

RESERVED
Court No.1

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

Transferred Application No. 674 of 2010

Wednesday, this the 22nd day of February 2017

Hon'ble Mr. Justice D.P. Singh, Member (J)
Hon'ble Air Marshal Anil Chopra, Member (A)

Smt. Kusum Lata, W/o No 7430995 Y Hav Late Sri Virender Singh Thathola, R/O Village-Talla Krishanpur, Tallital, Nainital.

.....Petitioner

Ld. Counsel for the : **Shri Yashpal Singh, Advocate**
Petitioner

Versus

1. Union of India through Ministry of Defence, Government of India, New Delhi.
2. Chief of Army Staff, New Delhi.
3. Director General of Military Intelligence/MI-20, General Staff Branch, Army Head Quarters, DHQ, PO, New Delhi.
4. Commanding Officer, 879, Intelligence and FS Unit, C/O 56 APO.
5. Senior Records Officer, Intelligence Corps, Pune-411040.
6. Station House Officer, PS-Saherkotda, Ahmedabad, Gujrat.
7. Commissioner of Police/SSP, Ahmedabad, Gujrat.
8. Chief Medical Superintendent, Civil Hospital, Ahmedabad, Gujrat.

...Respondents

Ld. Counsel for the : **Shri Rajiv Pandey, Central**
Respondents. **Govt Counsel assisted by**
Maj Soma John, OIC, Legal Cell.

ORDER (Oral)

1. We have heard Shri Yashpal Singh, Ld. Counsel for the petitioner and Shri Rajiv Pandey, Ld. Counsel for the respondents assisted by Maj Soma John, OIC Legal Cell and perused the records.
2. Petitioner preferred Writ Petition No 385 of 2006 in the High Court of Uttaranchal at Nainital for payment of family pension and setting aside the order of desertion passed by the respondents. The petition has been transferred to this Tribunal under the provisions of Section 34 of the Armed Forces Tribunal Act, 2007 and re-numbered as T.A. No 674 of 2010.
3. Husband of the petitioner (No 7430995Y Hav Late Virender Singh Thathola) was enrolled in the Army as Sepoy in the Military Intelligence Corps on 07.11.1987 and was attested on 30.06.1989. He served in different units of the Military Intelligence Corps. On 22.11.2001 while serving at Jailsalmer he was found to be involved in espionage network and was suspected to be involved in anti national activities. During course of inquiry with regard to espionage activities, husband of the petitioner deserted the Army on 25.11.2001 and later on died on 28.12.2001. A Court of Inquiry was held on 25.12.2001 and the petitioner's husband was declared deserter. It was after his death, the petitioner (wife of the deceased army personal) preferred Writ Petition for payment of family pension.

4. Admittedly petitioner's husband has not completed 15 years of colour service required for payment of pension/family pension. More over since he was declared deserter after Court of Inquiry, pension/family pension could not have been awarded till order of desertion stands.

5. Copy of the original records have been produced, according to which the Court of Inquiry was held in accordance with Rules and thereafter a finding has been recorded against petitioner's husband which reveals that petitioner's husband left the Army during course of inquiry with regard to his involvement in espionage activities. The record further reveals that husband of the petitioner was the key person involved in espionage activities alongwith certain other persons belonging to Jaisalmer and adjoining local areas. Involvement of the petitioner's husband in espionage activities and documents forwarded by certain spies of Pakistan was worked out by the Research and Analysis Wing (RAW) Technical Unit.

6. A perusal of the confidential record with regard to involvement of petitioner's husband in espionage activities seems to be established beyond doubt. The factual matrix on record with regard to espionage activities, we record our satisfaction that the petitioner's husband was rightly declared deserter and prima facie we feel that he fled the Army on account of pending inquiry with regard to his involvement in espionage activities and later on committed suicide on

28.12.2001. We do not find any good ground to set aside the order denying him pension or to set aside the order of desertion.

7. From the record it is also borne out that while deserting the Army petitioner's husband left a suicide note wherein he admitted his guilt. OIC Legal Cell invited attention of the Tribunal to para 113 of Pension Regulations which provides that family of the deserter is not entitled to family pension.

8. In view of above, we are of the opinion that the T.A. lacks merit and deserves to be dismissed.

9. It is accordingly **dismissed**.

No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

anb

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