

AFR

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****COURT NO.1****T.A. No.1000 of 2010**Thursday, this the 09th day of February, 2017**Hon'ble Mr. Justice D.P. Singh, Member (J)****Hon'ble Air Marshal Anil Chopra, Member (A)**

Smt. Kalawati Devi w/o
 Ex-JC-162155 M. Nb. Sub. (clk) Keshav Ram,
 aged about 48 years R/o Vivekanand Vidya
 Mandir Marg Jakhani, Post Bin,
 District Pithoragarh.

- Petitioner

Versus

1. The Union of India through the Defence Secretary,
Govt. of India, New Delhi.
2. The Officer Incharge Records
the Sikh Light Infantry Fatehgarh,
(U.P.)- 209601.
3. The Commanding Officer,
7, Sikh Light Infantry C/o 56 A.P.O.

- Respondents

Learned counsel appeared -
for the petitioner

Shri Sarvesh Pandey, Advocate

Learned counsel appeared -

Shri Ajay Singh Bisht and
 Shri D.K.Pandey, Advocates
 for the respondents , assisted
 by Maj Soma John, OIC Legal
 Cell.

ORDER**Per Justice Devi Prasad Singh**

1. Smt. Kalawati Devi, the petitioner preferred a writ petition, bearing number W.P. No. 954 (SS) of 2001 in the High Court of Uttaranchal at Nainital with a contention that her husband Keshav Ram is not traceable since 17.08.1989 and has been declared deserter by the respondents/ Army (7-Sikh Light Infantry). The petitioner, accordingly prayed that petitioner's husband may be treated as missing army personnel under Section 108 of the Indian Evidence Act, 1872 as also under the provisions of Army Orders, as he has not been heard of for 7 years and accordingly he may be deemed to have expired, making the petitioner entitled for post retiral benefits, which have been rejected by the respondents, declaring her husband as deserter.

2. We have heard Shri Sarvesh Pandey, learned counsel for the petitioner and Shri Ajay Singh Bisht and Shri D.K. Pandey, learned counsel for the respondents, assisted by Maj Soma John, OIC Legal Cell and perused the record.

3. According to petitioner's counsel, petitioner's husband Keshav Ram joined the Indian Army on 29.01.1966 and served at different places during the period of his service right from 1966 up to 1989. Initially he joined at Meerut and lastly he was posted at Trincomali of Srilanka in 1989 in connection with operation 'Pawan'. While working in the Indian Army in India, he was lastly

posted in West Bengal in 7-Sikh Light Infantry, from where he was deputed to participate in operation 'Pawan' at Srilanka in 1988.

4. While participating in operation 'Pawan' and serving the Indian Army at Trincomali of Srilanka in 1989, he was declared deserter on 17.08.1989 at 19.30 hours. The Officer Commanding 7-Sikh Light Infantry intimated to the petitioner through his letter No. 1202/Ag. Dated 18.08.1989 with desertion roll. A copy of letter dated 18.08.1989 has been filed as Annexure No.3 to the petition. A perusal of aforesaid letter dated 18.08.1989 shows that the petitioner's roll was forwarded for necessary action on petitioner's part, requiring the petitioner to handover her husband to the Unit whenever he is found anywhere.

5. After receipt of information with regard to petitioner's husband (supra), the petitioner wrote a letter on 28.08.1989 to the Commanding Officer, 7-Sikh Light Infantry, requesting him to search him personally, followed by due investigation with all efforts to trace him. A perusal of the letter dated 28.08.1989 sent to the Commanding Officer shows that it was sent from Pithoragarh, the native place of the petitioner, pointing out that Shri Keshav Ram has been a loyal soldier of Indian Army and it is most unlikely that he will desert the Unit from operational area (Trincomali of Srilanka), that too after putting in 24 years of service.

6. From the pleadings on record, it appears that the petitioner was informed by letter dated 02.09.1989 that her husband Keshav Ram has been declared missing and declaration of desertion sent vide letter dated 17.08.1989 stood cancelled. The declaration of

missing vide letter dated 02.09.1989 was followed by subsequent letters dated 20.09.1989, 16.10.1989 and 28.10.1989, collectively filed as Annexures No. 5 and 5-A to the petition.

