

**ARMED FORCES TRIBUNAL CHANDIGARH REGIONAL BENCH AT
CHANDIMANDIR**

O.A. NO. 67 of 2010

Smt. Surjit Kaur ... **Appellant**

Vs

Union of India and others ... **Respondents**

ORDER

12-07-2010

Coram : **Justice Ghanshyam Prasad, Judicial Member.**

Lt Gen H.S. Panag(Retd), Administrative Member.

For the Appellant(s) : Mr. Navdeep Siangh, Advocate.

For the respondent(s) : Mr. Sandeep Bansal, CGC.

Lt Gen H.S. Panag(Retd)

This appeal has been preferred against the judgment and its decree dated 08.01.2010 passed by Additional District Judge Hoshiarpur in Civil appeal No 71 of 2008 thereby he has set aside the judgment and decree dated 13.10.2008 passed by Civil Judge (Junior Division) Hoshiarpur in civil suit No 149 of 2006.

The prayer of the appellant is that the judgement of Additional District Judge Hoshiarpur dated 08.01.2010 should be set aside and directions be given to the respondents to release the applicable type of family pension alongwith arrears by treating her as war widow of a soldier of the British Indian Army rather than a soldier/employee of the Burma /Mynamar Government.

The husband of the appellant Sepoy Sital Singh was enrolled on 05 Sep 1934 and was posted to 5th Battalion, 8th Punjab Regiment also known as 5th (Burma) Battalion the 8th Punjab Regiment. He was killed in action on 07.12.1940 in Razmak, Waziristan (Pakistan). The appellant was granted Family Pension by the Controller of Military Accounts (Pensions), Lahore of the British Indian Army (later adopted by PCDA (P) Allahabad) under Indian Pension Regulations. She continued to receive her normal family pension through State Bank of Patiala, Tuto Mazara, District Hoshiarpur. The appellant took up a case for grant of liberalized family pension w.e.f 01.01.1996 as per the provisions of Ministry of Defence, letter No 1(2)/97/D(Pension)Service/Pension dated 24 Nov 1997. CDA (P) Meerut Cantt vide letter No CCC/Misc/N/05 dated 11.05.2006 stated that her husband was a soldier of the Burma Army and she is not entitled to even normal family pension but only to an "Ex Gratia Adhoc Allowance" that is given to pensioners being paid by Govt of Burma/Mynamar. CDA (P) Meerut Cantt also directed that a recovery of Rs 2871/- be made from her pension account due to over payment, since she was not entitled to ordinary family pension being a Burma/ Mynamar Govt family pensioner.

The appellant filed a civil suit in the court of Civil Judge (Junior Division) Hoshiarpur. During the proceedings, the respondents could not establish that the husband of the plaintiff/appellant was a soldier of the Burma/Mynamar Army/Government and that the petitioner was drawing family pension/ex gratia grant from the Accountant General as applicable to individuals drawing family pension from Burma/Mynamar Govt. The appellant established that her husband was a soldier of 5th Battalion, the 8th Punjab Regiment, was killed in action on 07 Dec 1941 and that she was

granted family pension by Controller of Military Accountant (Pensions) Lahore of the British Indian Army later adopted by PCDA (P) Allahabad and continued to receive the same until CDA (P) Meerut Cantt declared that she is only entitled to "Ex Gratia Adhoc Allowance" as applicable to Burma/Mynamar Govt pensioners. Documents on record also upheld the case of the appellant. Learned Civil Judge (Junior Division) decided the case in favour of the petitioner with costs. It was decreed that the petitioner is entitled to liberalized family pension and the defendant/respondents to refund the recovery of Rs 2871/- already recovered from the appellant.

The respondents (Union of India) filed an appeal and the same was allowed by Additional District judge Hoshiarpur and the judgement of Civil Judge (Hoshiarpur) Junior Division was overturned. Learned District Judge based on arguments of the learned counsels and evidence on record concluded that the husband of the appellant late Sepoy Sital Singh was a soldier of the Burma/Mynamar Army and she was only entitled to an "Ex Gratia Adhoc Allowance" being a Burma/Mynamar Govt family pensioner. The judgement of the Civil Judge (Junior Division) was set aside and the suit of the plaintiff/ appellant was dismissed with costs.

