

IN THE ARMED FORCES TRIBUNAL,
REGIONAL BENCH, GUWAHATI

OA-16/2017
(MA-18/17)

PRESENT

HON`BLE MR. JUSTICE VK SHALI, MEMBER (J)
HON`BLE LT GEN C.A.KRISHNAN, MEMBER (A)

No.14283981 Ex-Sig Man Deben Chandra Kalita
S/O Late Harkanta Kalita,
House NO.52, VIP Road, Chachal (Six Mile)
P.O. Khanapara
Dist-Kamrup (M).

..... **Applicant.**
By legal practitioners for
Applicant.
Mrs.Rita Devi,
Mr.A. R. Tahbildar.

-Versus-

1. The Union Of India,
Represented by the Secretary,
Ministry of Defence, Sena Bhawan,
New Delhi-1
2. The Records Signals
Pin 901124
C/o 56 APO
3. The Additional Directorate General,
Personnel Services, PS-4 (d),
Adjutant General's Branch
IHQ of MOD (Army), DHQ,
PO- New Delhi.
4. The Principal Controller of Defence
Accounts (Pension), Allahabad, Pin-211014,
Uttar Pradesh.

..... **Respondents**
By legal practitioners for
Respondents.
Mr.N.Baruah, CGSC.

Date of hearing :- 24.10.2017.

Date of Judgment and Order :- 24.10.2017.

ORDER

(Justice V.K.Shali, Member (J))

This is an original application filed by the applicant wherein he has prayed the following relief (s) :-

- a) To quash and set aside the letter issued by the PCDA(P), Allahabad on 23.11.1979 rejecting the applicant's claim for disability pension.
- b) To quash and set aside the communication dated (illegible) issued vide No.P/14283981/DP-6/NER by the Senior Record Officer, The Records Signals, C/O 56 APO rejecting applicant's claim for disability pension on the plea of policy constraint.
- c) To pay disability pension to the applicant with effect from the date of his discharge from service on 12.06.1979 with arrear and interest thereon.
- d) To grant rounding off benefit to the applicant with arrear.
- e) To grant all other benefits to which the applicant is otherwise entitled to.

2. Briefly stated the facts of the case are that, the applicant was enrolled in the Army (Corps of Signals) as a signalmen on 28.11.1970. He was invalidated out of service on 12.06.1979 under Army Rule 13 (3) Item III(iii) by the Invalidating Medical Board (hereinafter referred as IMB) in Low Medical Category EEE(P) as he was found to be suffering from "Idiopathic Epilepsy" with 20 % disability for a period of two years after rendering 08 years and 177 days of service. The case of the applicant is that being ignorant about the proposition of law, the applicant never

approached the concerned authority claiming the disability pension. He had of late learnt about the rights of getting disability pension from Zila Sainik Welfare Office and accordingly he made a representation to them claiming the disability pension. He received intimation from Zila Sainik Welfare office on 29.07.2016 which was received from the Senior Records Officer, the Records Signals stating that the disability pension to the applicant and other members of his family was rejected on 23.11.1979 on the ground that neither the disease was attributable nor aggravated to military service. The applicant accordingly filed the present application claiming the disability pension and also Broad Banding the amount to 50 %.

3. Along with the original application, the applicant has also filed an application seeking condonation of delay of 36 years 09 months and 28 days. The reasons for condonation of delay, as given in the application, are that the applicant was ignorant about the legal proposition which resulted delayed filing of the present application seeking payment of disability pension as he had been invalidated out of service because of Idiopathic Epilepsy. He has accordingly prayed for condonation of delay.

4. We have heard the learned Counsel for the applicant as well as the learned Central Govt. Standing Counsel appearing for the respondents.

5. It has been contended by the learned counsel for the applicant that in case of payment of pension, the Apex Court has held in the ***Union of India and Ors. Vs. Tarsem Singh (2008) 8 Supreme Court Cases 648*** that cause of action to file the application arises on month to month basis and therefore, on the basis of said Judgment, every month cause of action for filing the present application arises in favour of the applicant, but as a matter of absolute caution, the applicant has filed the

application seeking condonation of delay. He has accordingly prayed on that ground to allow the condonation petition and consider the Original application on merit.

6. The learned Counsel for the applicant has also referred to another judgment of Gauhati Bench of the Tribunal in **OA 59 of 2016** titled ***Langpum Vs. Union of India and Others*** where a delay of almost 16 years has been condoned and the applicant has been given the benefit of disability pension and Broad-Banding of the same. The learned Counsel has also contended that the application for payment of service element as well as disability component of the pension can not be restricted in his case to a period of 3 years, rather, it should be given from the period when he was invalidated out from the service.

7. At the first blush, the argument, which has been advanced by the learned Counsel for the applicant, seems to be very reasonable and convincing, but a deeper examination would show that not only the two cases which are relied upon by the learned Counsel for the applicant are distinguishable from the facts of the present case, but also not applicable to the case in hand. In ***Tarsem Singh case (Supra)***, no doubt the court has held that every month, when a pension is credited, the cause of action accrues in favour of the applicant to file the Original Application, but the vital fact which has been omitted by the learned Counsel for the applicant in the ***Union of India and Ors. Vs. Tarsem Singh*** Judgment is that this was a case where the applicant was admittedly receiving the service pension and was denied disability component of the pension. It is, in this background that the Hon'ble Apex Court observed that the payment of pension every month gives rise to cause of action, whereas, in the present case, the applicant is not in receipt of any pension, be it service element or disability component, therefore the cause of action can not be stated to be accruing to the applicant every month, rather, it accrued to

him almost 40 years earlier when he was invalidated out from service. Therefore, this **Union of India & Ors. Vs. Tarsem Singh** Judgment does not cover the facts of the present case in hand. Similarly, in **Langpum Vs. Union of Ors.** case also, the applicant had sought Broad Banding of the pension which gives an impression that he was in receipt of pension without Broad Banding at the time when the application was allowed and in any case, the delay which was there in **Langpum Vs. Union of India and Ors.** case was just half of the delay which has been found from the applicant's own averments made in his case. There is a markable difference the delay of 16 years and delay of 37 years which is in the case in hand.

8. The applicant was moreover denied the benefit of disability element by rejection of appeal way back in 1979 holding that the disability suffered by the applicant was "neither attributable to his service nor aggravated by the service" which was the law at that point of time. The law which is emergeable by the Hon'ble Apex Court in **Ram Avatar's** case and **Tarsem Singh's** case, cannot be applied and emergeable or interpreted in such a manner so as to resulting absurdity as sought to be interpreted by the applicant.

9. We feel that the applicant, under the guise of the present application, is not only seeking a declaration to get the pension both of service element as well as of disability component and other and thereafter seeking Broad-Banding. This is sought to be done by the applicant after a gap of almost 36 years whereas, the applicant and his predecessor in interest were highly educated and aware of their rights.

10. For the aforesaid reasons, we feel that the applicant is raising a totally stale claim which, if permitted to be done, will force the court to open the flood-gate of litigations. This can not be permitted to be done.

11. For the aforesaid grounds, we feel that the application seeking condonation of delay deserved to be dismissed as no sufficient cause has been shown. Since no sufficient cause has been shown and the application for condonation of delay has been dismissed, the Original Application is also dismissed.

MEMBER (A)

MEMBER (J)

mishra