7. Petitioner sent letters dated 23.09.1989 and 25.10.1989, making request to the Unit to continue her family allotment, as made by her missing husband Keshav Ram, a copy of which has been filed as Annexure No.7 to the petition. As a follow up action, the Unit held a Court of Inquiry and in pursuance of the finding recorded thereon, Keshav Ram was declared missing and the outcome of inquiry was notified in Part- II, Order No. 256/7/89 of the Unit. The missing report dated 13.11.1989 was forwarded to all the Units concerned through various letters, the copy of report/letter dated 13.11.1989 is annexed as Annexure No.8 to the petition. The copy of missing report has been circulated vide letter dated 21.11.1989, as contained in Annexure No.9 to the petition.

8. Since petitioner's husband did not turn up, he was declared absent without leave, for short 'AWL', in view the provisions of Army Act and treated as deserter under Section 106 of the Army Act. Petitioner also sent a petition dated 07.05.1989, in response to which by letter dated 07.06.1990 (Annexure No.12 to the petition), she was informed that the J.C.O. Keshav Ram was running in heavy debit balance at the time of desertion and a case of forgery was also pending against him, for which a Staff Court of Inquiry has been ordered and outcome of which shall be intimated in due course. Thus, it appears that, firstly petitioner's husband was declared as deserter and later on declared as a person

absent without leave. Once in an opinion expressed by Court of Inquiry petitioner's husband was declared as deserter under Section 206 of the Army Act (Annexure No.10) then why the stand has been changed by adopting another theory of absent without leave on account of loan burden, is not understandable. Another application was submitted by the petitioner on 25.07.1991, which was replied by letter dated 19.08.1991 by Capt Adjt Sumit Katyal for Officer Commanding, copy of which has been filed as Annexure No.14 to the petition. The whole history of desertion, changing the stand is reflected from letter dated 19.08.1991, written by Capt Sumit Katyal in response to petitioner's application dated 25.07.1991 (Annexure No.14). For convenience the entire letter dated 19.08.1991 is reproduced here under :-

“ 7 SIKH LI
C/o 56 APO
1303/KR/AG/CS
19 Aug 91

*Smt. Kalawati Devi
W/O JC- 162155M Ex Nb Sub (Clk)
Keshav Ram
C/o Sh Hayat Singh Lohia
Shopkeeper, Silldham Chowk
Pithoragarh
Dist Pithoragarh (UP)*

PETITION

1. *Reference Records The SIKH LI letter No JC- 162155M/ D&C/NE dated 25 July 91.*
2. *Parawise comments on your petition dated 10 April 91, received vide Records The SIKH LI letter under reference are given in succeeding paragraphs.*
3. **Para 1, 2, 3, 4 & 5.** *JC- 162155M Nb Sub (Clk) Keshav Ram of this unit deserted from unit lines without arms/ammunition on 17 August 1989 from OP PAWAN (Trincomalee) SRI LANKA.*

Accordingly, desertion roll was issued by this unit vide our letter No 1202/AG dated 18 August 89 and 1303/KR/AG/CS dated 30 August 89 and the case was reported to all concerned. All efforts were made to trace out your husband, but failed to elicit any trace. Consequently, HQ IPKF, reported to Army Headquarters that the JCO is '**MISSING**'. Army Headquarter vide their signal No 350325/OP PAWAN/Org 3 (d) dated 22 August 89, asked this unit to report the case as per SAO 8/S/85. Thereafter, it was intimated by Army Headquarters vide their Signal No. 350325/Org 3 (d) dated 31 August 89, that Headquarter IPKF had declared him deserter vide BC State 210 dated 29 August 89 and asked this unit to investigate circumstances and to forward detailed report/court of inquiry. As per directions from Headquarters 57 Mountain Division the JCO was declared again deserter under Army Act Section 105. Accordingly afresh desertion roll was issued vide our letter No. 1303/KR/AG dated 26 Feb 90 and previous desertion roll was cancelled.

4. **Para 6.** Family allotment was discontinued by Records The SIKH LI, when the JCO was declared deserter. Moreover, since the JCO was in heavy debit, it was not possible to remit money to the next of kin by this unit as well as Records The SIKH LI.

5. **Para 7.** Court of Inquiry has investigated the case in detail and found that the JCO left the unit lines of his own accord on 17 August 89 and was not seen thereafter. There is no foul play involved in the JCO's absence. As regards special allowances, this unit was unable to take up case since this allowance is admissible only to the families of missing personnel vide AI 35/72, whereas your husband has been declared as deserter.

