

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

Court No -1

ORIGINAL APPLICATION No. 432 of 2019

Tuesday, this the 28 Day of September,2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Smt. Sangita Tiwari, Widow of No. 7775968A Late Sepoy (MP)
Sri Dependra Kumar Tiwari House No. 69/40, Danakhori,
Kanpur (UP)

..... Applicant

Ld. Counsel for the Applicant : **Shri Vijay Kumar Pandey, and
Shri Girish Tiwari Advocate.**

Versus

1. Union of India, through Secretary, Ministry of Defence, (Air Force), South Block, R.K. Puram, New Delhi-110011.
2. OIC, Records, Records Corps of Military Police Records, PIN 900493 C/o 56APO.
3. PCDA (P), Draupadighat, Allahabad (UP)

..... Respondents

Ld. Counsel for the Respondents. **Shri Arun Kumar Sahu,
Central Govt. Counsel**

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

(i) That this Hon’ble Tribunal may kindly be pleased to quash the impugned order dated 30.07.2019, whereby the payment of Post retiral benefits of her deceased husband has been rejected by the opposite party no.2, as contained in annexure no.1 to this original application.

(ii) That this Hon’ble Tribunal may kindly be pleased to condone the shortfall in the qualifying service for pension of the deceased husband of the applicant and to grant her service pension and other consequential benefits from the date of completion of 15 years (Fifteen Years) of service to till the death of her husband i.e. 13.11.2007 and thereafter grant the Family Pension and other consequential benefits to the applicant w.e.f. 14.11.2007 to till today and onwards with 18% P.a. since due date to actual date of payment in the interest of justice.

(iii) That this Hon’ble Tribunal may be pleased to pass any other beneficial order or direction which this Hon’ble Court may deem just and proper be passed in favour of the applicant.

(iv) That this Hon'ble Tribunal may be pleased to award the cost of this application and legal expenses Rs.20,00,000/- (Rs. Twenty Lac) and allow the same.

2. Brief facts of the case giving rise to this application are that the alleged husband of the applicant was enrolled in the Army on 18.06.1988 and discharged locally from service on 31.01.2003 before completion of service tenure being undesirable soldier. At the time of discharge, alleged husband of the applicant had completed 14 years, 01 month and 07 days service and he died in a road accident on 13.11.2007. Applicant by means of instant Original Application has prayed to condone the shortfall period of about 11 months and grant her family pension.

3. Learned counsel for the applicant submitted that Late Sep Dependra Kumar Tiwari married to Smt Shashi Lata on 26.06.1989. Her name was recorded in service documents of deceased soldier. Smt Shashi Lata absconded him then applicant Smt Sangita Tiwari married to Late Sep Dependra Kumar Tiwari on 02.07.1997. She was granted maintenance allowance Rs. 500/- per month by the order of Civil Court, Unnao being legally wedded wife. Her maintenance allowance was stopped after the death of Dependra Kumar Tiwari. Being legally wedded wife, she was granted accidental claim on death of her husband. Learned

counsel for the applicant pleaded that name of applicant be entered in service record of late Dependra Kumar Tiwari and she may be granted family pension after condoning shortfall period of service.

4. On the other hand, learned counsel for the respondents submitted that Late Sep Dependra Kumar Tiwari solemnised three marriages. First marriage was solemnised with Smt Shashi Lata on 26.06.1989. Marriage Part II Order was published and name of Smt Shashi Lata was recorded in service documents of deceased soldier. Second marriage was solemnised with Smt Padma Tiwari on 28.02.1990. Her name was not recorded in service documents of deceased soldier. Third marriage was solemnised with Smt Sangita Tiwari on 07.02.1997. Late Sep Dependra Kumar Tiwari was awarded 4 red ink entries and was locally discharged from service on completion of about 14 years, 01 month service on disciplinary grounds as undesirable soldier. Late Sep Dependra Kumar was not granted any pension and he died on 02.07.1997. Deceased soldier did not raise any objection against his discharge order from 31.11.2003 to 13.11.2007. As per investigation report none of the three wives are living with the family of deceased soldier. Mother of deceased soldier Smt Kamla Devi is alone living at his house. Smt Sangita Tiwari filed a petition before Civil Court,

