

**Reserved**  
**Court No. 1**

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

**Original Application No. 104 of 2016**

**Monday, this the 19<sup>th</sup> day of July, 2021**

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

Smt Pankaj Singh W/O Late S.No 10505517-P, Sep Surya Pratap Singh, R/O Village – Nagla Gulal, PO : Baron, Teh – Sadar, District – Farrukhabad (UP).

**.... Applicant**

Ld. Counsel for the: **Shri Shiv Kant Pandey**, Advocate.  
Applicant

Versus

1. Union of India through Defence Secretary, Ministry of Defence New Delhi.
2. The Chief of Army Staff, Army Headquarter, Sena Bhawan, New Delhi.
3. The Additional Directorate General Territorial Army, General Staff Branch, IHQ of MoD (Army), L Block, Church Road New Delhi-110001.
4. The Officer-in-charge, Records, The Jat Regiment, Pin 900496 C/O 56 APO.
5. The Commanding Officer, 151 Inf BN (TA) JAT, Pin 934351, c/o 56 APO.
6. The Principal Controller Defence Account (P), Draupadi Ghat Allahabad (UP).

**... Respondents**

Ld. Counsel for the : **Shri Sunil Sharma**, Advocate  
Respondents. Central Govt. Standing Counsel.

## ORDER

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

“(a) This Hon’ble Tribunal may graciously be pleased to set aside final order dated 11.10.2013 (Annexure A-10), passed by respondent no. 4.

(b) This Hon’ble Tribunal may be pleased to set aside the order no G-4/5/12/64/VIII/G-428012 dated 05.07.2013, passed by respondent no. 6, as communicated by respondent no 4 vide letter dated 11.10.2013 (ANNX –A-10 to this OA.).

(c) This Hon’ble Tribunal may graciously be pleased to pass an order directing the respondents to grant family pension to applicant, for her life period.

(d) This Hon’ble Tribunal may be pleased to pass an order directing respondents 1 to 6 to pay Rs 48492/-, with interest the left out amount of full gratuity amount 2,24988/-.

(e) This Hon’ble Tribunal may grant any other and further relief to applicant as it deem fit, just and proper in the facts and circumstances of the case.

(f) This Hon’ble Tribunal may award the cost of petition to applicant.”

2. Undisputed facts of the case are as follows:- No 10505517P (late) Sep Surya Pratap Singh was enrolled in 151 Infantry Battalion (Territorial Army) on 21.06.2002. He was first disembodied from service on 10.10.2002 and thereafter embodied/disembodied from time to time under Rule 20 of the Territorial Army Rules, 1948. Later he was disembodied w.e.f. 24.06.2011 under Rule 33 of Territorial Army Rules, 1948 and it is alleged that during disembodiment, Sep Surya Pratap Singh sustained injuries due to accidental fire from his personal weapon on 02.08.2011 while cleaning his weapon at his home. He

was being evacuated to hospital for treatment but he succumbed to injuries in transit and his body was brought to Military Hospital, Fatehgarh for post-mortem on 03.08.2011. As per the death certificate as well as the certificate of attributability, he had sustained bullet injury accidentally from his private weapon at his home. The deceased soldier had put in 09 years and 47 days of embodied service at the time of death. The family pension was denied to the appellant vide letter dated 11.10.2013 stating that as per the existing rules, territorial army personnel who died during disembodied state without completing fifteen years of embodied service are not entitled for service pension. The applicant, being the wife of the deceased soldier sent representation dated 07.09.2011 for grant of family pension but it was denied by PCDA (P) Allahabad vide order dated 05.07.2013. In response to further representation dated 30.10.2013, applicant was again informed about non-admissibility of family pension vide letter dated 06.12.2013. This O.A. has been filed for grant of family pension.

