

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

TA No 239 2010
(Arising out of CWP 12990 of 2009)

Smt. Sarli	...	Petitioner
v.		
Union of India and others	...	Respondents

ORDER

21.07.2010

Coram : Justice Ghanshyam Prasad, Judicial Member

 Lt Gen N. S. Brar (Retd), Administrative Member

For the petitioner	...	Mr.Surinder Sheoran,Advocate
For the respondents	...	Ms Geeta Singhwal, Sr. PC

Lt. Gen. N. S. Brar (Retd.)

This application has been transferred from the Hon'ble Punjab and Haryana High Court and is taken up under Section 14 of the Armed Forces Tribunal Act 2007.

The petitioner, Smt Sarli, is the widow of No 6159996 Sepoy Bhagwan Singh, who died on 09.12.1971. The death was initially intimated as being killed in action in Operation Cactus Lily, 1971 Indo Pak War. The death was subsequently attributed to disease in hospital. The claim of the petitioner for Liberalised Family Pension

applicable to battle casualties having been denied, this writ was filed for the same.

Learned counsel for the petitioner stated that the husband of the petitioner was serving with 16 KUMAON in 1971. He died on 09.12.1971 due to wounds suffered in action. The Records Kumaon Regiment issued a certificate dated 05.01.1972 showing particulars of deceased soldier where it is clearly mentioned that he was killed in Operation Cactus Lily on 09.12.1971 in field (Annexure P1). The petitioner received condolence letters from the Prime Minister dated 22.12 1971 and from the Chief Minister of Haryana dated 19.01.1972. (Annexure P2 and P3). The petitioner was sanctioned and is in receipt of Special Family Pension wef 10.12.1971. He further stated that as per Government of India Ministry of Defence letter dated 30.10.1987 she is entitled to Liberalised Family Pension which was introduced wef 01.01.1986. Her repeated requests have been denied. Legal notice dated 18.07.2008 has also not elicited any response.

Learned counsel for the respondents on the other hand contested the claim of the petitioner and stated that the husband of the petitioner was enrolled in the Army on 06.01.1968 and expired on 09.12.1971 at Military Hospital Binnaguri due disease 'Toxic Myocarditis Empyema Thorasis'. Death certificate to this effect was issued the same day (Annexure R1). At that time due to the ongoing operations the unit of the petitioner wrongly reported the cause of death as 'Wounded in Operation Cactus Lily'. The Records Kumaon Regiment accordingly published Part II Order No 199/01/71 and also issued IAFY1940 (Particulars of Deceased Soldier) on 05.01.1972.

On 06.01.1972 the unit intimated the Records that Sepoy Bhagwan Singh had actually died in Military Hospital due to disease and his death was classified as a 'Physical Casualty' and not a 'Battle Casualty'(Annexure R2). On receipt of this letter the Records promptly cancelled the Part II Order and published a fresh Part II Order No 243/7/71 showing the cause of death as due to disease 'Toxic Myocarditis Empyema Thorasis'. No claim for any pension had till then been submitted. Claim for Family Pension was thereafter forwarded to PCDA(P) Allahabad on 10.02.1972 and 14.02.1972. The petitioner was accordingly sanctioned Special Family Pension as the death was attributable to military service in field area. She conceded that due to the turmoil of war resulting in error in reporting and in the intervening period between the initial report and the correction on 06.01.1972, condolence letters had been sent out. However no pension had been granted or withdrawn.

She further stated that the petitioners claim for Liberalised Family Pension is based solely on the IAFY 1940 dated 05.01.1972 which is not the authority for assigning attributability for grant of pension. The actual authority is Part II Orders. The authorised Part II Order is No 243/7/71 showing the cause of death as due to disease 'Toxic Myocarditis Empyema Thorasis'. Fresh IAFY 1940 was issued to the petitioner and she has been repeatedly informed that the death being a 'Physical Casualty' and not a 'Battle Casualty' she was not entitled to Liberalised Family Pension.

It was further stated by her that Government of India letter dated 30.10.1987 pertains to revision and rationalisation of pensionary benefits and not the eligibility criteria which in this case

remained unaltered. She finally contended that provision for grant of Liberalised Family Pension as contained in Para 6.1 of Government of India letter dated 31.01.2001 clearly states that for the purpose of grant of Liberalised Family Pension the cause of death must fall within the ambit of Category D or E of Para 4.1 which in this case it does not. These are reproduced at Para 6 of the written statement.

Considered the submissions of the learned counsel for the parties and perused the documents on record.

There is no doubt that the death of the husband of the petitioner was caused due to disease 'Toxic Myocarditis Empyema Thorasis' and that he died in Military Hospital Binnaguri on 09.12.1971 and not in action or due to wounds suffered in action. Death certificate issued on the same date shows the same cause. Wrong reporting under the circumstances prevailing and its prompt correction precludes any **mala fide** intent. IAFY 1940 issued initially, and which was corrected and superseded subsequently, cannot be sustained as an authority for any claim to pension or otherwise. No claim for pension was forwarded or granted based on the incorrect initial report. The petitioner has been correctly granted Special Family Pension wef 10.12.1971 as the death was attributable to military service.

The claim of eligibility for grant of Liberalised Family Pension as introduced wef 01.01.1986 does not carry weight as the death is not attributable to causes and circumstances which qualify for grant of such pension as detailed in Government of India letter dated 31.01.2001.

No case is made out for grant of Liberalised Family Pension and this petition is accordingly dismissed.

There shall be no order as to costs.

(Justice Ghanshyam Prasad)

(Lt. Gen. N. S. Brar (Retd.))

July 21, 2010

RS