

**COURT NO. 2, ARMED FORCES TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**OA No. 36 of 2016 with MA 16/2016**

**Smt Tar Kanwar**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant** : Mr. V.S. Kadian, Advocate

**For Respondents** : Mr. Shyam Narayan, Advocate

**CORAM :**

**HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER(J)**

**HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)**

**ORDER**

**MA 16/2016**

The applicant vide this application seeks condonation of 23510 days in filing the OA which for reasons mentioned therein taking into account the demise of the applicant late husband Late Sep Sakat Singh, Army No. 1699 on 04.11.2006, coupled with the factum that the applicant suffers from 100% blindness as brought through the records in view of verification of Annexures A-2 and A-3 submitted to the rejoinder affidavit of the applicant dated 26.09.2018, which verification has been submitted by the respondents on 26.07.2024 as verified by the Zila Sainik Kalyan Adhikari, Jaisalmer, we consider it appropriate to allow the prayer seeking condonation of the delay in

institution of the OA in view of the judgments of the Hon'ble Supreme Court in the matter of **UoI & Ors Vs Tarsem Singh 2009(1)AISLJ 371** and in **Ex Sep Chain Singh Vs Union of India & Ors (Civil Appeal No. 30073/2017)** and the reasons mentioned in the application. Thus, the MA 16/2016 is allowed despite opposition on behalf of the respondents and the delay of 23510 days in filing the OA 36/2016 is thus condoned. The MA is disposed of accordingly.

2. The applicant vide the present O.A 36/2016 has made the following prayers:-

- “(a) quash and set aside the impugned letter No. 0960/Pre-64/F-Pen dated 15.10.2015. And/or*
- (b) direct respondents to make husband of the applicant entitled to mustering out pension and accordingly family pension to the applicant with effect from date of death her husband i.e. 04.11.2006. And/or*
- (c) direct respondents to pay due arrears of family pension with interest @12% per annum from the date of death of her husband. And/or*
- (d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost against the respondents.”*

3. Late Ex. Sep Sakat Singh No. 1699 was enrolled in the Army on 03.06.1941 in Kota Umed Infantry and was discharged from service on 31.03.1951. The cause of his discharge as averred vide Counter Affidavit dated 05.05.2016 filed on behalf of the respondents has been endorsed as **“Mustered Out”**. He had rendered 09 years, 09 months and 28 days of service in the Army. As averred in the said

counter affidavit of the respondents, as per the records available with the Grenadiers Records, Late Ex. Sep Sakat Singh was not granted any type of pension after discharge from service as he had not rendered minimum 15 years of qualifying service according to the respondents, for grant of service pension as per the rules. The applicant herein has submitted to the effect that she is the widow of Late Sep Sakat Singh, Army No. 1699 and seeks the grant of mustering out pension to her late husband from the date of mustering out till his demise. The applicant also seeks family pension from the date of demise of the late Sep Sakat Singh, Army No. 1699. The respondents vide their Counter Affidavit dated 05.05.2016 stated to the effect that the name of Smt. Tar Kanwar( the applicant herein) is not found recorded under the column Heirs to Estate/ Family Pension in the Long Roll maintained by the Grenadiers records and submits that as per the records the name of next kin(NOK) is recorded as Prem Singh (Brother). The respondents further submits that the individual(i.e. an apparent reference to Late Sep Sakat Singh) did not change the NOK during his life time and the widow also did not inform anything during the period of preservation of service records i.e. 25 years after discharge. Vide rejoinder with an affidavit dated 26.09.2018, the applicant has submitted to the effect that her late

husband Ex Sep Sakat Singh participated in the Second World War during his service period and that she is presently in receipt of the Second World War pension from the Govt. of Rajasthan and placed on record a copy of the letter dated 30.08.2017 issued by the District Welfare Officer, Jaisalmer regarding submission of the life certificate for Second World War pension. The applicant submits that her name is mentioned in Sr. No. 26 of this letter as under:-

**ANNEXURE A- 2** TYPED COPY FOLLOWING

प्रमाण नं. - 02992-260029  
फॉर्म नं. - 02992-260029  
ई-मेल आईडी - zska-jai-rj@nic.in

