

Court No.1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 162 of 2020****Wednesday, this the 28th day of July, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

1. Smt Beena
Widow of Army No. 3192103N Late Hav Sunil Singh
R/o Vill – Bondro, PO – Bhira,
District – Bulandshahar (UP) – 245407
2. Master Aadarsh Choudhary
S/o No. 3192103N Late Hav Sunil Singh
Aged about 14 years
R/o Vill – Bondro, PO – Bhira,
District – Bulandshahar (UP) – 245407
3. Master Arjun Singh
S/o No. 3192103N Late Hav Sunil Singh
Aged about 12 years
R/o Vill – Bondro, PO – Bhira,
District – Bulandshahar (UP) – 245407

..... Applicants

Ld. Counsel for the Applicant: **Shri Ashok Singh &**
Shri Vikas Singh Chauhan, Advocate

Versus

1. Union of India through its Secretary, Govt. of India, Ministry of Defence, New Delhi-110011.
2. Chief of the Army Staff, IHQ of MoD (Army), DHQ PO, New Delhi – 110011.
3. OIC Records, Records The JAT Regiment, PIN-900496, C/o 56 APO.
4. Commanding Officer, 9 JAT, PIN – 911209, C/o 56 APO.
5. Office of the Principal Controller of Defence Accounts (Pension), Draupadighat, Prayagraj.
6. State Bank of India, through its Branch Manager, Branch Ganganagar, Distt – Meerut (UP) – 250002.

..... Respondents

Ld. Counsel for the Respondents : **Shri Anurag Mishra,**

Central Govt 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 for the following relief:-

“8.1 To quash/set aside the impugned order dated 20 Mar 2020, passed by the OIC Records The JAT Regiment (respondent No. 3) as a Annexure No A-1 with compilation No-1 to the OA. And release ordinary family pension alongwith arrears including all service consequential benefits of her husband under the provisions of Pension Regulations.

8.2 Issue an appropriate order or direction as this Hon’ble Tribunal may deem fit and proper in the demand of justice.

8.3 Issue an order or direction awarding the cost of the application together with all legal expenses incurred by the applicants.”

2. The factual matrix of the case is that applicant’s husband was enrolled in the Indian Army on 08.01.1999. While serving with 9 JAT, husband of the applicant requested for discharge from service on compassionate ground which was accepted and was to be discharged from service on 31.03.2019. The husband of the applicant was granted 30 days casual leave for the year 2019 from 20.02.2019 to 21.03.2019 to proceed his home town. During leave period, the husband of the applicant was residing with his family at Ganganagar, Meerut (UP) in a rented house. As per statement given to the local police by Smt Beena, Wife of Hav Late Sunil Kumar that while on leave on 24.02.2019 at about 1715 hours, they were riding a Scooty and two unknown men who were on a

two wheeler attacked her from behind and snatched her left earring and tried to grab her neck. At this moment her husband tried to confront two men one of them fired a gunshot from behind at her husband. Meanwhile both miscreants fled away from the spot and some people took her husband to Divayajoti Hospital from where he was further evacuated to Military Hospital, Meerut and was diagnosed as "GUNSHOT WOUND OCCIPITAL REGION". From there husband of the applicant was evacuated to Base Hospital, Delhi Cantt on 24.02.2019 and was kept dangerously ill list. The husband of the applicant was operated for the gunshot wound twice on 25.02.2019 and 26.02.2019 but could not be saved and succumbed to his gunshot wounds on 04.03.2019 with the diagnosis as death due to 'Gun Shot Injury Cervical Spine CV2-CV3 with trauma to Spinal Chord (OPTD)'. Based on a FIR lodged by the applicant, local police investigated and nabbed both the suspects involved in the incident. As per final report submitted by SO Ganganagar Police Station, Meerut, the applicant herself is under judicial custody under IPC Section 302 & 120 (B) for her alleged involvement in the death of Hav Sunil Singh and matter is subjudice before The Sessions Judge, District Meerut (UP). Thereafter, the applicant moved a bail application before the Hon'ble High Court at Allahabad as criminal misc. bail application No. 43395/2019 which was allowed and applicant was released on bail with some conditions. After releasing from bail, the applicant filed a representation dated 04.12.2019 before Chief of the Army Staff with a copy to JAT Records and PCDA (P) Allahabad to grant service monetary benefits and family pension of

