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W.P.No.24483 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on 30.11.2023

Order delivered on 08.03.2024

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU  
AND  
THE HONOURABLE Mrs.JUSTICE N.MALA

W.P.No.24483 of 2023

Ex.Sigmn V.Joseph Dayalan,  
aged 55 years,  
Ser No.15362477H  
S/o M.Vincent  
Plot No.4 & 5, Valan street,  
(I-756 B) MSR Nagar,  
Gundur,Trichy,  
Tamil Nadu - 620 007.

.... Petitioner

VS

1. The Armed Forces Tribunal,.  
Regional Bench,  
Old MH Building, 1A, Rudra Road,  
St.Thomas Mount, Chennai - 600 016.  
***(R1 is struck off from the array  
of parties vide order dt. 18.08.2023  
made in W.P.24483/23 by RSKJ and KBJ)***
2. Union of India rep. by its Secretary,  
Ministry of Defence,  
South Block,  
New Delhi - 110 011.



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3. The Chief of Army Staff,  
Army Headquarters,  
Integrated Headquarters,  
DHQ Post, Janth Block,  
New Delhi - 110 001.
4. The PCDA (P), Allahabad (UP),  
Pin - 211 014.
5. The Chief Record Officer,  
for Officer i/c Records,  
The Records Signals,  
Pin - 908 771  
C/o 56 APO (JABALPUR)

...Respondents

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified mandamus to call for the entire records connected with the impugned order passed by the 1st respondent in O.A.No.36 of 2021 dated 17.06.2022 and quash the same and consequently direct the respondents to sanction Service Element of Disability Pension w.e.f. 01.01.2006 and disburse the arrears.

For Petitioner : Mr.S.N.Ravichandran  
assisted by Mr.R.D.Ashok Kumar

For Respondents : Mr.K.Ramanamoorthy,  
Central Government Counsel for R2 to R5



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## **ORDER**

(Order of the Court was made by J.NISHA BANU, J.,)

This writ petition has been filed challenging the order passed by the first respondent dated 17.06.2022 made in O.A.No.36 of 2021, by which, the application of the petitioner seeking to grant Service Element of Disability Pension was dismissed and consequently, direct the respondents to sanction the same w.e.f. 01.01.2006 and disburse the arrears.

2. (i) The brief facts of the case of the petitioner is that the petitioner was enrolled in Indian Army in the Corps of Signals on 27.02.1988. He submitted an application on 31.06.1995 to discharge him from service on compassionate ground due to ill health of his parents. However, due to lack of manpower and trained persons in the Trade, his request was not accepted. Therefore, he continued to serve in the Army with devotion and dedication.

(ii) While so, the petitioner sustained permanent disability of IDK Rt.Knee-719 on 16.12.1996 while playing Hockey match during the Regimental Tournament. The Release Medical Board held on 27.02.1998 found the petitioner to be medically unfit to be retained in service and directed to be released on Low Medical category CEE/PERM. The petitioner could not



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even walk properly. However, instead of discharging the petitioner on medical invalidation, the respondents have discharged him on compassionate grounds when no such request was made by the petitioner after sustaining disability. He served in the Indian Army for 10 years and 33 days and discharged on 01.04.1998. After discharge, the petitioner sought for Disability Pension on 01.04.1998. However, the Signal Records Officer rejected the same stating that he was discharged under Army Rule 13(3) III(4) on compassionate ground and he was not entitled to disability pension.

(iii) The petitioner preferred First Appeal before the 2nd respondent which was rejected on 18.04.2017 stating that as the petitioner was discharged from service prior to 01.01.2006, he was not entitled to disability pension. Aggrieved by the same, he preferred Second Appeal before the Defence Minister's Appellate Committee on Pension, Ministry of Defence, New Delhi on 05.07.2017. The Appellate Committee vide order dated 05.07.2017 stated that the petitioner's disability be assessed and to grant pension based on the medical report of the Re-survey Medical Board, conducted on 09.08.2018. Then, the 3rd respondent granted Disability Element of the Disability Pension alone to the petitioner. Aggrieved by the denial of service element of disability pension, the petitioner issued notice to the respondents. However, the 3rd



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respondent vide letter dated 23.12.2020, rejected the same.

