

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

**T.A. NO. 26 OF 2010**

**(Arising out of Writ Petition (C) No.  
2823/2004**

**P R E S E N T**

**HON'BLE MR. JUSTICE H.N. SARMA, Member(J)**

**HON'BLE CMDE MOHAN PHADKE (Retd), Member(A)**

1. Smti Harimoti Roy,  
W/O Late NK Ajit Kumar Roy @ Ajoy Kumar,  
R/O.Vill & P.O. Kamargaon,  
Dist- Barpeta, Assam

.... Petitioner.

-Versus-

1. The Union of India, represented by the  
Secretary, Home Department (Defence),  
Sansad Marg, New Delhi-1
2. The Record Officer for O/C,  
EME Records, Secunderabad-500021 (U.P.)

3. Section Officer, AG/PS-4(PC),  
For Adjutant General, Army Head  
Quarters DHQ PO New Delhi-110011.

Respondent s

Mr.Bimal Chetri  
**Legal practitioner for  
Applicant (s)**

Mr. S.Bhattacharjee, CGSC  
**Legal practitioner for  
Respondent (s)**

Date of Hearing : 17.02.2011 & 08.03.2011

Date of Judgment & Order: 21st March, 2011

### JUDGMENT & ORDER

[Cmde Mohan Phadke]

Smt Harimoti Roy, the petitioner in this case, is the widow of late Ajit kumar Roy who served in the Indian Army as Sepoy/Driver for about 12 years and 28 days and was discharged from service on 25.5.1973 on completion of the term of engagement as evidenced from the certificate of service at Annexure B of the petition. After his retirement Shri Ajit Kumar Roy expired on 7.2.1977. The Petitioner submits that she applied for pension but was informed vide Annexure C that her husband

had not completed 15 years of service and was not granted any pension. No further amount was due to her husband Late Naik Ajit Kumar Roy. The Petitioner was further informed by EME Records, Secunderabad vide their communication dated 02-12-1987 at Annexure D:-

"Madam

1. Your application forms for grant of ordinary family pension was received in this office. It is intimated that as per our records your late husband No. 7045714 NK. Ajit Kumar Roy was enrolled in the Army on 28 April 1961 and discharged from service on 26 May 1973 after 12 years service. To earn service pension one has to serve for a minimum period of 15 years, whereas your husband served only 12 years. So your late husband was not granted any type of pension i.e., disability/service pension at the time of his discharge. As such, you are not eligible for grant of family pension as per existing rules.

Yours faithfully

Sd/-  
( J. Devayya )  
EME Officer  
APO for OIC EME Records"

2. The petitioner then submitted a further application dated 20<sup>th</sup> October 1991 at Annexure-E requesting sanction of family pension. In response thereto the EME Records Secunderabad called for some documents such as discharge

certificate, certificate of service in respect of her late husband and Photostat copy of Pension Payment Order etc. vide communication dated 16 May 91 at Annexure – F. She then wrote another letter dated 03-11-03 at Annexure –G giving details of the service rendered by her husband and the medals earned by him and stating that she had submitted documents along with her application dated 16-9-91. She then once again requested for the grant of family pension so as to enable the family to survive. She was, however, informed as under by the EME Records vide their letter dated Jan 2004 at Annexure I

- “1. Refer to your petition dated 03 Nov 2003.
2. It is intimated that as per records held in this office No 7045714 Late NK Ajay Kr Roy was enrolled in the Army on 28 Apr 61 and discharge from service on 25 May 73. He had rendered 12 years and 28 days service in the Army.
3. As per existing order, minimum 15 years qualifying service is required to earn service pension. Since he had rendered less than 15 years qualifying service, no service pension was granted to him. As such, you are not entitled to family pension as your husband was not in receipt of pension at the time of his death.”

3. Aggrieved by the denial of pension by the Respondents the Petitioner filed Writ Petition(Civil)

No.2823/2004 in the Gauhati High Court praying for a direction to the Respondents to release special family pension to the Petitioner with arrears thereof along with all other service benefits, compensation and interest. With the establishment of the Regional Bench of Armed Forces Tribunal at Guwahati this Writ Petition was transferred to this Bench for adjudication and registered as TA-26/2010.

4. The Petitioner's case is that her husband was entitled to special pension under the provisions of 164 and 167 of the Pension Regulations of the Army 1961. The Petitioner claims that Rule 164 provides that special pension or gratuity may be granted, at the discretion of the President, to individuals who are not transferred to the reserve and are discharged in large numbers in pursuance of Government's policy –

(i) of reducing the strength of establishment of the  
army; or

(ii) of re-organization, which result in disbandment of  
any units/formations.