6. **Para 9.** The JCO was running in heavy debit balance at the time of desertion. A case of forgery was also pending against him for which a staff court of inquiry was ordered by higher Headquarters. Based on the recommendations of the court of inquiry, a sum of Rs. 44,314-13 which was over paid to the JCO, is to be recovered from the paying officers.

Sd/- xx xx xx
(Sumit Katyal)
Capt
Adjt
for Offg CO

Copy to:-

*Directorate General of Infantry - (Two copies) -
Inf - 6(Pers)
General Staff Branch
Army Headquarters
DHQ PO New Delhi – 110011*

*for information
please
Petition in
in original is
enclosed.*

*Records The SIKH LI
Fatehgarh (UP)*

*-for information with
reference to their
letter quoted above.”*

9. It appears that reply and action reply went on with regard to present controversy, followed by detailed representation to the President of India on 22.01.2000, a copy of which has been filed as Annexure No.17 to the petition. The representation to the President has been followed by a notice under Section 80 of Civil Procedure Code dated 15.02.2000, as contained in Annexure No.18 to the petition. While submitting reply to T.A. it has been stated by the respondents in the counter affidavit that since the petitioner's husband was declared deserter on account of absence from duty after a period of 3 years, the petitioner is not entitled for any relief, including post retiral benefits and pension. The stand has also been taken that petitioner's husband was under heavy debit balance, hence he deserted the Army. However, nothing has come forward as to how and in what manner petitioner's husband has deserted the Army at Srilanka and reached to India. There is no material on record, which may indicate that petitioner's husband ran away while on leave.

10. On the other hand from the counter affidavit, it appears that petitioner's husband is missing from 17.08.1989 at 19.30 hours while he was on Unit duty during operation 'Pawan'. A person who was missing during operation, may be as Guard or on Post Duty,

was not classified as constructive deserter but declared to be missing, hence his desertion was issued to all concerned on 26.02.1989. Why a person in service will desert the Army while discharging duty in other country (Srilanka) during operation 'Pawan' is not understandable, that too when subsequent event shows that still he is not traceable. The respondents issued apprehension roll, holding a Court of Inquiry and declared him deserter. All belongings of petitioner's husband were dispatched to his native place in the State of Uttarakhand. The stand taken by the respondents is that after having remained deserter for 10 years, petitioner's husband was dismissed from service in accordance with the S.A.O 9/5/89 by the Commandant of 7-Sikh Light Infantry Regimental Centre, exercising powers under Section 20(3) of the Army Act, 1950. An amount of Rs.73,467/- was found in petitioner's husband's account, out of which Rs. 44,314/- were recovered towards outstanding dues by the CDA (O) Pune in pursuance of recommendation of Court of Inquiry and remaining amount of Rs.29,152.87 paise is still required to be deposited in Government Treasury. An amount of Rs.2,771/- was found due under AFPP Fund, apart from AGI saving benefits.

11. It has been submitted that under the Army Act, Rules and the Army Orders, there is no provision to presume death to a deserter. In such an event, the matter shall be dealt with in accordance with the directions given in letter dated 23.03.1992 of Ministry of Defence.

12. The question crops up whether the provisions contained in Indian Evidence Act, 1872 shall be applicable to resolve the present controversy, overriding the Ministry of Defence's letter dated 23.03.1992, filed as Annexure No.5 to the counter affidavit. For convenience the letter dated 23.03.1992 issued by the Ministry of Defence, Government of India with regard to missing person is reproduced below :-

“ No. 12 (16)/86D(Pens/sers)

Govt . of India
Ministry of Defence
New Delhi, the 23rd March, 1992.

To,
The Chief of the Army Staff
The Chief of the Naval Staff
The Chief of the Air Staff

Sub : Grant of family pension and gratuity to the families etc. of armed Forces personnel/ pensioners who disappear suddenly and whose whereabouts are not know.

Sir,

I am directed to refer to this Ministry's letters of even number dated 3rd June 1988 and 20th March 1990 and to say that the guidelines contained in the succeeding paragraphs will regulate payment of the benefits granted under the above noted letters.

2. The date of disappearance of the serving Armed Forces personnel /pensioners will be reckoned from the date the First Information Report is lodged with the police by the family and the period of one year after which the benefits of family pension and gratuity are to be sanctioned, will be reckoned from this date. However, the benefits to be sanctioned to the family, etc. of the missing personnel will be based on and regulated by the emoluments drawn by him and the rules/orders applicable to him as on the last date he/she was on duty including authorised periods of leave. Family pension at normal/enhanced rates as may be applicable in individual cases, will be payable to the families of missing personnel. Family pension where sanctioned at pre- 1.1.1986 rates will be revised and consolidated w.e.f. 1.1.1986 in terms of the Govt of India letter No. 1 (4)/87/D(Pens/Sers) dt 27th July, 1987, as amended from time to time.

