

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

TA No.642/2009

[WP (Civil) No. 2009/2008 of Delhi High Court]

Kanta Devi

.....Petitioner

Versus

Union of India & Others

.....Respondents

For petitioner: Retd. Col. S.R. Kalkal, Advocate.

For respondents: Sh. Gaurav Liberhan, Advocate.

CORAM:

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

ORDER

04.02.2010

1. The present petition was transferred from Hon'ble Delhi High Court to this Tribunal on its constitution.

2. The petitioner has prayed for quashing of the order dated 07.01.1999 discharging her husband late Nk. Jagbir Singh. The petitioner has as a consequence sought release of special family pension with effect from the date of demise of her husband along with

arrears. The petitioner also prays for damages and compensation for incorrect medical treatment of her late husband which resulted in early demise.

3. Brief facts of the case are that the late husband of the petitioner late Nk. Jagbir Singh enrolled in the Army on 10.07.1985. While serving in the Army late Nk. Jagbir Singh had suffered from unbearable migraine like pain in the head. Usually, he was prescribed pain killer tablets for the complaint. At times the individual consumed alcohol in order to suppress the ailment. He was punished a couple of times for consuming alcohol.

4. In March, 1997, he was admitted in the psychiatric ward where instead of proper investigation he was subjected to Electric Current Therapy (ECT). On 30.11.1998, the husband of the petitioner was issued a show cause notice because of five red-ink entry punishments in his record and discharged from service on 07.01.1999. He was discharged in 'Category AYE' despite the previous instances of admission in the Military Hospital.

5. The condition of late Nk Jagbir Singh was such that he had to be brought home by two other Jawans from his Unit. Immediately

thereafter he was taken to a private Nursing Home at Gohana. He was immediately shifted to PGIMS, Rohtak being in a critical state.

6. At PGIMS Rohtak, a CT scan of the head was taken on 12.01.1999. he was examined by Head of the Department of PGIMS Rohtak on 13.01.1999 with the Diagnosis 'Aducuplus' and further advised 'Neuro Surgery Consultation for PAG for VP (Ventesical Pesitonal Shunt)'.

7. Late Nk. Jagbir singh was taken to PGI Chandigarh for consultation on the same i.e. 13.01.1999. On the same day, the individual expired at 1700 hours while on his return.

8. We have heard learned counsel for the parties and perused the record.

9. The learned counsel for the petitioner made an averment to state that the husband of the petitioner was discharged illegally, because no inquiry was carried out nor his response to the show cause notice obtained. Besides, the language in the show cause notice did not adhere to the provisions of Army Rule 13 (3) (iii) (v) under which it was issued, and therefore, is illegal. Besides, the instructions laid down

for “Procedure for the Removal of undesirable and inefficient JCOs, WO and OR” dated 28th December, 1988 was not adhered to. The individual was sent to the Military Hospital, Meerut for the Release Medical Board on 04.01.1999 and the proceedings were finalised on the same day, apparently without proper medical examination.

10. The learned counsel for the petitioner further argued that the very fact that individual died on 13.01.1999 after his discharge on 07.01.1999, clearly indicates his state of health. It is obvious that the Medical Authorities have wrongly diagnosed and treated the patient leading to his early demise.

11. The learned counsel for the respondents argued that the procedure adopted for local discharge of the individual was correct and norms adhered to the Army Rule 13. There are several judgments which uphold the procedure so adopted in this case. Since the petitioner died after being discharge as ‘undesirable’ he was not entitled to any pension. Consequently, the widow is not entitled to special family pension. She has been awarded normal family pension.

12. Having heard the learned counsels on both sides, we are of the opinion that the very fact that the individual was discharged from

the Army on 07.01.1999 in Category AYE died within six days i.e. on 13.01.1999 due to medical treatment appears to be incomprehensible. The Death Certificate and supporting medical documents indicate that the individual was suffering from some serious ailment in the head (brain). Therefore, in this case Appendix II, Entitlement Rules for Casualty Pensionary Awards, 1982, paras 10 and 11; and Section IV para 178, Pension Regulations of the Army, 1961 can be applied in order to review the case.

13. In view of the foregoing, we direct the respondents to review the medical records of the individual, both prior to his discharge and post discharge. Should the investigation/review uphold the contention of the petitioner, then financial dues as applicable may be released. The exercise may be completed within 90 days of this order. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
February 4, 2010.