5. Citing the various medals that her Late husband had won and the service that he had rendered she has considered the denial of pension to be illegal, arbitrary, malafide, unreasonable and discriminatory. The Petitioner has also claimed the sudden discharge of her husband from service, on the ground that he had completed the period of engagement of 12 years and 28 days in the army, was undertaken with a view to deprive him of pensionary benefits. She claimed that her husband had no knowledge of the term for which he was enrolled. Nor was he informed of this. She has, finally pleaded for grant of special family pension in the interest of justice and fair play. In a further Affidavit-in-Reply that was filed in October, 2010 the Petitioner has submitted that in the enrolment form, in respect of the Petitioner's husband, which was not supplied to him it was stated that he was required to serve for not less than 10 years and, thereafter, if required, for a further period in reserve service so as to complete a total period of 20 years. The Petitioner's husband rendered 12 years and 28 days instead of 10 years as specified. In view thereof, and on the strength of Regulations 164 and 167 of

the Army Pension Regulations 1961, which are reproduced below, he was entitled to special pension.

a) **Rule 164 provides** that – the special pension or gratuity may be granted on the discretion of president to individuals who are not transferred to the reserve and are discharged in large number in pursuance of the Govt. policy, either of reducing the strength of the establishment of the Army or of reorganization, which results in disbandment of any units/formations.

b) **Rule 167** provides the scale of special pension and gratuity for the **qualifying service of 10 years** or more but less than 15 years, the pension proportionate to the minimum service pension under **Regulation 136**. Thus, the gratuity is to be paid in case where the service is of **5 years** or more but less than **10 years** or it is even less than **5 years**. In other case, when the service rendered is for **10 years** or more the **special pension** has to be paid.”

6. Based on the above informations the Petitioner has reiterated that the petitioner’s husband was discharged from service in pursuance of the Government policy as mentioned in the enrolment form either to reduce the strength of the Army establishment or for the purpose of re organization which warranted the disbandment of any unit /formation and that being so the petitioner is entitled to special pension.

7. The respondents, have on the other hand contended that family pension becomes payable to the family of a deceased service person only if he happened to draw pension at the time of his death. The husband of the petitioner had joined army on 20-04-1961 with a term of engagement of 10 years of colour service and 10 years as reserve. He was discharged from service on 25-05-1973 on completion of his term of engagement. Further, as the individual had not completed 15 years of service in the army he was not entitled to any pension. Whilst denying the contention that the deceased was not informed of the terms of engagement at the time of his enrolment, the respondents have submitted that the period of service that he was required to put in viz. not less than 10 years and a further 10 years in the Reserve if required to do so to complete a total period of 20 years was within the knowledge of Shri Roy as it was recorded in the Enrolment Form (Annexure – 1) itself. On receipt of representations dated 07-02-1990 and 20-01-1999, the petitioner was immediately informed of her ineligibility to receive family pension.

8. We have heard the learned counsels for the Petitioner and the Respondents at length. During the hearing the learned counsel for the Petitioner strongly urged that he was entitled to special pension in terms of Regulations 164 and 167 of the Army Pension Regulations, 1961. To support this contention he further urged that as against the ten years mentioned in the Enrolment Form he had actually served for 12 years and 28 days and was discharged under the Government policy. The Respondents in response submitted, when quizzed, that the Petitioner had initially signed for 10 years and thereafter re-engaged for a further period of 2 years. On completion of 2 years engagement the Petitioner declined to sign for further service and was, consequently, discharged on 25<sup>th</sup> May, 1973 on completion of his engagement under Item II(iii) of the table annexed to Rule 13(2) of the Army Rules, 1954. The Respondents produced the original records for inspection and gave, as directed by the Tribunal, copies of the Re engagement form and the unwillingness proforma to the learned counsel for the petitioner. This fact has

been acknowledged by the Petitioner in Para 5 of her Additional Affidavit dated 7<sup>th</sup> March, 2011 by saying,

“But to the utter surprise, on the day of argument of the case in hearing stage on **17.2.2011**, for the first time, the counsel of the respondents produced two copies of documents regarding extension of two years of service and unwillingness certificate dated **11.9.70** and **4.1.73** of Late A.K.Ray before the Hon’ble Tribunal and the same were handed over to the counsel of the petitioner on the same day on 17.2.11 in contravention with their own two affidavits. On the other hand, in the event of declining relief to the petitioner for any reason, the Hon’ble Tribunal will also pass appropriate order in swearing of false affidavits by the respondents.”

9. It is abundantly clear from the pleadings and arguments and from a perusal of the record that the petitioner’s husband. Late Nk Ajit Kumar Roy, was discharged from service on completion of his engagement of 12 years and 28 days of service as he gave unwillingness to sign for further service. As a consequence thereof he fell short of the minimum qualifying service, of 15 years, for pension. Late NK Ajit Kumar Roy was not in receipt of pension at the time of his death on 7.2.1977. The first

letter that refers to application by the petitioner for pension is the Records office communication dated 21 Nov 1981 at Annexure C which informed her that her late husband was enrolled in the Army on 28<sup>th</sup> April 1961 and discharged from service on completion of term of engagement on 25 May 1973(A/N) and, since he had not completed 15 years of service, he was not granted any pension and also that no more amount is due for payment to her husband. The contention of the learned counsel for the petitioner that petitioner's husband was discharged from service in pursuance of Government policy as mentioned in the Enrolment Form either to reduce the strength of the Army establishment or for the purpose of re organization which warranted the disbandment of any unit /formation and that being so the petitioner is entitled to special pension is not supported by any documentary evidence or by records. On the contrary the record shows that the petitioner's husband was discharged on completion of his engagement as he was unwilling to continue for further service. Regulations 164 and 167 are, therefore, not applicable to the facts and circumstances of this case. The

petitioner's claim for entitlement to special pension in terms of regulations 164 and 167 of the Army Pension is accordingly considered untenable.

10. The petition is accordingly dismissed as being devoid of merit. The parties are to bear their own cost.

MEMBER(A)

MEMBER(J)