

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

ORIGINAL APPLICATION No. 94 of 2018

Wednesday, this the 29th day of September, 2021

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

Sundari Devi, W/o Late Bhoop Chand R/o Vill & Po- Sour,
Tah-Tehri, Dist-Tehri Garhwal (Uttarakhand)

..... Applicant

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

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence, South Block, New Delhi-110001.
3. The Record Office, JAT Regiment, Abhilekh Karyalaya Records, The Jat Regiment, Bareilly-240001

.....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 set aside / quash the impugned annexed as Annexure A-1

(II) To issue order or direction to respondents to grant service pension to the husband of the applicant till his survival i.e. upto 08.04.2015 and thereafter the family pension to the applicant being his successor.

(III) Any other relief as considered proper by this Hon’ble Tribunal be awarded in favour of the applicant.

(IV) Cost of the application be awarded to the applicant.

2. Supplementary rejoinder affidavit filed by learned counsel for the applicant is taken on record.

3. Brief facts of the case giving rise to this application are that the applicant’s husband was enrolled in the Army on 15.09.1976 and discharged from service on 26.06.1991 under Army Rule 13(3) III (iv) of 1954 on compassionate grounds on own request. Husband of the applicant filed representation to quash discharge order and to issue direction to respondents to

grant service pension but the same was rejected. Being aggrieved, applicant has filed instant Original Application.

4. Learned counsel for the applicant submitted that on the night of 18.02.1991, husband of the applicant along with other persons was on duty. They were informed that some infiltrators were trying to cross the border. They went into action and drove away the infiltrators. On 19.02.1991, Commanding Officer called the applicant and other persons and told them that a group of women labourers had complained that some soldiers had molested them on the previous night. The husband of the applicant told the Commanding Officer that there was no such incident and he was not involved in such act. The Commanding Officer reverted the husband of the applicant from existing rank and awarded 14 days pay fine. Similar orders were also passed in respect of other persons namely Shri Ranbir Singh, Shri Dewan Singh and Shri Dinesh Chandra, who were on duty along with the husband of the applicant on the night of 18.02.1991. Commanding Officer also took signature on some blank papers under the threat that if they did not do so, they would be put behind the bars for twelve years for the alleged offence of rape with the women folk allegedly detained by them. On 26.02.1991, Commanding Officer discharged the husband

of the applicant on compassionate grounds. Identical orders were served upon all three others who were on duty in the night of 18.02.1991. Shri Ranbir Singh and Shri Dewan Singh filed the petition in the Hon'ble Court which was allowed. They got relief of reinstatement in service from the first appellate court as confirmed by the Hon'ble Delhi High Court in appeal No RSA No 32 of 1995. Shri Dinesh Chandra also filed a writ petition at Hon'ble High Court of Delhi which was disposed of with the direction to approach the respondents. Shri Dinesh Chandra had completed about 14 years and 1 month service. His representation was considered by the respondents and he was also granted service pension under Regulation 124 after condoning shortfall period. On 11.06.2010, husband of the applicant also prayed the respondents to condon his period of shortfall and grant pension to him but the same was denied on the reason that minimum qualifying service to earn service pension is 15 years as per Rule 132 of Pension Regulation (Part-1) 1961 and the applicant served less than 15 years, therefore the husband of the applicant is not eligible for grant of service pension as per existing rules. Husband of the applicant died on 08.04.2015 leaving behind the applicant as his legal successors. Learned counsel for the applicant submitted that

since similarly situated personnel have been granted service pension, hence direction be issued to the respondents to quash the shortfall period and grant service pension to husband of the applicant from 01.01.2011 to 08.04.2015 till his life time and grant family pension to applicant from next day of death of her husband i.e. 09.04.2015 being his successor.

5. Per contra, learned counsel for the respondents submitted that in the night of 18.02.1991, husband of the applicant was deployed along the INDO PAK border in Punjab to check infiltration of unauthorised elements. A group of 47 Bangladesh Nationals 31 men and 16 women were apprehended on 19.02.1991 while attempting to cross over to Pakistan. On interrogation, the man and women reported that they were detained by the army personnel in close proximity with ulterior motives with womenfolk. These persons were taken along the deployment line to determine the place of their detention. They identified 08 persons including the husband of the applicant who were involved in wrongful detention and misbehaving the womenfolk. Husband of applicant along with 07 other personnel confessed that they had detained the Bangladesh Nationals in the night of 18/19 Feb 1991 at post in the unoccupied bankers and did not report the matter in

contravention to the orders. They were tried summarily by Commanding Officer 20 JAT Regt under Army Act Section 63 and awarded punishments. Husband of the applicant was awarded 'Deprived of the appointment of L/Hav'. After summary disposal, the husband of the applicant along with other personnel applied for premature discharge on compassionate grounds on 19.02.1991. Their discharge was sanctioned. The Husband of the applicant had rendered 14 years and 164 days service against mandatory requirement of minimum 15 years qualifying service for grant of service pension. As per rule, there was a shortfall of 201 days service for grant of service pension. Learned counsel for the respondents submitted that, as per Rule 125 of pension Regulations for the Army (Part- I) 1961, deficiency in service for eligibility of service pension or gratuity may be condoned by competent authority except in the following case:-

- (a) *An individual who is discharge at his own request. Or*
- (b) *An individual who is eligible for special pension or gratuity under Regulations 164. Or*
- (c) *An individual who is invalided with less than 15 years serviced.*

6. Since husband of the applicant was discharged from service on own request and had rendered only 14 years and 164 days service, hence he was not granted service pension.

