

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT
NEW DELHI**

T.A. No. 367/2010

[WP(C) No.4025/07 of Delhi High Court]

Smt. Shakun Sharma

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh.Anil Kumar Bakshi, Advocate with Sh.A.K.
Shukla, Advocate.

For respondents: Ms.Barkha Babbar, Advocate

CORAM:

**HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.
HON'BLE LT. GEN. M.L. NAIDU, MEMBER.**

**ORDER
25.03.2010**

1. The present petition has been transferred from
Hon'ble Delhi High Court to this Tribunal on its formation.

2. Petitioner by this petition has prayed that the
proceedings of unit court of inquiry and the declaration by the

Army Unit (3 Infantry Division Signal Regiment c/o. 56 APO) that her missing husband is a 'Deserter' since 05.11.2000 and her husband as 'missing' initially and thereafter 'presumed dead' on 25.01.2001 be set aside. She further prayed that the terminal/pensionary benefits may be granted to her in terms of Government of India letter dated 03rd June 1988.

3. Brief facts which are necessary for the disposal of present petition are that petitioner is legally wedded wife of Army person Lance Naik Pradeep Kumar of last unit 3 Infantry Division Signal Regiment c/o. 56 APO. She belongs to rural and humble background and her permanent home address is Village and Post Akoda, District Bhind, Madhya Pradesh. She has 4 children i.e. three daughters aged about 16 years, 14 years and 12 years and one son aged about 7 years. Her husband was enrolled in Army in March 1986 and his date of birth was 18.07.1967. He was placed in Signals Department of the Army dealing with Telecommunication within Army. Thereafter, he served in various Army units. In September, 1999, he was posted to unit 2 Infantry Division Signal Regiment in Leh (J&K). He last came on annual

leave in June/July, 2000. Petitioner used to receive regular phone calls from her husband. However, after January, 2001 when she did not get any call from her husband for sometime, she got worried and she made enquiries from her husband's last unit and she was informed that her husband had not reported to unit. A copy of Army unit letter dated 22.03.2001 is placed on record. After learning that her husband had not reported to Unit, she approached the Army Authorities vide letter dated 25.06.2001. The Army Authorities vide letter dated 26.06.2001 informed her that her husband had been declared deserter by his last unit. Thereafter, vide Army unit letter dated 25.07.2001, she was informed that her missing husband had been sent on temporary duty with Rs.12000/- for some unit work at Chandigarh and all service documents of her husband had been sent to Depot Regiment, Jabalpur and her husband had been declared 'deserter'. On 28.07.2001, her brother in law made a complaint to Police Station Umari (M.P.) regarding his missing brother. The said complaint was registered by Police Station Umari as 'missing person report serial no.7/2001'. Subsequently, vide Police Certificates dated 31.07.2004 and 04.10.2005, the Police has stated that nothing was known about her missing husband. After

that, she approached the office of District Sainik Welfare Board Jabalpur and vide letter dated 31.07.2001, the Army Authorities were requested for necessary action in her case. Thereafter, she went from pillar to post but without any result. Ultimately, she was driven to file the present writ petition before the Hon'ble Delhi High Court which was transferred to this Tribunal on its formation.

4. A reply was filed by the respondents wherein they took the position that a court of inquiry was held against the petitioner's husband for his illegal absence and he was declared deserter on 05th November, 2000. It is pointed out that the petitioner's husband has gone home instead of reporting to 'N' area of Chandigarh where he was ordered for reporting. It is also pointed out that petitioner's husband had left the unit on 25.01.2001. It is also pointed out that he was habitual defaulter and he was guilty of overstay leave and absenting himself without leave several occasions.

5. Be that as it may but the facts remains that since 2001, petitioner's husband has not reported alive. For all practical

purposes, petitioner's husband is missing. In such matters, a order was issued by the Government of India dated 03.06.1988 which mitigates the hardships, which reads as under :-

"No. 12 (16)/86/D Pens/(Sers)
Govt. of India/Bharat Sarkar
Ministry of Defence/Raksha Mantralaya

New Delhi, Dated 3rd June, 1988

To,

The Chief of the Army Staff,
The Chief of the Naval Staff,
The Chief of the Air Staff,

Subject : REPLEASE OF DCRG, LEAVE ENCASHMENT AND
 FAMILY PENSION IN RESPECT OF ARMED FORCES
 PERSONNEL WHO ARE MISSING.