**राजस्थान सरकार**  
**जिला सैनिक कल्याण कार्यालय, जैसलमेर**

क्रमांक एफ/जी.प्र.प./जि.सै.कका/जैस/2017/1142 दिनांक: 30 अगस्त 2017

1. श्रीमती जमना W/o सगत सिंह Vpo- सांकडिया पोकरण जैसलमेर
2. श्रीमती हर कंवर W/o दुर्गर सिंह Vpo- डेलासर जैसलमेर
3. श्रीमती साकू कंवर W/o कुशल सिंह Vpo- छायाण पोकरण जैसलमेर
4. श्रीमती गीरा कंवर W/o माणक सिंह Vpo- डेलासर जैसलमेर
5. श्रीमती पदम कंवर W/o भाखर सिंह Vpo- खेतासर, सांकडा पोकरण जैसलमेर
6. श्रीमती केकू कंवर W/o भंवर सिंह Vpo- सिनावडा पोकरण जैसलमेर
7. श्रीमती सिर कंवर W/o विजयराज सिंह Vpo- सिनावडा पोकरण जैसलमेर
8. श्रीमती हर कंवर W/o प्रयाग सिंह Vpo- मोहनगढ जैसलमेर
9. श्रीमती इन्द्र कंवर W/o सौवल सिंह Vpo- माधोपुरा, सांकडा पोकरण जैसलमेर
10. श्रीमती मोहरो कंवर W/o उत्तम सिंह Vpo- राजमथाई पोकरण जैसलमेर
11. श्रीमती हेम कंवर W/o ओम सिंह Vpo- सत्याया, पोकरण जैसलमेर
12. श्रीमती तार कंवर W/o सबल सिंह Vpo- पुनमनगर, जैसलमेर
13. श्रीमती नैत कंवर W/o विजय सिंह Vpo- केलावा, पोकरण जैसलमेर
14. श्रीमती सीता बाई W/o राय सिंह Vpo- हमीरा, जैसलमेर
15. श्रीमती रूकमणी बाई W/o भोजराज सिंह Vpo- सरदार सिंह की दाणी, पोकरण जैसलमेर
16. श्रीमती चन्द्र कंवर W/o पल्ले सिंह Vpo- सरदार सिंह की दाणी, पोकरण जैसलमेर
17. श्रीमती प्रयाग कंवर W/o सबल सिंह Vpo- हमीरा, जैसलमेर
18. श्रीमती इन्द्र कंवर W/o अलसी सिंह Vpo- भादरिया, जैसलमेर
19. श्रीमती धापु कंवर W/o विजय सिंह Vpo- करनो की दाणी, जैसलमेर
20. श्रीमती गज्जर कंवर W/o कल्याण सिंह Vpo- सरदार सिंह की दाणी, पोकरण जैसलमेर
21. श्रीमती गेहर कंवर W/o अमय सिंह Vpo- हमीरा, जैसलमेर
22. श्रीमती उदय कंवर W/o सांग सिंह Vpo- बरडाणा, पोकरण जैसलमेर
23. श्रीमती जेहू देवी W/o हेम राम Vpo- जावरा, पोकरण जैसलमेर
24. श्रीमती गवरी कंवर W/o राज सिंह Vpo- बाधवा, जैसलमेर
25. श्रीमती गीर कंवर W/o हण सिंह Vpo- एका पोकरण जैसलमेर
26. श्रीमती तार कंवर W/o सगत सिंह Vpo- बरडाणा, पोकरण जैसलमेर
27. श्रीमती भंवर कंवर W/o दान सिंह Vpo- सांकडा, पोकरण जैसलमेर
28. श्रीमती केकू कंवर W/o भंवर सिंह Vpo- सिनावडा पोकरण जैसलमेर

(Copyed copy follows)

विषय :- द्वितीय विश्व युद्ध पेन्शन के लिए जीवन प्रमाण पत्र भिजवाने बाबत।

उपरोक्त विषय लेख है कि आपका जीवन प्रमाण पत्र इस कार्यालय को प्राप्त नहीं हुआ है। इस कार्यालय द्वारा आपको द्वितीय विश्व युद्ध की पेंशन राशि का भुगतान किया जा रहा है। अतः सलंगन जीवन प्रमाण पत्र दिनांक 30 सितम्बर 2017 तक पूर्ण कर ग्राम सरपंच से प्रमाणित कर भिजवाये नहीं तो आपकी पेंशन रोक ली जावेगी इसलिए जीवन प्रमाण पत्र नहीं मिलने से उचित राशि पुनः राजकोष में जमा करा दी जावेगी।