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(iv) Aggrieved by the same, the petitioner preferred Original Application before the 1st respondent in O.A.No.36 of 2021 for sanctioning of Service Element of Disability Pension. By order dated 17.06.2022, the 1st respondent dismissed the application on the ground that the petitioner has not rendered mandated minimum qualifying service for the said benefit and that his manner of exist from service was not on account of medical disability. Aggrieved by the same, the petitioner filed a Review Application in R.A.No.36 of 2022, before the 1st respondent and the same was also dismissed. Hence, the present writ petition, challenging the order passed by the 1st respondent in O.A.No.36 of 2021 dated 17.06.2022.

3. (i) Learned counsel for the petitioner would submit that the Release Medical Board held on 27.02.1998 at 151 Base Hospital C/o 99 APO, recommended the petitioner to be medically unfit to be retained in service and directed to be released on Low Medical Category CEE/PERM. This elemental aspect was brushed aside by the 1st respondent Tribunal. He would further submit that the petitioner was not discharged from service on medical grounds but has arbitrarily discharged under Army Rule 13(3) III (4), on



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compassionate grounds. Therefore, the very discharge under compassionate ground, after having found him to be medically unfit to be retained service is arbitrary and illegal. Though the said fact was brought to the notice of the 1st respondent, the same was not considered. The Tribunal proceeded on the basis that the petitioner was discharged on his own request and not on account of medical invalidation.

(ii) Learned counsel would further submit that the 1st respondent failed to consider the fact that the manner of exit of the armed personnel from service is immaterial when the medical disability is a permanent one and occurred during the course of service. As per Raksha Mantra Committee of Experts Report (i.e.,) the Ministry of Defence Report, w.e.f. 01.01.1973, there is no minimum qualifying service required for Service Element of Disability Pension and the said position has been accepted by the Hon'ble Apex Court.

(iii) Learned counsel would further submit that the 1st respondent has not considered Regulation 183 of Pension Regulations for the Army, 1961 which envisages about payment of Disability Pension. The said Regulation discloses that rendering of minimum qualifying service is not a pre-requisite or *qua non* for sanctioning of Service Element of the Disability Pension. The findings of the 1st respondent that a minimum qualifying service is required to



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Learn Service Element stands contravention of Regulation 183 of Pension Regulations for the Army, 1961. The 1st respondent has misconstrued the 'Service Pension' contemplated under Regulation 132 of the Pension Regulations for the Army, 1961 to be the same and synonymous as that of "Service Element" of the 'Disability Pension' contemplated under Regulation 183 of the Pension Regulations for the Army, 1961.

(iv) Learned counsel would further submit that the 1st respondent erred in holding that for grant of Service Element of Pension, a minimum qualifying service is mandatory, in the absence of explicit provision mandating minimum qualifying service for the grant of Service Element of the Disability Pension. Hence, the impugned order is liable to be set aside.

(v) Learned counsel would further submit that the Hon'ble Supreme Court in the case of *Union of India & Ors. vs. V.R.Nanukuttan Nair* reported in 2019(19) SCC 690 dealt with the identical issue. Though the said decision was referred to and relied on, the same was omitted to be considered by the 1st respondent Tribunal. Learned counsel also relied on the decision rendered in *J.Beliks Raj v. Union of India* O.A.No.58 of 2014 dated 22.06.2015 in which the application of Armed Personnel therein who was discharged from service on their own request is entitled to disability pension including the



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service element of the disability pension. Therefore, the learned counsel would submit that similarly placed Army Personnel who sustained a permanent disability during the course of their employment are receiving the disability pension, which is inclusive of service element, whereas a different yardstick is applied in respect of the petitioner alone which amounts to discrimination and violation of Article 14 of the Constitution of India.

(vi) Learned counsel would further state that the petitioner hails from poor socio economic strata of the Society and he is the sole breadwinner of his family. While admitting the nature and permanency of disability, the 3rd respondent granted only disability element thereby depriving the petitioner's service element. The petitioner is aged 55 years and suffering with several medical ailments apart from taking treatment for disability sustained by him. Hence, he would pray to allow the writ petition.

4. (i) Per contra, the learned Central Government Counsel appearing for the respondents would submit that the petitioner submitted a petition dated 31.07.1995 requesting to discharge him from service on compassionate grounds. The wife of the petitioner had also submitted a petition dated 22.07.1996 addressed to the President, Army Wives Welfare Association,



