

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.112 of 2014

Thursday, the 18<sup>th</sup> day of June 2015

THE HONOURABLE JUSTICE V. PERIYA KARUPPIAH  
(MEMBER - JUDICIAL)  
AND  
THE HONOURABLE LT GEN K. SURENDRA NATH  
(MEMBER - ADMINISTRATIVE)

Smt. Vasanta Kumari  
W/o Late Ex Naik Pragasam Jayaraj MEG  
No.1341494, R/o H.No.283/B  
Pylon Colony, Nagarjunasagar  
Nalgonda District-508 202  
Andhra Pradesh.

.. Applicant

By Legal Practitioner:  
Mrs. Tonifia Miranda

vs.

1. Union of India  
rep. by its Secretary  
Ministry of Defence  
New Delhi-110 011.

2. Chief of Army Staff  
Army Head Quarters (AHQ)  
Defence Head Quarters (DHQ)  
Integrated Head Quarters  
New Delhi-110 011.

3. Record Office  
Madras Engineer Group  
Pin 900 493  
C/o 56 APO.

4. Principal Controller of Defence Accounts  
Draupathi Ghat, Allahabad  
UP 211 014.

5. K. Udayakumar  
S/o Ex Naik Pragasam Jayraj MEG  
H.No. 4-254, Near Venkatraman Theatre  
Pothaiguda, Mothukur  
Nalgonda District 508 277, AP .... Respondents/Respondents

By Mr. M. Damodharan, SCGSC  
For RR 1 to 4.

N.A. for R5

### **ORDER**

(Order of the Tribunal made by  
Hon'ble Justice V. Periya Karuppiah, Member (Judicial))

1. The applicant has filed this application for setting aside the 3<sup>rd</sup> respondent's letter No.134194/Pen(f)/dated 05.02.2014 and consequently direct the respondents to grant family pension to the applicant from the date of death of her husband and to pay the arrears of service pension due to the applicant's deceased husband.

2. The facts of the applicant's case in brief would be as follows:

The applicant's husband was enrolled in the Army as a boy on 09.12.1963 and was re-mustered to Recruit on 05.01.1966. He was discharged from service on 12.07.1978 after completing 14 years, 07 months and 03 days of service which includes boy service also. The applicant submits that her husband earned many awards and distinctions and he participated in various National and International

Games and events. The applicant's husband sought for grant of service pension, but he was denied and subsequently, he died on 30.11.1993. The applicant sent a representation dated 11.01.1994 to the respondents for family pension and financial assistance through the Zilla Sainik Board since she was living with her son and daughter in abject poverty. But the 3<sup>rd</sup> respondent by their letter dated 10.03.1994 rejected the claim of the applicant. However, the applicant kept on sending representations in the years 2001, 2003, 2004 and 2008. In the meanwhile, she lost her daughter in a fire accident. Her son is working in State Bank of Hyderabad as Class IV employee. The applicant submits that her husband was not properly advised regarding the ill-effects of a voluntary discharge. For the legal notice dated 06.01.2014 sent by the applicant, the respondents denied through the impugned order dated 05.02.2014. Though the 4<sup>th</sup> respondent replied by letter dated 10.04.2014 stating that the 3<sup>rd</sup> respondent had been directed to take necessary action, the applicant did not receive any favourable reply. Therefore, the applicant has filed this application and requests that the same may be allowed.

3. The respondents-1 to 4 filed reply-statement which would be in brief as follows:

The applicant's husband, i.e., No.1341494 Nk Late Pragasam Jayaraj was enrolled in the Army (Madras Engineer Group) as a Boy on 09.12.1963. He was re-mustered to recruit on 05.01.1966 and subsequently was promoted to the rank of Naik on 01.09.1973. The applicant's husband got discharged from service in the rank of Naik on 12.07.1978 at his own request on extreme compassionate grounds before fulfilling the conditions of his enrolment under Rule 13(3)(iv) of Army Rule 1954. His total service was 14 years, 6 months and 5 days including the boy service. At the time of his discharge, he got two punishments for the offence of over-stayal of leave. The minimum qualifying service to earn Service Pension shall be 15 years as per Rule 132 of Pension Regulations for the Army Part-I (1961). The respondents submit that as the applicant's husband did not serve a minimum qualifying service and therefore, he was not eligible for service pension. The applicant's husband died on 30.11.1993 without receiving any pension. Family Pension is admissible to a widow whose husband died while in service or should have been in receipt of a pension at the time of his death. As the applicant's husband was not a pensioner and died after his discharge, the applicant is not entitled to get Family Pension as per Rule 212 of Pension Regulations for the