अतः आपको जीवन प्रमाण पत्र की प्रति सलंगन कर लेख है कि अविलम्ब जीवन प्रमाण पत्र इस कार्यालय को भिजवाये इसके साथ-साथ अपने फोन/मोबाइल नम्बर एवं बैंक का नाम खाता संख्या एवं शाखा का पता अवश्य अंकित करें।

सलंगन - जीवन प्रमाण पत्र

जिला सैनिक कल्याण अधिकारी  
जसलमेर  
जिला सैनिक कल्याण अधिकारी  
जसलमेर

4. Inter alia, the applicant has placed on record as Annexure A-1 to the Rejoinder, a discharge certificate [IAFY-1964] of Army/Regt. No. 1699 Sep Sakat Singh which states as scanned as under:-

ANNEXURE A / In Regt. of IAFY-1964 70

7351 For use in Substitution of Original/Lost Discharge Certificate [IAFY-1964]

(1) Personal/Army/Regt. No. 1699 (2) Rank Sep

(3) Name SAKAT SINGH (4) Regt/Comp. 1699 SEP

(5) Address Village PAKHRA PO. PAKHRA

Thana BAKHRA Dist. RAJASMEER

(6) The abovenamed individual having stated that he has lost his discharge certificate and as copies of the discharge certificate cannot be supplied the following details of his service are furnished -

(7) Date of enlistment 05 JAN 1944 In (REGIMENT) (Regt)

(8) Date of discharge 31 MAR 1951 In (REGIMENT) (Regt)

(9) Cause of discharge MUSTERED OUT

which document is issued by the O I/C of the Grenadiers. The applicant further submits that she is a handicapped person suffering from permanent disability of Blindness @100% disability and has submitted Annexure-A3 as issued by the Govt. of Rajasthan in relation thereto.

5. The matter was reserved for orders vide order dated 26.09.2023. Vide order dated 07.02.2024, it was considered essential that the documents filed by the applicant with the rejoinder affidavit dated 26.09.2018 on 27.09.2018, i.e. Annexure A2 and Annexure A-3, be verified within a period of two weeks by the respondents, in view of the averments that had been made on behalf of the respondents in their Counter affidavit stating to the effect that the applicant's name is not recorded as being the Next of Kin(NOK) of Late Ex Sep Sakat Singh of the Brigadier Records of Army No. 1699.


6. The respondents pursuant thereto on 26.07.2024 submitted the copy of the letter dated 23.07.2024 of Col. A.S. Baryawal, SM(Retd) with the Zila Sainik Kalyan Adhikari, Jaisalmer with duly attested and signed copies of the documents annexed at Annexures A-2 and A-3 to the Rejoinder affidavit of the applicant dated 26.09.2018 filed on 25.09.2018 along with the Life Certificate qua the applicant as on 24.07.2024. The said verification thus establishes that the applicant


Smt Tar Kanwar is the widow of the Late Ex. Sep Sakat Singh No. 1699. The said verification report also establishes that the applicant suffers from 100% blindness. The said verification report also establishes that Late Ex. Sep Sakat Singh No. 1699 had also participated in the Second World War. The Life Certificate that has been submitted by the respondents vide this letter dated 23.07.2024 of the Zila Sainik Kalyan Adhikari, Jaisalmer, which reads to the effect:-

:- जीवन प्रमाण पत्र :-

यह प्रमाणित किया जाता है कि श्रीमती तार कंचर पत्नी नं. 1699 सिपाही स्व० सगत सिंह निवासी बरडाना तहसील पोकरण जिला जैसलमेर आज दिनांक 24.07.2024 तक जीवित है। यह भी प्रमाणित किया जाता है कि उक्त वीरगना के पति ने द्वितीय विश्व युद्ध के समय सैन्य सेवा की थी इसके बाद कहीं भी नहीं की है। इनको द्वितीय विश्व युद्ध की पेंशन के अलावा केन्द्र सरकार/राज्य सरकार या अन्य उपक्रम से किसी प्रकार की पेंशन/सहायता राशि नहीं मिल रही है। इनका धियरण निम्न है -

बैंक का नाम स्टेट बैंक ऑफ़ इंडिया, पोकरण  
 बैंक का पता नगरपालिका पोकरण, के सामने  
 खाता सं. 61014642654  
 मोबाईल नं. 8619222485

  
 प्रमुख अधिकार पेंशन  
 दिनांक 24/07/24  
 जैसलमेर

  
 आगरोचक/प्रधानाचार्य  
 या अन्य राजपत्रित अधिकारी  
 कर्नल ए.एम. वापकत, ब्रेना मेरत (रे.मि.)  
 जिला सैनिक कल्याण अधिकारी  
 जैसलमेर

*Sainik*  
 D-79/101

also establishes that the applicant is not in receipt of any other pension or any assistance from the government.