her husband being a legally wedded wife. In reply, JAT Records vide their letter dated 06.01.2020 apprised the facts of Rule 75 (a) of Pension Regulations for the Army, Vol-I (2008) to the applicant. Thereafter, applicant moved an application dated 28.02.2020 to the Hon'ble Prime Minister of India and Chief of the Army Staff with copy to OIC Records JAT, Commanding Officer 9 JAT, SBI Om Plaza, Meerut and PCDA (P) Allahabad to release all service benefits in her favour being a legal heir which was suitably replied by JAT Records vide letter dated 20.03.2020 denying release of service benefits to her. Being aggrieved by denial, the applicant has filed the present Original Application for release of ordinary family pension.

3. Learned counsel for the applicant submitted that husband of the applicant was on leave and was murdered by two unknown persons on 24.02.2019 and applicant is also accused for murdering her husband. For this, FIR No. 0051 dated 25.02.2019 was lodged. The applicant is presently on bail and matter is subjudice before the Sessions Judge, Meerut. The applicant being a legally wedded wife and having two minor children, her ordinary family pension which is withheld illegally by the respondents, be released to the applicant specially for the maintenance of her two minor school going children. Learned counsel for the applicant placed reliance on the judgment of the Hon'ble Punjab & Haryana High Court in the case of **Nasib Singh Ex Subedar Major vs. UOI & Ors**, decided on 31.10.1996 and reported in (1997) 115 PLR 65, and the Hon'ble Apex Court judgment in **Maj (Retd) Hari Chand Pahwa vs. UOI & Ors**, 1995 (1) Service Law Reporter, 703 and

pleaded that ordinary family pension alongwith all other monetary benefits be released as applicable as per law.

4. Learned counsel for the respondents submitted that applicant herself is allegedly involved in death of her husband under Sections 302 and 120 (B) of the Indian Penal Code which is subjudice before the CJM Court, Meerut and presently she is on bail, hence, applicant would be entitled to all terminal benefits/emoluments of her husband only after outcome of the case as per Rule 75 (a) of pension Regulations for the Army, Vol-I (2008). Rule 75 (a) of Pension Regulations for the Army, Vol-I (2008) is quoted below :-

“If an eligible member who in the event of death of service personnel while in service, is eligible to receive ordinary family pension under these Regulation is charged with an offence of murdering the service personnel or for abetting in the commission of such an offence, the claim of such a person including other eligible member or members of the family to receive ordinary family pension shall remain suspended till the conclusion of the criminal proceeding instituted against him/her”.

Learned counsel for the respondents on the basis of aforesaid Regulation 75 (a) pleaded for dismissal of O.A.

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

6. In the instant case, applicant has been accused for murdering her husband in regard to which matter is subjudice before the court of law. The terminal benefits/emoluments, as per rule quote above, will be withheld till finalization of legal proceedings and will be released to the next of kin/next eligible kin on the outcome of the case only.

7. We have given our earnest consideration to the submissions of the learned counsel for the parties and find that husband of applicant was murdered in regard to which applicant is not only a suspect but matter in this regard is sub-judice before the court of law under Section 302 and 120 (B) of the Indian Penal Code. The applicant being on bail, would be entitled to all terminal benefits/emoluments of her husband only after outcome of the case as per Rule 75 (a) of pension Regulations for the Army, Vol-I (2008).

8. We find that applicant's claim for release of ordinary family pension has rightly been rejected by the respondents as per rule, which needs no interference.

9. In view of above, we are of the opinion that O.A. is devoid of merit, deserves to be dismissed and is accordingly, **dismissed**.

10. No order as to costs.

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

Dated: 28th July, 2021

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