Heard the learned counsels for the appellant and the respondents and perused the documents on record.

The counsel for the appellant argued that the judgement was bad in law since while setting aside the judgement of the lower court which was in favour of the appellant, Additional District Judge Hoshiarpur started off with the wrong assumption that the appellant's husband was killed in action in "Waziristan in Burma" and hence was a soldier of the then Burma

Army. Waziristan is a place in Pakistan (then in India) and not in Burma. The appellant's husband was a soldier in 5th Battalion, the 8th Punjab Regiment also known as 5th (Burma) Battalion the 8th Punjab Regiment since it originated from 93 Burma Infantry (raised to guard British Territory in Burma). 93 Burma Infantry was merged to raise 5th Battalion the 8th Punjab Regiment in 1923. The word Burma in Brackets was used by 5th Battalion the 8th Punjab Regiment as per Indian Army tradition of maintaining a link with historical origin. This information is also available on the Internet and would be on record maintained by the AG's Branch. Consequently, the appellant was granted family pension vide Circular No 354 dated 16.01.1942 of Controller Military Accounts, Lahore (later merged with CDA (P) Allahabad. The appellant continued to receive family pension from CDA (P) Allahabad until she took up a case for grant of liberalized family pension vide Ministry of Defence letter No 1(2)/97/D(Pensions)/Service/Pension dated 24 Nov 1997. While processing/considering her case for grant of liberalized family pension the CDA (P) Meerut Cantt and the Records Rajput Regiment focused on the word "Burma" written in brackets as part of the designation of 5th Battalion (Burma) the 8th Punjab Regiment. The CDA (P) Meerut Cantt erroneously presumed that the husband of the petitioner was a Burma Army/Govt pensioner. Consequently, vide Circular No CCC/Misc/H/05 Office of the CDA (P) Meerut Cantt dated 11.05.2006. They not only ordered recovery of Rs 2871/- from the petitioner but thereafter started considering her as a Burma/Mynamar Army/Govt family pensioner. Former Burma/Mynamar Army/Govt employees and their families are entitled to a pension paid by Burmese/Mynamar Govt which is stepped up to the minimum level of

pension applicable in India and the difference is paid by the Govt of India. The total admissible amount is known as “Ex Gratia Adhoc Allowance” which is much less than what is granted to families of former soldiers of the British Indian Army. Thus, after having received family pension as the widow of a soldier of the British Indian Army for 68 years, it is miscarriage of justice to now treat her as a Burma/Mynamar Army/Govt family pensioner.

The counsel for the respondents stuck to the argument that the husband of the appellant was soldier of the Burma Army and died in action at “Waziristan, Burma” and thus was only entitled to an “Ex Gratia Adhoc Allowance” as applicable to family pensioners of Burma Army/Govt. Detailed records of the individual have been destroyed as per rules and only an extract of the Long Roll is available. There is no evidence on record and none was produced by the respondents to support their claim.

Keeping in view the facts of the case, arguments of the learned counsels and the documents on record, there is no doubt in our mind that the husband of the appellant was a soldier of the 5th Battalion, the 8th Punjab Regiment also known as 5TH (Burma) Battalion, the 8th Punjab Regiment of the British Indian Army. He was killed in action in Waziristan, Pakistan (then part of India) on 07 Dec 1940. The widow was correctly sanctioned family pension as entitled to the widow of a soldier of British Indian Army killed in action and continues to be entitled to the applicable pension.

For the reasons stated above, this appeal is allowed. The judgment of the Additional District Judge Hoshiarpur in question is set

aside and the judgment and decree of the learned lower Court is restored with cost throughout with modification that the appellant be paid applicable family pension within three months.

(Justice Ghanshyam Prasad)

[Lt Gen H.S. Panag (Retd)]

12-07-2010

‘sns’