

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.47 of 2013

Monday, the 21st day of October, 2013

THE HONOURABLE JUSTICE V. PERIYA KARUPPIAH
(MEMBER - JUDICIAL)

AND

THE HONOURABLE LT GEN ANAND MOHAN VERMA
(MEMBER – ADMINISTRATIVE)

M. Dhanalakshmi,
W/o. Hav. S. Murugesan No.10452213,
[Also representing her children M. Sapnadevi (22/2013)
And M. Avinash (20/2013)]
Aged 38 years, R/o Pillaiyar Compound,
Maruthupandian Nagar, 4th Street, Narimedu,
Madurai-625 002.

... Applicant

By Legal Practitioner:
Ms. Tonifia Miranda

Vs.

1. Union of India,
Represented by its Secretary,
Ministry of Defence,
South Block, New Delhi 110011.
2. HQ ATNKK & G Area,
Chennai.
3. The Commanding officer,
105 Inf Bn (TA) RAJ RIF,
Delhi Cantt-110 010.
4. 117 INF Bn (TA) The Guards,
Tirucharapalli (Tamil Nadu).

5. Principal Controller of Defence Accounts,
DraupathiGhat,
Allahhabad, UP 211 014.
6. Abhilekh Brigade of the Guards Records,
Brigade of the Guards, Post Box No.19,
Kamptee 441 001.

... Respondents

By Mr. B. Shanthakumar, SPC

ORDER

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

1. This application has been filed by the applicant seeking for setting aside the proceedings of Court of Inquiry declaring the applicant's husband a deserter, as illegal and non est in the eye of law and violative of principles of natural justice and to direct the respondents to award special family pension to the applicant and to her children from the alleged date of mysterious disappearance on 29.4.1998 on duty with interest at 18% per annum till the date of payment and also to pay a sum of Rs.20 lakhs towards compensation for the sufferings of the applicant and her children, who lead a life in poverty at the default of the respondents, as detailed in the relief para-3 (a) to (h), with costs.

2. The factual matrix of the applicant's case as stated in the application would be as follows :-

The applicant is a young destitute wife of Havildar S. Murugesan No. 10452213, who was enrolled on 16.10.1984 with the 4th respondent service, and was temporarily attached with the 3rd respondent, namely Territorial Army. The applicant's husband was a talented and patriotic person who was serving the Mother India through armed forces. The applicant's husband was a loving husband and a caring father of his children. Since no contact could be made with her husband during the early days of July, 1998, the applicant addressed a letter to the 3rd respondent with a request to know about his whereabouts. However, a letter dated 6.7.1998 from 3rd respondent to 4th respondent was marked to her and she was shocked and pained to know the contents of the letter which would state that her husband was on temporary duty from 20.4.1998 for carrying the personal documents of Major General Risal Singh (Retd), who stayed at Nandini Guest House of 2nd respondent at Chennai from 26.4.1998 to 29.4.1998 and during the said period, Major General Risal left for Delhi on 29.4.1998 and the individual was told to receive his movement order and to report to his unit, but he did not reach back to his unit, till date. Furthermore, Havildar Murugesan stayed with Havildar Vijayan (Mess Havildar) and NCO I/C Nandini Guest Room in the Area Mess during his attachment with the 2nd

respondent. The applicant also received a letter dated 14.7.1998 from 3rd respondent that her husband was sent on temporary duty to 2nd respondent by an order dated 20.4.1998, but did not report back to unit. The applicant was highly disturbed and emotionally down to know the contents. The applicant made her fervent steps to 4th respondent, which was evident from the letter of 4th respondent addressed to 3rd respondent dated 23.7.1998. The applicant had also sent a letter to the Prime Minister of India on 28.7.1998, and the President of India on 31.7.1998. She also approached the then Member of Parliament of Madurai Dr. Subramanian Swamy. In response, a letter was addressed by 4th respondent to the Member of Parliament on 10.8.1998. She also made personal inquiries with Nb Sub Paulouse AJ. She received a letter dated 17.8.1998 of the 3rd respondent. Similarly, she also received a letter dated 21.10.1998 from the 1st respondent with an assurance that efforts would be taken to find the whereabouts of the applicant's husband. The applicant also approached the Superintendent of Police, Madurai District, and the 4th respondent sent a communication to the Superintendent of Police on 11.6.1999. Despite the fact that applicant visited the 4th respondent, on several occasions, there was no fruitful result. She also travelled to Delhi with her two small children to meet the 3rd respondent for her financial assistance and to take immediate steps to locate and restore her husband. Brigadier P.S. Rathore had written a letter on 11.6.1999 to the 4th respondent in which the efforts