Sir,

A number of cases have been referred to this Ministry for grant of terminal and other pensionary benefits to the families of service personnel who have suddenly disappeared while in operational and non-operational service and whose whereabouts are not known. At present all such cases are considered on merits. In the normal course unless a period of 7 years has elapsed from the date of disappearance of the employee, he cannot be deemed to be dead and therefore, the retirement benefits cannot be paid to the family. This principle is based on Section 108 of the Indian Evidence Act which provides that when the question is whether the man is alive or dead and it is proved that he had not been heard of for 7 years by those who would naturally have heard of him had he been alive, the burden of proving that he is alive is shifted to the person who affirms it. This has resulted in grate hardship and distress to the families who have to wait for 7 years before any terminal benefits could be paid to them.

2. The President is therefore, pleased to decide that when a member of the Indian Armed Forces is declared missing while in service the family will be paid the following benefits subject to

adjustment of outstanding dues in respect of the missing personnel, if any:-

Immediately after date of declaration of disappearance:

The amount of salary due, leave encashment due and DSOP/AFPP Fund amount subject to nomination made by the missing personnel

After lapse of one year from the date of declaration of disappearance/presumption of death:

Family pension and DCRG etc. as admissible in normal conditions.

3. The above benefits may be sanctioned after observing the following formalities:-

The family must lodge a report with the concerned Police Station and obtain a report that the employee has not been traced after all efforts had been made by the police.

The claimant will be required to furnish an indemnity bond with two solvent sureties to the effect that all payments thus made will be recovered from the amount due to the person if he/she reappears and makes any claim.

4. The family can apply to the concerned authority for grant of family pension and DCR Gratuity after one year from the date of declaration of disappearance of the service personnel in accordance with the procedure for sanction of family pension and DCR Gratuity. In case the disbursement of DCR Gratuity is not effected within 3 months of the date of application, the interest shall be paid at the rates applicable and responsibility for the delay fixed.

5. In case of officers, the respective Branch/Dte at Service HQrs and in the case of JCOs/OR and equivalent in Navy and Air Force, their respective Records Offices will process such cases with CDA (O)/PAO/CDA (P)/CDA (Navy)/CDA (Air Force).

6. The provisions of this letter take effect from 29th Aug 86.

7. This issues with the concurrence of the Finance Division of this Ministry vide their UO No.802-Pen of 1988.

Sd/-
(Y.K. Talwar)

Desk Officer”

6. Previously if the incumbent is not found alive for a period of seven years then he was presumed to be dead as per Section 108 of the Indian Evidence Act. This rigour has now been reduced by this order and by virtue of this order, immediately after date of declaration of disappearance the amount of salary due, leave encashment due and DSOP/AFPP Fund amount subject to nomination made by the missing personnel should be issued after lapse of one year from the date of declaration of disappearance/presumption of death and family pension and DCRG etc. as admissible in normal conditions. Those benefits should be released to the incumbent after observing the formalities like family must lodge a report with the concerned Police Station and obtain a report that the employee has not been traced after all efforts had been made by the Police. Second, that the claimant will be required to furnish an indemnity bond with two solvent sureties to the effect that all payments thus made will be recovered from the amount due to the person if he/she reappears and makes any claim. The family can apply to the concerned Authority for grant of family pension and DCR Gratuity after one year from the date of declaration of disappearance of the service

personnel in accordance with the procedure for sanction of family pension and DCR Gratuity. In case the disbursement of DCR Gratuity is not effected within 3 months of the date of application, the interest shall be paid at the rates applicable and responsibility for the delay fixed.

7. This benevolent order of the Government should have been implemented in letter and spirit when the petitioner has already produced the Missing Report of the Police Station, Umari, M.P. and the one year should be counted from the date of disappearance of the incumbent. It appears that Authorities were either not aware of this order or they deliberately ignored the order. This is regrettable act and a responsibility should be fixed that why so much delay has been caused in the payment to the petitioner.

8. Accordingly, we allow this petition and set aside the order passed by the Authorities declaring him deserter and direct the respondents to release the entire amount which is due to the petitioner as per the order dated 03.06.1988 and a proper enquiry

should be made who is responsible for causing this delay. All the arrears of the amount should be worked out and paid to the petitioner within three months from today with interest @ 12%. Petitioner is also entitled to the cost which is quantified in the sum of Rs.10,000/-.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
March 25, 2010.