Army Part-I (1961). The applicant filed this application with an exorbitant delay of more than 20 years from the date of death of her husband. There are no service records with the Records Madras Engineer Group, Bangalore. All the representations of the applicant were properly replied from time to time. However, Record Office is not a competent authority to sanction any financial benefits to any pensioner or NOK of the deceased pensioner. The applicant's Late husband got discharged from service in the rank of Naik on 12.07.1978 at his own request on extreme compassionate grounds before fulfilling the conditions of his enrolment under Rule 13 (3) (iv) of Army Rule 1954 due to his personal gain and not due to any burden of duty of the respondents. The minimum qualifying service to earn Service Pension shall be 15 years as per Rule 132 of Pension Regulations for the Army Part-I (1961). The applicant's husband had not served the minimum qualifying service and therefore he was not eligible for service pension. As the applicant's husband was not a pensioner and died after his discharge, the applicant was/is not entitled to get Family Pension within the framework of rules on the subject as per provisions contained in Rule 212 of Pension for the Army Part-I (1961). Therefore, the respondents request that this application may be dismissed.

4. The 5<sup>th</sup> respondent has not filed reply affidavit, but filed a Memo which would be as follows:

The 5<sup>th</sup> respondent submits that he is the son of the applicant and he has no objection for the grant of Family Pension in favour of his mother, the applicant. He submits that his father was a hockey player and coach and he served in the field areas of Silugri. His father sought discharge on his own request due to his illness, viz., Spondylitis. Due to his ill-health, he was forced to submit his application for discharge. The 5<sup>th</sup> respondent's sister Lavyna Jaya Pradha died due to fire accident. He submits that his mother has been suffering all these years and therefore, he requests that the application may be allowed.

5. On the above pleadings, the following points were found emerged for consideration:

*(1) Whether the shortfall of 5 months and 25 days in qualifying service of the applicant's husband Late Ex Naik Pragasam Jayaraj be condoned to make him eligible for getting service pension?*

*(2) If so, whether the arrears of service pension with effect from 12.07.1978 till the death of Ex Naik Pragasam Jayaraj on 30.11.1993 has to be paid to the applicant?*

*(3) Whether the applicant is entitled to get family pension on the death of her husband on 30.11.1993 and be paid with entire arrears with all other death benefits of her husband?*

(4) *To what relief the applicant is entitled for?*

6. We heard the arguments of Mrs. Tonifia Miranda, learned counsel for the applicant and Mr. M.Damodharan, learned SCGSC assisted by Major Suchithra Chellappan, learned JAG Officer appearing for respondents-1 to 4. The 5<sup>th</sup> respondent has filed a Memo to the effect that he has no objection and he would not participate in the hearing.

7. We have given our anxious thoughts to the arguments advanced on either side and perused the documents and other records produced on either side.

8. **Point Nos.1 to 3:** The admitted factual aspects are that the applicant is the widow of Late Ex Naik Pragasam Jayaraj MEG who was enrolled in the Army as Boy on 09.12.1963 and was re-mustered on 05.01.1996 and he was married to the applicant during his service and after serving in the Army he got discharged from service in the rank of Naik on 12.07.1978 at his own request on extreme compassionate grounds before fulfilling the conditions of enrolment under Rule 13(3) (iv) of Army Rules 1954. It is further admitted that the applicant's husband had rendered 14 years 6 months and 5 days and his character was assessed as 'Good'. Since the applicant's husband had not served the Army for 15 years, he was not granted

any service pension after his discharge from service. Subsequently, the applicant's husband died on 30.11.1993 as a non-pensioner.

9. However, the applicant was seeking Family Pension from the respondents for the service rendered by her husband immediately after his demise during 1994, but it had denied with the reason that the applicant's husband was not a pensioner. The applicant was advised to go for financial help from appropriate authorities. Still the applicant had applied on various occasions seeking for Family Pension. Having found that her husband's service had fallen short of 15 years, she also pleaded for condonation of deficiency of her husband's service under Rule 125 of Pension Regulations for the Army 1961, Part-I. The said claim of the applicant was also denied by quoting the provision that her husband was not eligible since he was discharged from service at his own request. Finally, the request of the applicant to grant Service Pension to her husband and Family Pension for herself was also refused by the respondents by passing impugned order on 05.02.2014. Now the applicant has challenged the impugned order and the earlier communications refusing Service Pension to her husband and Family Pension to her, in this Original Application.