taken by the applicant was referred and to take immediate steps to find out her husband. The applicant approached the Police once again by filing a complaint before Thallakulam Police Station, which was registered in Crime Mo.556 of 2000 dated 21.6.2000, and the said FIR also did not yield any fruitful result. There was no action taken for finding her husband and to restore him. The applicant was slowly losing her faith in the respondents and the Government institution. The repeated demands of her through letters dated 27.4.2001 and 12.5.2001 also did not yield any result. The applicant was shocked to receive a letter dated 27.6.2001 from the 6th respondent that her husband was declared as a deserter with effect from 30.4.1998 and was discharged from service with effect from 1.7.1999 on the ground that he was untraceable. The applicant did not receive any Court of Inquiry proceedings nor the discharge book of her husband. The letter dated 23.8.2001 would disclose that the respondents could not trace the applicant's husband. She also sent a petition on 7.11.2002 and 13.12.2005, to which nothing was turned. However, the 6th respondent instructed the Ex-Servicemen Board to conduct investigation and send a report. The 6th respondent requested the applicant to forward necessary documents for payment of claims despite the fact that applicant sent the same in her earlier letter dated 5.12.2007. However, necessary documents through Ex-Servicemen Board were sent on 4.4.2008. A reminder was also sent by the Ex-Servicemen Board on 25.6.2008 to the 6th respondent. Even though the

applicant was patiently waiting for all these years for the return of her loving and caring husband, it was not done nor the respondents had pity on her to sanction benevolent family pension to the applicant. She also made an application on 7.7.2009, to which the 6th respondent replied on 22.7.2009 stating that the claim of the applicant was under investigation. Due to the inaction of the respondents, she again made a petition to the Tamilnadu Ex-Services League, who also forwarded it to the respondents, but no action was taken for the said request. The applicant is in a state of utter poverty and was suffering with her family throughout all these years with her children. The children have grown up and now they are college going. The respondents being the guardian and custodian of its employees and their dependents and their welfare, they did not care the applicant for about 12 years and the said lapse or omission of the respondents is unjustifiable in the eye of law. She had to live a pathetic and poor life due to the fault of the respondents without any family pension nor her husband was restored. Her life along with children continues with mental trauma, numerous expenditure and she managed to borrow loans from various friends and relatives and could pass her livelihood. The said sufferings by the applicant and her family were due to the default or negligence of the respondents officers.

3. The alleged Court of Inquiry conducted for finding the applicant's husband as a deserter was not informed to the applicant nor any evidence

has been placed before the Court of Inquiry for declaring him as absent without any permission or leave. The very concept of declaring a person, who was not traceable as a deserter, is not known to law. Therefore, the entire Court of Inquiry proceedings declaring the applicant's husband as deserter was illegal and *non est*. The procedure to declare an individual as a deserter was not followed in the case of the applicant's husband. The order passed by the competent authority declaring the applicant's husband as deserter resulted in the discharge of her husband from the Territorial Army, could not be sustained. Therefore, the reliefs as asked for in the application may be ordered and thus the application be allowed.