3. Learned counsel for the applicant submitted that denial of family pension to the applicant when her husband admittedly died when he was preparing to join duty is not justified when such a benefit is extended to the widow of regular Army personnel who die in harness. While arguing the case learned counsel for the applicant also referred Govt of India, Min of Def circular dated 11.06.1985, especially paragraph 3 (ii) read with subsequent Circulars dated 30.10.1987, 03.02.1998 and 12.11.2008 to substantiate his submission. It was

contended that there is no statutory rule denying family pension to Territorial Army personnel dying at home and since the Territorial Army reservists during disembodied state are liable to be called at any time, failure of which is treated as absence without leave, denial of family pension in the event of Territorial Army personnel dying due to accidental death during disembodied state would be arbitrary and discriminatory. Further submission of learned counsel for the applicant is that husband of applicant was granted leave w.e.f. 24.06.2011 to 31.07.2011. The deceased soldier was required to join duty on 01.08.2011 vide recall letter dated 20.07.2011 (Annexure RA-I) but due to some domestic compulsion, he requested for extension of leave which was verbally agreed to by the Commanding Officer. A railway warrant to this effect was also issued to travel from home town to duty station which clearly establishes that applicant's husband was required to join duty w.e.f. 01.08.2011. Learned counsel for the applicant pleaded for grant of family pension to applicant.

4. Respondents, while filing counter affidavit, have submitted that the deceased soldier did not have the requisite minimum qualifying embodied service of fifteen years to earn service pension, and, hence, upon his death while he was in disembodied state, the applicant is not entitled to family pension. Shri Sunil Sharma, learned counsel appearing for the respondents further submitted if the deceased individual had not put in minimum period of qualifying service of fifteen years, then the entitlement to family pension arising out of death would

not arise. In this regard the counsel for the respondents drew our attention to Pension Regulations for the Army, Part-I (2008) which has superseded the Pension Regulations for the Army, 1961 with effect from 01.07.2008. Our attention was especially drawn to Section 2 titled 'Ordinary Family Pension' clause 62, which inter alia lays down that, the regulations shall not apply to the members of the Territorial Army other than those who die while rendering 'embodied service' or after retirement with pension under the said Regulations. Learned counsel for the respondents further submitted that persons in Territorial Army cannot at all times be treated at par with the Army personnel, the Territorial Army personnel while in disembodied state does not stand on the same footing as compared to regular Army personnel and thus applicant is not entitled to family pension. He pleaded for dismissal of O.A.

5. We have considered the rival submissions and also perused the impugned order & materials placed on record.

6. The distinctive features of Territorial Army and regular Army are significant in the present case. As per Army Order 77/1984, the Territorial Army is a part of the regular Indian Army. The role of Territorial Army is to relieve the regular Army from static duties, assist civil administration in dealing with natural calamities and maintenance of essential services in situations where life of communities is affected or the security of the country is threatened, and to provide support to units of the regular Army as and when required. As explicit in the

statement of objects and reasons of the Territorial Army Act, 1948, the role of the Territorial Army is:-

- (a) To provide a second line to and a source of reinforcement for the regular army.
- (b) To assist in internal defence duties in a national emergency.
- (c) To be responsible for anti aircraft and coastal defence; and
- (d) To give the youth of India an opportunity of training themselves to defend their country.

7. The terms and conditions of service of personnel belonging to Territorial Army are governed by the Territorial Army Act, 1948. It is contained in Section 9 of the Territorial Army Act that when a person enrolled in the Territorial Army is not called out during the period of disembodied state, he is not subject to the provisions of the Army Act. When the Territorial Army personnel are in a disembodied state i.e., when they are not called out or attached to any portion of the regular Army for active duty, then the Territorial Army Act, 1948 governs the service conditions and this is the statutory scheme.

8. The only question falling for consideration is whether in the facts and circumstances of the case, the applicant is entitled to family pension and whether denial of family pension to the applicant is justified?

9. It is the admitted position that late Sepoy Surya Pratap Singh was enrolled in the Territorial Army on 21.06.2002 and he died on 02.08.2011 due to accidental fire while cleaning his personal weapon.

Contention of learned counsel for the applicant is that the deceased soldier was embodied at the time of death as his leave expired on 31.07.2011 and he was to join unit on 01.08.2011 but due to domestic problems applicant's husband had requested his Commanding Officer for extension of leave which was verbally approved and he was preparing himself to rejoin duty. It was also contended that a railway warrant for return journey was also issued to perform journey from home town to duty place. As per contention of learned counsel for the applicant, the deceased soldier was embodied.

