

IN THE ARMED FORCES TRIBUNAL
REGIONAL BENCH, GUWAHATI.

OA- 37/2018.

PRESENT

HON'BLE DR. (MRS) JUSTICE INDIRA SHAH, MEMBER(J)
HON'BLE LT GEN GAUTAM MOORTHY, MEMBER(A)

Smt Yumlembam Geeta Leima
W/O No. 4365209W Hav Y Ibomcha Singh
Of 8 Assam Regiment
Resident of Sugnu Awang Leikai
P.O and P.S.Sugnu, Dist. Kakching
Manipur, Pin 795101.

..... **Applicant.**

By legal practitioners for Applicant.
Mrs Pempi Dutta Dhar

-VERSUS-

1. Union of India,
Represented by the Secretary,
Ministry of Defence
South Block, New Delhi – 110011.
2. Chief of Army Staff, represented by
Adjutant General, IHQ of MoD(Army)
DHQ, Sena Bhawan, New Delhi-110011.
3. OIC Records, The Assam Regiment,
PIN (ARMY) 900332, C/o 99 APO
4. PCDA(Pension), Draupadighat, Allahabad-211014,(UP)

..... **Respondents..**

**By Legal Practitioner for the
Respondents**
Mr. N.Baruah, CGSC

Date of Hearing : 18.12.2018

Date of Judgment & Order : 22.02.2019

JUDGMENT AND ORDER

(Dr.(Mrs.)Indira Shah,J)

1. The applicant by filing this application has sought for :-
 - (a) Family Pension to the applicant for life. Alternatively, a lump sum compensation of Rs.20 lacs, so that with the interest thereof, the family can survive.
 - (b) Status of family of Ex-Serviceman Pensioner's Family to the applicant along with entitled associated facilities like ECHS, Canteen, etc.
 - (c) To recover the amount of fine of Rs. 1 lac, awarded by the Court in favour of the victim from the accused.

2. The factual matrix of the case in brief is that, the husband of the applicant, Hav Y Ibomcha Singh joined Indian Army on 16.12.1996. The applicant's marriage with Ibomcha Singh was solemnized in the year 1998 and out of the wedlock in the year 2001, a daughter was born. On 19.09.2016, the minor daughter of the applicant attempted to commit suicide by cutting her wrist. It was then disclosed to the applicant that her daughter was sexually assaulted by her own father in the year 2014. When she was again molested on 10.09.2016, she attempted to end her life. The matter was immediately reported to Women Police Station, Porompat, Imphal (East) and FIR No.49 (a) 2016 WPS/IE Under Section 6 of POCSO Act was registered. The accused father was arrested. Trial commenced against the accused in the Court of Special Judge, POCSO, Imphal East. On conclusion of trial the accused was held guilty under section 6 of the POCSO Act, 2012 and accordingly convicted and sentenced to :-

(i) undergo rigorous imprisonment for life and also was directed to pay a fine of Rupees One Lac to the prosecutrix,

(ii) A sum of Rs.Two Lacs payable by the scheme of the Department of Social Welfare, Govt. Of Manipur be awarded to the victim, on her approaching to the appropriate authority.

(iii) Further permissible compensation payable by scheme of Manipur State Legal Service Authority, be awarded to the victim on her approaching the authority.

3. The husband of the applicant, i.e, the accused has been languishing in jail and the applicant and her victim daughter have lost their pension for the Army Service done by him which is about 19 ½ years. The applicant applied for Pension to OIC, Records, which has been refused since the applicant's husband has been dismissed from service.

4. As per the verdict of the Court the applicant has received Rupees Two Lacs from the Govt of Manipur and Rupees Thirty Thousand from AWWA fund as a financial assistance. The applicant to avoid social stigma and adverse publicity, has shifted her daughter out of Manipur state to New Delhi for further studies, which is an additional financial burden to her.

5. It is averred that during the pendency of the criminal case, the maintenance allowance was being paid by her husband to her. This has been stopped now.

6. It is submitted by the learned counsel for the applicant that the applicant wants to live a life of dignity and honour and as such is not in favour of seeking Presidential pardon for her husband.

7. It is submitted that the accused/husband of the applicant had completed 19 years 10 months of service and thereby completed the minimum pensionable service.

8. In a similar case in O.A. No. 118/2018 filed before the AFT, Principal Bench, New Delhi the applicant, (wife of a serving soldier) filed a FIR against her husband for repeatedly raping their minor biological daughter, as a result of which, her husband was convicted and sentenced to undergo rigorous imprisonment for life. Based on the conviction and award of life imprisonment, he was dismissed from service. The Bench vide their order of 08.08.2018 have ruled:-

"8. Under the Circumstances we find that the present case is an exceptional case where the competent authority should exercise its discretion in favour of the applicant in view of Rule 9 (a) of the Pension Regulations (supra)."