4. The objections raised by the respondents in the Counter would be as follows :-

The applicant's husband Havildar S. Murugesan was enrolled on 16.10.1984 and he was absorbed into the battalion pipe band and thereafter attached with 105 Infantry Battalion (TA) RAJ RIF as part of Territorial Army band with effect from 19.11.1986. The applicant's husband was detailed on a temporary duty to then HQ ATNKK & G Area, vide movement order dated 20.4.1988 with permission to avail four days Casual leave prior to the commencement of his temporary duty. He availed four days Casual Leave from 22.4.1998 to 25.4.1998 and thereafter, he reported to duty at HQ ATNKK & G Area on 26.4.1998 to perform the duty of liaison NCO of Major

General (Retd) Risal Singh, AVSM, who was scheduled to visit Chennai from 26.4.1998 to 29.4.1998. On completion of the assigned task, he went missing with effect from 30.4.1998. The 105 Infantry Battalion (Territorial Army) RAJ RIF, initiated a signal on 17.6.1998 seeking information from HQ ATNKK & G Area regarding his whereabouts since he neither reported nor contacted 105 Infantry Battalion (Territorial Army) RAJ RIF as well as 117 Infantry Battalion (Territorial Army) The Guards and, therefore, his desertion roll was issued on 12.7.1998. A Court of Inquiry was convened by 105 Infantry Battalion on 12.7.1998 to investigate about his absence and he was finally declared as a 'deserter' by 117, Infantry Battalion (Territorial Army) The Guards, with effect from 30.4.1998. The Superintendent of Police, Madurai District, Tamilnadu State, also intimated that he was not traceable at the address given and his whereabouts were also not known. The applicant's husband Havildar S. Murugesan, was discharged from Territorial Army service with effect from 1.7.1999 on the grounds of being untraceable under the provisions of Territorial Army Act Rule 14(b) (iii) and 15 (i) of Territorial Army Regulations, 1948. The applicant approached higher authorities and Colonel of Regiment (Guards) for the grant of family pension. Records, The Guards asked 117 Infantry Battalion (Territorial Army) The Guards, to approach 105 Infantry Battalion (TA) RAJ RIF to convene a fresh court of Inquiry to re-asertain his whereabouts, who in turn, declined to carry out a fresh Court of Inquiry. Thereafter, Records The Guards asked

117 Infantry Battalion (TA) The Guards, to conduct a fresh Court of Inquiry based on the documents and reports available with them. Accordingly, Court of Inquiry was convened by 117 Infantry Battalion (TA) The Guards, declaring the applicant as 'missing and presumed dead'. On receipt of the Court of Inquiry report, Records The Guards forwarded the family pension papers to the applicant for completion and early return along with other requisite documents in their letter dated 22.8.2013. The family pension claim will be processed and will be sanctioned by PCDA (P), Allahabad, after it is adjudicated by it. The relief of grant of Special Family Pension from 29.4.1998 to pay the arrears with interest at 18% p.a. and a lump sum compensation of Rs.20 lakhs cannot be granted as per rules. Her ordinary family pension claim documents will be forwarded to PCDA (P), Allahabad, immediately on receipt of requisite documents from her. Therefore, the application filed by the applicant may be dismissed as unnecessary and devoid of merits.

5. On the above pleadings, the following points were framed for consideration in this application :-

- i) Whether the Court of Inquiry proceedings declaring the applicant's husband as deserter is illegal and non est in the eye of law and violative of principles of natural justice and liable to be set aside ?

- ii) Whether the applicant is entitled for Special Family Pension as prayed for in the application ?
- iii) Whether the applicant is entitled for a compensation of Rs.20 lakhs from the respondents for the reasons mentioned in Para-8 sub-para 3 (a) to (h) of the application ?
- iv) To what relief the applicant is entitled for ?

6. Heard Mr. B.A. Thayalan, Learned Counsel representing for Ms. Tonifia Miranda, Counsel for the applicant, and Mr. B. Shanthakumar, Learned Senior Panel Counsel, assisted by Major Suchithra Chellappan, Learned JAG Officer appearing for the respondents.

