

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

OA- 14/2018.

PRESENT

HON'BLE DR(MRS) JUSTICE INDIRA SHAH, MEMBER(J)

HON'BLE LT GEN GAUTAM MOORTHY, MEMBER(A)

Sri Ajit Gogoi
S/O.Late Konthi Gogoi
Vill- Mongroi
PO Na-Kachari
PS Mariani
Dist. Jorhat (Assam).

.... **Applicant.**

**By legal practitioners for
Applicant.**

Mrs Rita Devi

Mr. A.R.Tahbildar

-VERSUS-

1. Union of India,
Represented by the Secretary,
Govt. of India, Ministry of Defence
Sena Bhawan, New Delhi – 110011.
2. Commanding Officer
Brigade of the Guards
Regimental Centre
Pin- 900 746
C/O. 56 APO
3. Records,
Brigade of the Guards
Pin 900 746.
C/O. 56 APO.
4. 13 Guards,
Pin 910913
C/O.56 APO

... **Respondents..**

**By Legal Practitioner for the
Respondents**

Brig N.Deka, (Retd), CGSC

Date of Hearing : 02.08.2018

Date of Order : 03.08.2018

JUDGMENT AND ORDER.

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

The applicant, herein, is the father of 15619680K Guardsman Palash Gogoi of Brigade of the Guards Regiment, who went on missing w.e.f. 25.04.2010 from Howrah Railway Station on his way to his home town in the District of Jorhat, Assam. The applicant's son Palash Gogoi was enrolled in the Indian Army on 23.12.2004 in Brigade of the Guards Regiment and was attested on 09.11.2005. He was transferred from Guards Regimental Centre to 13 Guards with effect from 7th March, 2006. While he was temporarily attached with 5 ASSAM, he was granted 14 days Casual leave w.e.f. 24.04.2010. He boarded Hyderabad-Howrah Express on 24.04.2010. It is averred that during this period he was in regular contact with his family and thereafter, the applicant's son neither reached home nor contacted his family members or the army authorities and simply went on missing leaving behind his aged parents, a handicapped sister and a brother who is a cultivator.

[2] The family members when failed to trace out even after vigorous search, the applicant lodged an FIR in the Deberapar Police Outpost on 01.05.2010. In the Deberapar Police Out Post ,GD entry No. 3 dated 01.05.2010 was registered in this respect. Apart from this, missing report was also lodged in the Howrah GRPS being registered as Howrah GRPS GD Entry No. 361 dated 05.05.2010. The applicant also lodged missing

report to the Superintendent of Police, Jorhat District on 07.5.2010 and to the Unit to which his son Palash Gogoi was last attached to. In response to the aforesaid communication, Deberapar Police Out Post issued a certificate and also the DISPOL, Jorhat issued a WT Message to Commissioners /Dispols of India for causing an enquiry in the respective jurisdiction to trace out the applicant's missing son.

[3] It is alleged by the applicant that though the applicant duly lodged a missing report in the concerned Police Station and also informed the authorities, the Brigade of the Guards, Regimental Centre C/O. 56 APO vide order dated 22.05.2010 forwarded Desertion Roll/Over Staying Leave to the District Collector/Superintendent of Police, Jorhat requesting to take steps to apprehend Palash Gogoi.

[4] The applicant again submitted an application to the Officer-in-Charge, Brigade of the Guards on 24.06.2010 through Zila Sainik Welfare Officer, requesting to take necessary action to trace out his missing son. The said application was forwarded by the Zila Sainik Welfare Officer on the same date to the concerned authority. Pursuant thereto, 13 Guards vide communication dated 6.7.2010 to the Directorate General Mech Forces(Pers) IHQ of MoD(Army) submitted a detail report on the missing Palash Gogoi and the action taken by the authorities thereon. The Colonel's Sectt(Guards) GOC-in-C-Sectt vide communication dated 6.8.2011 requested the Superintendent of Police, Railway Protection Force, Howrah (West Bengal) to lodge an FIR on the missing of Palash

Gogoi as the parents of the missing personnel were deprived from pension and other monetary benefits.

[5] In the meantime, the Superintendent of Police ,DEB,Howrah GRP forwarded the enquiry report on 28.09.2011 pertaining to Palash Gogoi to the Colonel's Sectt (GUARDS), GOC-in-C Sectt vide letter dated 13.09.2011 informing that even after taking up all possible measures to trace out the missing personnel, no positive result has yielded. When the applicant's son could not be traced out even after passing of 2 years, the applicant approached the authorities for grant of pensionary benefits on the presumption of death of his son. In response to the applicant's petition, The Records, Brigade of Guards ,C/O. 56 APO, vide letter dated 29.11.2012 directed the Brigade of the Guards, Regimental Centre to forward the Court of Inquiry by declaring "individual missing and presumed dead" for official purpose and for necessary action. It is alleged by the applicant that even after passing of long 7 years since the date of submission of the Inquiry Report till date, the authorities have not taken any effective steps to release pension and other due benefits to the applicant.

[6] Heard Mr. A.R.Tahbildar, learned counsel for the applicant and Ms.N.Das, learned counsel appearing on behalf of CGSC assisted by Capt Akash Vashishta, OIC, AFT Legal Cell.

[7] Capt Akash Vashishta, OIC, AFT Legal Cell who had sought for time to verify the factual position of the case has not disputed the facts and

documents submitted by the applicant. The counsel for the applicant has referred to a Circular issued by the Govt. of India , Ministry of Defence, vide No.12(16)/86/D(Pen/Ser) dated 03.06.1998 in respect of release of DCRG, Leave Encashment and family pension in respect of Armed Forces personnel who are missing. The said letter is quoted as under :

" 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 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 HQs and in the case of JCOs/OR and equivalent in Navy and Air Force, their respective Records Officers 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.

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"

[8] This Regional bench in a similar case vide order dated 01.10.2015 passed in OA-01 of 2015 on the basis of the aforesaid circular directed the respondents to declare the applicant's husband in that case as deemed dead who also went on missing since December,2010.

As per the circular, after a lapse of one year from the date of declaration of disappearance/presumption of death, family pension and

other benefits may be granted to the family members of the missing personnel. Here in this case the applicant went on missing with effect from 25.04.2010.

[9] As per 108 of the Evidence Act, if a person being in natural and ordinary course of affairs heard by the person in question has not so heard of him for 7 years may be presumed to be dead and the burden of proving that he is alive is shifted to the person who affirms it.

[10] In view of Govt. of India's letter dated 3rd June, 1998 as well as in accordance with Section 108 of Evidence Act, we hereby allow this Original Application. Consequently, the impugned order dated 22.05.2010 of Brigade of Guards, Regimental Centre, PIN 900746 C/O 56 APO on desertion/overstaying leave of Palash Gogoi is hereby set aside and quashed. Respondents are directed to declare No.15619680K Guardaman Palash Gogoi as deemed dead and release family pension and other dues including the all arrears pay,allowances w.e.f. 25.4.2010 with interest @ 9% per annum within 3 (three) months with effect from receipt of a copy of this Judgment and Order.

[11] No costs.

MEMBER(A)

MEMBER(J)

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