

**Reserved Judgment****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW  
(CIRCUIT BENCH AT NAINITAL)****Original Application No. 19 of 2015**

....., this the..... day of November, 2018

**Hon'ble Mr. Justice S.V.S. Rathore, Member (J)****Hon'ble Air Marshal BBP Sinha, Member (A)**

1. Smt Manju Joshi w/o Sep/Clk 12898209 Manoj Kumar Joshi  
and for her two minor children.
2. Aditya Joshi s/o Late Manoj Joshi
3. Arivaz Joshi s/o Late Manoj Kumar Joshi  
Through their natural guardian mother applicant  
Village & Post Office Jarar Deval,  
Tehsil Pithoragarh & District Pithoragarh.  
..... Applicants

Ld. Counsel for : **Shri P.S. Bohara, Advocate**  
the Applicant

Versus

1. Union of India through its Union of India,  
By its Secretary, Ministry of Defence,  
South Block, New Delhi 110011.
2. Additional Director General (Territorial Army),  
Army Head Quarters, "L" Block Church Road,  
New Delhi 110001.
3. The Commanding Officer,  
130 Infantry Battalion (T.A.) ECO Kumaon,  
C/o 56 APO.
4. The Officer Incharge of Records,  
Kumaon Regiment,  
C/o 56 APO.
5. Principal Controller of Defence Accounts,  
Drapauthi Ghat, Allahabad, UP 211 014.

.....Respondents

Ld. Counsel for the : **Shri Amit Sharma,**  
**Respondents** **Ld. Counsel for Central Govt.**

**ORDER**

**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)”**

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, and he has claimed the reliefs as under:-

*“(1) Call for all the service records of the deceased along with enrollment, alleged disembodiment order and payment of pay records, leave and service records.*

*(2) Direct the respondents to allow the family pension to the dependents of the deceased as under Army Rule, Regulations and Acts applicable to the case of Territorial Army Personnel attached with the Army, from the date of death i.e. 14.06.2004 and 18% interest upon the amount of arrears.*

*(3) To pay a sum of Rs. 20 lacks towards compensation for the sufferings of the applicant and her children, who lead a life in poverty at the default of the respondents due to the inaction and misleading advice furnished to the applicants.*

*(4) Any other relief as considered proper by this Hon’ble Tribunal be awarded in favour of the applicants.”*

2. In this case, on behalf of the applicants, detailed written arguments have also been filed. In reply to the said written arguments, on behalf of the respondents, written arguments have also been filed.

3. The admitted facts of the case are that Sipahi Manoj Kumar Joshi, husband of applicant no.1 Smt Manju Joshi was enrolled in the Territorial Army and he died on 14<sup>th</sup> June 2004. During the course of his service, at native place residence, where he died, but not disembodied on that date, from the service on the date of death (as mentioned in O.A.). Respondents have miserably failed to produce the original service records of the Enrolled Individual (now deceased) despite of the order dated 17.05.2017 passed by this Hon’ble Court. In the written arguments, several provisions of the Army

Act and the Territorial Army Act have also been mentioned and on the basis of the same, the applicant no. 1 has claimed for family pension.

4. On behalf of the respondents, the facts have been enumerated in Para nos. 3 (i), (ii) and (iii) of the counter affidavit, which reads as under :

*“3 (i) That 130 Infantry Battalion (Territorial) Ecological task Force was established on 01 Apr 1994 for twin objectives of reversing the ecological and rehabilitation of ex-servicemen. However, special sanction was obtained from the competent authority to recruit certain category of personnel from open market as ex-servicemen were not forthcoming for the recruitment. Thus the equation of personal enrolled for 130 Infantry Battalion (Territorial Army) Ecological Task Force with normal category or regular Army or Territorial Army personnel is not in order. As per ADG (TA), Integrated Headquarters of MoD (Army) letter No 542441/GS (TA-3)/05 dated 27 Jul 2005 (The photocopy (CTC) annexed as Annexure CA-1), service rendered in Ecological Units is not counted as qualifying service for the pensionary benefits.*

*3 (ii). No. 12898209K Late Sepoy Clerk Manoj Kumar Joshi (husband of the applicant) was enrolled in 130 Infantry Battalion (Territorial Army) Ecological Kumaon based on open entry as he was not an ex-serviceman. At the time of enrolment, he was explained about terms of engagement as application to a person enrolled in Ecological Battalion as laid down in Territorial Army Enrolment Form and it was signed by him. As per record held with respondent no.4, he was disembodied from service w.e.f. 01 May 2004 after rendering total 9 years 07 months and 29 days embodied service. Copy of Part II Order by which he was disembodied is attached as Annexure No. 10 with the O.A. Thereafter, he died on 14 Jun 2004 due to natural reason while on disembodied state vide Death Certificate attached as Annexure No. 7 of the O.A. On his demise, a sum of Rs. 68,775/- (Rupees sixty eight thousand seven hundred seventy five only) on account of Service gratuity and DCRG was paid to Smt Manju Joshi, next of kin and applicant of this O.A. In final settlement, the account of the individual was closed in debit, hence no question rises from payment of any amount from the Running Ledger Accounts.*

