

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

15.

O. A. No. 34 of 2010

Smt. Barfai Devi

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh. S. N. Sharma, Advocate.

For respondents: Sh. Ankur Chhibber, Advocate.

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.

HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER

9.3.2011

1. Petitioner by this petition has prayed that the relevant record in respect of the husband of the petitioner may be summoned and to consider the case of husband of the petitioner sympathetically and convert the dismissal from the service into discharge or invalidated out and grant the disability pension under Rule 173 of the Army Pension Regulations 1961 part I.

2. Petitioner is wife of Nk Hazari Lal who has been declared as a deserter. The petitioner's husband was enrolled on 18th March 1987 and while serving in Mountain Division he suffered Sensori Neural Deafness due to unusual sound of weapon firing and the Medical Board assessed that the disease of the husband of the petitioner is aggravated by the Military Service. The husband of the petitioner was brought before a Medical Board in 1998 and the Medical Board assessed the disease of the husband of the petitioner as aggravated by Military Service due to exposure to the weapon firing. In 2001, he was posted to the 27 Raj Put Regiment and came under the attack of the mental depression and was admitted to the Military Hospital Chandimandir on 3rd January 2001. It appears that he left the Military Hospital without any permission from

the authorities and it was after good six years when he came back in the year 2007 to home and the Army authorities declared him deserter w.e.f. 1st March 2007 and dismissed from service by the order dated 19th April 2004. It is also alleged that this order was never communicated to the petitioner. Thereafter the petitioner i.e. the wife of Nk. Hazari Lal started making request for grant of a family pension through mercy petitions but without any result and ultimately she filed the present petition before this Tribunal.

3. A reply was filed by the respondents and respondents in their reply pointed out that the petitioner was undergoing a treatment in the Military Hospital at Chandimandir and he ran away from that place and after 30 days of his absence a Court of Inquiry was conducted for investigation and regarding action against his absence without due authority. As per the Court of Inquiry, Commanding Officer of 27 Raj Put Regiment declared him deserter on 1st March 2001 and the petitioner's husband was dismissed from service on 19th April 2004 by the order of Commandant Raj Put Regiment. Since he was deserter he could not be brought before an Invalidating Medical Board.

4. Learned counsel for the petitioner submitted that no such intimation was sent to the petitioner about the whereabouts of her husband and it was she who informed about her husband when he returned home in 2007. Learned counsel for the petitioner submitted that wife of Nk. Hazari Lal may be granted some pensionary benefit or some pension to survive. But the question is that once the petitioner has been dismissed from service, he cannot be given any benefit unless the order of dismissal is declared bad. Under Regulation 113 a person who is dismissed from service is disentitled to any pension or gratuity but on a representation if made before the competent authority, the President can grant a pension to the petitioner within the limit prescribed under

Regulation 113. So far as this Court is concerned, since petitioner's husband has been dismissed and declared a deserter and order of dismissal has not been challenged before us, we cannot go into the merits of the dismissal order. However, if the version of the petitioner is accepted that her husband became a mental case and was not found for last good six years after he has escaped from the Military Hospital Chandimandir and he was brought back after six years i.e. in 2007, therefore, some benefit could be given to her. Looking to the predicament of the old lady, we only can suggest that she can make a representation before the authorities making out a case that since her husband who was not in a fit mental condition escaped from the hospital and was not there for good six years and he is still in the mental state of total derailed condition, therefore her case may be considered sympathetically for grant of some pension to survive under Note 113. She may make a representation under the Note 113 and we hope and trust that if such a representation is made by the petitioner, the authorities may take a liberal view in the matter as her husband is a total mental case so that she can get something to survive. The authorities shall consider the matter sympathetically and pass an appropriate order in case she makes a representation within a period of one month and same may be disposed of within two months thereafter.

5. The petition is accordingly disposed of.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
March 9, 2011