

**(2007) 01 MAD CK 0271**

**In the Madras High Court**

**Case No : Writ Petition No. 3767 of 2001**

Pachammal

APPELLANT

Vs

Government of India

RESPONDENT

**Date of Decision : 08-01-2007**

**Acts Referred:**

Pension Regulations for Army, 1961 — Rule 13, 213

**Citation : (2007) 01 MAD CK 0271**

**Hon'ble Judges : R. Banumathi, J**

**Bench : Single Bench**

**Advocate : S.P. Ilangoan, for the Appellant; Y. Balasubramanian, S.C.G.C., for the Respondent**

**Final Decision : Allowed**

## **Judgement**

R. Banumathi, J.—The Petitioner seeks issuance of a Writ of Mandamus directing the Respondents to pay a compensation of Rs. 10,00,000/- for the death of her husband on account of premature discharge from service and award disability pension to her husband Munusamy and also award family pension to her.

2. Facts which led to the Writ Petition are as follows:

2.1. Petitioner's Husband Sep.1283657 Munusamy was enrolled into the Army on 13.12.1965. In the Army, he fell sick and on 23.5.1970 he was admitted in the Military Hospital Panagarh for treatment of ailment diagnosed as "obstructive Jaundice". He was later transferred to command Hospital, Calcutta, for recategorisation and the Calcutta Hospital discharged him on 17.6.1970 placing him in the low medical category "CEE" temporarily for one year. But the Petitioner's Husband Munusamy was discharged from army service with effect from 12.12.1970 i.e. after 4 years and 364 days. During his life time, the said Munusamy made repeated request for disability pension. He died on 11.6.1973 leaving the Petitioner and one crippled son and one daughter as dependents.

2.2. According to the Petitioner, the disease "obstructive Jaundice" is a curable

disease, which could have been cured completely if treated properly. According to the Petitioner, her husband - Munusamy was entitled for review by Medical Board to revalidate his medical category, which was unjustly denied to him on account of hasty and sudden discharge from service and she claims a compensation of Rs. 10,00,000/-. For discharging her Husband from service in an unhealthy condition which led to his early demise and thus rendering the Petitioner helpless.

3. Learned Counsel for the Petitioner has submitted that when the individual was suffering from tuberculosis, as per rules, he ought to have been transferred to Military Hospital for better treatment which was not done in the case of Munusamy. It was further submitted that the Army Authorities have abruptly discharged Munusamy just one day prior to completion of his five years service and he was unjustly denied disability pension and Munusamy died in harness at the age of 26 years.

4. Contending that the Writ Petition is highly belated one, the learned standing counsel Mr. Balasubramanian submitted that the Petitioner's Husband had served only four years and 364 days and the Petitioner cannot paid pension merely as charity. It was further submitted that granting of disability pension does not arise as the Petitioner's Husband had served only four years and 364 days in the Army.

5. Admittedly, the Petitioner's Husband was enrolled in the Army on 13.12.1965 at the age of 18 and was discharged on 12.12.1970. On 23.5.1970, Munusamy was admitted in Panagarh Hospital where he was diagnosed for "obstructive jaundice". He was discharged on 29.5.1970 and transferred to command Hospital, Calcutta. He was admitted in the command Hospital, Calcutta on the same day i.e. 29.5.1970 where he was taking treatment till 19.6.1970. He was discharged on 19.6.1970 and at the time of discharge recommended " Placed in Med.Cat.CEE Temp. for one year w.e.f. 17.6.1970. Med. Board held on 17.6.1970. With coin lesion antetubercular treatment on one year".

6. The contention that no proper treatment has been given to Munusamy is raised nearly 30 years after discharge and the death of the personnel. We cannot verify any of the allegation after such a long time. While so, the claim of the Petitioner claiming compensation of Rs. 10,00,000/- for the abrupt discharge and death of her Husband are not substantiated.

7. As Per Section 132 of Pension Regulation Act, minimum period of qualifying service actually rendered and required for earning service pension shall be 15 years. The Petitioner's Husband Munusamy has not completed 15 years of service and therefore, he was not eligible for service pension.

8. The only point to be considered is whether disability pension is payable to Munusamy from 23.5.1970 to 11.6.1973 and the subsequent family pension. On 23.5.1970 Munusamy was admitted to Military Hospital, Panagarh for treatment of ailment diagnosed as "obstructive jaundice" and was transferred to Command Hospital, Calcutta for treatment where he was diagnosed for "coin lesion tuberculosis" and was placed on low medical category CEE temporarily for one

year with effect from 17.6.1970 and was advised treatment for "coin lesion tuberculosis". As per the procedure laid down in army Order 150/75, the Petitioner's husband Munusamy ought to have been treated in the Military Hospital for one year with full pay and brought before an Army Medical Board for recategorization. If he was found fit by the Medical Board, he ought to have been taken back by the Army service and if he was not fit, he ought to have been invalidated out of Army service with disability pension. Without following the procedure of providing him with the required mandatory medical treatment for one year, the army authorities conducted test on 12.12.1970 i.e. within six months of treatment and discharged him from army service without granting him disability pension to which, he was lawfully entitled to. Munusamy was discharged on 12.12.1970 after completion of four years and 364 days of army service i.e. exactly one day short of completion of five years which would have given him the status of permanent classification and eligible to benefits and privilege to be treated in military hospital. One could easily perceive that he was discharged just one day prior to the completion of five years and that he may not achieve permanent classification. His discharge from service on 12.12.1970 appears to be unjust.