Unnao, which was allowed and applicant was granted maintenance allowance Rs. 500/-. She also filed a suit before family Court Kanpur who passed ex-party order in her favour as legal wife on 30.05.2019 but not for grant of pension. She filed mercy petition to condone shortfall period for grant of family pension which was rejected vide order dated 12.09.2019. She filed O.A. No 132 of 2012 before this Tribunal with the prayer to quash discharge order of Late Sep Dependra Kumar Tiwari dated 31.01.2003 and to grant her consequential benefits, monetary or otherwise which was rejected.

5. We have heard learned counsel for the parties and perused the record.

6. The question before us to decide is whether Smt Sangita Tiwari is entitled for pensionary benefits?

7. On perusal of service record of Late Sep Dipendra Kumar Tiwari, it appears that deceased soldier was a defaulter. After his death Smt Sangita Tiwari and Smt Padma Tiwari both have produced marriage certificate as well as death certificate of deceased soldier and claiming for family pension as wife of deceased soldier. He was punished 8 times under various Sections for various offences which resulted in his discharge

before completion of pensionable service. Thus, in terms of Para 132 of Pension Regulations for the Army 1961, he was not granted service pension. Since the deceased soldier was not granted any service pension, hence applicant is also not entitled for family pension. In addition, Late Sep Dependra Kumar Tiwari violated army rule by contracting plural marriage without divorce from first wife.

8. We have gone through Original Application No 132 of 2012 filed by the applicant in this Tribunal. This Tribunal after hearing all the points of both the parties disposed off the Original Application vide order dated 07.09.2015. Page 5 (Para 4) of operative portion of the judgment reads as under:-

“4. As per this judgment nominee, who is mentioned in service record of the applicant is the deceased’s legal heir. We are of the view that Smt Shashilata Tiwari seems to be entitled for post retiral benefits in accordance with the rule. Of Courts, the applicant has right to file a suit to advance her claim for grant of retiral benefits in accordance with law but there is another aspect. The applicant has challenged discharge order. Almost more than 4 years have passed; the late Shri Dipendra Kumar has not raised any grievances against the discharge order. Keeping the silence upto death, now there appears no reason to raise grievance against order of discharge. Aggrieved party has not raised his grievances by approaching appropriate forum/court. Now

the applicant has no right to challenge discharge order on demise of Sep Dipendra Kumar after elapse of 4-5 years. In case any person is aggrieved by any order, he/she should have to approach the court within a stipulated or reasonable period of time. We do not find it appropriate to interfere with the present controversy. However, we direct the Respondents for payment of post retiral benefits to the NEXT OF KIN as recorded in service record within a period of three months. So far as the applicant is concerned, since she also claimed to be wife of late Sep Dipendra Kumar, she has right to claim her share if any of post retiral dues from civil court and court may decide without being influenced by present order.”

9. On perusal of above judgment it transpires that applicant Smt Sangita Tiwari in her earlier O.A. has already raised all her grievances and sought for condoning shortfall period and for grant of family pension which was denied vide order dated 07.09.2015. Order was passed in favour of Next of Kin for grant of retiral dues. As per order of Tribunal, Smt Shashi Lata as NOK was contacted by Record Officer but she did not turn up to take benefits.

10. We, therefore do not find any merit in the application to interfere with the impugned locally discharge order passed by the respondent authority in terminating the services of Late Sep Dipendra Kumar Tiwari and condoning the shortfall period for grant of family pension to

the applicant. Consequently, the application being devoid of merit is liable to be **dismissed**. Resultantly, O.A. is **dismissed**.

11. No order as to costs.

12. Pending applications, if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 28 September, 2021

Ukt/-