7. The Learned Counsel representing the Counsel for the applicant would submit in his argument that the applicant's husband was missing from Chennai when he was sent on temporary duty to HQ ATNKK & G Area, Chennai. The applicant's husband was admittedly on temporary duty and his belongings including the ID Card, uniform were found in the place, namely Nandini Guest House in ATNKK & G Area at Chennai, and it is for the respondents to explain as to how he was missing from the said place. The said factum of missing was not immediately informed by the authorities concerned at Chennai to the unit where he was attached in Delhi. He would

also submit that the factum of obtaining movement order by the applicant's husband was also not provided by the said authority so as to presume that he left Chennai for Delhi. He would also submit that the 105 Infantry Battalion (TA) RAJ RIF did not also inform the absence of the applicant's husband after the temporary duty assigned to him was over. But it was informed to the applicant on 17.6.1998 only, and it would show that the 105 Infantry Battalion (TA) RAJ RIF were not careful in their duty. It was also pointed out that only after 1½ years a Court of Inquiry was convened to investigate the absence of applicant's husband. He would further submit that the said Court of Inquiry was also not convened in accordance with the rules since the applicant's husband had not absented himself by over staying the leave granted to him or absented himself without availing any extension of leave. The declaration of the applicant's husband as deserter based on the investigation report of 117 Infantry Battalion (TA) The Guards was also not legally correct since the applicant's husband was missing during the temporary duty assigned to him at Chennai. He would further submit that the discharge of the applicant's husband on 1.7.1999 from the Territorial Army service on the grounds of being untraceable under Rule 14 (b) (iii) and 15 (i) of Territorial Army Regulations, 1948, is also not sustainable and are mutually contradictory. He would also submit that the subsequent Court of Inquiry convened by 117 Infantry Battalion (TA), The Guards, which came to the conclusion that the applicant's husband was presumed to be dead and

was not traceable, would show that the earlier Court of Inquiry held by 105 Infantry Battalion (TA) RAF RIF declaring the applicant's husband was void. He would also submit that once the applicant's husband was not found to be a deserter, the order of discharge passed against the applicant's husband would also be *non est* in the eye of law. He would further submit that the applicant being the widow of Havildar S. Murugesan, is entitled to Special Family Pension since her husband was untraceable and was presumed to be dead by a subsequent Court of Inquiry. He would insist in his argument that the applicant's husband was missing while he was performing a duty and for that he could not be blamed as absent without leave and be declared as 'deserter'. If really the applicant's husband was a deserter, he ought to have been traced by this time and suitable action should have been taken as per law. Instead of waiting for passing a lawful order, the applicant's husband was hurriedly discharged from service, which is unknown to law. He would also submit that the subsequent Court of Inquiry had found him 'untraceable and presumed to be dead' and, therefore, the applicant's husband ought to have been deemed in service till such date and the applicant should have been entitled to Special Family Pension. Contrary to that, the respondents have processed the papers for ordinary Family Pension belatedly, which is also not correct. He would further submit that the respondents even though well aware of the fact that the applicant's husband was missing from duty and was untraceable, had prolonged from paying the

arrears of pay or the Family Pension or the Special Family Pension from 1998 onwards despite repeated and frequent requests made by the applicant and they are responsible for the huge delay in making the applicant and her family to suffer. The Learned Counsel would also submit that the applicant and her young children were put to poverty without any payment from the respondents all these years which is more than 15 years, and are, therefore, liable to compensate the applicant and her family. He would, therefore, request that the claim of Rs.20 lakhs compensation is a just compensation and accordingly the application may be allowed as prayed for.

8. The Learned Senior Panel Counsel would submit in his argument that the applicant was found entitled for Family Pension and the pension papers were sent to the applicant for submission along with the requisite documents towards the sanction of Family Pension. The said move could be taken by the respondents only after the receipt of investigation report of the Court of Inquiry conducted by 117 Infantry Battalion (TA) The Guards finding that the applicant's husband was untraceable and was presumed to be dead. He would further submit in his argument that the first Court of Inquiry proceedings declaring the applicant's husband as 'deserter' was convened in accordance with law and since the applicant's husband was not reporting to duty, he was rightly declared as 'deserter'. He would also submit that after following the formalities, the applicant's husband was discharged from

service with effect from 1.7.1999. Therefore, the claim for Special Family Pension by the applicant cannot be sustained. In view of the fact that the applicant was found entitled to Family Pension and the pension papers were also sent to her, the claim for Special Family Pension for the missing of her husband is not sustainable. He would similarly submit that the claim of compensation of Rs.20 lakhs is not at all sustainable in view of the fact that the applicant's husband was ultimately found to be untraceable and presumed to be dead. There was no delay on the part of the respondents prior to such declaration made by 117 Infantry Battalion (TA) The Guards. Even otherwise, the claim for compensation at Rs.20 lakhs is highly excessive and the applicant is not entitled for such a tall claim. Therefore, he would request us to dismiss the application.