*3 (iii). That as per record held with Respondent No 4, Smt Manju Joshi (hereinafter referred to as Applicant) is widow of the above named individual. On death of her husband, she requested for grant of family pension by submitting applications, legal notice and application under RTI Act 2005. Taking cognizance on her applications, Respondent No 4 based on rule position has suitably intimated the applicant that she is not eligible for grant of family pension.*

5. Learned counsel for the applicants has not mentioned anywhere in the O.A. that the husband of the applicant no. 1 was enrolled in the Ecological Task Force of the Territorial Army. The submission of the learned counsel for the applicants on the basis of the several provisions, is that the applicant is entitled to family pension, while on the contrary, the claim of the applicants has been denied by the respondents on the ground that the husband of the applicant no. 1 was a member of Ecological Task Force of the Territorial Army and he died during this disembodied state. Members of Ecologies task force are not entitled to pensionary benefits.

6. Learned counsel for the applicants have also annexed alongwith the written submission the judgment of the Hon'ble Apex Court delived in the case of **Santosh Devi vs. Union of India & ors.** (Civil Appeal No.4853 of 2016) decided on 06<sup>th</sup> May 2016. Apart from it, another judgment of Armed Forces Tribunal, Principal Bench, New Delhi in the case of **Major SD Singh vs. Union of India & ors** (T.A. No. 46 of 2010) decided on 19.10.2010 has also been relied upon. The claim in T.A. No. 46 of 2010 decided by the Hon'ble Principal Bench was for grant of superannuation w.e.f. 1.10.2002 with interest @ 12% p.a., while in the case of Smt. Santosh Devi (supra), the similar point was involved, however it was with regard to members of regular TA persons and not of Eco task force. The point involved was whether the family of member of a Territorial Army, who died in disembodied state is entitled to family pension or not. The Hon'ble Supreme Court in the aforesaid case has considered all the relevant provisions of the Army Act, Territorial Act and the Pension Regulations. In this perspective, we would like to reproduce Paras 17, 18 and 19 of the said judgment as under :

*“17. As per the rules, no family pension is payable to the legal heir of a territorial army personnel who died during disembodied state and who*

has not put in pensionable service. Contention of respondents that admissibility of such a relief would be contrary to the rules in force has led to a patent anomaly. Such anomaly was pointed out by Major, Addl. Offr./TA-3, TA DTE, GS Branch in his inputs for VI Pay Commission dated 09.03.2007 (Annexure P-8) thereby recommending to do the needful to render fair treatment to Territorial Army personnel. We deem it appropriate to reproduce it as under:-

**GRANT OF FAMILY PENSION TO NoK OF TA PERS WHO THOUGH IN SERVICE BUT DIES DURING DISEMBODIES STATE.**

4. Anomaly is:-

(i) Person 'A' is in embodied state for the last 10 years, he gets disembodies today and dies tomorrow, in such case NoK is not being granted ordinary family pensions.

(ii) Person 'B' is in disembodied state for the last 10 years, he gets embodies today and dies tomorrow. In this case NoK is being granted ordinary family pension.

Note: Point to be noted is both indls are in service and have not been discharged from service.

18. In response to the above communication relied upon by the appellant, Mrs. Balasubramanian, learned counsel appearing for the respondents has drawn our attention to the comments on "General Staff Branch" dated 09.03.2007 (Annexure R-1 series). After referring to the aforesaid recommendation of Additional Officer/TA-3, TA Dte, GS Branch it was observed as under:-

"(ae) In view of the above case, though has been referred to me CGOA to issue instructions to PCDA (Allahabad) to entertain ordinary family pension to NoK of pers dying during disembodies state. The same is still under consideration with CGDA.

(af) It is recommended that the issue be addressed in recommendations of 6<sup>th</sup> CPC to remove the anomaly for which no orders to the effect exist."

Even though the above anomalies have been taken not of by the concerned authorities, the respondents have not so far taken any decision to rectify the anomalies to give fair treatment to the Territorial Army personnel by granting family pension to 'next of kin' of Territorial Army personnel who die while in disembodies state. Territorial Army personnel actually remain on rolls till they are retired from service and as noticed earlier, they are liable to be called out for military service at any time. During disembodiment, Territorial Army personnel wait in reserve. It was contended by the learned counsel for the appellant that when gratuity and other benefits are paid to the territorial army personnel dying during disembodied service as a death in harness, they should also be eligible for service pension. Learned counsel for the appellant has drawn our attention to Ministry of Defence Report (Declassified on 18.02.2016) of the committee of Experts constituted for Reduction of Litigation, Review of Service & Pension Matter 2015:-

*“Report Page 223. 8<sup>th</sup> line. We also find that widows/ families of Ta personnel dying in harness but during the period of ‘disembodiment, demobilized state) are not granted Ordinary Family Pension. We feel that this issue may be considered favourably since such pers remain on the strength of the TA and also on the rolls of their unit while on disembodied state,. If the families of regular military pers who die due to non service related causes or while on leave or while on furlough are entitled to Ordinary Family Pension, then by same logic even families of TA pers should not be refused the same.”*

