

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

TA No. 249 of 2010
(Arising out of CS No. 1004 of 2006)

Kalash Wati	...	Petitioner
v.		
Union of India and others	...	Respondents

ORDER
28.07.2010

Coram : Justice N. P. Gupta, Judicial Member

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

For the Petitioner Mr. D.V.J olly, Advocate

For the Respondents Mr. Sandeep Bansal, CGC

This is a transferred matter having been filed as a civil suit in the Court of Civil Judge, Junior Division, Ambala, praying for family pensions with effect from 26.02.1990.

The facts alleged are that the plaintiff's husband was enrolled in the Army on 02.03.1943. The term of engagement was 12 years' colour service and 3 years as reserve. On completion of the terms of engagement, he was finally discharged on 11.03.1958. He was not granted Reservist Retention Pension since he had drawn his reservist gratuity vide letter dated 18.06.1958. The plaintiff then served a legal notice for grant of family pension, whereupon, she was asked to provide a copy of Discharge Certificate, which too was given, but then she did not receive any reply.

According to the written statement filed, the stand taken, **inter-alia**, is that since the deceased husband was neither entitled to nor getting any pension, the petitioner is not entitled to any family pension. It is also pleaded that the individual died as non-pensioner due to non-completion of qualifying 15 years in colour and qualifying service. Long silence on the part of the deceased for not claiming any pension is also sought to be pleaded as estoppel to be operative against the plaintiff. It is also pleaded that it is wrong to say that the term of engagement was 12 years colour service and 3 years as Reserve. Rather, the term was 10 years colour service and 10 years' reserve service. Since the individual did not complete the qualifying service to earn pension, he was not entitled to pension. **Inter-alia**, with these pleadings, it was prayed that the suit be dismissed.

A rejoinder was also filed, reiterating the stand taken in the plaint.

Before us, the claim for family pension is not pressed, feeling rightly that the plaintiff is not entitled to family pension. However, reliance was placed upon documents, Annexures P-1 and P-3 produced on record of the learned trial Court. It is prayed that in terms of Annexures P-1 and P-3, the family or the deceased, who had opted for lump sum reservist gratuity in lieu of pension, is entitled to be granted consolidated ex-gratia payment at per month rate as prescribed in the communications, which is prescribed to be Rs.605/- from 01.11.1997 with dearness relief, as notified from time to time.

This submission was opposed by the learned counsel for the respondents by contending, firstly, that no such prayer was made in the plaint; secondly, that the deceased husband did not receive

gratuity in lieu of pension and reservist gratuity in lieu of pension is **sine qua non** for entitling the family to receive ex-gratia payment under Annexures P-1 and P-3. Therefore, the petitioner is not entitled to the same.

We have considered the submissions.

So far as the first submission is concerned, by virtue of Section 14 of the Armed Forces Tribunal Act, the Tribunal is required to decide both the question of law and fact that may be raised before it, and the provisions of Section 34 also do not bar the jurisdiction of the Tribunal from entertaining the above prayer. More so, when it arises from the documents already tendered in evidence in the learned trial Court way back in the year 2009 before transfer of the matter to this Tribunal, as Annexures P-1 and P-3. In that view of the matter, we are not inclined to accept the first objection raised by the learned counsel for the respondents.

As regards second objection, in our view, it is required to be noticed that in the year 1958, when he received discharge, he was paid gratuity and was not paid pension. It is not shown that gratuity was paid to the individual in lieu of anything else, if it was not paid in lieu of pension. Obviously, it has but to be assumed to have been paid in lieu of pension only. Secondly, we have to accept the spirit of the decision taken by the Government of India vide Annexure P-1, which appears to be to ameliorate the difficulties of the families of the deceased reservists. In view of the fact that the deceased reservist having received gratuity once upon a time and the individual having died leaving behind the family to the grace of God, the benefit conferred by Annexures P-1 and P-3 is required to be made available

by interpreting it in a manner so as to be available to the persons like the plaintiff-petitioner, and so on.

Accordingly, the petition is allowed. The petitioner is held entitled to ex-gratia payment per month at the rate prescribed in Annexures P-1 and P-3 with effect from 01.11.1997. However, since the suit had been filed on 01.08.2006 only, in view of the established practice propounded by Hon'ble the Supreme Court of India, the entitlement of the petitioner is required to be treated to commence from since before three years from the filing of the suit. Thus, the petitioner is held entitled to get actual payment with effect from 01.08.2003. The respondents are directed to calculate the amount and make payment to the plaintiff-petitioner within a period of three months from the date of receipt of copy of this order by the learned counsellor for the respondents, failing which the petitioner shall be entitled to interest @ 10% p.a.

The parties are left to bear their own costs.

[Justice N. P. Gupta]

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

July 28, 2010
RS