Before K. Sreedharan, C.J. and Jawahar Lal Gupta, J.

J.C. 6219 SUBEDAR (HONY. LT.) GURDIP SINGH (RETD.),—*Petitioner*

versus

UNION OF INDIA and OTHERS,—*Respondent*

C.W.P. No. 13024 of 96

May 16th, 1997

Constitution of India, 1950—Arts. 226/227—Army Pension Regulations, 1961—Delay in making claim for pension—obligation to pay pension is of Govt.—Grossly unfair if Govt. is permitted to take advantage and reject claim on ground of delay—When the department itself has defaulted in making payment inspite of demands made by employee, it can not take plea of limitation.

Held, that apparently, the petition is highly belated. However, the Courts have been reluctant to reject a citizen's claim for pension on the ground of delay. The obligation to pay pension is that of the Government. If either on account of ignorance or on account of some other reason, the citizen does not approach the Court, the result is that the Government retains money belonging to him. It would be grossly unfair if the Government is permitted to take advantage of the situation in which the employee is placed and his claim for pension was to be rejected only on the ground of delay.

(Para 7)

Further held, that in S.R. Bhanrale *versus* Union of India and others AIR 1997 SC 27, it was held that when the department itself had defaulted in making payments in spite of demands made by the employee, it could not plead the bar of limitation. Consequently, the plea of delay raised on behalf of the respondents cannot be sustained. It is rejected.

(Para 7)

Constitution of India, 1950—Art. 226—Army Pension Regulations, 1961—Reg. 179—Petitioner claiming disability pension inspite of fact he had completed full tenure of service—Regulation provides for grant of disability pension to person inspite of fact that he has completed tenure—Regulation confers discretion on competent authority to decide case—Petitioner held not entitled to be paid pension as competent authority had teken a positive decision that disability not attributable to military service—Not fair for Court

to substitute its own opinion over the competent authority—Writ dismissed.

Held, that a perusal of Regulation 179 would show that disability pension can be granted to a person inspite of the fact that he has completed his tenure of service. However, the regulation confers a discretion on the authority. The rationale is that a person may suffer an injury a few days before his due date of retirement. He may complete his tenure before he is actually retired but the quality of his life is adversely affected. To compensate him for that, a provision for the grant of disability pension has been made. However, the rule does not confer an absolute right on the officer. It gives a discretion to the authority. Resultantly, the competent authority has to consider and decide the case on its own facts.

(Para 12)

Further held, that the competent authority has after consideration of the matter, come to the conclusion that the disability was not attributable to or aggravated by the military service. The petitioner was admittedly examined by a Medical Board. A copy of the proceedings of the Board was produced before us. We have retained a photo copy on record as Mark 'A' . It clearly shows that the petitioner's problem was found to be "constitutional" and "not attributable to the Army Service". If the competent authority has taken a positive decision on the basis of the advice of the Medical Board, it cannot be said that it has exercised its discretion arbitrarily or unfairly. The view taken by the authority was a possible one. It would not be fair for this Court to substitute its own opinion for that of the competent authority.

(Para 13)

B.S. Sehgal, Advocate, *for the Petitioner*

S.K. Pipat, Sr. Advocate with Sanjeev Pandit, Advocates, *for the Respondent.*

JUDGMENT

Jawahar Lal Gupta, J.

(1) The petitioner who was discharged from the Indian Army as a Subedar (Hony. Lt.) on September 4, 1969, has filed this writ petition with a prayer that a writ of *mandamus* be issued directing the respondents to release the disability element of pension to him. A few facts may be noticed.

(2) The petitioner was enrolled in the Army on September 5, 1941. He had risen to the rank of a Subedar. On the 5th September, 1969 the petitioner was discharged from the Army on completion of his tenure. During these 28 years, the petitioner had served in various areas of operation and was awarded various medals. He was also granted the honorary rank of Lieutenant. The petitioner alleges that from the 16th September, 1965 to 11th February, 1968, he had remained posted in NEFA. He had to "carry out strenuous duties of visiting various regiments of the Brigade located at the height of over 13000 feet. "Due to the stress and strain of service duties, the petitioner suffered "myocardial infraction and was hospitalised." He was brought before the Release Medical Board at Chandigarh. He was down-graded to the Medical Category 'BEE' and the disability was assessed at 30%. On 5th September, 1969, he was discharged from the service. His case for the grant of disability element of pension was sent to the competent authority,—*vide* letter dated 24th April, 1970, he was informed that the "disability.....is not attributable to or aggravated by the military service." Consequently, his claim was rejected. A copy of this order has been produced as Annexure P.2 with the writ petition. Thereafter, the petitioner took no action for a period of seven years when he submitted an appeal. This was rejected,—*vide* order dated 12th December, 1977. He submitted another representation which was rejected on 11th March, 1981. More than 15 years later, the petitioner filed the present writ petition in August 1996. He prays that the respondents be directed to pay the disability pension to him.