9. We have given anxious thoughts to the arguments advanced on either side. We have also perused the records.

10. **Points No.1 & 2:** The indisputable facts are that the applicant's husband Havildar S. Murugesan, was enrolled with the 4th respondent on 16.10.1984 and he was absorbed into the battalion pipe band and thereafter attached with 105 Infantry Battalion (TA) RAJ RIF with effect from 19.11.1986 as part of the Territorial Army band and thereafter, he was detailed on temporary duty to HQ ATNKK & G Area, Chennai, to perform a

liaison duty for Major General (Retd) Risal Singh, AVSM, who was scheduled to visit Chennai from 26.4.1998 to 29.4.1998. It is also an admitted fact that Havildar S. Murugesan was missing from 30.4.1998, after the completion of the assigned task.

11. The missing of Havildar S. Murugesan was certainly after the completion of duty, but he ought to have obtained a movement order for his move from Chennai to Delhi and then to proceed to his unit for reporting. It was also not disputed by the respondents that the uniform, ID card and other belongings of the applicant's husband Havildar Murugesan was found in Nandini Guest House itself where he was put on temporary duty. The said circumstances would lead us to presume that no movement order was given to the applicant's husband Havildar Murugesan to move from Chennai to Delhi for carrying the papers of the said Major General (Retd) Visal Singh. Therefore, it cannot be said that the duty assigned to him at Chennai was completed and he absented himself from the duty. The Court of Inquiry proceedings challenged in this application in which the applicant's husband Havildar Murugesan was declared as a 'deserter'. The said Court of Inquiry proceedings were initiated by 105 Infantry Battalion (TA) RAJ RIF on 12.7.1998. It was argued by the Learned Counsel for the applicant that it was not conducted properly and even the applicant wife of Havildar Murugan was not called for as a witness to ascertain as to whether he absented from

duty and was living with her. No doubt, the applicant was an important witness to prove as to whether the applicant was living with her or his presence at his native place. According to Rule-183(4) of The Army Rules, 1954, a Court of Inquiry constituted to decide as to the illegal absence of any individual shall examine all witnesses who may be desirous of coming forward to elicit the truth, but the important witness, namely the applicant, was not informed about the conduct of Court of Inquiry so as to ascertain the presence or the absence of Havildar Murugesan with the applicant. Therefore, the mandatory provision to examine all the witnesses required for finding the illegal absence of the individual was not followed. Moreover, the said Court of Inquiry proceedings were not produced for our perusal. Apart from that, on the basis of the declaration of the applicant's husband Havildar S. Murugesan as a 'deserter', he was stated to have been discharged from service with effect from 1st July, 1999 under Territorial Army Rule-14 (b) (iii) and 15(i) of Territorial Army Regulations, 1948. The provisions in Rule-14 (b) (iii) is related to discharge of a person from service. The provisions of 14 (b) (iii) is extracted hereunder for better appreciation :-

"14(b) Any such person may be discharged as hereinafter provided on any of the following grounds, namely

(i)

(ii)

(iii) That his services are no longer required."

12. In the above said Rule, it is mentioned about the discharge of a person from Territorial Army service, when his services are no longer required.

13. Therefore, the said provisions are not relevant to an individual who was missing or absented himself from service. Furthermore, the distinction between 'absent without leave' and the 'missing of any person' due to the kidnapping or killing by anti-social elements would be different and it could be decided only on production of definite evidence. When the applicant, the wife of Havildar S. Murugesan, was not examined by the impugned Court of Inquiry, how it could come to a conclusion that the applicant was a deserter, presumably alive somewhere. In the said circumstances, the Court of Inquiry convened on 12.7.1998, did not follow the procedures to declare the applicant's husband as a 'deserter'.