10. The learned counsel for the applicant would submit in her argument that the denial of condonation of deficiency in service for



the personnel who applied for discharge on compassionate grounds and discharged prematurely had been dealt with by Bombay High Court and Delhi High Court in Navy cases in which the Regulation 82(a) of the Pension Regulations for Navy was quashed and therefore, Para 125(1) of Pension Regulations for the Army 1961, Part-I has also been virtually quashed and the denial of condonation of deficiency in service as per Para 125 of Pension Regulations for the Army 1961, Part-I for personnel who were discharged at their request cannot be held correct. She would cite a judgment of the Hon'ble Apex Court in an appeal preferred against the judgment of Hon'ble AFT Principal Bench, New Delhi in O.A.No.401 of 2013 and R.A.No.11 of 2014 with M.A.No.120 of 2014 in O.A.No.401 of 2013 in which the judgment of the Bombay High Court relating to declaration of Regulation 82(a) as *ultra vires* was discussed and was found to bind the respondents. She also argued that the said principle laid down by the Bombay High Court was followed by the Hon'ble AFT Principal Bench in the said applications was accepted by the Hon'ble Apex Court in the judgment. The learned counsel for the applicant would also produce the judgment of the Hon'ble Apex Court passed in Civil Appeal No.9389 of 2014, dated 20.01.2015 for our perusal. She would also cite yet another judgment of the AFT Kochi Regional Bench made in O.A.No.126 of 2013 in which the principle arrived

regarding quashing of Regulation 82 (a) of Pension Regulations for Navy 1961 in favour of Navy personnel has been made applicable to Army personnel also and it was held that Regulation 125(a) of the Pension Regulations for the Army 1961 Part-I is violative of Article 14 of Constitution of India and is null and void. She would further submit that in view of the development of law in favour of the personnel standing on similar footing of the applicant's husband would benefit the applicant's husband also and therefore the impugned order passed by the respondents throughout have to be set aside and the applicant's husband be given with Service Pension posthumously after condoning the deficiency in service under Regulation 125 of Pension Regulations for the Army 1961 and consequently the applicant be given with Family Pension from the date of her husband's death with all other benefits.

11. Per contra, the learned CGSC would submit in his argument that the facts of the case in Navy are different from the facts of the present case and the applicant's husband did not seek for condonation of deficiency in service throughout his lifetime and the applicant has now come forward to seek for condonation is not sustainable. He would further submit in his argument that Regulation 82 (a) of Pension Regulations for the Army 1964 alone was quashed by the Hon'ble High Court of Bombay and the said

Regulations are not applicable to the Army personnel. He would also argue that Regulation 125 of Pension Regulations for the Army 1961, Part-I is still in vogue for personnel who have retired prior to the implementation of Pension Regulations for the Army 2008 and no provision in Regulation 125 of Pension Regulations for the Army 1961, Part-I was set aside and therefore, the applicant's husband's deficiency in service cannot be condoned since he was discharged from service at his own request and Para-125(a) of Pension Regulations for the Army would squarely be attracted to the applicant's case. He would therefore submit that the impugned order passed by the respondents are valid and are not liable to be set aside.

12. On the above submissions, when we approach the facts of the case, we could see the said judgment of Bombay High Court in quashing Para 82(a) of Pension Regulations for the Army 1964 was upheld by the Hon'ble Apex Court in the judgment cited by the learned counsel for the applicant as reported in **(2015) 3 SCC 404** in the case between **UOI & Anr.** and **Surender Singh Parmar**. It has been categorically approved in the said judgment in respect of such finding of Bombay High Court as accepted by the Delhi High Court against the respondents. It is laid down as follows:

*" In the present case, the appellant has not challenged the validity of judgment passed by the Bombay High Court wherein Regulation 82(a) was declared as ultra vires. The aforesaid finding of the Bombay High Court was also accepted by the Delhi High Court in the case of the respondent. In absence of any challenge before this Court, we are not inclined to decide the question of validity of Regulation 82(a) which has already been declared ultra vires and violative of Article 14 of the Constitution of India. "*

13. As per the dictum laid down by the Hon'ble Apex Court, the condonation of deficiency in service to the Navy personnel cannot be rejected on the ground that he voluntarily sought permission to leave the service. The Government of India, Ministry of Defence had delegated the power to condone shortfall in qualifying service to the grant of pension beyond six (6) months upto twelve (12) months to competent authority in its letter dated 14.08.2001. In this case, the applicant's husband admittedly served in the Army for 14 years 6 months and 5 days. The applicant had applied for such condonation of deficiency of service of her husband to the respondents which was rejected on the ground that her husband was discharged at his own request. The Hon'ble Apex Court has upheld the condonation of deficiency of service for Navy personnel by accepting the decision of Bombay High Court declaring Regulation 82(a) of Pension Regulations for the Navy 1964 as *ultra vires*. Whether such principle

laid down in the said judgment would help the Army personnel who are bound by Para 125 of Pension Regulations for the Army 1961, Part-I is the present question.