10. Learned counsel for the applicant laid emphasis upon Regulation 289 of the Pension Regulations for the Army (Part I) 1961 to contend that members of the Territorial Army are governed by the same regulations as applicable to the Army personnel. Pension Regulation 289 reads as under:-

“289. The grant of pensionary award to the members of the Territorial Army shall be governed by the same general regulations as applicable to the corresponding personnel of the Army except where they are inconsistent with the provisions of Regulations in this Chapter.”

11. We observe that Pension Regulations for the Army (Part-I), 1961 have been superseded by the 2008 Edition and the relevant regulation is now Regulation 182 which is the same as Regulation 289 aforementioned. A plain reading of the aforesaid provision makes it clear that the grant of pension award to personnel of the Territorial Army is governed by same general pension regulation as applicable to regular Army personnel except wherever it is dealt with differently in

the said regulations. Therefore, unless an exception has been carved out in the case of personnel of the Territorial Army, the Pension Regulations for the Army, 1961 (New Pension Regulations for the Army, 2008) would govern the field in the matter of grant of various pensionary awards. This is made further clear from the Govt of India, Min of Def letters dated 03.02.1998 and 12.11.2008 issued by the Government of India, Ministry of Defence which are made applicable to the Territorial Army amongst others.

12. Plea urged by the applicant is that while the wife of a regular Army soldier, who dies in harness is entitled to family pension if he dies in harness and even if the deceased soldier has not put in the minimum qualifying service to earn service pension, the same is denied to wife of a deceased Territorial Army soldier on a specious plea that the deceased soldier was in disembodied state. This according to the applicant is discriminatory. Further submission of learned counsel for the applicant is that the deceased soldier was embodied as he was about to rejoin duty on 01.08.2011 and after verbal extension of short leave by the Commanding Officer he was preparing himself to rejoin duty and while cleaning his personal weapon an accident took place resulting into his injury and he succumbed to that.

13. No doubt, with effect from 01.07.2008, new Pension Regulations for the Army, 2008 have come into operation superseding the earlier one. In Section 2-Ordinary Family Pension of the new Regulation of



2008, Regulation 62 lays down that the regulations shall not apply to members of the Territorial Army other than those who died while rendering embodied service or after retirement with pension under these regulations. Learned counsel for the respondents laid emphasis upon the Pension Regulations for the Army, 2008 to contend that, as husband of the applicant died while in disembodied state, applicant-wife is not entitled to family pension. In the preface of the said regulations issued by the Government of India, Ministry of Defence dated 01.07.2008, it is specifically mentioned that it is applicable to Army personnel who are in service as on 01.07.2008. In the present case, it is an admitted position that the deceased-Sep Surya Pratap Singh was embodied on 21.06.2002 and died due to accident on 02.08.2011 when new Pension Regulations came into existence. Therefore, new Pension Regulations, 2008 is applicable in the present case as husband of applicant was in embodied state when his death occurred.

14. Additionally, applicant's husband was recalled to join duty on 01.08.2011 vide letter dated 20.07.2011 (Annexure RA-I). He was issued railway warrant No B-304925 dated 20.07.2011 to perform journey from Farrukhabad to Mujaffarpur. The above fact clearly establishes that applicant was recalled for duty and while making preparation to join the duty, he met with an accident (cleaning of his personal weapon) resulting in his injury and subsequently death.

Therefore, applicant shall be presumed to be in embodied state and his death is attributable to military service.

15. In view of the above, we are of the view that since applicant's husband was not disembodied at the time when he died, applicant seems to be entitled to family pension in terms of Pension Regulations for the Army, 2008, which is applicable to embodied personnel of the Territorial Army.

16. The O.A. is **allowed**. The impugned orders dated 11.10.2013 and 05.07.2013 are set aside directing the respondents to grant family pension to applicant w.e.f. three years prior to filing of present O.A. This O.A. was filed on 19.02.2016. Respondents are also directed to pay pension and alongwith arrears to applicant within a period of four months from today.

17. Default will invite interest @ 8% p.a.

18. No order as to costs.

19. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated : 19 July 2021  
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