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requesting to discharge her husband on extreme compassionate ground which was suitably replied to the wife of the petitioner by IHQ of MoD(Army) Sigs 4(b) vide letter dated 26.08.1996. Subsequently, the case of the petitioner was reviewed during 1997 and sanction for his discharge from service on extreme compassionate grounds by the competent authority on 28.07.1997. Thereafter, the petitioner was ordered for discharge from service under Army Rule 13(3) Item III (iv) at his own request on compassionate ground with effect from 31.03.1998 (A/N) vide order dated 01.01.1998. Since the petitioner was in low medical category for the disability "IDK (RT) Knee for RMB V67" at the time of discharge, he was brought before duly constituted Release Medical Board held on 27.02.1998 wherein he was medically & physically examined and his disability was opined as attributable to military service with remarks that "injury sustained on 16 Dec 96 during org games vide IAFY-2006 dt 05 June 17". The medical board had assessed the degree of disablement @ 20% for two years with composite assessment @ 20%. The petitioner was informed that since he was discharged from service under Army Rule 13(3) III (iv) at his own request on compassionate ground, he is not entitled for grant of disability pension.

(ii) Learned counsel further submitted that the contention of the



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petitioner that he had not made request for discharge from service is a blatant lie as it is evident from the Discharge Order, sanction of competent authority for discharge on compassionate grounds and the Release Medical Board proceedings that he was not invalided out from service but was discharged from service under Army Rule 13(3) Item III (iv) at his own request on compassionate ground. Therefore, he is not entitled for grant of disability pension. Further, even assuming that the petitioner was discharged from service based on his low medical category and not based on his own request, then also he is not entitled for grant of Service Element of Pension as he had rendered only 10 years and 33 days of service in the Army and he is not eligible for grant of Service Pension in terms of Para 132 and para 183 of Pension Regulations for the Army 1961 (Part I). Learned counsel would further submit that the petitioner has filed the Original Application after 25 years of his discharge from service which is grossly time barred by Limitation Act 1963 and the writ petition is also devoid of merits and substance. Hence, he would pray to dismiss the writ petition.

5. We have heard the learned counsel appearing on either side and perused the materials available on record.



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6. It is seen from the records that the petitioner enrolled in Indian Army in the Corps of Signals on 27.02.1988 and served at Unit No.3 AIR FMN Sig.Reg., C/o 99 APO. In December 1994, the petitioner's father suffered massive heart attack and underwent major surgery and required constant attention. The petitioner's mother being aged and having low BP, due to which, she would often faint and fall down, causing injuries to her. Since the petitioner could not be present at the time of his parent's medical emergency, the petitioner submitted an application on 31.06.1995 with medical records of his parents and sought for voluntary discharge from service on compassionate ground.

7. The petitioner's father being an ex-servicemen also requested the CO of No.3 Air FMN Sig.Reg., to expedite disposal of application submitted by the petitioner seeking discharge on compassionate ground. A reply was sent by CO(3 AFSR) to petitioner's father stating that Signal Records Office is not accepting the premature discharge application as there is acute shortage of manpower. The petitioner was also intimated that his request for discharge from service was rejected on account of shortage of manpower in the rank of



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Corps of Signals and critical deficiency of Signal Man Trade. The petitioner did not make further request or application for voluntary discharge from service on compassionate ground. The petitioner made necessary arrangements to take care of his aged parents at his native place and continued to serve in the Indian Army.

8. The petitioner, during his service, participated in Regimental Hockey Tournament in December 1996 and while playing in hockey tournament on 16.12.1996, he sustained permanent disability of IDK Rt.Knee 719. The petitioner was not able to walk properly due to severe pain in the knee joint. In Release Medical Board held on 27.02.1998 at 151 Base Hospital C/o 99 APO to assess the nature of disability suffered by the petitioner, it was found that the petitioner was medically not fit to be retained in service and directed to be released immediately on Low Medical category CEE/PERM. The Resurvey Medical Board held on 27.02.1998 also opined that the disability suffered by the petitioner is a permanent one and it is attributable and aggravated by military service. The petitioner was recommended to be discharged on medical invalidation forthwith by the Medical Board.



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9. The main contention of the petitioner is that instead of discharging the service of the petitioner on medical invalidation, the Department proceeded to discharge him on compassionate ground by invoking Army Rule 13(3) III(4) to evade paying disability pension to the petitioner. The initial request of the petitioner seeking to discharge him voluntarily on compassionate ground was not pending at that point of time, as the same has been rejected and the petitioner also continued his service in the Indian Army.

10. According to the petitioner, after discharge from service, when he made representation dated 01.04.1998 seeking disability pension, there was no reply from the respondents for six months. Therefore, he made another representation dated 13.12.1998, seeking for grant of disability pension. However, vide reply dated 14.01.1999, he was informed that he was discharged from service under Army rule 13(3) III (4) i.e., on his own request on compassionate ground and therefore, he is not entitled to Disability Pension.