3. In the case of missing pensioners, the family pension at the rates indicated in the PPO will be payable and authorised by the

pension Sanctioning. Necessary action to sanction the family pension as due, as provided in para 2 above.

4. *Death gratuity will also be payable to the families, but not exceeding the amount which would have been payable as retirement gratuity if the person had retired. The difference between retirement gratuity and death gratuity shall be subsequently payable after the death is conclusively established or on the expiry of seven years period from the date of missing.*

5. *An indemnity bond will be obtained for the above purpose from the family members etc. in the formats enclosed as Appendix (A) (for missing personnel) and as Appendix 'B' (For missing pensioners) to this letter, which have been prepared by the Deptt of pension & pensioners Welfare in consultation with Deptt of Legal Affairs.*

6. *Cases already settled otherwise, than in accordance with this letter need not be re-opened, unless such a re-opening will be to the advantage of the beneficiaries.*

7. *This issues with the concurrence of Finance Division of this Ministry vide their U.O. No. 285/Pen of 1992.*

8. *Hindi version will follow.*

*(Based on Deptt. Of pension & pensioners
Welfare O.M. No. 1/17/86-P&PW(c) dt.
25.1.1991.*

*Sd/- xx xx xx
(DIWAN CHAND)
DESK OFFICER ”*

13. There appears no doubt that in case the letter of Ministry of Defence is taken into account, then the petitioner may not be entitled for post retiral dues. But keeping in view the statutory provisions, contained under Section 114 of the Indian Evidence Act read with Section 108, she shall be entitled for pension. Apart from Sections 14 and 15 and Section 23 of AFT Act, 2007 provides that the Tribunal shall also be guided by the principles of natural justice and has power to regulate its own procedure.

14. In view of the above, instructions issued by the Government of India or the Army may not override the statutory provisions of

the Central Act with regard to adjudication of controversy where Evidence Act is applicable.

15. Section 108 of the Indian Evidence Act, 1872 is relevant for the adjudication of the present controversy, which provides that burden of proof that a person is alive, who has not been heard of for seven years shall be shifted to a person who affirms it. For convenience Section 108 of the Evidence Act is reproduced below :-

“108. Burden of proving that person is alive who has not been heard of for seven years.—1[Provided that when] the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is 2[shifted to] the person who affirms it.—1[Provided that when] the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is 2[shifted to] the person who affirms it.”

16. In the present case, according to the learned counsel for the petitioner whereabouts of petitioner's husband are not known. He missed from Trincomali of Srilanka during operation 'Pawan', that too during the period when he was on duty. Since the petitioner was on active duty and that too far away in other country, burden shall be on the respondents to establish that the petitioner's husband is alive.

17. It is the Army/ respondents, who treated petitioner's husband as missing person and later on absent without leave and declared him deserter, after 3 years, treating him alive, hence burden shall

be upon the respondents to establish that petitioner's husband is alive. The failure on their part to discharge burden of proof, keeping in mind Section 108 of the Indian Evidence Act shall be fettered. Section 114 of Indian Evidence Act empowers the Courts to presume the existence of certain facts. For convenience Section 114 of Indian Evidence Act is reproduced below :-

“114. Court may presume existence of certain facts. —The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.”

However, such presumption shall be rebuttable vide *AIR 2005 SC 800 Shobha Hymavathi Devi vs. Sethi Gangadhara Swamy & others*. Petitioner's husband is missing while on duty during operation 'Pawan' from Srilanka. Since he did not turn up to his native place even till date, it seems enough to draw a presumption under Section 108 Indian Evidence Act.

18. The Orissa High Court in **Parikhit Muduli and others vs. Champa Devi and others**, reported in AIR 1967, Orisa,70 held that the presumption under Section 108 of the Indian Evidence Act is available at the time when the party approaches the Court for necessary relief. There cannot be any presumption as to actual date of death and this fact has to be proved like other fact. Same view has been taken by the Calcutta High Court in **Narki vs. Lal Sahu**, reported in 1990 ILR (37) Cal 103 and AP. High Court in **Kottapalli Venkateswaralu vs. Kottapalli Capayya and others**, reported in AIR 1957 AP 380. It has been held in the above case that the death can be presumed to have been occurred on the

date when the suit was filed. It may be held that the person is not alive by the date of institution of suit but the presumption cannot be that he or she is dead on the date.

