IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No.11123 of 2025 a/w CWP No.11125 of 2025 and CWP No.11173 of 2025

Decided on: 11.07.2025

CWP No.11123 of 2025

Union of India & Others ...Petitioners

Versus

No.13767335 W Ex Nk (TS)-Vimal Kumar

...Respondent

CWP No.11125 of 2025

Union of India & Others ...Petitioners

Versus

Smt. Raj Devi, D/o No.1116648 late Hav Gian Chand Garg

...Respondent

AND

CWP No.11173 of 2025

Union of India & Others ...Petitioners

Versus

No.15495022F Ex. Sepoy (ACP-I)-Praveen Kumar

...Respondent

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Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice

Hon'ble Mr. Justice Ranjan Sharma, Judge

[1] *Whether approved for reporting?.*

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[1] *Whether reporters of Local Papers may be allowed to see the judgment?*

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For the petitioners: Mr. Balram Sharma, Deputy Solicitor General of India [Senior Advocate] with Mr. Rajeev Sharma, Advocate in all the petitions.

G.S. Sandhawalia, Chief Justice *[Oral]*

The present order shall dispose of the above three writ petitions, since the issue is similar, as the present writ petitions have been filed at the belated stage, as such, seeking challenge to the order's passed by the Armed Force Tribunal, Chandigarh with Circuit Bench at Shimla.

2. In case of Vimal Kumar [CWP No.11123 of 2025], the order passed by the Tribunal is dated 19.04.2023, whereby the Tribunal, as such, granted the disability pension @ 50% as against 40% for life from the day next to date of his discharge from service i.e. 01.08.2018 after rounding off as per the ratio of judgment of the Supreme Court in ***Civil Appeal No.418/2012 titled Union of India Vs Ram Avtar*** decided on 10.12.2014. The due and admissible arrears were to be calculated and released to the applicant within a period of three months from the date of receipt of certified copy of order, failing which, the applicant was

to be entitled to recover interest @ 8% per annum, till realization of entire amount, while noticing that there was disability of "Moderate Depressive Disorder" which was detected during the period of service, as the applicant had been enrolled in the Indian Army on 24.07.2001. The present writ petition has only been filed on 06.06.2025 after a period of two years. In the intervening period, miscellaneous applications have been filed before the Tribunal, seeking leave to appeal, which was dismissed on 01.05.2024 on account of being barred by 127 days. Even after dismissal of the said application, no effort, as such, was made to file the writ petition for a period of more than one year.

3. Similarly, in Raj Devi's case [CWP No.11125 of 2025], the order passed by the Tribunal is dated 13.07.2023, and the Tribunal has granted the benefit of the family pension to the applicant from the date of death of her step-mother i.e. 03.01.2015 within three months from the date of receipt of certified copy of the order. In the intervening period, miscellaneous application for leave to appeal has been filed before the Tribunal in the year 2024 which was dismissed on 07.03.2024 and

efforts were made to file the writ petition only on 28.06.2025, after a period of one year.

4. Similarly, in Praveen Kumar' case [CWP No.11173 of 2025], the order passed by the Tribunal is dated 24.02.2023 and Tribunal has granted the benefit of disability pension @ 75% against 50% for life, from the day next to date of his discharge from service i.e. 01.04.2021, after being rounded off as per the ratio of the judgment of the Supreme Court in ***Civil Appeal No.418/2012 titled Union of India Vs. Ram Avtar,*** decided on 10.12.2014 and due and admissible arrears calculated and released to be the applicant within a period of three months from the date of receipt of certified copy of order, failing which, the applicant shall be entitled to recover interest @ 8% per annum, till realization of the entire amount. The fact that the disability was of "Non-functioning Kidney left with Paraganglioma-UB (OPTD) (ICD-N 28.9)" was kept in mind. In the year 2022, application was filed seeking leave to appeal, which was dismissed on 01.01.2024 (Annexure P-5), by the Tribunal on the ground of delay of 247 days and resultantly leave to appeal was also

dismissed. No efforts were made to file the writ petitions for a period more than one year and the present writ petition was filed on 27.06.2025.

5. The above sequence of events would go on to show the negligence, as such and lack of commitment of the Union of India to prefer their remedy within a reasonable period. Therefore, we are of the considered opinion that the above cases are liable to be dismissed.