(3) The respondents contest the petitioner's claim. It has been averred that the petitioner was "retired.....after completion of term of service and he has no cause of action to claim the disability pension....." It was "during his hospital admission at Command Hospital, Chandigarh on 17th June, 1969 for Release Medical Board in preparation to his retirement from the Army, the disease 'MYOCARDIAL INFRACTION 410' was diagnosised by the Board of Medical Officers.....The Medical Board.....opined the cause of his disease as 'constitutional disability unconnected with service'. "The proceedings of the Medical Board were approved by the Higher Formaton Headquarters i.e. ADMS, HQ PH and HP Area, Ambala

Cantt. on 24th June, 1969. It has been further stated that the petitioner's representation was considered and rejected. The respondents allege that the writ petition is highly belated and should be dismissed on that ground also.

(4) Counsel for the parties have been heard.

(5) On behalf of the petitioner, it has been contended that the claim for disability pension has been arbitrarily rejected. The benefit was admissible to the petitioner under the Pension Regulations and that the respondents had wrongly declined his prayer. On behalf of the respondents, it was submitted that the writ petition was highly belated. It is further submitted that the Medical Board had found that the physical problem was 'constitutional disability unconnected with service'. Consequently, the petitioner has no claim for pension.

(6) The two questions that arise for consideration are :-

(i) Is the writ petition liable to be dismissed on the ground of delay ?

(ii) Is the petitioner entitled to the grant of disability pension ?

Reg. (i)

(7) The petitioner was admittedly discharged from the Army on 5th September, 1969. His claim for disability pension had been rejected,—*vide* order dated 24th April, 1970. He had filed an appeal after many years which was rejected,—*vide* order dated 12th December, 1977. The two representations submitted thereafter were rejected,—*vide* orders dated 8th June, 1978 and 11th March, 1981. Even thereafter, the petitioner had waited for 15 years before approaching this Court. (Apparently, the petition is highly belated. However, the courts have been reluctant to reject a citizen's claim for pension on the ground of delay. The obligation to pay pension is that of the Government. If either on account of ignorance or on account of some other reason, the citizen does not approach the court, the result is that the Government retains money belonging to him. It would be grossly unfair if the Government is permitted to take advantage of the situation in which the employee is placed

and his claim for pension was to be rejected only on the ground of delay). In fact, this court has already taken that view. Reference in this behalf may be made in *Sardara Singh* v. *Union of India* (1). It was held as under :—

> "It is no doubt correct that the petitioner has filed the writ petition after a lapse of almost 40 years. A perusal of the order, quoted above, however, shows that the petitioner had been regularly representing to the authorities and his claim was declined only on the ground that the disability was not attributable to or aggravated by military service. This being factually incorrect, we have no alternative but to quash the order. Further more, in the circumstances of the case and more particularly the continuing disability (sic) delay in approaching the court even in the matter of pension cannot completely defeat his claim. We consider it to be in the interest of justice to allow his claim for the payment of pension. However, on account of delay, we decline the petitioner's prayer for the payment of interest."

The above view has the imprimatur of their Lordships of the Supreme Court. (In *S.R. Bhanrale* v. *Union of India and other*(2), it was held that when the department itself had defaulted in making payments inspite of demands made by the employee, it could not plead the bar of limitation. Consequently, the plea of delay raised on behalf of the respondents cannot be sustained. It is rejected).

Reg. (ii)

(8) It was contended on behalf of the petitioner that a member of the Armed Forces who suffers from any kind of physical disability which is assessed at 20% or more has a right to get the disability pension in spite of the fact that he has served for the full tenure. In case of the petitioner, it was clearly established that he was suffering from a disability of 30% at the time of his discharge from the Army. Consequently, he had a right to the grant of disability

(1) 1992 (6) SLR 683
(2) AIR 1997 S.C. 27

pension. This claim was controverted on behalf of the respondents.

(9) The grant of pension to the Army personnel is governed by the provisions of Army Pension Regulations, 1961. Regulation 132 provides that "the minimum qualifying colour service for earning a service pension is 15 years." Keeping in view the fact that soldiers can suffer injuries which can result in causing permanent or temporary disability and even affect their tenure of service, a special provision for the grant of disability pension has also been made. The obvious purpose is that a person who has suffered injury during the course of his service in the Army should be compensated.