14. It is the case of the respondents that the applicant was discharged from Territorial Army service with effect from 1.7.1999. However, it was referred in the letter of Abhilek Brigade of The Guards Records, Kamptee, dated 14.2.2006, the applicant's husband was stated to have been dismissed from service in pursuance of the declaration by the Court of Inquiry as 'deserter'. In view of the finding reached by us that the impugned Court of

Inquiry dated 12.7.1998 was not in accordance with law, the order passed by the competent authority under Territorial Army Act Rule-14(b) (iii) and 15(i) of Territorial Army Regulations, 1948, and the action taken in pursuance of the Court of Inquiry convened on 12.7.1998, are not sustainable.

15. Apart from that, a fresh Court of Inquiry was admittedly convened by 117 Infantry Battalion (TA) The Guards, which concluded that the applicant's husband was 'missing and presumed dead'. The decision of the subsequent Court of Inquiry would make the earlier decision reached by the Court of Inquiry convened on 12.7.1998 declaring that the applicant's husband was a deserter, a nullity. On that aspect also, the discharge/dismissal order passed against the applicant's husband on 1.7.1999 could not be sustained. Therefore, the applicant's husband should have been construed as 'dead' on the date of the decision reached by the Court of Inquiry convened by 117 Infantry Battalion (TA) The Guards, and he cannot be construed as a 'deserter' or dismissed/discharged from Territorial Army service on and from 1.7.1999. Therefore, the Court of Inquiry proceedings held on 12.7.1998 is liable to be set aside as a nullity and *non-est* in the eye of law and violative of the principles of natural justice.

16. In the previous paragraphs, we find that the declaration regarding the applicant's husband as a 'deserter' was incorrect and the dismissal/discharge order passed against him on 1.7.1999 were also *non est* in the eye of law. Therefore, the applicant's husband should have been deemed in service till he is declared presumed to be dead. In the said circumstances, the Pension Regulations for the Army, 1961 (Part-I), which covers the Territorial Army also, would govern the situation. A Special Family Pension to the family of an individual could be granted if his death was due to wound, injury or disease which is attributable to military service or aggravated by military service. As far as this case is concerned, the applicant's husband was presumed to be dead after holding an inquiry by the Court of Inquiry by 117 Infantry Battalion (TA) The Guards. In the said circumstances, such a presumption of death even though after the service, could be considered in the course of service. Therefore, the death should have been considered as attributable to military service and the Next of Kin of individual (i.e.) Havildar Murugesan would be entitled to a Special Family Pension as per the provisions of Rules-213 and 214 of Pension Regulations for the Army, 1961 (Part-I). The applicant was seeking for particulars and the benefits arising out of the missing of her husband from June, 1998 onwards. She had also lodged an FIR in the year 2000 on a fond hope that her husband could be traced and be brought alive to live with her and family. The correspondence had by her throughout from 1998 onwards would go to show that the

applicant with her two children born to Havildar Murugesan, were suffering financially and were terribly put to difficulties to make both ends meet. However, no redressal was given nor any steps had been taken by the respondents for the purpose of granting legally payable benefits to her. She has filed this application before us on 8.2.2013. However, the respondents have come down to send the claim forms on 22.8.2013 only, for being filled up by her for the purpose of granting Family Pension payable to her from the date of the presumption of death of her husband. But it was not for the purpose of granting Special Family Pension. It was for an ordinary Family Pension. The respondents have notionally accepted to grant Family Pension by admitting the death of her husband on presumption and on the basis of the fact that the applicant's husband was missing while in service and thereafter, he was presumed to be dead. We have already found that the death of a person who was missing and was not traceable and presumed to be dead, would be amounting to death attributable to service, even though it was in civil side. In the said circumstances, the proposal sent by the respondents to the applicant should have been for Special Family Pension and not for ordinary Family Pension. In the said circumstances, the applicant is found entitled to Special Family Pension as sought for by her.