6. In such circumstances, we have already dismissed a bunch of cases, the lead case of which was **CWP No.2522 of 2025**, titled as **Union of India & Ors. Versus Pawna Devi**, on 25.02.2025 by noting that a reasonable period of delay can only be condoned by this Court not beyond a period of one year and if no effort was made by the Union of India to challenge the orders as such passed by the Tribunal within the said period. The relevant paragraphs of the said judgment read as under:

> *"4. We are of the considered opinion that though there is no period prescribed for filing the writ petitions which challenge the orders of the Tribunal while invoking the power under Article 226 of the Constitution of India, but the Union of India cannot be permitted free play, as such to challenge the said orders at its own whims and fancies after a period of over two years in all these set of cases. The parties to the litigation have developed a vested*

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right as such after the orders have come in force in their favour and for the Union of India as such to file these writ petitions after the delay as mentioned above, cannot as such be countenanced in the absence of any justifiable reasons.

5. *The stock reason given for delay is that in **Civil Appeal No.447 of 2023 titled as Union of India & Ors. Versus Parashotam Dass**, was decided on 21.03.2023, wherein the Hon'ble Apex Court held that there is no restriction to exercise the power under Article 226 of the Constitution of India to challenge the orders passed by the Armed Forces Tribunal. The fall back has been made on an opinion dated 18.09.2023 given by learned Attorney General to file writ petitions to challenge the said order and therefore, justification has been made that a decision was taken on 18.10.2023, based on the said advice.*

6. *It is also not disputed that prior to the order passed in the case of **Parashotam Dass [supra],** there was a right of appeal to the Supreme Court under the Armed Forces Tribunal Act of 2007, prescribing a period of 90 days of the said decision under Section 30 of the Act.*

7. *There is nothing to show that after passing of the order of Tribunal, the Union of India had preferred its remedy before the Hon'ble Apex Court within the prescribed period. Only on account of the fact that judgment has been passed in the case of **Parashotam Dass [supra]** and opinion has been given by learned Attorney General to a set of cases, the sufficient cause is sought to be made out.*

8. *Thus, we can safely hold that there is deliberate inaction and lack of bonafide by the Union of India which amounts to gross negligence and the Union of India cannot take advantage of an order passed by the Hon'ble Apex Court whereby, the right to challenge the orders of the Armed Forces Tribunal has been cemented by noticing that constitutional provisions under Article 226 of the Constitution of India cannot be curtailed.*

9. *As per averments made in the writ petitions itself, the decision to file the writ petitions was only taken on 18.10.2023 after taking the opinion of the learned Attorney General to file the writ petitions and thus, the inaction is clear, as the order impugned was passed more than a year earlier.*

10. *As noticed, the Tribunal had passed various orders way back in May, August & November, 2022 and for*

a period ranging to 1 year to 1½ years, the Union of India opted not to challenge the said orders.

11 to 24 xxx xxx xxx xxx

25. It is not the case of Union of India that there is any fraud or misrepresentation in the present set of cases, whereby mainly the legal representatives of the Armed Forces are seeking redressal of their rights. The State or the public body can be given some acceptable latitude keeping in view the law laid down by the Hon'ble Apex Court in the principle of limitation and though no precise formula, as such, can be laid down, but we cannot brush aside the fact that the parties in view of the orders passed by the Tribunal could have also resorted to getting the orders executed by filing appropriate remedies and Tribunal has also granted the benefit of penal interest, if the payment is not made within the prescribed period. In spite of this fact the Union of India chose to sit tight and chose not to file the writ petitions within a reasonable period which can be classified as one year and beyond the same, no indulgence can be granted.

26. Therefore, the period prior to 18.10.2023 as such between the date of the decisions ranging from May/August/November, 2022 cannot be condoned in any manner and therefore, we are of the considered opinion that the present writ petitions are liable to be dismissed on the grounds of delay and laches as on account of Union of India not having resorted to its legal remedies expeditiously or even having made reasonable effort to challenge the said orders or even take a decision as such to challenge the said orders for a period of over one year. The latitude as such on account of laxity on the department, in such circumstances cannot be extended.

27. Without going into the merits of the cases, we are of the considered opinion that there is a delay of over a year from passing of the orders and no effort was made to challenge the order passed by the Tribunal within a reasonable time, therefore, on account of the opinion given on 18.09.2023, the Union of India cannot raise the issue on merits."

28. Resultantly, there is no other option, but to dismiss these four writ petitions on account of the principle of delay and laches and the same are accordingly dismissed alongwith pending miscellaneous application(s), if any."

7. In such circumstances, counsel for the Union

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of India could not distinguish the present set of cases from the earlier bunch and therefore, we do not find any plausible reason to take a different view in the present writ petitions.

8. Resultantly, the present writ petitions are dismissed. Pending application(s), if any, shall also stand disposed of.

(G.S. Sandhawalia)
Chief Justice

(Ranjan Sharma)
Judge

July 11, 2025
[Bhardwajhimani]