9. Rule 9 of the Pension Regulations for the Army Part-1 (2008) reads as under:-

"RIGHT TO WITHHOLD OR SUSPEND OR DISCONTINUE PENSION

*9. (a) In circumstances to be determined by the competent authority or as may be specified in these Regulations, the pension including the commuted value thereof which has not been paid or gratuity to be granted to an individual, or any portion of it, may be withheld, suspended or discontinued. **In exceptional cases payment of part or whole of the pension, allowance or gratuity withheld or suspended may, by an order of the competent authority be made***

to the wife or other dependant(s) of the pensioner."(Emphasis added.)

(b) *This Regulation may be invoked under the following circumstances : -*

(i) *xxxxx*

(ii) *Other serious crimes under Indian Penal Code, Official Secrets Act or any other special law of the land and grave misconduct; as defined in Notes to Regulation 8 of these Regulations.*

(iii) to (vi) *x xx x x*

(vii) *Any other circumstances considered special by the Central Government."*

10. **This is indeed an exceptional case where the victim has been raped and perpetrator of the crime is her own biological father. The victim and the applicant here were dependents of the accused. Hence, this case deserves to be considered under Rule 9 (supra) as the applicant's husband was convicted of a serious crime under a special law of the land (POCSO Act 2012) which leads to invoking this Regulation.**

11. In yet another case of ***Rameswar Yadav - Vs- Union of India 1089 Supp (2) SCC 565***, after retirement the Army Soldier was convicted under section 302 IPC and sentenced to undergo life imprisonment. Payment of his pension was suspended and it was challenged before the Hon'ble Apex Court. It was observed that Regulation 119 of Pension Regulations Part I (1961) confers power on the competent authority to withhold in whole or in part, the pension of a pensioner, who is convicted of a serious crime by a court of law. Para 29.1 of Pension Payment Instructions (1973) also confers power on the Disbursing

Officer to forthwith suspend the payment of pension payable to a pensioner, if he is sentenced to imprisonment. On the release of the pensioner from imprisonment, the Disbursing Officer is required to restore his pension. It was held by the Hon'ble Supreme Court in para 4, 5 &6 as follows :-

"4. These provisions require the competent authority to apply its mind to the question as to whether the pension should be suspended in whole or in part. While determining this question the Disbursing Officer has to consider the nature of the offence, the circumstances in which offence might have been committed and other allied matters. The officer has also to consider the hardship on the dependants of the person, if the payment of pension is suspended. In the instant case, the impugned order does not show that the competent authority applied its mind to the question as to whether the whole or a part of the pension should be suspended, instead, the authority mechanically issued orders for the suspension of the entire amount of pension for the period of imprisonment of the petitioner.

5. That apart, the amount of pension granted to the petitioner was Rs.108 which is a paltry amount and which in all likelihood may not be sufficient to sustain the petitioner's family members. The competent authority did not address himself to any one of these aspects. No reasons are recorded as to why the entire pension was necessary to be suspended. The impugned order is therefore unsustainable in law.

6. Having regard to the special facts and circumstances of the case, we are of the opinion that the suspension of total pension payable to the petitioner was unreasonable. We, accordingly, set aside the order of the CDA (Pensions) Allahabad dated September 23, 1986. We further direct that the suspension of pension should be confined to Rs.8 and the rest of the amount, namely, Rs.100 per

mensem (or the revised amount, if any) should be paid to the petitioner. The respondents are directed to pay the arrears of pension to the petitioner within four weeks and they shall continue to pay the aforesaid amount of pension per mensem to the petitioner. As and when the petitioner is released from imprisonment it would be open to him to recover the remaining amount of pension in accordance with the rules. The parties will bear their own costs."

12. In catena of cases, to do justice to the victims, Hon'ble Supreme Court has directed payment of monetary compensation as well as rehabilitative settlement. They are ***Kewal Pati Vs. State of Uttar Pradesh (1995) 3 SCC 600, Supreme Court Legal Aid Committee Vs. State of Bihar (1991) 3 SCC 482 ; Railway Board Vs. Chandrima Das (2000) 2 SCC 465 ; Nilabati Behra vs. State of Orissa (1993) 2 SCC 746 ; Khatri(1) Vs State of Bihar (1981) 1 SCC 623 ; Union Carbide Corporation Vs. Union of India (1989) 1 SCC 674.***

13. In result of the judicial pronouncements, Section 357 (A) has been introduced in the Code of Criminal Procedure and a scheme has been framed in favour of the victims. Compensation under section 357 (A) is payable to victim of a crime in all cases irrespective of conviction or acquittal. The amount of compensation may be worked out by appropriate forum.