17. Having found that the impugned Court of Inquiry proceedings is not sustainable and the applicant is entitled for Special Family Pension from the

date of missing of her husband on presumption of his death, both the points are decided in favour of the applicant.

18. **Point No.3:** The applicant being an eligible widow of her husband was pressing for the status of her husband and was asking for financial help by providing the benefits accrued on his missing or the death of her husband. On a careful perusal of the documents, we find that she was continuously corresponding with the respondents from 1998 onwards till the date of application. In most of the letters, she was referring her plight against life without money and her financial status, without payment of the benefits payable due to the service of her husband. Nothing had turned the respondents despite they conducted a Court of Inquiry on 12.7.1998, which was also not in accordance with law. The subsequent Court of Inquiry found her husband was untraceable and presumed to be dead. Even after such change of circumstance, the respondents did not act swiftly to pass orders. In the said circumstances, the applicant and her family of two children suffered penniless due to the fault of the respondents. The said sufferings of the applicant with her family continued from 1998 onwards till this date, which is more than one decade. It is an admitted fact that the applicant's husband Havildar S. Murugesan rendered service to the Nation from 1984 till his date of missing. He was also presumed to be dead on a subsequent date, and his service would also be more than 15 years. In the said

circumstances, the respondents ought to have considered a regular payment of Family Pension since he was stated to have been discharged from service on and from 1.7.1999. That was also not done. The applicant and her family were suffering purely due to the lethargy of the respondents. The said sufferings even though could not be compensated with any money, we are of the considered view that the respondents shall pay a compensation of Rs.2 lakhs to the applicant, which may heal the damages caused to her. This point is accordingly decided.

19. **Point No.4:** In view of our findings held above, the application filed by the applicant seeking for Special Family Pension is allowed from the date of missing of her husband till this date as per law. In view of the fact that the applicant was suffering from 1998 onwards without money, it has become necessary for us to direct the respondents pay the applicant or to deposit a sum of Rs.4,00,000/- (Rupees Four lakhs only) to the credit of this Original Application, within a period of 30 days, so as to disburse the same to the applicant towards the arrears of benefits to be adjusted in the Pension Payment Order to be passed by the respondents, apart from the payment of balance arrears and the future Special Family Pension and future Family Pension and the compensation already ordered. Time for payment of the remaining arrears of pension and the issuance of Pension Payment Order and payment of compensation of Rs.2 lakhs, is three months. In default to

comply, the said arrears, will carry an interest of 12% p.a. from this date till it is paid.

20. With the aforesaid observations, the application is allowed with costs of Rs.5000/- of this application to be paid to the applicant.

Sd/-
LT GEN ANAND MOHAN VERMA
MEMBER (ADMINISTRATIVE)

Sd/-
JUSTICE V.PERIYA KARUPPIAH
MEMBER (JUDICIAL)

21.10.2013
(True Copy)

Member (J) – Index : Yes / No
Member (A) – Index : Yes / No

Internet : Yes / No
Internet : Yes / No

NCS

To,

1. Secretary to the Government,
Ministry of Defence,
South Block,
New Delhi 110011.
2. HQ ATNKK & G Area,
Chennai.
3. The Commanding officer,
105 Inf Bn (TA) RAJ RIF,
Delhi Cantt-110 010.
4. 117 INF Bn (TA) The Guards,
Tirucharapalli (Tamil Nadu).
5. Principal Controller of Defence Accounts,
Draupathi Ghat,
Allahabad, UP 211 014.
6. Abhilekh Brigade of the Guards Records,
Brigade of the Guards, Post Box No.19,
Kamptee 441 001.
7. Ms. Tonifia Miranda,
Counsel for applicant.
8. Mr. B. Shanthakumar, SPC
Counsel for respondents.
9. OIC, Legal Cell (Army),
ATNK & K Area HQ,
Chennai.
10. Library, AFT, Chennai.

**HON'BLE MR.JUSTICE V. PERIYA KARUPPIAH
MEMBER (JUDICIAL)
AND
HON'BLE LT GEN ANAND MOHAN VERMA
MEMBER (ADMINISTRATIVE)**

O.A.No.47 of 2013

21.10.2013