

Court No. 1 (E-Court)**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 84 of 2021**Tuesday, this the 26th day of April, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Smt. Sonali @ Soni
 W/o No. 15222491X Late Gnr Rathod Yogesh Prahlad
 R/o Village – Adhore, Post – Shindi, Tehsil – Chalisaon,
 District – Jalgaon
 Presently R/o at C/o Rajesh Kumar, 17/A, 19/F/1 Rajapur,
 Allahabad

.... ApplicantLd. Counsel for the Applicant : **Shri Ashok Kumar**, Advocate.

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Incharge Records, Artillery Records, PIN-908802, C/o 56 APO.
3. Principal Controller of Defence Account (Pensions), Draupadi Ghat, Allahabad.

... RespondentsLd. Counsel for the Respondents : **Shri Ashish Kumar Singh**,
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, whereby the applicant has sought following reliefs:-

- “i. To issue an order or direction in the suitable nature directing the respondent authorities to consider the claim of the applicant for release of death-cum-retiral dues alongwith family pension w.e.f. 26.08.2017.

- ii. To issue any order or direction, which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.
- iii. To award the cost of the application to the applicant."

2. Brief facts of the case giving rise to this application are that the deceased soldier was enrolled in the Indian Army on 16.09.2009. During the casual leave period, there was a dispute with his real uncle in respect of immovable property and therefore, husband of the applicant could not join duty in his unit in time and absented himself to settle the dispute. Accordingly, an apprehension roll was issued vide order dated 30.07.2015 and after clear 30 days of his absence, soldier was declared as a deserter w.e.f. 23.07.2015 by a Court of Inquiry under Army Act Section 106. During desertion period, husband of the applicant died on 26.08.2017. The husband of the applicant has rendered five years, ten months and seven days of service. Applicant submitted a petition dated 25.10.2017 requesting for grant of death benefits and family pension in her favour attaching death certificate of her husband, however, action with regard to sanction for grant of family pension to the applicant is pending with respondents for condonation of absence period of her husband. Being aggrieved, the present Original Application has been filed to release death-cum-retiral dues and family pension.

3. Learned counsel for the applicant submitted that applicant was granted casual leave by his unit and during the leave period, there was a dispute with his real uncle in respect of immovable property and therefore, husband of the applicant could not join duty in his unit

in time and absented himself to settle the dispute. In the meantime husband of the applicant died on 26.08.2017 due to electric shock in his field. The incident, which resulted in death, was informed to the Army authorities and applicant being wife and Next of Kin received some amount on account of Final Settlement of Account, i.e. credit balance, AFPP fund balance and AGI maturity.

The applicant submitted an application dated 07.12.2018 to release death-cum-settlement dues alongwith family pension in her favour after the death of her husband as her husband died during service period but till date no action has been taken by the respondents. As per service rules, after the death of government employee, the widow is entitled to seek the benefit of death-cum-retiral dues as well as family pension but till date the Army authorities have failed to entertain the claim of the applicant and therefore, applicant is living in penurious condition having no source of income for her livelihood and two minor daughters. He pleaded for grant of family pension to the applicant from the next date of death of her husband.

4. Learned counsel for the respondents submitted that husband of the applicant was enrolled in the Army on 16.09.2009. The husband of the applicant was granted 15 days casual leave from his unit 216 Medium Regiment w.e.f. 28.06.2015 to 12.07.2015 which was further extended upto 22.07.2015. However, husband of the applicant failed to rejoin duty on completion of his leave. Accordingly, an apprehension roll was issued vide order dated 30.07.2015 and after clear 30 days of his absence, soldier was declared as a deserter w.e.f. 23.07.2015 by a Court of Inquiry under Army Act Section 106.

The husband of the applicant has rendered five years, ten months and seven days of service.

5. As per service records, Smt. Sonali being wife was nominated as next of kin, heir to Estate, Death-cum-Retirement Gratuity and family pension. A petition dated 25.10.2017 was received from the applicant stating therein that her husband Gnr Rathod Yogesh Pralhad expired on 26.08.2017 and requested for grant of death benefits in her favour attaching death certificate of her husband. Accordingly, Artillery Records approached Zila Sainik Kalyan Evam Punarwas Adhikari, Jalgaon (Maharashtra) to assist the NOK i.e. Smt. Sonali, widow of the deceased soldier for preparation of documents for Final Settlement of Account and AGI Maturity with a copy of the applicant, Smt. Sonali, widow of the deceased soldier with an advice to report to the Zila Sainik Kalyan Evam Punrawas Adhikari Jalgaon for obtaining Final Settlement of Account documents and early return to Artillery Records vide Artillery Records letter dated 25.10.2017

6. We have heard learned counsel for both sides and perused the material placed on record.

7. The respondents in para 8 of the counter affidavit has admitted processing of applicant's case for grant of family pension. Para 8 reads as under :-

"8. That it is information of the Hon'ble Tribunal that No 15222491X Late Gnr Rathod Yogesh Pralhad was declared deserter with effect from 23 Jul 2017 as per the Court of Inquiry (C of I) and was not dismissed from service till his death. Since there is no provision in Pension Regulation 2008 (Part-1) which debars family pension to the Next of Kin in cases where the person subject to Army Act dies during desertion period. In such type of cases, next of kin is eligible for grant of family pension provided the absence period from desertion to death is got regularized by the competent authority under the provision of Govt. of

India, Min of Def letter no 7(50) 2001-D/(AG) dated 14 Aug 2001 as amended vide order dated 24 Sep 2001 to help out of the Next of Kin/dependents members of family of deceased soldier. However, the applicant, Smt. Sonali, widow of the deceased soldier is eligible for grant of family pension and other death benefits as admissible, if absence period from date of desertion to date of death be regularized by competent authority. However, the statement of case for regularization of absence period from desertion of death of the deceased soldier in terms of Govt. of India, Min of Def letter no 7(50) 2001-D/(AG) dated 14 Aug 2001 as amended vide order dated 24 Sep 2001 has already been forwarded to Pay Account Office (Other Ranks), Artillery, Lekhanagar duly recommended by the Officer-in-charge Records and Colonel Records of Artillery Records for onwards submission to the competent authority i.e. Integrated Headquarters of Ministry of Defence (Army) vide Artillery Records letter No 1522249`X/Death Case/01/NE-I dated 30 May 2019.”

8. In view of above assertion of the respondents, the competent Army authorities are directed to regularize absence period of applicant's husband from the date of desertion till death in terms of aforesaid Govt of India, Ministry of Defence policy letters to enable applicant to get family pension.

9. Accordingly, Original Application is allowed. The applicant being widow of deceased soldier is entitled for family pension from the next date of death (26.08.2017) of her husband. The respondents are directed to grant family pension to the applicant w.e.f. the next date of death of her husband for life, i.e. w.e.f. 27.08.2017. 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.

10. No order as to costs.

11. Pending Misc. Application(s), if any, shall stand disposed of.

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

Member (A)

Member (J)

Dated: April, 2022

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