9. Death certificate of Munusamy has been produced showing that Munusamy died on 11.6.1973. The Petitioner has filed additional affidavit stating that her husband came home on discharge from army in a poor state of health. It is also averred that without pension and with no sources of income, he could not get proper treatment and his condition become deteriorated and he died within three years after discharge from army at a young age of 26 years. During his life time, Munusamy has been making request for disability pension. His petition was also forwarded for early and necessary action. If he had been given disability pension, he might have been in a position to take better treatment.

10. In the counter affidavit, it is averred that the Husband of the Petitioner was discharged being a case of "service no longer required and not on medical ground". The category of discharge on the ground of "service no longer required" is contrary to the medical records. As aforesaid, Munusamy was kept under low medical category CEE for a period of one year and the same has also been referred in the discharge certificate. Cause of discharge is only stated as "unsuitable for further military service under Army Rule 13, item (v). But medical discharge certificate does not indicate that service no longer required. That he had been discharged as being a case of service no longer required, is inconsistent with the medical records.

11. The question requiring consideration is whether on the facts of the instant case, nearly after thirty years, can the High Court be justified in exercising its judicial review regarding the order of discharge of Munusami, made on 12.12.1970. It is well settled that exercising Writ Jurisdiction is to maintain a right balance between administrative discretion and the need to remedy the alleged unfairness in the exercise of such discretion. Since the abrupt termination

of service of Munusamy on 12.12.1970 is unjust and unfair, there is need to remedy the same unfairness though the petitioner has moved this Court at a distance point of time.

12. In a similar case in *Union of India v. Neki Ram* 2003, AIR S.E.W. 3015, the Supreme Court has confirmed the order of the Courts below awarding disability pension holding that the army man was hale and healthy at the time when he joined military service and developing illness during service and no materials were produced by the authorities to rebut presumption that the army man has developed disease in the course of service confirming the finding of the Courts below, the Supreme Court has held as under:

the trial Court examined the matter from various angles and found that when he joined the service he was hale and healthy and no sign of ill health could be found in him at that time. It was only when he was in service he developed the said disease. In the circumstances, the Court found that the matter should have been put beyond doubt that it was not as a result of military service or attributable to military service particularly when he had served continuously for four years. There is no material placed before the Court to rebut the presumption that he had developed the disease in the course of his service. On that basis the trial Court decreed the suit. The first Appellate Court also reiterated the view of the trial Court and High Court dismissed the second appeal. Hence, this appeal.

13. After Munusamy's death, the Petitioner was making repeated appeals for grant of family pension. But stating that she is not eligible for family pension, the Respondents have granted some financial assistance. It may not be proper to go into the correctness or otherwise of the discharge nearly three decades after the discharge. By going through the typed set of papers, it is seen that both the Petitioner and her Husband were sending repeated representations to the Respondents for grant of family pension. As noted earlier, the Petitioner was granted financial assistance of meagre amount for certain periods. When the petitioner had sent representation in April 1995 for financial assistance, the same was returned requesting her to forward the copy of the discharge certificate and other particulars. Grant of financial assistance and requesting the Petitioner to send discharge certificate, the Petitioner, who is stated to be an impoverished cattle grazer, might have gained impression that her matter is being under consideration. In case of this nature, delay in approaching the Court cannot be the reason for declining the relief. It must be deemed that Munusamy is discharged under the provisions of Army Act. Under the Rules made thereunder, Munusamy is eligible for disability pension. Therefore, it is held that Munusamy is eligible for disability pension from 23.5.1970 to till the date of his death (11.6.1973).

14. Under Rule 213 of Pension and Regulations of Army, special family pension may be granted to the family of an individual if his death was due to a disease which was attributable to military service. Rule 213 reads as under:

### Special Family Pension.

A special family pension may be granted to the family of an individual if his death was due to or hastened by

(a) a wound, injury or disease which was attributable to military service,

or

(b) the aggravation by military service of a wound, injury or disease which existed before or arose during military service.

Since Munusamy died of disease coin lesion tuberculosis, which he suffered during military service and aggravated due to abrupt termination of his service without treatment. As per Rule 213, the family of deceased Munusamy are eligible to special family pension as contemplated under Army Rules.

15. In the result, this Writ Petition is allowed. The Respondents are directed to pay disability pension payable to the deceased Munusamy from 23.5.1970 to till the date of his death (11.6.1973). Further, the respondents are directed to pay Special Family Pension to the petitioner as per the Pension Rules of the Army.