(10) What is the position in the present case? Admittedly, the petitioner had served from 5th September, 1941 to 4th September, 1969. He had completed his full tenure of 28 years. Thus, he had not suffered adversely in so far as his tenure of service is concerned.

(11) Learned counsel for the petitioner contended that a soldier is entitled to the grant of disability pension in spite of the fact that he has had a full tenure of service. In support of his claim, learned counsel referred to the provision of Regulation 179. It reads as under :—

> "179. A Junior Commissioned Officer retired on completion of tenure or of service limits, if suffering on retirement from a disability attributable to or aggravated by military service and recorded by service Medical Authority, may at the discretion of the competent authority, be granted in addition to the service pension admissible a disability element as if he had been retired on account of the disability."

(12) (A perusal of the above provision would show that disability pension can be granted to a person in spite of the fact that he has completed his tenure of service. However, the regulation confers a discretion on the authority. The rationale is that a person may suffer an injury a few days before his due date of retirement. He may complete his tenure before he is actually retired but the

quality of his life is adversely affected). To compensate him for that, a provision for the grant of disability pension has been made. However, the rule does not confer an absolute right on the officer. It gives a discretion to the authority. Resultantly, the competent authority has to consider and decide the case on its own facts. If it finds that the disability was attributable to or aggravated by military service, it can grant disability pension. However, if it finds that the disability was neither attributable to nor aggravated by Army Service, it has the power to decline the request. However, it must act fairly. It cannot act arbitrarily.

(13) What is the position in the present case ? (The competent authority has after consideration of the matter, come to the conclusion that the disability was not attributable to or aggravated by the military service. The petitioner was admittedly examined by a Medical Board. A copy of the proceedings of the Board was produced before us. We have retained a photo copy on record as Mark 'A'. It clearly shows that the petitioner's problem was found to be "constitutional" and "not attributable to the Army Service". If the competent authority has taken a positive decision on the basis of the advice of the Medical Board, it cannot be said that it has exercised its discretion arbitrarily or unfairly. The view taken by the authority was a possible one. It would not be fair for this Court to substitute its own opinion for that of the competent authority).

(14) Besides the above, it is also the admitted position that an officer is entitled to the grant of disability pension only when the medical evidence establishes that he was handicapped to the extent of 20% or more. In the present case, there is no evidence regarding the extent of the petitioner's disability for the last 25 years. There is nothing to show that he has a disability of 20% or more.

(15) In view of the above, the second question is answered in the negative. It is held that the petitoner is not entitled to the grant of disability pension. The action of the authorities in rejecting his claim was not illegal or invalid.

(16) No other point was raised.

(17) In view of the above, there is no merit in this writ petition. It is, consequently, dismissed. No costs.

J.S.T.

Before Ashok Bhan and Iqbal Singh, JJ.

M/S RAJA RAM KULWANT RAI,—*Petitioner*

versus

ASSISTANT COMMISSIONER OF INCOME TAX,—*Respondent*

C.W.P. No. 3035 of 97

May 28, 1997

Income Tax Act, 1961—SS.143(2), 158—B and 158—BC—Undisclosed income of block period brought to tax—Assessment under section 158-BC(c) for block period 1985—95 after search and seizure operation—Assessing authority issuing notice under section 143(2) to assessee requiring information in connection with return of income for assessment years 1988-89 and 1989-90—Notice is without jurisdiction since the years assessed in block period cannot be re-assessed since the assessment stands merged in the collective assessment.

Held that once the assessment has been framed it can only be re-opened by issuing notice under sections 147/148 where income has escaped assessment or as a result of search and seizure under section 132. Notices issued under section 148 prior to the search were rendered infructuous after the framing of the assessment for the block period of ten years under Chapter XIVB. Department could not proceed on the basis of notices issued under section 148 prior to the framing of assessment under Chapter XIV.

(Para 17)

Further held that under section 143(2), Assessing Officer can issue notice in case he deems it necessary or expedient where a return has been filed under section 139 or in response to a notice under section 142(1) to ensure that the assessee has not understated the income or has not computed excessive loss or has not underpaid the tax in any manner, serve on the assessee a notice requiring him on a date to be specified therein either to attend his office or to produce, or cause to be produced there, any evidence on which the assessee may rely in support of the return. The purpose of introducing of Chapter XIVB which provides for special procedure for framing of assessment orders for a block period of ten years