

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

ORIGINAL APPLICATION No. 605 of 2018

Wednesday, this the 13th day of October, 2021

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

Smt Gulkandi Devi & Another, wife of Late Sri Ram Arya,
Resident of House No 103, Village- Kilauni, Tehsil- Mahaban,
District- Mathura, Uttar Pradesh.

..... Applicant

Ld. Counsel for the Applicant : **Shri Birendra Prasad Singh,
Advocate.**

Versus

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), South Block, DHQ, New Delhi.
3. Commanding Officer, 90 Armoured Regiment, C/o 56 APO.

.....Respondents

Ld. Counsel for the Respondents. : **Shri RC Shukla,
Central Govt. Counsel**

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

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

(i) To issue an appropriate order or direction to the respondents hereto to immediately grant the benefits of judgment and order dated 27.07.1998 rendered in Civil Misc Writ Petition No 10776 of 1989, Sri Ram Arya Versus Union of India and Others, and /or,

(ii) To issue an appropriate order or direction to the respondents hereto to immediately release the entire terminal dues as well as other benefits including increments and promotion scale benefits in compliance of the judgment and order dated 27.07.1998 of the Late Sri Ram Arya bearing Service No 10511062Y as well as arrears of family pension along with suitable interest.

(iii) Issue an appropriate order or direction which this Hon’ble Tribunal may deem fit and proper in the circumstances of the case including an order of awarding damages as well as cost of the instant application in favour of the applicant and against the respondents, hereto.

2. Brief facts of the case giving rise to this application are that the applicant’s husband Sri Ram Arya was enrolled in the Army on 15.12.1971. On 03.02.1985 husband of the applicant

wrote a letter to Defence Secretary, Chief of Army Staff and GOC-in C, Southern Command containing allegation against his Squadron Commander, Maj NC Paizada. Matter was investigated and disciplinary action was taken against husband of the applicant for direct writing to superior officers. Husband of the applicant was tried by District Court Martial (DCM) for an offence under Army Act Section 56 (a). Husband of the applicant filed Writ Petition against DCM in Allahabad High Court which was allowed but order of Hon'ble Allahabad High Court was not complied with. Husband of the applicant died on 31.01.2002. Being aggrieved, applicant (legal heir/wife of the deceased soldier) has filed instant Original Application for grant of family pension and service benefits.

3. Learned counsel for the applicant submitted that two charges were framed against the husband of the applicant under Section 56 (a) of Army Act for direct writing letter to superior officers. The first charge was that husband of the applicant made a false accusation on 03.02.1985 and second charge was that on 06.02.1985, husband of the applicant wrote another letter to Commander 4 (I) Armd Brigade. Husband of the applicant was punished vide order dated 16.07.1986. Husband of the applicant preferred appeal before Hon'ble

Allahabad High Court. His appeal was allowed vide order dated 27.07.1998 and order of punishment awarded by DCM was quashed and respondents were directed to reinstate husband of the applicant in service and treat him in continuous service with all service benefits including increment and promotion as per relevant rules. Respondents filed an appeal on 18.11.1998 against the judgment which was dismissed on 08.07.2010. During pendency of appeal, husband of the applicant died on 31.01.2002. There is no any stay against the order of Hon'ble High Court Allahabad. After death of her husband, applicant wrote several letters to implement the order of Hon'ble High Court Allahabad but instead of complying the order, respondents are trying to restore the appeal. Learned counsel for the applicant submitted that directions be issued to respondents to comply the order of Hon'ble High Court, Allahabad and grant family pension to the applicant with all consequential benefits.

4. Per contra, learned counsel for the respondents submitted that husband of the applicant wrote a letter to superior officers on 03.02.1985 against his Sqn Cdr, Maj NC Raizada. Husband of the applicant again wrote same letter to his superior officers and violated the normal channel of correspondence on a number of occasions. Allegations were

investigated and found substantiated. Disciplinary action was taken against the husband of the applicant and husband of the applicant was awarded punishment of Reduced to Rank and Dismissed from service wef 22.11.1986. Being aggrieved, husband of the applicant filed petition before Hon'ble High Court Allahabad which was allowed on 27.07.1998. Hon'ble High Court Allahabad directed the respondents to reinstate the petitioner in service and treat him as of continuous in service with all service benefits including increments and promotion as may be available to him under the relevant rules within a period of three months from the date of communication of the order, to make payment of amount payable upon such reinstatement within a period of one month from the date of reinstatement and go on paying his current salary until the matter is determined finally and payment of arrears be taken by the concerned authorities in accordance with law having regard to the rules and regulations including the question as to whether the petitioner had been engaged in any other employment in the meantime. Union of India filed Special Appeal against the order of High Court, Allahabad which was dismissed on 08.07.2010. Learned counsel for the respondents admitted that since appeal filed by the respondents has been dismissed, the case of applicant to comply the order of Hon'ble

High Court Allahabad is under process and the applicant shall be granted her dues in terms of law at the earliest.

5. We have heard, learned counsel for the parties and perused the documents available on record.

6. After having heard the submissions of learned counsel of both sides we find that husband of the applicant was enrolled in the army on 15.12.1971 and dismissed from service on 22.11.1986, thus he completed about 14 years and 11 months of service and he died on 31.01.2002. Hon'ble High Court Allahabad has passed detailed order in favour of the husband of the applicant granting all service benefits including promotion and pay and allowance vide order dated 27.07.1998. Appeal filed by the respondents against the order of Hon'ble High Court Allahabad was dismissed in 08.07.2010. At least after passing the order by Hon'ble High Court, Allahabad respondents should have immediately reinstate the husband of the applicant in service and grant his dues. The public interest demands that administration must abide by the promises held out to citizens. It is totally immoral to go back from the promises held out by the mighty state to the detriment of a small people. Therefore, it is the function of the Courts to see that the citizen's rights

should be protected against the mighty state and state should be forced to abide by the promises made to its citizens. Respondents cannot deny the order of Hon'ble High Court, Allahabad, therefore, they are under obligation to reinstate the husband of the applicant in service. It is a matter of great surprise that 23 years have elapsed but order of Hon'ble High Court Allahabad has not yet been complied with and respondents are stating that compliance of order is in process. Applicant is entitled all service benefits in terms of order of Hon'ble High Court.

7. In the instant case gross injustice done to the applicant is a case of mind set and adhering to old junk system . It requires interference by administration of justice so that one has to obey and respect law. Husband of the applicant died during pendency of the matter and applicant suffered mental pain and agony for more than 34 years. The applicant was compelled to enter in unnecessarily litigation and file application before this Tribunal even after her case was decided by Hon'ble High Court Allahabad. Accordingly, respondents are liable to pay cost of Rs. 75,000/- (Rupees seventy five thousand) for not implementing the order of Hon'ble High Court Allahabad for about 23 years. The amount shall be deposited in Registry

within one month and shall be paid to the applicant. The purpose of imposing cost is not only to compensate a litigant but also to caution the authorities to work in a just and fair manner in accordance to law.

8. Thus, in the result, Original Application succeeds and is **allowed**. Respondents are directed to grant all service benefits as applicable to the husband of the applicant in terms of order of Hon'ble High Court Allahabad along with arrears and further grant family pension to the applicant from the next date of death of her husband i.e. 01.02.2002. The respondents are further directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. In case the respondents fail to give effect to this order within the stipulated time, they will have to pay interest @ 8% on the amount accrued from due date till the date of actual payment.
9. Pending applications, if any, are disposed of accordingly.

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

Dated: 13 October, 2021
Ukt/-

