

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

32.

O. A. No. 462 of 2010

Smt. Geeta Devi

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh. S. M. Dalal, Advocate.

For respondents: Sh. Ajai Bhalla, Advocate.

CORAM:

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

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

ORDER

21.4.2011

1. Petitioner by this petition has prayed that the impugned order dated 12th April 2010 may be set aside and declare the order dated 24th November 1999 of the Government of India, Ministry of Defence as *ultra vires* of the Article 21 of the Constitution of India and direct the respondents to grant dependent pension to the petitioner with effect from 1st January 1997 with interest @ 12% per annum.

2. Petitioner is the mother of the deceased Rajender Kumar. He was Ex-DEME and was recruited in the Navy on 31st January 1996 after successfully passing the basic training at INS Chilka. The deceased son of the petitioner was undergoing a training at INS Shivaji at Lonavala and he disappeared on 1st January 1997 and thereafter he was missing as he did not report on duty for training and he was declared deserter. It is also alleged that petitioner's son was found missing and he

was declared deserter and no steps were taken to find out the whereabouts of the boy and when the boy was not found the parents ultimately filed the FIR and sought the directions from the Court to find out the boy whether dead or alive. A petition was filed before the Hon'ble Delhi High Court and the Hon'ble Delhi High Court passed an order directing to conduct a one man enquiry to find out the whereabouts of the boy. The enquiry was conducted by the respondents and report of the enquiry was placed before the Hon'ble Delhi High Court. The Hon'ble High Court in its order dated 11th November 2008 reproduced the findings of the enquiry and found that since the boy was not found alive for the last seven years therefore he is presumed to be dead as per Section 108 of the Evidence Act and the High Court also found that since the boy was missing and he has not been heard alive for the last more than seven years, therefore, he is presumed to be dead and necessary steps may be taken for grant of pensionary benefits to the parents of the petitioner in accordance with the rules. The matter was again examined by the respondents in light of the directions of the Hon'ble Delhi High Court and a proper speaking order was passed by the respondents on 12th April 2010. It was observed that as per the entitlement rules at appendix 5 of Navy Pension Regulations and Government Order dated 31st January 2001 the dependant family pension is admissible in case where death has been accepted as attributable to or aggravated by the military service. Under the circumstances mentioned in category 'B' and 'C' of para 4 of the Government's order dated 31st January 2001 and it has been further observed that since the death has not occurred on account of the circumstances mentioned in category 'C' therefore petitioner is not entitled to any special family pension. So far as the ordinary family pension is concerned there also an income criteria has been fixed i.e. the dependant's income should not exceed more than Rs. 3,500/- per month plus

dearness relief and in the present case the petitioner's annual income mentioned by the petitioner was Rs.1,01,500 that exceeds the monetary criteria fixed by the Government in their policy decision. Therefore the petitioner is not entitled to special family pension or an ordinary family pension. Aggrieved by this the petitioner has filed the present petition before this Tribunal.

3. A reply has been filed by the respondents and the respondents has alleged that a search was carried out to locate the petitioner's son around the establishment as per the established procedure and at Police Station Lonavala an FIR was also registered to locate the sailor but he was not found nor any abnormal incident occurred in the establishment. Moreover the Police Station at Laxmangarh and Sikar in Rajasthan were also informed to find out the whereabouts of the petitioner's son but no such information was received from any quarter. Then again it is also pointed out that in view of the directions given by the Hon'ble Delhi High Court an officer was appointed to make an investigation about the whereabouts of the boy and he submitted a report before the Hon'ble Delhi High Court and the Hon'ble Delhi High Court felt satisfied and no further directions were issued except to examine the case of grant of a dependant pension to the petitioner and the issue of dependant pension was examined by the authorities in accordance with Navy Regulations and Government order bearing on the subject. Since petitioner's income was more than Rs. 3,500/- per month therefore she could not be given an ordinary family pension and so far as the special family pension is concerned that too also is regulated by the rules and there also it has to be established that the death is attributable to or aggravated by the military service but there is no such correlation of the death of the petitioner's son

With the military service and as such the petitioner is not entitled to special family pension also.

4. We have heard learned counsel for the parties at length and gone through the record and after examining the record we find that so far as the issue with regard to missing of the petitioner's son is concerned a proper investigation has already been done by the authorities and also in view of the directions given by the Hon'ble Delhi High Court but they could not find out the actual cause of missing of the petitioner's son. Therefore the only option left is to presume that the boy is dead when he has not been reported dead or alive for the last seven years as per Section 108 of the Evidence Act. Therefore so far as the issue of survival of the boy is concerned that clinch because of the legal presumption. Next question is with regard to grant of family pension to the parents i.e. special family pension as well as the ordinary family pension. Both these aspects were examined by the authorities as discussed above and we are of the opinion that so far as the special family pension is concerned, the correlation of death with the military service has to be established which was not done in the present case. So far as the ordinary family pension is concerned there the Government has laid down a criteria of the income of the dependant and in that case also the income of the petitioner is more than Rs. 3,500/- per month. Therefore the petitioner is not entitled to ordinary family pension on that count.

5. However, before parting with the case we would like to observe that in the present economic scenario when inflation is sky rocketing meagre amount of Rs.3,500/- per month as dependent income is too low. The Government should consider the proportionate increase in dependent income otherwise Rs. 3,500/- per

month is too meagre in the present context. We hope and trust that the Government will look into the matter and proportionately increase the amount from Rs. 3,500/- per month to a reasonable amount so that the dependents could get at least some solace in loss of their kith and kin.

6. In the present case the boy was entrusted to the Navy and he has not been found alive, the parents have lost their son and the reasons are not known therefore a presumption has been drawn that the boy has fictionally died but that would not be any solace to the parents. It is admitted position that the boy was undergoing a training with the Naval authorities and the Naval authorities have failed to report whether the petitioner's son has died or ran away and under what circumstances he died is still a mystery. Be that as it may, the parents need to be appropriately compensated because the boy was with the Naval authorities for undergoing a training. The respondents owe a definite responsibility for safe conduct of the son of the petitioner. Therefore in these circumstances we think that a sum of Rs.1 lakh should be granted to the petitioner if she has not received any ex-gratia amount.

7. Hence we do not find any merit in this petition and same is disposed of with no order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
April 21, 2011