14. The learned counsel for the applicant had taken shelter under the judgment of AFT Regional Bench, Kochi in which the said Bench has found that Para 125(a) is ultra vires of Article 14 of Constitution of India. No doubt there cannot be two different treatments for one set of personnel in Navy and one set of personnel in Army, though the two personnel are governed by the different Pension Regulations. Admittedly, Para 125(a) has not been set aside by the High Court or Supreme Court in this country. It is brought to our notice that Armed Forces personnel are being governed by policy letters issued by Government of India and are made applicable in common like that of the letter dated 14.08.2001 in which the condonable period has been enhanced from six (6) months to twelve (12) months for all the Armed Forces personnel. Therefore, the first respondent has treated the Navy personnel as well as Army personnel equally and therefore, the principle laid down in respect of the Navy personnel should be made applicable to the Army personnel also. In the light of the judgment rendered by the Hon'ble Apex Court reported in **(2015) 3 SCC 404** in the case between **UOI & Anr. and Surender Singh Parmar**, when we peruse the judgment of AFT Regional Bench, Kochi

made in **O.A.No.126 of 2013**, the reason given in para-5 that Regulation 82 of the Pension Regulations for the Navy is in *pari materia* with Regulation 125 of the Pension Regulations for the Army 1961, therefore, the principle laid down by the Hon'ble High Court of Bombay is equally applicable to Regulation 125 of the Pension Regulations for the Army, 1961 appears to be sound. The judgment of Bombay High Court which declared Regulation 82(a) of Pension Regulations for the Army was challenged in SLP (Civil) No.13893 of 2007 before the Hon'ble Apex Court and it was dismissed. All these circumstances made us to consider Regulation 125 (a) of Pension Regulations for the Army 1961 being violative of Article 14 of Constitution of India as null and void.

15. We do also find that the principles laid down by the Hon'ble Apex Court granting relief for the premature retiree for condonation of deficiency of service in Navy would also apply to the Army personnel to get the benefit of condonation of deficiency of service in order to get service pension as per the remaining provisions of Para 125 of Pension Regulations for the Army 1961. Therefore, the respondents ought to have condoned the deficiency of service of the applicant's husband which is five months 25 days and should have granted reliefs as sought for by the applicant despite it was submitted after the death of her husband. It was not done so.

The latest claim of the applicant in the year 2014 was also not considered by the respondents by quoting the same reason that the applicant's husband's deficiency in service cannot be condoned as he was discharged at his own request on compassionate grounds. Therefore, we find that the impugned orders challenged in this application in refusing the claim of the applicant are liable to be quashed. Consequently, the applicant is found entitled to the reliefs as sought for by her. However, she did not lay her claim before the appropriate forum within the time limit as provided in the statute. The delay in filing the claim before us was condoned in view of the principles laid down by the Hon'ble Apex Court in "**Tarsem Singh's case**" that the claim for pension is a continuous and recurring one and therefore, the claim cannot be rejected in whole under law of limitation. But the claim payable within the limits of law shall be ordered in favour of the claimant. Accordingly, the applicant is found entitled to the claim of Family Pension only on her husband's Service Pension which has to be calculated on her husband's service pension after condonation of deficiency of service for 5 months 25 days so as to make it as 15 years of pensionable service and should be granted by the respondents in favour of the applicant with effect from three (3) years prior to the date of filing of this application along with other benefits payable to a pensioner. Accordingly, all

the three (3) points are answered as indicated above in favour of the applicant.

16. **Point No.4:** In view of our findings on the above points, the applicant is entitled to Family Pension payable on the Service Pension of the applicant's husband to be calculated for 15 years of pensionable service as the deficiency of 5 months 25 days is ordered to be condoned. The said Family Pension shall be paid by the respondents to the applicant with effect from three (3) years prior to date of filing of this application, namely, 24.06.2011 till this date and the respondents are also directed to issue Pension Payment Order to that effect and all other benefits payable to the pensioner from out of service of her husband within a period of three (3) months from today. In default to comply with the order, the applicant is entitled to the said payment with interest at 9% per annum till its realization.

17. In fine, the application is allowed as indicated above. No order as to costs.

Sd/  
LT GEN K. SURENDRA NATH  
MEMBER (ADMINISTRATIVE)

Sd/  
JUSTICE V.PERIYA KARUPPIAH  
MEMBER (JUDICIAL)

**18.06.2015**  
**(True copy)**

**Member (J)** – Index : Yes/No

Internet : Yes/No

**Member (A)** – Index : Yes/No

Internet : Yes/No

vs



To:

1. The Secretary  
Ministry of Defence  
New Delhi-110 011.

2. Chief of Army Staff  
Army Head Quarters (AHQ)  
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Nalgonda District 508 277, A

6. Mrs. Tonifia Miranda  
Counsel for applicant.

7. Mr. M.Damodharan, SCGSC  
Counsel for respondents-for RR 1 to 4.

8. OIC, Legal Cell,  
ATNK & K Area, Chennai.

9. Library, AFT, Chennai.

HON'BLE MR.JUSTICE V. PERIYA KARUPPIAH  
MEMBER (JUDICIAL)  
AND  
HON'BLE LT GEN K. SURENDRA NATH  
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Dt: 18.06.2015