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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MS.JUSTICE P.T.ASHA

Review Application No.138 of 2013
&
M.P.No.1 of 2013

1.S.Sunder Raj Petitioner

-vs-

1.The Union Of India,
Represented by its Secretary to Government,
Ministry of Defence,
New Delhi.

2.The Officer-in-Charge,
Madras Regiment,
AbhilekhKaryalaya,
Records the Madras Regiment,
Post Bag No.1, Wellington - 644 231,
Nilgiris District.

..... Respondents

Review Application filed under Order 47 Rule 1 read with Section 114 of the Code of Civil Procedure to review the order passed by this Court dated 07.04.2011 made in W.A.No.679 of 2009.

Prayer in W.A.No.679 of 2009 : Appeal under Clause 15 of the Letters Patent, against the order dated 02.12.2008 made in W.P.No.15669 of 1999. This petition filed under Article 226 of the constitution of India to issue a writ of Mandamus directing the respondents to take the petitioner into the strength of army service as sepoy with all monetary benefits.

WP No.15669/1999 : Pleased to issue a writ of mandamus or any other appropriate writ order or directing of the nature of writ directing the respondents to pay the Military Pension.

For Petitioner : Mr.K.M.Ramesh
for Mr.M.L.Ganesh

For Respondents : Mr.A.Kumaraguru
Senior Panel Counsel



O R D E R

[Order of the Court was delivered by P.T.ASHA,J.]

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The above Review Application is filed against the Judgement in W.A.No.679 of 2009, pursuant to the leave granted by the Honourable Supreme Court in S.L.P.No.CC.4449-4450 of 2013. Considering the limited prayer we briefly touch upon the issues which have culminated in filing the present Review Application.

2.The review petitioner herein joined the Madras Regiment of the Indian Army as a Sepoy on 16.10.1986. He was discharged from service with effect from 31.05.1995 on the ground that he was medically unfit.

3.The review petitioner would contend that he was discharged from the service without referring him to the Military Board for examination. The review petitioner, thereafter, made a representation to the 2nd respondent on 10.07.1995, to continue him in service till he became eligible for pension or atleast for disability pension. However the claim was rejected on the ground that the disability was not attributable to his service.

4.The review petitioner had approached this Court by filing W.P.No.15669 of 1999 seeking a direction to the respondents to pay him service pension. The 1st and 2nd respondents had filed a detailed counter denying the claim of the review petitioner stating that he was not entitled to disability pension or service pension under the rules. The respondents had contended that he had been paid with the invalid gratuity, DCRG and AGIF disability benefits and therefore claim of the review petitioner cannot be considered. The learned Single Judge by order dated 02.12.2008 was pleased to dismiss the Writ Petition as being misconceived.

5.This order was taken up on appeal in W.A.No.679 of 2009. Pending the Writ Appeal, review petitioner was referred to the Military Hospital at Chennai. The Medical Officer, Military Hospital, Chennai, by order dated 23.12.2010, was directed to examine the review petitioner and file a report within a period of four weeks. Pursuant to the said order the review petitioner was examined on 31.01.2011 by the Clinical Phsychologist, Department of Psychiatry, Command Hospital Air Force, Agram (P.O.), Bangalore - 560 007 and the Classifed Specialist (Psychiatry), Command Hospital (Air Force), Bangalore - 7, and it was found that he was suffering from Schizophrenia (20%).



6.This Court by order dated 07.04.2011 had dismissed the Writ Appeal. The review petitioner had filed Review Application No.110 of 2012, which was also dismissed by the orders of this Court dated 10.09.2012. The orders in W.A.No.679 of 2009 as well as in the Review application No.110 of 2012 were taken up to the Honourable Supreme Court in S.L.P.No.C.C.4449-4450 of 2013, which was withdrawn by the review petitioner with liberty to file a review petition before this Court. In view of the said liberty the petitioner has filed this review petition.

7.Mr.K.M.Ramesh, learned counsel for the review petitioner would submit that though the Review Application has been filed to review the Judgement in Writ Appeal No.679 of 2009, it would suffice if the respondents would consider him for payment of pension and other benefits as he is suffering from Schizophrenia (20%).

8.However, considering the position that the Armed Forces Tribunal has now been constituted, we are of the view that this issue should be considered by the Tribunal. We permit the review petitioner to file a petition before the Armed Forces Tribunal, Chennai, on or before 31.08.2019. The Tribunal shall entertain the application by condoning the delay taking into pendency of the matter before this Court and the Honourable Supreme Court from the year 1999 on wards.

9.The tribunal is requested to dispose of the Petition so filed within a period of four months from the date of filing of the petition by the review petitioner.

The Review Application is disposed of with the above directions. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

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To,

1.The Union Of India,
Represented by its Secretary to Government,
Ministry of Defence,
New Delhi.



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