

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2016

CORAM:

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A. No.319 of 2016

S. Neelakanda Pillai (Died)

N. Meenakshi (Died)

N. Palpandi

(Substituted as Appellant in respect of
died Appellant as per Order of this
Court dated 10.09.2015)

... Appellant

Vs.

1. Union of India
represented by the Secretary
Ministry of Defence
(Pension Grievance Cell)
New Delhi

2. The Record Officer
Madras Regiment Abhilakh
Karyala Records
The Madras Regiment
Wellington (Nilgiris) 643 241

3. The Director
Ex-Serviceman Board
Teynampet
Chennai 600 018

... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent
challenging the order dated 23.03.2009 passed in W.P. No.12954
of 1999.

W.P. No.12954 of 1999 : Petition filed under Article 226 of the
Constitution of India, praying for issue a Writ of
Certiorarified Mandamus, calling for the records relating to the
Order of the 2nd Respondent made in Ref.No.03195/EP/Gen/63/PG3
dated 11.05.1999 and quash the same and consequently direct the

respondents to consider the representation of the Petitioner dated 06.06.1999 addressed to the 1st Respondent on merits.

For appellant : Mr. M. Santharam

JUDGMENT

(delivery by SATISH K. AGNIHOTRI, J.)

This intra-Court appeal arises from the order dated 23 March 2009 passed in W.P. No.12954 of 1999.

2. To avoid prolixity, the parties are referred to as per their rank in the instant intra-Court appeal.

3. The appellant's father, viz., S. Neelakandapillai, Ex-Sepoy, filed the instant writ petition being W.P. No.12954 of 1999, calling in question, the justifiability of the order dated 11 May 1999 passed by the second respondent, whereunder, his request for service pension and disability pension was rejected on the ground that he was enrolled in the Army on 02 April 1948 and discharged from service on medical grounds on 01 February 1955, after rendering qualifying service of 6 years and 307 days and as such, could not earn minimum qualifying service of 15 years and further, for a direction to the respondents to consider and pass orders on his representation dated 06 January 1999.

4. The learned Single Judge, examining the relevant rules, viz., Rule 173 of the Army Rules, which provides for grant of disability pension and also Rule 49(3)(1)(q) of the Central Civil Services (Pension) Rules, 1972, which provides for qualifying service for the purpose of pension and gratuity admissible under the Rules, came to the conclusion that the appellant's father was not entitled to service pension and also disability pension, in respect of which, minimum qualifying service is contemplated and dismissed the writ petition.

5. After demise of the writ petitioner, his wife, viz., N.Meenakshi challenged the order passed in the writ petition in the instant intra-Court appeal in 2010. However, even prior to the stage this intra-Court appeal came to be numbered, she had breathed last. Now, the writ petitioner's son has got himself substituted as the appellant.

6. The learned counsel for the appellant would contend that the appellant's father sustained disability during his service at Hyderabad, which is before he was sent to war service

at Kashmir border. On account of disability, he could not continue his service and as such, the minimum qualifying service is not relevant for the purpose of grant of disability pension. In this regard, the learned counsel for the appellant relies on Union of India and another vs. Bashirbhai R. Khiliji¹.

7. Rule 173 of the Army Rules prescribes if an individual is invalidated from service on account of a disability which is attributable to or aggravated by military service and is assessed at 20% or over, he is entitled to disability pension. In the case on hand, the appellant's father was found to have not joined the unit on account of ailment in his left eye and in the course of medical treatment, he lost vision in his left eye, which does not come within the definition of sustaining disability in the course of service.

8. Be that as it may, the appellant's father ought to have claimed retiral benefits within a reasonable time from the date of discharge, i.e., 01 February 1955. But, he did not take any action till he made a representation on 06 January 1999, which was rejected vide order dated 11 May 1999, sought to be impugned in the writ petition. At this stage, no further enquiry can be conducted when the authorities have taken a categorical stand in the order dated 11 May 1999 that all service records of the appellant's father had been destroyed, being 25 years old.

9. In Bashirbhai R. Khiliji (supra), the respondent therein was an Armed Constable in Central Reserve Police Force (for brevity "CRPF"), who suffered Pyrogenic Meningitis and Neurosensory Deafness in January 1990 while on duty. In 1994, he filed a petition before the High Court of Gujarat for invalid pension. In such facts situation, the Supreme Court, finding that the respondent therein was not entitled to pension, inasmuch as he had not put in ten years of minimum qualifying service, however, taking a sympathetic view, ordered for payment of Rs.1 lakh as ex gratia to him. The instant case is distinguishable on facts, as the respondent therein took recourse to judicial forum immediately and also on law, as the provisions applicable to the case therein was the CRPF Act, 1949 and the CRPF Rules, 1955.

