities, instead of granting 40% disability, by the impugned order dated 23.8.75 rejected the claim of disability pension. According to the petitioner, aforesaid order was not received by him as he had gone to Ranchi and was employed as a Security Man. However, later on, he came to know when he was informed by his family members, then he preferred an appeal but the same

was not disposed of by the authorities on the ground that the appeal was barred by limitation. Thereafter, the petitioner met several authorities and went on writing to the officials, Ministers and Prime Minister with regard to his grievance, however, he could not receive any response except that the communication of his appeal having been rejected in the year 1977. Thereafter, the petitioner has filed the present writ application for seeking justice.

3. A counter affidavit has been filed on behalf of the Union of India. Their stand is that the writ application is not maintainable as it has been filed after a long period without explaining the delay. The petitioner is guilty of laches. Further stand is that after the petitioner was enrolled in the Army, he remained ill and remained in the Military Hospital for treatment during the period from 16th January, 1971 to 23rd May, 1974. On diagnosis, it was found that he was suffering from Juvenile Moderately Severe DEC & Non Ketonic diabetes Mellitus. The Medical Board examined him and recommended for 40% disability. He was given sheltered appointment for about three years and five months and thereafter, he was discharged with effect from 13th March, 1975 under the Army Rule 13(2)(A). It is further stated that the petitioner was examined by the Medical Board. His disability pension claim was placed before the Chief Controller of Defence and Accounts who is a competent authority to decide the pensioner claims. But his case was not accepted on the ground that the disease Diabetes on which the claim based was not attributable to Military Service and does not fulfil the following conditions namely that it existed before or arose during military service and has been or remains aggravated thereby and thereafter the disability pension was disallowed and the order was communicated. It is also stated that the service rendered by the petitioner is less than ten years and as such he is not entitled to disability pension. The petitioner did not prefer appeal within time and as such the appeal was not considered.

4. Learned Counsel for the petitioner submitted that on the ground of delay, the writ application should not be dismissed as the petitioner had been pursuing his remedy by filing petition/representation and when no heed was paid, he has filed the writ application and the petitioner is not disentitled to the relief prayed. He also submitted that the order contained in Annexure-1 has been passed behind the back of the petitioner in as much as when the medical board has found 40% disability his claim for pension should not have been rejected without hearing the petitioner. He also contended that the ground which has been given for disallowing the disability pension puts the onus on the petitioner to prove a negative fact which is not permissible in law.

5. The learned Counsel appearing for the respondent, on the other hand, submitted that the writ application has to be dismissed on the ground of laches and undue delay. The order was passed in 1975. The petitioner had knowledge of the same and preferred an appeal beyond time which was not entertained and the petitioner was informed about the same in 1977 but even then he did not challenge the orders within reasonable time and only after about 19 years, he

has challenged the orders without giving explanation much less satisfactory explanation for not approaching this Court earlier. He also submitted that no doubt the Medical Board has recommended 40% disability pension but the claim of the petitioner was considered by the authority concerned and thereafter the same has been disallowed on the grounds mentioned in Annexure-1. There is no question of violation of principle of natural justice as after considering the recommendation of the Medical Board and other reports, the petitioner's claim for disability pension has been disallowed.

6. No doubt, the writ application has been admitted but by admission itself, the question of delay does not lose its significance. The first question to be considered is as to whether this Court should allow the writ application at this belated stage or not. So far as the factual aspect of the matter is concerned, in the entire writ application, only vague statement has been made that the petitioner's appeal was not entertained. He has been representing the matter before the authorities and when no heed was paid, then he has come to this Court. The said assertion has been denied in the counter affidavit. It is an admitted fact that this application has been filed after about 19 years. From the perusal of Annexure-2, it appears that the petitioner was informed that his appeal was not entertained because the same was barred by limitation. As stated above, no explanation has been given by the petitioner as to why he slept over the matter for about 19 years and approached this Court after such a long time.

7. Learned Counsel for the petitioner submitted, that there is no law that only on the ground of delay, the claim of the petitioner can be rejected. In support of his contention, he relied upon a judgment of the Supreme Court in the case of *Ramchandra Shankar Deodhar and Ors. v. The State of Maharashtra and Ors.* 1974 SC 259 wherein it was held that the rule which says that a Court may not inquire into belated or stale claims is not a rule or law but a rule or practice based on sound and proper exercise of discretion, and there is no inviolable rule that whenever there is delay the Court must necessarily refuse to entertain the petition. The question is one of discretion to be followed on the facts of each case. The question as to whether the Court should interfere in the matter or not when there is delay in filing the writ application is one of discretion and that has to be judged in the facts and circumstances of the case. This question has recently been considered by the Apex Court in the case of *State of Maharashtra v. Digambar* 1995 SC 1991, where also there was a delay of 20 years on the part of the petitioner in invoking the High Court's extraordinary jurisdiction under Article 226 of the Constitution. The High Court granted relief but the Apex Court set aside the said order and while setting aside the order of the High Court, it was observed that when the writ petitioner is guilty of laches or undue delay in approaching the High Court, the principle of laches or undue delay disentitled the writ petitioner for discretionary relief under Article 226 of the Constitution of India from the High Court particularly when virtually no attempt had been made by the writ petitioner to explain his blameworthy conduct of undue delay or laches.

8. In the present case, as stated above, except vague assertion, nothing has been stated to justify as to why the petitioner has not approached this Court for about 19 years. In my view, the discretionary power has to be exercised in favour of the person who is vigilant and not in favour of the person like the petitioner who is sleepy or indolent. It is not a case where the petitioner was not aware of the orders under challenge. He was aware of those orders and in spite of that, he slept over the matter for about 19 years. In that view of the matter, the power under Article 226 of the Constitution should not be exercised in favour of the petitioner on the ground of delay and laches.

9. Even on merits also, I am of the view that the petitioner has no case. The materials on record show that the petitioner during the course of employment was suffering from ailment and was in hospital for months. The Medical Board recommended 40% disability pension, however, the authorities, under relevant provision, did not find him entitled for the same as it is not attributable to military service and it is existed before or arose during military service and has been or remained aggravated thereby. In the case of the petitioner, it was found that ailment disability was not attributable to the military service and thereafter, the impugned order has been passed. There is nothing on the record to show that the said order has been passed without any material.

10. Thus, for the aforesaid reasons, no ground for interference is made out. Accordingly, this application is dismissed.