19. In case a person is not heard for 7 years, then the burden of proof that he or she is alive shall be on the person who says that he or she is alive. The presumption under Section 108 of the Evidence Act will be that he is dead but it shall be rebuttable presumption.

20. Hon'ble the Supreme Court in **Life Insurance Corporation of India vs. Anuradha** (Civil Appeal No. 2655 of 1999), decided on 26.03.2004 held that presumption as to death under Section 108 would arise only after lapse of 7 years. Accordingly, the presumption of death is subject to rebuttal by the party who claims the person alive.

21. Besides above, the provisions contained in Section 108 of the Indian Evidence Act create a fiction of law, according to which under Section 108 of Indian Evidence Act a person shall be deemed to be dead after 7 years in case his or her whereabouts are not known but shall be rebuttable.

22. Apart from above, Section 114 of the Evidence Act confers jurisdiction to the Courts to presume existence of certain facts. Petitioner's husband is missing while on duty or in active service right from 17.08.1989 at 19.30 hours from Srilanka during operation 'Pawan'. He has not been seen at his native place in India nor his whereabouts are known by the respondents in spite

of making all efforts. Keeping in view long period of more than 27 years, a presumption may be drawn that he is no more alive. The respondents cannot be exonerated from their duty or burden to find out petitioner's husband's whereabouts, more so when he is missing during operation 'Pawan'.

23. In **State of Bombay vs. Pandurang Vinayak**, AIR 1953 SC 244 : Hon'ble Supreme Court held that, when a statute enacts that something shall be deemed to have been done, which in fact and truth was not done, the court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical conclusion. (para 5). In **Bengal Immunity Co. Ltd. vs. State of Bihar**, AIR 1955 SC 661: The Hon'ble Court held that, legal fictions are created only for some definite purpose and it is to be limited to the purpose for which it was created and should not be extended beyond that legitimate field. In **CIT vs. S. Teja Singh**, AIR 1959 SC 352 : Hon'ble Supreme Court held that, it is a rule of interpretation well settled that in construing the scope of legal fiction it would be proper and even necessary to assume all those facts on which alone the fiction can operate. (para 6). In **CIT vs. Shakuntala**, AIR 1966 SC 719: Hon'ble Supreme Court held that the fiction created by the legislature must be restricted by the plain terms of statute. The principle that a legal fiction must be carried to its logical conclusion does not require the court to travel beyond the terms of the section or give the expression a meaning which it does

not obviously bear. (para 6). In **Boucher Pierre Andre vs. Supdt. Central Jail**, AIR 1975 SC 164: Hon'ble Supreme Court held that, where a legal fiction is created, full effect must be given to it and it should be carried to its logical conclusion. In **Cambay Electric Supply Industrial Co. vs. CIT**, AIR 1978 SC 1099: Hon'ble Supreme Court held that legal fictions are created for a definite purpose and they should be limited to the purpose for which they were created and should not be extended beyond the legitimate field.(para 8) In **State of Maharashtra vs. Narayan Rao**, (1985) 2 SCC 321: Hon'ble Supreme Court held that, a legal fiction should ordinarily be carried out to its logical conclusion and to carry out the purposes for which it is created but it cannot be carried beyond that. In **Harish Tandon vs. ADM**, (1995) 1 SCC 537: Hon'ble Supreme Court held that, when a statute creates a legal fiction saying that something shall be deemed to have been done which in fact and truth has not been done, the court has to examine and ascertain as to for what purpose and between what persons such a statutory fiction is to be resorted to. Thereafter full effect has to be given to such statutory fiction and it has to be carried to its logical conclusion. In **Prafulla Kumar Das and Ors. vs. State of Orissa**, JT (2003) 9 SC 477: Hon'ble Supreme Court held that, the purpose and object of creating legal fiction in the statute is well-known, when a legal fiction is created, it must be given full effect. (par 39). In **State of W.B. vs. Sadan K. Bormal**, (2004) 6 SCC 59: Hon'ble Supreme Court held that so far as interpretation of legal fiction is

concerned, it is trite that the court must ascertain the purpose for which the fiction is created and having done so must assume all those facts and consequences which are incidental or inevitable corollaries to giving effect to the fiction. (para 25).