10. In the course of arguments, the learned counsel for the appellant has referred to a recent decision of the Supreme Court in Union of India and another vs. Rajbir Singh², wherein, the provisions of Pension Regulations for the Army, 1961 and Entitlement Rules for Casualty Pensionary Awards, 1982, were

1 (2007) 6 SCC 16

2 (2015) 12 SCC 264

sought to be implemented. In case of Army personnel, who apparently sustained disability just before taking their case to the court, the Supreme Court held as under:

"16. Applying the above parameters to the cases at hand, we are of the view that each one of the respondents having been discharged from service on account of medical disease/disability, the disability must be presumed to have been arisen in the course of service which must, in the absence of any reason recorded by the Medical Board, be presumed to have been attributable to or aggravated by military service. There is admittedly neither any note in the service records of the respondents at the time of their entry into service nor have any reasons been recorded by the Medical Board to suggest that the disease which the member concerned was found to be suffering from could not have been detected at the time of his entry into service. The initial presumption that the respondents were all physically fit and free from any disease and in sound physical and mental condition at the time of their entry into service thus remains unrebutted. Since the disability has in each case been assessed at more than 20%, their claim to disability pension could not have been repudiated by the appellants."

11. Hereagain, the facts are distinguishable inasmuch as the persons who were disabled, could establish that their disability was more than 20% and they had taken recourse to the judicial forum within a reasonable time. In the case on hand, as aforesaid, the appellant's father had approached the authorities only after lapse of 44 years.

12. We have given our anxious thought and consideration to the case from all angles and are of the considered view that no case is made out to interfere with the order rendered by the learned Single Judge.

13. Resultantly, finding no ground to interfere with the impugned order passed by the learned Single Judge, we dismiss this intra-Court appeal. No costs.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

cad

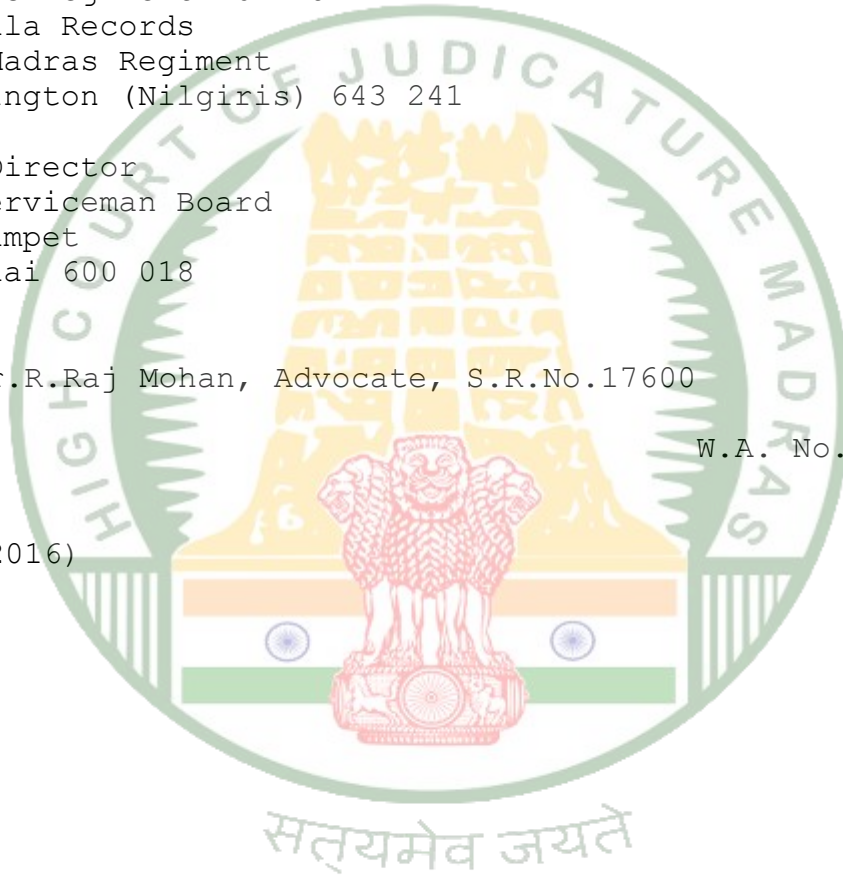
To

1. The Secretary
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(Pension Grievance Cell)
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Teynampet
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+lcc to Mr.R.Raj Mohan, Advocate, S.R.No.17600

W.A. No.319 of 2016

KSJ(CO)
CA(31/03/2016)



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