

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 65 of 2020**Tuesday, this the 6th day of April, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)Smt. Chandrawati
Widow of No. 6451010, Ex Dvr Late Sita Ram
R/o Mohammadi Nagar, PO – Dilkusha,
District – Lucknow, Pin – 226002 (UP)**.... Applicant**Ld. Counsel for the Applicant: **Shri Manoj Kumar Awasthi**, Advocate

Versus

1. Union of India through Secretary Ministry of Defence (Army), South Block, New Delhi-110011.
2. Chief of the Army Staff IHQ MoD (Army), Army HQ, South Block, New Delhi.
3. The Officer-in-Charge Record Office ASC Records (South), Bangalore PIN – 900493, C/o 56 APO.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

... RespondentsLd. Counsel for the Respondents : **Shri Shyam 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. To issue/pass an order or direction to the respondents to grant the regular service pension of applicant's husband from date of discharge i.e. 11.12.1974 to 17.02.2018 (date

of death of applicant's husband) alongwith 12% interest on arrear to applicant.

- B. To issue/pass an order or direction to the respondents to grant reservist pension to applicant monthly from 18.02.2018 vide Govt. of India, MoD letter No. 17(4)/2008(1)/D (Pen/Policy) dated 11.11.2008 alongwith 12% interest on arrear.
- C. To issue/pass an order or direction to the respondents to decide the applicant's appeal dated 06.03.2018.
- D. To issue/pass any other order or direction as this Hon'ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.

2. Succinctly stated, applicant was enrolled in Indian Army as Sepoy in ASC on 24.11.1962 and was discharged from service on 11.12.1974 after rendering 12 years and 17 days of colour and reserve service before completion of his tenure in reserve service on disciplinary grounds. The husband of the applicant approached ASC Records through RTI application dated 06.08.2015 for grant of service pension but he was denied vide letter dated 26.08.2015 stating that as per Rule 132 of Pension Regulations for the Army 1961 (Part-1), minimum 15 years of qualifying service is mandatory for earning of service pension. Since, the husband of the applicant was discharged from service before completion of terms and engagement of service (07 years Colour & 08 years Reserve), he was not eligible for grant of service pension. After lapse of 4 years, the applicant filed first appeal dated 06.03.2019 under RTI Act 2005 for grant of family pension. The applicant was suitably replied vide ASC Records letter dated 30.03.2019 denying grant of pension. Being aggrieved by denial of

service pension/family pension, the applicant has filed the present Original Application.

3. Learned counsel for the applicant submitted that as per contact of engagement between husband of the applicant and the respondents, husband of the applicant had to serve 7 years in Colour and 8 years in Reserve in order to complete 15 years minimum qualifying service to get pension. His further contention is that husband of the applicant was illegally discharged from service as mentioned in rejection letter of the respondents dated 26.08.2015 stating that “... ***you were enrolled in Army Service Corps on 24.11.1962 and discharged from service on 12 Dec 1974 before completion of terms and engagement (7 years Colour & 8 years Reserve). Consequently you were rendered only 12 years in Army Service Corps. Hence you are not eligible for grant of Service Pension.***” Besides this, the reason for discharge from service in Para 3 of counter affidavit is given by the respondents is that ‘husband of the applicant was declared deserter from service and later dismissed on disciplinary grounds under Army Act Section 20 (3) with effect from 12 Dec 1974’ whereas in page 7 of Discharge Book, the reason for discharge is given “**Service No longer required**” In addition to this, Character of the husband of the applicant assessed in page 9 of Discharge Book is “VERY GOOD”. Therefore, it is clear that husband of the applicant has been discharged from the service without stating/recording desertion as the reason, before completion of his reserve service, which resulted him becoming ineligible for

grant of service pension. He pleaded that applicant be granted family pension.

4. Learned counsel for the respondents submitted that husband of the applicant was declared deserter from service and later dismissed on disciplinary grounds under Army Act Section 20 (3) w.e.f. 12.12.1974. As per policy for grant of service pension under Para 132 of Pension Regulations for the Army 1961 (Part-1), an individual should have completed minimum 15 years qualifying service to earn service pension. Since, the husband of the applicant had only 12 years and 17 days of service to his credit at the time of his discharge, he is not entitled/eligible for service pension. Besides this, service documents including Sheet Roll has already been destroyed on expiry of stipulated period of retention of 25 years on non pensioner as per the policy on the subject. Therefore, as per Rule 155 of pension Regulations for the Army 1961 (Part-1) a reservist on completion of the combined colour and reserve qualifying reserve of not less than 15 years is entitled to a reservist pension. Since, the husband of the applicant was discharged/dismissed from service before completion of terms and engagement of 15 years of service i.e. (7 years of Colour and 08 years of Reserve), hence, he is not eligible for grant of reservist pension and accordingly, applicant is also not eligible for family pension.

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

6. At the outset, we would like to note that husband of the applicant has been discharged from service for the reason 'Service no longer required' as mentioned in the Discharge Book of the soldier whereas respondents have given reason for discharge that husband of the applicant was declared deserter and later dismissed from service on disciplinary grounds under Army Act Section 20 (3) before completion of 15 years qualifying service to earn service pension. From the Discharge Book, it is also clear that on the date of discharge, applicant was in fit state of health, his character was assessed 'VERY GOOD' and he had rendered continuous 12 years of service and had been awarded medals during the course of service. It is nowhere stated in Discharge Book that applicant was discharged/dissmised from service on disciplinary grounds.

7. The perusal of above mentioned facts show that due procedure was not followed as per rules and regulations to discharge the husband of the applicant .Therefore, we find that husband of the applicant has been discharged illegally from service, which is against the rules & regulations of the service and therefore, husband of the applicant requires to be reinstated in service.

8. Accordingly, O.A. deserves to be allowed and is allowed. The impugned order/discharge order is hereby quashed. The husband of the applicant shall be notionally reinstated into service and to be in service till he would be entitled for service pension as per Pension Regulations for the Army, 1961. Since, the husband of the applicant had died on 17.02.2018, the applicant being widow is entitled for

family pension w.e.f. 18.02.2018. As the Original Application was filed in this Tribunal on 19.11.2019, hence, law of limitations is not applicable for restriction of arrears of family pension to three years preceding the date of filing of the instant O.A. Therefore, respondents are directed to grant family pension to the applicant from the date of death of her husband i.e. 18.02.2018 for life. The respondents are directed to give effect to this order within four months from the date of receipt of a copy of this order. Default will invite interest @ 8% per annum till actual payment.

9. No order as to costs.

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

Member (A)

Member (J)

Dated: April, 2021

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