

**IN THE ARMED FORCES TRIBUNAL
REGIONAL BENCH, GUWAHATI**

O.A. NO. 01 OF 2015

P R E S E N T

**HON'BLE MR.JUSTICE N.K.AGARWAL, MEMBER (J)
HON'BLE LT GEN (RETD) GAUTAM MOORTHY, MEMBER (A)**

Smti Bishnu Kumari KC
Wife of No.15373842Y NK
(Chef Community)Jong Bahadur KC
Resident of C/O.Y.B,Thapa,
Quarter No,MES 75/4
DM Line Shillong East
Khasi Hills District Meghalaya.

... **Applicant**

Mrs.Pallavi Talukdar

Legal practitioner for Applicant

-Versus-

1. The Union of India,
Represented by the Secretary,
Ministry of Defence, Sena Bhawan, New Delhi
2. The Commandant ,Signal Regiment, Northern Command
C/O.56 APO Udhampur, Jammu and Kashmir.
3. The Commandant Records Signals, Jabalpur,
Madhya Pradesh 482001
4. The Commandant ,Air Fmn Sig Coy,
South Air Command Pin 918399
5. Station HQ PIN 900113 C/O. 56 APO.

... **Respondents.**

**Mr.C.Baruah, CGSC
Legal practitioner for Respondents**

Date of Hearing :- 29.09.2015

Date of
Judgment & Order : **01.10.2015**

JUDGMENT & ORDER

(N.K.Agarwal,J)

Heard Mrs.Pallavi Talukdar, learned counsel for the applicant. Also heard Ms.D.Tamuli, learned counsel representing Mr.C.Baruah, learned CGSC assisted by Major Asha Dahia, learned JAG officer appearing for the respondents.

[2] The instant OA has been preferred by the unfortunate widow of No 15373842Y NK Jong Bahadur KC for declaring her husband as deemed dead and for grant of balance amount of salary, retiral dues and family pension.

[3] Facts in brief, as alleged in the application, are that the applicant is the legally wedded wife of 15373842Y NK Jong Bahadur KC and out of their wedlock, she has one unemployed son, Kim Bahadur KC. The husband of the applicant joined in the Indian Army on 10.02.1991 as a Cook (Chef Community) and during the course of employment he was posted from one place to another. However, he was in constant touch of the applicant's family. He was also regularly visiting his family at Shillong as and when leave was granted to him. He was also extending financial assistance to his family during the course of employment since he was the only bread earner of the family. When he was posted in North Command Signal Regiment, Udhampur in Jammu and Kashmir, he came to Shillong on leave and after expiry of leave in December, 2010 he returned back to his place of posting. However, after he left Shillong there was no communication between the applicant and her husband compelling the applicant to inquire from the North Command Signal Regiment, Udhampur, Jammu and Kashmir about the whereabouts of her husband. In response to the above, the Respondent No. 2 vide letter dated 12.10.2011 (Annexure A-3) intimated the applicant that her husband had already been posted out from the Unit on 2.5.2011 to South Air Command, Air Fmn Sig coy, pin 918398,C/O. 56 APO and she was asked to approach the South Air Command.

Accordingly, she approached the South Air Command, Air Fmn Sig Coy, C/o 56 APO inquiring about the whereabouts of her husband. The Commanding Officer vide letter dated 09.12.2011 communicated the applicant that the applicant's husband was posted out from North Command and that he was to report to South Air Command Unit on 08.07.2011. However, he had never reported to South Air Command. Consequently, apprehension roll for deserter was issued vide letter dated 26.08.2011 to all concerned at the applicant's native address and the same was returned with a report that the person was not found in the address. Consequently, the personal documents of the applicant's husband was sent to the Signal Record Office signal and applicant's husband was declared as deserter and further the applicant was requested to make further correspondences to North Command Signal Regiment vide letter dated 09.12.2011 (Annexure-A4). Thereafter, a letter dated 12.07.2012 (Annexure-A5) was issued by the Major Assistant Military Attache (welfare) for Defence Attache, Shri Niraj Srivastava, respondent No.3, directing him to communicate the applicant about the whereabouts of her husband. However, no communication was made to the applicant. The applicant has also approached the Signal Record Office to inquire about her husband. But surprisingly, she was served a letter dated 08.10.2012 intimating that the service benefit of her husband had been finalized by Corps of Signals with terminal balances and the applicant shall be paid only Rs.43,426.00. The applicant then filed a FIR before the Incharge of Cantonment Beat House, Shillong about the missing of her husband on 11.04.2013 and the Superintendent of Police, East Khasi Hills District, Meghalaya acting upon the missing report issued a letter dated 17.04.2013 (Annexure-A7) to the respondent No.2 to intimate the office of Superintendent of Police about the whereabouts of missing husband of the applicant. The applicant then submitted a representation against the missing husband to Respondent Nos. 2, 3 and 4 on 26.4.2013 (Annexure A9) praying for

revocation of the order declaring the applicant's husband as a deserter and for conducting an appropriate enquiry to find out whereabouts of her husband and the cause of disappearance.