7. Learned counsel for the respondents further submitted that husband of the applicant filed case at Hon'ble High Court, Delhi which was disposed of with the directions to decide statutory appeal. His statutory appeal was dismissed by the respondents. Husband of the applicant against the order in statutory appeal filed petition in AFT, Principal Bench, Delhi, which was dismissed with direction to file representation before the respondents. Respondents again rejected the representation of the husband of the applicant. Now the applicant Smt Sundari Devi, widow of deceased soldier has filed instant Original Application for grant of service pension to her husband till his life time and thereafter family pension to her. Learned counsel for the respondents submitted that the applicant has no case and instant Original Application is devoid of merit and is liable to be dismissed.

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

9. The issue involved in this case is no longer *res integra* and is squarely covered by the judgment of the Hon'ble Supreme Court in **Union of India & another vs. Surinder Singh Parmar, Civil Appeal No.9389 of 2014**, decided on **January 20, 2015**, following which, a catena of decisions have been given by this Tribunal allowing such claims. The reasoning given in one such case i.e. **OA No.99 of 2015**, titled **Parkash Chand vs. Union of India & another**, decided on **09.09.2015**, is reproduced below:-

“7. In the above connection, we take note of the fact that as per Regulation 125 of Pension Regulations for the Army, 1961, OIC Records is competent to condone the deficiency in service to be eligible to earn service pension with minimum 15 years of qualifying service upto six months, and IHQ of Ministry of Defence (Army), upto 12 months. Even otherwise, the said issue is no longer *res Integra* and already stands settled by the Apex Court in a case pertaining to Navy, titled **Union of India & another vs. Surinder Singh Parmar, Civil Appeal No.9389 of 2014**, decided on **January 20, 2015**. In that case respondent retired voluntarily from Naval service on 24.06.1985 when instructions dated 14.08.2001, providing condonation of shortfall in qualifying service beyond 6 months and up to 12 months, were not in existence and the Navy (Pension) Regulations provided that the benefit of condonation of shortfall in pensionable

service was not applicable to persons seeking voluntary discharge from service. The Apex Court, while holding the latter provision as *ultra vires*, further held that ***where the competent authority fails to exercise its power for condoning shortfall in qualifying service, court would be within its jurisdiction to pass appropriate order directing the authority to do the needful.*** The relevant paras 11 to 14 of the judgment are reproduced below for ready reference:-

“11. In view of the aforesaid provisions the respondent is entitled to claim total period of service as 14 years for the purpose of calculation of pension. By the Government of India, Ministry of Defence Order dated 14.08.2001 administrative power has been delegated to the competent authority. Under clause (a)(v) the competent authority has been empowered to condone shortfall in qualifying service for grant of pension beyond six months and up to 12 months. The said provision reads as follows:

“(a)(v) Condonation of shortfall in qualifying service for grant of pension in respect of PBOR beyond six months and up to 12 months.”

12. In view of the aforesaid provision, the respondent is also entitled to claim for condonation of shortfall in qualifying service for grant of pension beyond six months upto 12 months. If the aforesaid power has not been exercised by the competent authority in proper case then it was within the jurisdiction of the High Court or Tribunal to pass appropriate order directing the authority to condone the shortfall and to grant pension to the eligible person, which has been done in the present case and we find no ground to interfere with the substantive finding of the Tribunal. However as we find that the respondent was allowed to retire from service on 24.-6-1985 when the Instruction dated 14-8-2001 was not in existence, we hold that the respondent is entitled for such benefit

from such date on which the said Instruction came into effect. The Tribunal failed to notice the aforesaid fact but rightly declared that the respondent's shortfall stands condoned.

13. In the facts of the case, we are of the view that it should have been made clear that the respondent shall be entitled to the benefit w.e.f. 14.8.2001 and not prior to the said date. The order passed by the Tribunal stands modified to the extent above. The appeal stands disposed of with the aforesaid observations."

10. Thus that OA was allowed with appropriate directions to the respondents.

11. After having heard the submissions of learned counsel of both sides we find that certain facts are admitted to both the parties. Husband of the applicant along with three other soldiers were discharged from service. All three other similarly situated soldiers have been granted service pension by the Court/respondents. Even Shri Dinesh Chandra a similar situated soldier has been granted service pension by condoning shortfall period of service.

12. In the facts and circumstances stated above, we are of the considered opinion that the shortfall of 201 days of service for grant of service pension to husband of the applicant, is condonable and is hereby condoned with a direction to the respondents to grant service pension to the husband of the

applicant for service rendered by him, from the date husband of the applicant would have completed 15 years of service.

13. Thus, in the result, Original Application succeeds and is **allowed**. Respondents are directed to grant service pension to the husband of the applicant from the date of completion of 15 years of service and further grant family pension to the applicant from the next date of death of her husband i.e. 09.04.2015. 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.

14. No order as to costs.

15. Pending applications, if any, are disposed of accordingly.

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

Dated: 29 October, 2021
Ukt/-