

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 79 of 2020**Wednesday, this the 29th day of September, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)****Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

Smt. Yashwati Devi, W/o Ex Np. 14456127Y Gnr (GD) late Ashok Kumar Singh

Artillery, Nasik Road Camp, Maharashtra
R/o Village – Attar Chandi, Tehsil – Aonla,
District – Bareilly (UP) – 243001**.... Applicant**Ld. Counsel for the Applicant : **Shri Lal Chandra Sahu**, Advocate

Versus

1. Union of India through Secretary, Ministry of Defence, New Delhi – 110011.
2. IHQ of MOD (Army), Adjutant General Branch, Addl Dte, Gen Pers Service, Room No. 18, Plot No. 108 (West) L-Block, Church Road, New Delhi – 110011.
3. Officer In-charge, Records, Topkhana Abhilekh, Artillery Records, PIN 0 908802, C/o 56 APO.
4. PCDA (P) Draupadi Ghat, Allahabad.

... RespondentsLd. Counsel for the Respondents : **Ms. Anju Singh**,
Central Govt Counsel**ORDER**

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

- “(a) Hon'ble Tribunal may please to set aside the order dated 01.03.2017 passed by the respondents on the First

Appeal of the applicant (Annexure No. 2 to the Compilation-II).

- (b) Hon'ble Tribunal may please to set aside the order dated 25.10.2018 passed by respondents on the Second Appeal filed by the applicant (Annexure No. 1 to the Compilation-1).
- (c) Hon'ble Tribunal may please to direct the respondent to grant the pension to her husband and after she may be granted family pension.
- (d) This Hon'ble tribunal may please to issue order or direction which this Hon'ble Court may deem fit and proper under circumstances of the case."

2. Brief facts of the case are that applicant was enrolled in the Army on 29.07.1978. During service a murder was committed on 04.07.1986 while applicant's husband was on 62 days annual leave from 13.05.1986 to 13.07.1986 and was apprehended/kept in civil custody. Applicant's husband was awarded life imprisonment for 20 years by Sessions Court, Bareilly on 01.10.1988. Thereafter, he was released on bail on 31.07.1989 vide Hon'ble High Court, Allahabad judgment dated 21.07.1989. On 14.10.1988, husband of the applicant appealed in the Hon'ble High Court of Allahabad against punishment awarded by the Sessions Court, Bareilly and the Hon'ble High Court of Allahabad vide its orders dated 29.08.1991 passed order that services of applicant's husband will not be terminated. The applicant's husband reported in unit on 31.07.1989 and thereafter, he was granted leave from 13.09.1989 to 22.09.1989 but he overstayed leave from 23.09.1989 to 28.06.1990 and rejoined in unit after an absence

period of 279 days. The husband of the applicant was in civil police custody from 10.09.1987 to 09.10.1988 and in imprisonment after conviction by the Court from 10.10.1988 to 21.07.1989 till he released on bail. A Show Cause Notice dated 25.04.1991 was issued to the husband of the applicant as to why his services should not be terminated under the provisions of para 423 of Regulations for the Army, 1987 and Rule 13 (3), item III (iv) of Army Rules, 1954. However, husband of the applicant got stay order from the Hon'ble High Court of Allahabad vide order dated 29.08.1991 against termination of his services, pursuant to the Show Cause Notice issued to him. Thereafter, husband of the applicant was discharged from service on 31.01.1994 (AN) on fulfilling the conditions of enrolment under Rule 13 (3) III (i) of Army Rules, 1954 with a liability to service in the reserve for a period of 2 years on attainment of 40 years of age whichever is earlier. The husband of the applicant rendered 15 years, 6 months and 3 days of service including 1 year, 6 months and 28 days of non qualifying service, i.e. 279 days for Over Staying Leave (OSL) and 294 days in police custody under section 302/24 of IPC (Total 573 days). In terms of para 132 of pension Regulations for the Army, 1961 (Part-1), 15 years of qualifying service is mandatory for grant of pensionary benefits. Since, the husband of the applicant rendered total 13 years, 11 months and 14 days of qualifying service (excluding 573 days non qualifying service), hence, he is not entitled for pensionary benefits. After a lapse of 22 years from the date of discharge of husband of the applicant, she submitted

a petition dated 16.12.2016 which was replied by Artillery Record stating that she is not entitled to family pension in terms of para 132 of pension Regulations for the Army, 1961 (Part-1). Second appeal of the applicant dated 07.05.2018 was also rejected vide letter dated 07.06.2018. Being aggrieved, the applicant has filed the present Original Application.