*In spite of repeated recommendations, it is not known why steps are not being taken to remove the anomalies to pay family pension to ‘next of kin’ of Territorial Army personnel who rendered long service in Territorial Army and died while in disembodies state. We hope that the Union of India considers the issue favourably to remove the anomalies to pay appropriate family pension to next of kin of Territorial Army personnel who die while in disembodied state by giving due weightage to their embodied service.*

*19. On behalf of the appellant, it was submitted that Raj Singh had unblemished service record and has rendered a total service of about twelve years in Territorial Army (11 years and 289 days) including service in operational area. For quite sometime, the appellant has been pursuing the litigation seeking family pension. Considering the peculiar facts and circumstances of the case and the plight of the appellant, in the interest of justice and in exercise of our power under Article 142 of the Constitution of India, we deem it appropriate to award ex-gratia grant of rupees ten lakhs payable to the appellant.”*

7. Apart from it, the conditions of Ecological Task Force of the Territorial Army are also different. In the policy of Ecological Task Force of the Territorial Army, there is a specific provision that the members of the Ecological Task Force of the Territorial Army shall not be entitled to any pensionary benefits. Relevant extracts of the aforesaid policy are reproduced as under:-

*“11. In this context, the letter of MoD dated 31.03.2008 filed along with the counter affidavit is very important. The relevant part of this letter, which deals with the pay and allowances of Territorial Army personnel Ecological is reproduced as under:-*

*“(d) Pay and Allowances. Territorial Army personnel on the roll of this unit/company will be governed by the provisions as given below:-*

*(i) All Territorial Army personnel, not on permanent staff, will be entitled to only the minimum basic pay of their rank and service group in which they are employed in Ecological units. Appropriate percentage of dearness allowances as*

*admissible from time to time will also be admissible in addition.*

*(ii) Under the revised terms and conditions, no increment will be admissible to ex-servicemen irrespective of their length of service in the Ecological Task Force other than TA personnel on perm staff.*

*(iii) Other allowances like Compensation in lieu of Quarter, Children Education Allowances, Hill compensatory allowance, High Altitude allowances, House Rent Allowances and Road Mileage Allowances will continue to be admissible, where applicable as hither-to-fore till further orders.*

*(iv) Pension entitlement of Territorial Army personnel earned for the earlier regular Army services, will remain untouched and will be ignored in fixing their pay and allowances.*

*(v) The individual will not be entitled to any pensionary benefits for the service rendered in the Ecological Task Force of Territorial Army.*

*17. The concept of ETF was first initiated by the Indian government in 1980 to undertake ecological restoration work in terrains, rendered difficult either due to remote location, severe degradation or risky law-and-order situations. The other important objective of this project was to promote and provide meaningful employment to local ex-servicemen in the Territorial Army (the country's second line of defence after the regular Army).*

*The idea behind ETF battalions was to infuse military-like work culture and commitments into high-priority eco-projects. Under this scheme, these battalions would be raised by the Ministry of Defence while their operational expenditure would be reimbursed by the Ministry of Environment and Forests. Raw materials (like sapling, equipment and fencing) and technical guidance would be provided by the state forest departments.*

*After restoration, the eco-regenerated areas would be handed over to the concerned State department while the self-sufficient ETFs would be redeployed elsewhere in the State. Interestingly, it was Nobel laureate Norman Borlaug who had suggested that the retired soldiers of the Indian Army be utilized to check ecological degradation.*

*18. Thus, the purpose of establishing ETFs of the TA was entirely different. Their duties and task are also not similar to those which are performed by regular TA personnel. The regular TA personnel have to work also in active service areas and they can be deployed in other operational areas. Their duties are exposed to hazards to human life like regular Army,*

*which is not in the case of ETFs. Therefore, a separate scheme and service conditions have been created for the members of ETF. We have mentioned the said conditions in earlier part of this order, which are contained in the letter of MoD dated 31.03.2008. Sub-clause (x) of Column (d) of the said letter, which deals with the Pay and Allowances of ETF personnel, in unequivocal terms says that individual will not be entitled to any pensionary benefits for the service rendered in the Ecological Task Force of Territorial Army. There is no denying of fact that this service condition was accepted by the applicant while joining ETF.”*

8. Learned counsel for the respondents has submitted that the case of the applicant is fully covered with the case of Santosh Devi (supra) and this Tribunal may grant ex-gratia payment to the applicants. While going through the order passed by the Hon’ble Apex Court in Santosh Devi (supra), the said ex-gratia payment was granted by the Hon’ble Supreme Court in exercise of powers under Article 142 of the Constitution of India, while this Tribunal lacks such jurisdiction. No specific provision for grant of ex-gratia payment to a person, who is not entitled to family pension under Army Act, Rules/Regulations could be brought to our notice.

9. In view of the aforesaid, this O.A. deserves to be dismissed and is hereby **dismissed**.

**(Air Marshal BBP Sinha)**  
**Member (A)**

**(Justice S.V.S. Rathore)**  
**Member (J)**

Dated : October, 2018  
PKG