11. Challenging the rejection order, the petitioner preferred First Appeal and the same was rejected stating that though he had suffered permanent



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disability, he is not entitled to disability pension on account of the fact that he was discharged from service prior to 01.01.2006. Challenging the same, the petitioner preferred Second Appeal, in which, the Appellate Committee vide order dated 05.07.2017 directed to assess the petitioner's disability by the Re-Survey Medical Board. On ascertaining the percentage of his disability, the said Board fixed his disability at the rate of 20% for life. Based on the same, the 3rd respondent was granted Disability Element of Disability Pension and denied Service Element of Disability Pension to the petitioner.

12. Aggrieved over the denial of service element of disability pension, the petitioner sent legal notice to the respondents on 01.10.2020. In pursuant to which, the 3rd respondent vide letter dated 23.12.2020, rejected the grant of service element of disability pension on the ground that the petitioner had not put in minimum qualifying service of 15 years as mandated under Rule 12 of the Army Pension Regulations to be eligible for service pension. Therefore, the petitioner filed Original Application before the Hon'ble Armed Forces Tribunal, Regional Bench, Chennai in O.A.No.36 of 2021 for sanction of Service Element of Disability Pension with arrears. Counter affidavit has been filed by the respondents 2 to 5 stating that he is not entitled to service element



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of disability pension as he was invalidated from service at his own request and not on medical invalidation.

13. It is to be noted that the 1st respondent /Armed Forces Tribunal while dismissing the petitioner's application, in the impugned order dated 17.06.2022 , placed reliance on the decision rendered by the Full Bench of the Principal Bench of Armed Forces Tribunal, in the case of Ex.Sgt.Girish Kumar Vs. Union of India and others (O.A.No.1439 of 2017 dated 10.12.2017). However, the aforesaid Full Bench order of the Tribunal was stayed by the Hon'ble Supreme Court in Civil Appeal Diary No(s).21811/2018 dated 13.07.2018. The Review Application filed by the petitioner in R.A.No.36 of 2022 against the said order passed in O.A.No.36,2021, was also dismissed.

14. The manner of exit of the armed personnel from service is immaterial when the medical disability is a permanent one and occurring during the course of their service. The Hon'ble Supreme Court in Union of India & Ors v. V.R.Nanukuttan Nair, reported in 2019(19) SCC 690 has held that rendering minimum qualifying service is not a pre-requisite or *sine qua non* for granting Service Element of Disability Pension.



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15. Similarly placed persons like that of the petitioner were granted service element by order of the Armed Forces Tribunal, Chennai in the case of J.Beliks Raj v. Union of India made in O.A.No.58 of 2014 who was discharged from service on his own request, holding that he is entitled to disability pension, including the service element. The order passed by the Tribunal was implemented by the respondents in its letter and spirit. The act discrimination of similarly situated armed personnel would amount to placing equals unequal apart from being a colourable exercise of power. The respondents who have admitted the permanency of disability of the petitioner and granted disability element ought not to have deprived the petitioner of his service element. The petitioner has put in 10 years and 33 days of service in the Indian Army and he is now 55 years old. It is contended by the learned counsel for the petitioner that the petitioner is the bread winner of his family and suffering with several medical ailments apart from taking treatment for the disability sustained by him.

16. In view of the above discussion, we are of the view that the impugned order passed by the 1st respondent in O.A.No.36 of 2021 dated



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17.06.2022 has to be set aside, accordingly, the same is set aside. The respondents are directed to sanction Service Element of Disability Pension w.e.f. 01.01.2006 along with arrears to the petitioner within a period of twelve weeks from the date of receipt of a copy of this order. Accordingly, the Writ Petition is allowed. No costs.

(J.N.B., J.) (N.M., J.)  
08.03.2024

vsi

Index : Yes / No

Internet : Yes / No

Neutral citation : Yes / No

To

1. The Secretary, Union of India,  
Ministry of Defence, South Block,  
New Delhi - 110 011.
2. The Chief of Army Staff,  
Army Headquarters, Integrated Headquarters,  
DHQ Post, Janth Block,  
New Delhi - 110 001.
3. The PCDA (P), Allahabad (UP),  
Pin - 211 014.
4. The Chief Record Officer,  
for Officer i/c Records,  
The Records Signals, Pin - 908 771



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C/o 56 APO (JABALPUR)

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**J. NISHA BANU, J.**  
**and**  
**N.MALA, J.**



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vs

Pre-delivery order in  
**W.P.No.24483 of 2023**

**08.03.2024**