[4] It is the case of the applicant that her husband was arbitrarily declared as a deserter and that he had never deserted the Indian Army. In fact, the husband of the applicant had gone missing while serving in Indian Army. It is the further case of the applicant that after making representation on 26.04.2013, the same was forwarded to Signals Records by the respondent No.4 vide letter dated 10.05.2013. However, the letter was returned to the Respondent No.4 with a request to take necessary action vide letter dated 03.06.2013. Thereafter, respondent No.4 issued a letter dated 13.07.2013 requesting the applicant to forward an affidavit of No Objection Certificate duly signed by the applicant on the stamp paper. Further, the respondent No.4 requested the applicant to forward a statement that neither the applicant's husband reached home nor contacted the applicant or any of his blood relatives. The applicant accordingly sworn the affidavit and forwarded the same to Respondent No.4 vide letter dated 13.7.2013 (Annexure-A12). The respondent No.4 vide letter dated 13.7.2013 requested the Superintendent of Police, Deputy Commissioner, East Khasi Hills District and Officer Incharge of Sadar Police Station, Shillong to investigate the case of the applicant's husband and submit report to respondent No.4 so as to enable the respondent authorities to take appropriate action for grant of emolument to the applicant in respect of the retiral benefit left by her husband. The respondent No.4 vide letter dated 31.7.2013 requested the applicant to lodge a FIR before the police where the applicant resides informing missing of her husband and also to forward copy of the FIR to respondent No.4 for necessary action. The applicant then informed the respondent No.4 vide letter dated 17.8.2013 enclosing the copy of the FIR that the applicant had already lodged the FIR on 11.4.2013 before the

Cantonment Beat House, Shillong complaining about the missing of her husband. Thereafter, pursuant to the request of the Respondent No.4 vide letter dated 04.12.2013 'Non Traceable Report' dated 07.01.2014 was obtained from the SP, East Khasi Hills District. and sent to Respondent No.4 Thereafter, respondent No.4 issued the impugned letter dated 29.04.2014 (Annexure-A1) to the Station Headquarters, c/o 56 APO (Respondent No.5) along with all supporting documents in connection with the applicant's husband so as to pass necessary orders for presumption of death of the husband of the applicant. As no order was passed, the applicant sent legal notice on 12.05.2014 calling upon the respondent No.4 to release the service benefits/pension /emoluments within a period of 30 days. The same was forwarded by the Respondent No.4 vide letter dated 30.05.2014 (Annexure-A2) to the Station Headquarters for perusal and for taking necessary action. However, till date neither the necessary order with regard to the presumption of death of the applicant's husband has been passed nor retirement benefits were granted. Hence, this application.

[5] The respondents by filing reply affidavit in substance have not disputed the applicant's claim but they come up with the plea that the matter is pending before the Station Headquarters Pin 900113 C/O/56 APO (Respondent No.5) for consideration.

[6] We have heard the rival contentions advanced by the learned counsel for the parties and perused the pleadings and materials available on record.

[7] On the fact of the records, it is crystal clear that earlier without going deep into the matter, the respondents have declared the husband of the applicant as deserter in a hasty manner though he was missing while on duty. Even the respondents have not asked the applicant about the whereabouts of her husband before declaring him as deserter. It is only when the applicant came to know about such order passed by the respondent authority, she protested and filed

representations. Be that as it may, pursuant to the representations sent by the applicant, it is noticed that a fresh Court of Inquiry was conducted by the respondents and relevant documents were called from the applicant which were duly sent to them. After conducting the Court of Inquiry and after receiving the relevant Non Traceable Report and other papers, the matter has been remitted by the respondent authority to Station Headquarters, Pin 900113 C/O 56 APO for passing orders regarding presumption of death of the applicant's husband in the year 2013 and since then it is pending for consideration. This decision of the subsequent court of inquiry would make the earlier decision reached by the Court of Inquiry declaring the applicant's husband as deserter as ineffective, inoperative and nullity.

[8] We may profitably quote hereinbelow the circular No.12(16)/86/D (pen/Sers) dated 03.06.1998 issued by the Desk officer, Govt. of India, Ministry of Defence addressed to all three service chiefs regarding release of DCRG, leave Encashment and Family pension in respect of armed forces personnel who are missing:

*"No. 12 (16)/86/D (Pen/Sers
Government of India/Bharat Sarkar
Ministry of Defence/Raksha Mantralaya
New Delhi, Dated 3rd June, 1998
To
The Chief of the Army Staff
The Chief of the Naval Staff
The Chief of the Air Staff
Subject RELEASE OF DCRG, LEAVE ENCASHMENT AND FAMILY
PENSION IN RESPECT OF ARMED FORCES PERSONNEL WHO ARE
MISSING
Sir,
A number of cases have been referred to this Ministry for grant of
terminal and other pensionary benefits to the families of service
personnel who have suddenly disappeared while operational and
non-operational service and whose whereabouts are not known.
At present all such cases are considered on merits. In the normal
course unless a period of 7 years has elapsed from the date of
disappearance of the employee, he cannot be deemed to be dead
and therefore the retirement benefits cannot be paid to the
family. This principle is based on Section 108 of the Indian*

Evidence Act which provides that when the question is whether the man is alive or dead and it is proved that he had not been heard of for 7 years by those who would naturally have heard of him had he been alive, the burden of proving that he is alive is shifted to the person who affirms it. This has resulted in 13 T.A No. 119 of 2012 great hardship and distress to the families who have to wait for 7 years before any terminal benefits could be paid to them.

2. The President is therefore pleased to decide that when a member of the Indian Armed Forces is declared missing while in service the family will be paid the following benefits subject to adjustment of outstanding dues in respect of the missing personnel, if any:-

*(a) Immediately after the date of declaration of disappearance
The amount of salary due, leave encashment due and DSOP/AFPP Fund amount subject to nomination made by the missing personnel.*

*(b) After the lapse of one year from the date of declaration of disappearance/presumption of death
Family pension/DCRG etc. as admissible in normal conditions.*

3. The above benefits may be sanctioned after observing following formalities:-

(i) The family must lodge a report with the concerned police station and obtain a report that the employee has not been traced after all efforts had been made by the police.

(ii) The claimant will be required to furnish an indemnity bond with two solvent sureties to the effect that all payments thus made will be recovered from the amount due to the person if he/she reappears and makes any claims.

4. The family can apply to the concerned authority for grant of family pension and DCR Gratuity after one year from the date of declaration of disappearance of the service personnel in accordance with the procedure for sanction of family pension and DCR Gratuity. In case the disbursement of DCR Gratuity is not effected within 3 months of the date of application, the interest shall be paid at the rates applicable and responsibility for the delay fixed.

5. In the case of officers, the respective Branch/Dte at Service HQrs and in the case of JCOs/OR and equivalent in Navy and Air Force, their respective Records Offices will process such cases with CDA (P)/PAO/CDA (P)/CDA (Navy)/CDA (Air Force).

*6. The provisions of this letter take effect from 29th August, 1986.
14 T.A No. 119 of 2012*

7. This issues with the concurrence of the Finance Division of this Ministry vide their U.O No. 802-Pen of 1988.

Yours faithfully,

Sd/- xx xx

(Y. K. TALWAR)

DESK OFFICER"

[9] The above Government circular deals with the detailed procedure to be adopted in case of missing personnel by the Units. Para 2(b) of the above circular clearly stated that after lapse of one year from the date of declaration of disappearance/presumption of death, family pension/DCRG etc. as admissible in normal conditions should be paid.

[10] Reverting to the facts of the case , it is evident that though it is found in the Court of Inquiry conducted by the respondents that the applicant's case is a fit case for declaring her husband as deemed dead and consequential entitlement of the applicant to payment of family pension and other dues lying deposit with the respondents, however, even after an inordinate delay neither a formal order declaring the applicant's husband as deemed dead has been made nor dues have been paid to her.

If this is the manner in which the Army Personnel are treated, it can be said that it is extremely unfortunate. The Army personnel are bravely defending the country even at the cost of their lives and we feel that they should be treated in a better and more humane manner by the governmental authorities, particularly in respect of their emoluments, pension and other benefits. (As observed by the Hon'ble Supreme Court in the case of Nand Lal Vs. state of Uttarkahand and anr reported in (2010) 4 SCC 562).

[11] In the above circumstances, we are of the opinion that the impugned order dated 09.07.2011 declaring the applicant's husband as deserter is legally not sustainable. Further, the respondents are required to declare the applicant's husband as deemed dead so as to enable her to tide over her financial crisis.

[12] For the foregoing reasons, we are of the considered opinion that the application is deserved to be allowed. It is accordingly allowed. The impugned

order dated 09.07.2011 declaring the applicant's husband as deserter is set aside and quashed. The respondents are directed to declare the husband of the applicant as deemed dead within a period of one month in terms of the Govt. of India (Ministry of Defence) letter No. 12 (16)/86/D (Pen/Sers New Delhi, Dated 3rd June, 1998 quoted herein above and to pay her all arrears regarding pay, allowances and family pension w.e.f. 09.07.2011 i.e the date when the applicant's husband was declared missing/deserter, within a period of 3 (three) months from the date of passing of this Judgment and Order along with interest @ 8% per annum failing which the respondents shall be liable to pay interest @12% per annum.

[13] With the above observations and directions, the original application stands allowed.

[14] However, in the facts and circumstances of the case there will be no order as to costs.

MEMBER (A)

MEMBER (J)

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