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**COURT NO. 3,
ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

**T.A. No. 501 of 2009
(Delhi High Court W.P (C) No. 1813 of 1992)**

IN THE MATTER OF:

**Ex Sigmn Amin Lal (deceased) through widow Smt Santra Devi
(legal representative)Applicant**
Through Mr N.L Bareja counsel for the applicant

Versus

Union of India and OthersRespondents
Through: Mr Ankur Chhiber counsel for the respondents

CORAM:

**HON'BLE JUSTICE MANAK MOHTA, JUDICIAL MEMBER,
HON'BLE LT GEN Z.U.SHAH, ADMINISTRATIVE MEMBER**

Order

Date: 21 -5-2010

1. The applicant filed a writ petition (civil) No. 1813/1992 in the Hon'ble Delhi High Court. The applicant has prayed that the order of the dismissal wef 16/10/73 be quashed and he be reinstated in service

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wef 10/8/70 with all consequential benefits including pension. During the pendency of writ petition applicant Ex Sigmn Amin Lal expired on 1/6/94 thereafter his widow was brought on record being legal representative vide order dated 1/9/1994 by Hon'ble Delhi High Court. The same was transferred to the Armed Forces Tribunal on 23/9/2009 on its constitution.

2. The relevant facts in brief are that the applicant was enrolled in the Army on 11/11/55 for a period of 7 years colour and 8 years reserve service. The applicant was transferred to reserve establishment on 27/4/65 but again recalled to active service on 25/9/65. He was transferred to reserve again on 3/4/66.

3. The applicant was called to report for reservist training at Jabalpur from 10/8/1970 to 20/9/70 vide letter dated 16/7/1970 but claims that he did not receive the same. In any case the applicant claims that he was not required to attend the said training as he was not left with more than six months of service from the date of conclusion of the training ie 20/9/1970, this being his last year of service in the reserve.

4. The applicant became due for pension on 11/11/70 but did not receive the same. On his query he was informed that he was not eligible for any pension as he had not reported for biennial training at Jabalpur on 10/8/70. He had been declared as a deserter wef 10/8/1970 and later dismissed from service wef 16/10/73.

5. The applicant submits that had he received the letter dated 16/7/1970 he would have reported for training to earn pay and allowances for the training period. He would not have risked his pensionary benefits also. No apprehension roll was issued. Despite repeated queries the respondents did not give a copy of call notice or court of inquiry to the applicant.

6. The applicant has prayed that the order of the dismissal wef 16/10/73 be quashed and he be reinstated in service wef 18/8/70 with all consequential benefits, including pension.

7. In a further application under sec 151 CPC dated 28/10/93 the applicant has stated that Govt sanction dated 02/7/93 has been accorded for grant of reservist pension (Annexure P-1) wef 11/11/70. The applicant had however been deprived of his retirement benefits for a

long period and therefore respondents are liable to pay interest at 18 percent. He has quoted the case of Kerala and ORS Vs M Padmanabhan Nair (AIR 1985 SC 356). In addition the applicant claims that he has also been denied several other privileges available to ex servicemen. In aforesaid application he has prayed that directions be issued for payment of interest at 18 % for the period of 23 years during which his pension was illegally withheld and also exemplary costs for the suffering and non provision of various privileges available to ex-servicemen.

8. The respondents in the reply have stated that the applicant has already been granted reservist pension and the order of dismissal has already been cancelled on 02/7/93. All the prayers in the main writ petition have been granted and therefore the writ petition has become infructuous. The application move for interest makes it a new prayer. This is not maintainable. Even otherwise the applicant is not entitled to any interest. The loss suffered by the applicant is due to his own fault and there is no provision for payment of interest on pension. The respondents in reply to application filed under Sec 151 CPC further mentioned that call up notice was sent on 16/7/70 to his last home

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address. This was received back with the remarks that the applicant did not live there. Another letter was sent to DSS & A Board, Jaipur to intimate the whereabouts of the applicant. The whereabouts were not given. The applicant was then declared a deserter from 10/8/70 and subsequently dismissed from service wef 16/10/73.

9. In a rejoinder affidavit the applicant's widow (since applicant had expired by the time) has stated that the applicant, her husband, was deprived of his pension because of the fault of the respondents. The applicant should not have been called for training and was entitled to grant of pensionary benefits due to him wef 11/11/70. The applicant's widow has prayed that interest be paid on the pension for 23 years.

10. We have heard the arguments and perused the records. The respondents attempted to obtain the correct address of the applicant since he had moved without intimating the same to the respondents. There was no other recourse than to declare the applicant as a deserter on 10/8/70. Until this order remained the applicant was not eligible for pension. The applicant filed a writ against the order of dismissal and for

pensionary benefits on 14/5/1992. Thus it is clear that the applicant himself was responsible for the delay to claim redress and pension. The order for payment of pension was passed on 02/7/1993 by which his order of dismissal dated 16/10/73 was cancelled and he was granted pension. Thus from a perusal of the record the respondents alone can not be held responsible for delay in sanctioning pension. Thus the main relief sought in the writ petition has been granted but as per the applicant claims for interest and cost remained. We have considered the submissions made in this respect and have perused the record. We have considered the judgements cited by the applicant in the case of State of Kerala Vs M Padmanabhan Nair (1985) 1 Supreme Court of case 429. In that case the payment of gratuity and pension etc were delayed due the non submission of Last Pay Certificate (LPC). This was not adequate justification for delayed payment. Likewise in case of R Kapoor Vs Director Inspection (Services Law Reporter 1994(5) Page 116, payment of gratuity was withheld on the ground that claim of damages for unauthorised occupation was pending. This again was ruled as unjustified cause for withholding payment. In these cases interest was awarded. This is not the position in the present case and do not help the applicant. Furthermore interest as penalty or damages has not been

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claimed in the original application. Interest has been demanded vide separate application under Sec 151 CPC dated 28/10/92. Therefore the claim of interest on pension is not tenable. The applicant has been paid pension and his widow is now in receipt of family pension. He is therefore not entitled to interest on the same. However in view of the extreme delay in passing the order of revocation in 1993 during which the applicant was deprived of retirement benefits. Because of the mental agony suffered by the applicant we direct that a sum of Rs 10,000/- be paid by the respondents as a special cost to the applicant.

MANAK MOHTA
(Judicial Member)

Z.U.SHAH
(Administrative Member)

Announced in the open court

Dated: 21-5-2010