3. Learned counsel for the applicant submitted that applicant's husband while on leave was falsely implicated in a case No. 70/1986 under Section 302, 307, 147, 148, 149 of IPC. The husband of the applicant was confined in District Jail, Bareilly and later released on bail under the order of the Hon'ble High Court of Allahabad. The applicant's husband filed Civil Misc. Writ Petition before the Hon'ble High Court of Allahabad in which the Hon'ble Court passed order dated 29.08.1991 that services of the applicant's husband will not be terminated. Thereafter, applicant's husband joined duty and was paid pay and allowances regularising the period of illegal detention. The husband of the applicant was discharged from service on 31.01.1994 on fulfilling the terms and conditions of engagement under Rule 13 (3) III (i) after rendering 15 years, 6 months and 3 days of service. The husband of the applicant was not granted pension whereas he had completed pensionable service of 15 years, 6 months and 3 days as mentioned in his discharge book. The applicant submitted first appeal dated 16.12.2016 which was replied on 12.03.2017 rejecting grant of pension being total qualifying service 13 years, 11 months and 5 days only against the mandatory qualifying service of 15 years.

4. Learned counsel for the applicant further submitted that husband of the applicant died on 16.12.2010 and there is no other means to survive, hence, applicant's case may be considered on mercy ground by condoning/regularising non qualifying service of her husband's 294 days which is illegal detention in jail. After regularisation of 294 days period of detention, only 3 months and 6 days will be shortfall for grant of regular pension and therefore, he pleaded to condone short fall period to enable applicant for grant of family pension in view of Govt. of India, Ministry of Defence letter dated 25.10.2018.

5. On the other hand, learned counsel for the respondents submitted that in August 1986, unit of the applicant received a letter from Superintendent of Police, Bareilly that husband of the applicant, was involved in a murder case. The murder was committed on 04.07.1986 while applicant's husband was on 62 days annual leave from 13.05.1986 to 13.07.1986 and was apprehended/kept in civil custody. Applicant's husband was awarded life imprisonment for 20 years by Sessions Court, Bareilly on 01.10.1988. Thereafter, he was released on bail under order dated 21.07.1989 of Hon'ble High Court, Allahabad. Husband of the applicant had filed a Writ Petition No. Nil of 1991 against Union of India wherein Hon'ble High Court of Judicature at Allahabad vide its order dated 29.08.1991 had directed that services of applicant's husband will not be terminated pursuant to show cause notice dated 25.04.1991. The applicant's husband reported in unit on 31.07.1989 and thereafter, he was granted leave

from 13.09.1989 to 22.09.1989 but he overstayed leave from 23.09.1989 to 28.06.1990 and rejoined at 192 Field Regiment on 29.06.1990 after a period of 279 days absence. The husband of the applicant was in civil police custody from 10.09.1987 to 09.10.1988 and in imprisonment after conviction by the Court from 10.10.1988 to 21.07.1989 till he released from bail.

6. Learned counsel for the respondents further submitted that a Show Cause Notice dated 25.04.1991 was issued to the husband of the applicant as to why his services should not be terminated from the Army under the provisions of para 423 of Regulations for the Army, 1987 and Rule 13 (3), item III (iv) of Army Rules, 1954. However, husband of the applicant got stay order from the Hon'ble High Court of Allahabad vide order dated 29.08.1991 against termination of his services pursuant to the Show Cause Notice issued to him. Thereafter, husband of the applicant was discharged from service on 31.01.1994 (AN) on fulfilling the conditions of enrolment under Rule 13 (3) III (i) of Army Rules, 1954 with a liability to service in the reserve for a period of 2 years on attainment of 40 years of age whichever is earlier. The husband of the applicant rendered 15 years, 6 months and 3 days of service including 1 year, 6 months and 28 days of non qualifying service, i.e. 279 days for Over Staying Leave (OSL) and 294 days in police custody under section 302/24 of IPC (Total 573 days). In terms of para 132 of pension Regulations for the Army, 1961 (Part-1), 15 years of qualifying service is mandatory for grant of pensionary benefits. Since, the husband of the applicant

rendered total 13 years, 11 months and 14 days of qualifying service (excluding 573 days non qualifying service), hence, he is not entitled for pensionary benefits.