14. In ***Ankush Shivaji Gaikwad Vs. State of Maharashtra (2013) 6 SCC 770***, the matter was revisited by the Hon'ble Supreme Court with reference to development in law and it was observed :-

*“29. The long line of judicial pronouncements of this Court recognized in no uncertain terms a paradigm shift the approach towards victims of crimes who were held entitled to reparation, restitution or compensation for loss or injury suffered by them. This shift from retribution to restitution began in the mid 1960s and gained momentum in the decades that followed. Interestingly the clock appears to have come full circle by the law makers and courts going back in a great measure to what was in ancient times common place. Harvard Law Review (1984) in an article on “Victim Restitution in Criminal Law Process: A Procedural Analysis” sums up the historical perspective of the concept of restitution in the following words:-**“Far from being a novel approach to sentencing, restitution has been employed as a punitive sanction throughout history. In ancient societies, before the conceptual separation of civil and criminal law, it was standard practice to require an offender to reimburse the victim or his family for any loss caused by the offense. The primary purpose of such restitution was not to compensate the victim, but to protect the offender from violent retaliation by the victim or the community. It was a means by which the offender could buy back the peace he had broken. As the state gradually established a monopoly over the institution of punishment, and a division between civil and criminal law emerged, the victim’s right to compensation was incorporated into civil law.”**(Emphasis added.)*

15. Introduction of Section 357 A in the Code of Criminal Procedure empowers the Court to direct the State to pay compensation to the victims of sexual offences. Under this provision even if the accused is not tried, the victim needs to be rehabilitated. The Victim may request the State or District Legal Service Authority to award him/her compensation. This provision was introduced as recommendations made by the Law

Commission of India in its 152nd and 154th Reports in 1994 and 1996 respectively. The 154th Law Commission Report on the Cr.P.C. devoted an entire Chapter to 'Victimology' in which victim's right in criminal trials was discussed extensively as under :-

"Increasingly the attention of criminologists, penologists and reformers of criminal justice system has directed to victimology, control of victimization and protection of victims of crimes. Crime often entails substantive harms to people and not merely symbolic harms to the social order. Consequently, the needs and rights of victims of crime should receive priority attention in the total response to crime. One recognized method of protection of victims is compensation to victims of crime. The needs of victim and their family are extensive and varied."

16. The principles victimology is embodied in Indian Constitution in the shape of Fundamental Rights and Directive Principles of State Policy. The principles of compensation to victims of crime can be therefore be expanded. Compensation should not only be paid by the State or Legal Services Authority but by the employer, whose employee committed the offence. The victim here is the daughter and applicant is wife of the accused. The victim is not only the victim of crime but also the victim of deprivations of her entitlements, which have come to a halt. The applicant is a patient of Systematic LupasErythematosus (SLE) and was undergoing medical treatment. The Victim has joined college in Delhi. The respondents, i.e., Indian Army is morally responsible to compensate the victim and her family as it is their soldier who has committed the crime.

17. The amount of Rs.30,000/- that was given by the Army Wives' Welfare Association as compensation is merely a token of anguish that the Organization has expressed.

18. We believe that denial of financial benefits in cases, like the case in hand, would undoubtedly lead to non-reporting of such incidents for fear of losing all financial entitlements. We also believe that payment of compensation would encourage similarly placed victims to come forward and report such despicable acts. However, we must make it clear that this Judgment should not create a precedent in respect of victims of any other crimes.

19. We, therefore, direct the Respondents to pay **compensation and grant benefits as under** :--

(a) Pension to the wife, i.e., the applicant herein, till her life time. After her demise to the daughter till her marriage.

(b) Compensation to the tune of final settlement of account and provident fund that is to include gratuity amount, leave accumulation amount, etc to include the amount of fine of Rs. 1 lac, awarded by the POCSO Court in favour of the victim from the accused.

(c) Compensation to the amount of Army Group Insurance fund as would have been payable to the applicant's husband had he been discharged in the normal manner, and also,

(d) To issue ECHS card, Canteen Card & Dependant Card to the applicant.

(e) Any other compensation as deemed fit.

20. We, hereby, vide this order appeal to the Ministry of Defence to formulate a policy to allow compensation to the victims of such cases.

21. No costs.

MEMBER (A)

MEMBER (J)

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