

ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW  
COURT NO. 2

**T.A. No. 623 of 2010**

**Thursday, this the 21<sup>st</sup> day of July, 2016**

**“Hon’ble Mr. Justice D.P.Singh, Judicial Member  
Hon’ble Air Marshal Anil Chopra, Administrative Member”**

Shalini Mishra, wife of (Late) Sep/AA Ajai Kumar Mishra (No 13989474K), resident of C/o Smt. Sushila Tiwari, wife of (Late) Sri Om Nath Tiwari, House No 15/16, Deoria Ram Nath (West), Ward No. 6, Distt. Deoria-274001  
.... **Petitioner**

Versus

1. Union of India through the Chief of Army Staff, Army HQ, DHQ PO, New Delhi.
2. Director General of Medical Services, (Army), Army HQ, L, Block, New Delhi-1.
3. Principal Controller of Defence Accounts (Pensions) (PCDA (P)), Allahabad.
4. Commanding Officer, 421 Field Ambulance, C/o 99 APO.
5. Officer -in -Charge, AMC Records, Lucknow.
6. Smt Phoolmati wife of Shri Bashishth Mishra Resident of Mohalla Ashok Nagar Village Ganeshpur Tappa Lohada, Pargana Haveli Tehsil Parendia Distt Maharajganj.

**...Respondents**

**Ld. Counsel appeared for the  
Petitioner**

**- Col (Retd) R.A.Pandey  
Advocate**

**Ld. Counsel appeared for the  
Respondents**

**- Shri A.N.Tripathi  
C.G.S.C**

**ORDER (ORAL)**

1. This Petition has come up before us by way of transfer under Section 34 of the Armed Forces Tribunal Act, from Hon'ble the High Court at Allahabad and it has been renumbered as Transferred Application No. 623 of 2010.

2. Applicant's husband namely, Ajai Kumar Mishra was enrolled in the Indian Army Medical Corps (AMC) on 25<sup>th</sup> Oct 1994. During the course of service, he came back to his native place on leave where he was reportedly murdered on 09.03.2005. At the time of death, the surviving family members consisted of wife and one son. Smt Phoolmati, who is arrayed as respondent no 6 in the instant case, is the mother of the deceased. The Applicant being wife of the deceased, claimed payment of post retiral dues and Pensionary benefits. The matter of retiral dues and Pensionary benefits was not processed on the sheer ground that the deceased was murdered by someone. Concededly, there is nothing incriminating the Applicant in so far as murder of the deceased is concerned. On account of oscillating attitude of the respondents, the Applicant being aggrieved, preferred a writ Petition being Writ Petition No37921 of 2008 in the High Court

at Allahabad which in due course stood transferred to this Tribunal as stated supra.

3. We have heard Col (Retd) R.A.Pandey for the Petitioner and Shri A.N.Tripathi learned counsel for the respondents assisted by Col Kamal Singh, OIC Legal Cell. We have also heard Shri Vijai Kumar Pandey, learned counsel for the Respondent no 6.

4. In the course of arguments, a specific query was posed to learned counsel for the respondents whether it is permissible under any provision of law to stop payment of Pensionary benefits to the bereaved family on the only ground that the husband of the Applicant was killed by some assailant and that a criminal case was pending in the court of law but Shri A.N.Tripathi, appearing for the respondents failed to draw our attention to any policy, regulations or statutory mandate whereby in such situation, Pensionary benefits can be declined to the Applicant or her son. The law is well settled on the point that pension or Pensionary benefits are not bounty and the respondents have no right to stop payment of pension on flimsy ground in contravention of relevant statutory mandate. It shocks our judicial conscience that the Applicant and his son who has now grown up being about 16 years of old,

have not been paid a single penny till date and we can well visualize their predicament.

5. **Per contra**, Shri V.K.Pandey, counsel appearing for the respondent no 6 who happens to be mother of the deceased, submits that it is yet to be decided by a court of law whether it is mother or wife of the deceased who is entitled to Pensionary benefits of deceased. It is informed that the matter is still protracting in the civil courts. The argument advanced by learned counsel for the respondent no 6, in our considered view, is wholly misconceived inasmuch as the decision on the question as to payment of Pensionary benefits has to be taken in accordance with the Pension Regulations/policy framed by the Army and undoubtedly, it is the wife being widow of the deceased, who is entitled for Pensionary benefits/family pension in accordance with the relevant Rules/Regulations. In so far as, mother of the deceased who is arrayed as respondent no 6 in the instant case is concerned, in case, any army order, policy, Rules and Regulations permit the mother of the deceased to be paid any part of the Pensionary benefits, the authority that be, shall pass speaking order and in case, she is found to be entitled, the authority shall provide the benefits to the respondent no. 6 accordingly.

6. Reverting to the facts of the case, we cannot reconcile ourselves to a situation where the matter has been allowed to hang in fire for the last 11 years without there being any statutory provisions to do so in a situation where the army personnel who had gone on leave to his native place is murdered. Whatever Pensionary benefits were available to the dependents of the deceased, the same ought to have been paid to the widow or any other dependents in accordance with Pension Regulations but the same cannot be declined or kept hanging fire for as long as 11 years. The inordinate delay that has occurred in the instant case that too on unfounded ground seems to be fatal. It would be a travesty of justice in case the Applicant or for matter of that, any other dependents of the deceased entitled under the Regulations, are not paid pension or post retiral dues for such a long time. The Courts, in such circumstances, cannot sit as a mute spectator with blinkers on.

7. Accordingly, we allow the T.A and direct the respondents to take decision at the earliest with regard to payment of family pension and other retiral dues to the Applicant and other dependents if any in accordance with Pension Regulations and shall ensure that entire outstanding dues are paid to the Applicant

or any other dependents expeditiously, say within four months alongwith the interest at the rate of 10% with effect from Ist Jan 2006. Needless to say that the respondents shall take decision by passing a reasoned and speaking order keeping in view the pension regulations applicable to the present case and communicate the decision to the Applicant or any other dependent within a period of six months. It is clarified that we have not entered into merit of the controversy.

8. Let a copy of this order be communicated to the authority that be by the learned counsel for the respondents within 10 days from today. The applicant shall also communicate the order forthwith.

**(Air Marshal Anil Chopra)**  
**Member (A)**

**(Justice D.P. Singh)**  
**Member (J)**

**MH/-**