In **State of A.P. vs. Pensioner's Association**, (2005) 3 SCC 161: Hon'ble Supreme Court held that if the provision itself provides a limitation to operation of legal fiction created by it, consequences flowing from the legal fiction have to be understood in the light of limitations imposed. (para 28 & 30).

24. In view of the facts and circumstances discussed hereinabove, coupled with law laid down by different Courts (supra) and discussions made hereinabove, we agree with and accept the petitioner's contention that in view of the provisions of Section 108 of Indian Evidence Act read with Army circulars (supra) her husband shall be deemed not alive, subject to rebuttal in future, with petitioner's entitlement to avail all service benefits of her husband from the date of filing of present T.A.

25. It is unfortunate that an army personnel, who has been missing while on active service in a foreign country (Srilanka), his wife, a lady has been running from pillar to post for service benefits available to her on account of missing of her husband since 1989. Respondents did not form a sympathetic opinion with the plight of petitioner, whose husband has been missing since 17th August, 1989 on account of loyalty to Nation and Indian Army while obeying the command order serving as member of Indian Armed Force in Srilanka. It is the Army, which is responsible to

find out whereabouts of her husband and in case it was not possible then to provide service benefits to the petitioner to serve the family as the source of livelihood. It shall be appropriate to issue appropriate order by the Indian Army to deal such situation while a person is missing during active service and had not turned up and joined the duty as well as native place. The burden lies on the Nation as well as the Army to formulate some scheme and think that how the family of a missing army personnel could survive for 7 years, awaiting presumptive death under Section 108 of the Indian Evidence Act. In this regard as a temporary measure some rules must be framed to look after the family of such army personnel.

26. The plight of petitioner's husband and her family may be attended by Shakespeare play, namely, 'Timon of Athens' Alcibiades, an Athenian captain speaks in Senate and the reply to him by the First Senator, to quote :

"Hard fate! He might have died in war. My lords, if not for any parts in him,- Though his right arm might purchase his own time, And be in debt to none,- yet, more to move you; Take my deserts to his, and join 'em both: And, for I know your reverend ages love Security, I'll pawn my victories, all My honour to you, upon his good returns. If by this crime he owes the law his life, Why, let the war receive't in valiant gore; For law is strict, and war is nothing more.

FIRST SENATOR.

We are for law,-he dies: urge it no more, On height of our displeasure: friend or brother, He forfeits his own blood that spills another."

27. Let us not be too hard and inhumane to our own soldiers, who dies or missing in active service, that too in foreign land under the command of the Indian Army. Unless proved otherwise, they

should be deemed to be missing or died while in active service for the cause of Nation and accordingly in such situation immediate help be provided to family of the deceased or missing army personnel so that their family may survive during the period of investigation or till the conclusion of investigation or return or presumptive death of such person.

28. Keeping in view the apathy, hardship and inhumane treatment, from which the wife and family of the soldier missing while serving the Indian Army since 1989 in Srilanka is suffering, it is a fit case where compensatory cost may be awarded under Section 18 of the Armed Forces Tribunal Act and in view of law settled by the Hon'ble Supreme Court. We assess the cost as Rs.2,00,000/- .

ORDER

29. In view of above, T.A. is allowed and the impugned order dated 25.03.2000, contained in Annexure No. 2 to the petition is set aside with all consequential benefits. We quantify the cost as Rs.2,00,000/- (two lacs), which shall be deposited in Tribunal within three months and shall be released in favour of the petitioner through crossed cheque by the Registry or respondents may pay and submit the compliance report within a week from the date of payment of cost as above.

(ii) The respondents are directed to provide all service benefits, including arrears of pension and salary of the rank which petitioner's husband was holding at the time of his last seen i.e. w.e.f. 17th August, 1989. He shall be deemed to be in service for

the purpose of post retiral dues, pension and arrears of salary of the rank which he was holding on 17th August, 1989 but the arrears of salary shall be for the period of the rank when he would have completed the service tenure.

(iii) However, petitioner shall be entitled for regular pension alongwith arrears w.e.f. 02.05.2001, the date when she preferred the writ petition in the High Court with interest @ 10%/-.

(iv) Let the necessary exercise be done and consequential benefits be provided to the petitioner within four months from today. Original records, if any shall be returned to the OIC Legal Cell. Let copy of the order be issued to the parties within three days in accordance with the rules. OIC Legal Cell shall inform the appropriate authorities forthwith.

(v) T.A. is allowed accordingly.

(Air Marshal Anil Chopra)
Member (A)

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

JPT