7. Learned counsel for the respondents further submitted that husband of the applicant filed a Criminal Appeal No. 2398 of 1998 against his conviction and sentence passed. The husband of the applicant died on 16.12.2010. Accordingly, appeal filed by the applicant has been dismissed as abated vide Hon'ble High Court of Allahabad order dated 24.04.2018. During this period, husband of the applicant filed another WP No. 5988/1994 in the Hon'ble High Court of Judicature at Allahabad for promotion to the rank of Naik and reinstatement in service for two more years so as to earn pensionary benefits. However, the petition was dismissed by the Hon'ble Court stating no order can be passed unless and until his Criminal Appeal No. 2393/1988 is decided. After a lapse of 22 years from the date of discharge of husband of the applicant, applicant approached Artillery Records for grant of family pension vide petition dated 16.12.2016 which was replied by Artillery Record stating that she is not entitled to family pension in terms of para 132 of pension Regulations for the Army, 1961 (Part-1). The applicant submitted second appeal dated 07.05.2018 for regularising of non qualifying service and condonation of shortfall in qualifying service for grant of family pension which was also rejected vide letter dated 07.06.2018 stating that condonation period for more than one year is not permitted under the provisions of Govt. of India, MoD letter dated 14.08.2001. Under the provisions of

para 212 of Pension Regulations for the Army, 1961 (Part-1), family pension is granted to widow/dependent of those who died either as pensioner or while in service. Since, the husband of the applicant was neither a pensioner nor died in service, therefore, the applicant is not entitled to family pension in terms of ibid policy. She pleaded for dismissal of O.A.

8. Heard learned counsel for the parties and perused the material on record.

9. We find that applicant's husband was in jail for a period of 294 days due to being involved in a criminal case and not at his own and on Writ Petition of the applicant, the Hon'ble High Court of Allahabad vide its orders dated 29.08.1991 passed order that services of applicant's husband will not be terminated pursuant to Show Cause Notice dated 25.04.1991. After treating this period of 294 days of absence as regularised, total service of the applicant's husband comes to 14 years, 8 months and 24 days, thus, only 3 months and 6 days of service will be short to enable her to grant family pension.

10. The issue regarding condonation of deficiency in minimum qualifying service regarding service pension has been dealt with not only by different Benches of the Armed Forces Tribunal but also by the Hon'ble Apex Court in the case of **Shiv Dass vs Union of India and Others** in Civil Appeal No 274 of 2007, decided on 18.01.2007, and it has been held therein that deficiency in qualifying service upto 1 year is condonable. Taking note of the above and also that there is

deficiency of less than 1 year in qualifying service of the applicant's husband and the said deficiency is condonable under Rule 125 of Pension Regulations Part I, 2008, we find that applicant's claim regarding condonation in deficiency in her husband's qualifying service and to grant her family pension deserves to be allowed.

11. Accordingly, O.A. is allowed. Shortfall of 3 months & 6 days in minimum qualifying service of the applicant's husband in getting family pension to the applicant is condoned and applicant is held entitled to get family pension from the next date of death of her husband.

12. The respondents are directed to grant family pension to the applicant from the next date of death of her husband i.e. w.e.f. 17.12.2010. However, due to law of limitations settled by the Hon'ble Supreme Court in the case of **Shiv Dass** (supra) the arrears will be restricted to three years preceding the date of filing of the instant O.A. The date of filing of this O.A is 01.01.2020. The respondents are further directed to implement this order within a period of four months from the date of receipt of certified copy of this order. Delay shall invite interest @ 8% per annum till actual payment.

13. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)

Member (A)

Member (J)

Dated: 29th Sept., 2021

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