7. The Counter affidavit filed by the respondents dated 05.05.2016 establishes that the Late Ex. Sep Sakat Singh No. 1699 was **mustered out** on **31.03.1951** from the Kota Umed Infantry. The Long Roll annexed at R-1 to the counter affidavit of the respondents also brings out categorically that the applicant's late husband was mustered out on 31.03.1951. The counter affidavit of the respondents vide parawise reply Para- 1 at page 39 of the record categorically states to the effect:-

*“1. That the contents of para 1 of the Original Application are not admitted, hence denied. It is submitted that as per the Long Roll maintained by The Grenadiers Records casually for Mustering Out has been recorded, but grant of Mustering Out or any type of pension has not been recorded. Photocopy of relevant page of Long Roll is enclosed herewith and marked as Annexure R-1.”*

**thus brings forth that there was no mustering out pension paid to the applicant's late husband.**

8. The applicant has submitted vide Para 4.4 of the OA that her husband made representations for grant of pensionary benefits but the same was to no avail. The respondents however through their Counter affidavit have not admitted the assertions made in Para 4.4 of the OA

and have rather stated that till the time the individual was alive he never petitioned for pension or any other issue and that he never made any correspondence with the Grenadiers Records after retirement till death. The respondents have further submitted to the effect that the instant OA has been filed after a lapse of 65 years and in terms of Section-22(c) of the AFT Act, 2007, the prayers made by the applicant cannot be granted.

9. That the applicant's late husband was entitled for mustering out pension is apparent in view of the admission of the respondents that the applicant's **late husband was mustered out wef 31.03.1951** and thus in terms of Section-316 (b) forming part of Sub-Section-XVI of Pension Regulations for the Army in India, Part II and rules made by the Governor General, 1940 which reads to the effect:-

*"316. Viceroy's commissioned officers and other ranks of the Indian Army, and similar ranks holding combatant status in ancillary services, including reservists.*

*The Governor General may, at his discretion, sanction the grant of mustering-out pensions and gratuities individuals of the above categories in the following circumstances:*

*(a) Discharge on account of the disbandment of a unit and consequent elimination of its reserve.*

*(b) Discharge on account of reduction of establishment.*

*(c) Discharge on becoming unsuitable for retention owing to a change of class composition, provided that the individual cannot be absorbed in another unit.*

***(d) In any other circumstances approved by Governor General.”,***

he was clearly entitled to the grant of mustering out pension.

10. The verdict of the Hon'ble High Court of Rajasthan dated 14.07.2008 in S.B. Civil Writ Petition No. 3617/2006 in ***Smt. Fef Kanwar Vs. UOI & Ors***, placed reliance on observations in Para-9 of the verdict of the Hon'ble High Court of Rajasthan in ***Smt. Sajjan Kanwar vs UOI & Ors***. dated 21.03.2005 which read to the effect:-

***“9. In view of the discussion made the writ petition is allowed. The letters dated 13.12.1945 and 12.3.1947 (Annex.R/1 and R/2) are set-aside and the directions are issued to the Government to calculate the mustering out pension to the petitioner from the date of disengagement in the Army. The same be calculated and made over to the helpless widow, the petitioner herein who may be on the verge of her life tenure. A further direction is issued to the respondents to find out the entitlement of the petitioner with regard to family pension after death of her husband and if she be entitled to the same to make over it to her as expeditiously as possible. The directions issued by this court must be complied within a period of two months from today. This Court does not find it to be a case where the petitioner may also be entitled to interest or costs.”***

11. The petitioner's late husband was held entitled to the mustering out pension despite his having worked only 5 years, 3 months and 12 days with the qualifying service for grant of pension being 10 years and despite the factum that the applicant in that case

Smt. Fef Kanwar was claiming pension for services rendered by her husband in the Indian Army w.e.f. 19.07.1942 to 01.11.1947.

12. Vide order dated 30.05.2013 in *Smt. Chunki Devi Vs. UOI & Ors.* in OA 24/2011 of the AFT(RB), Jaipur, the applicant's late husband No. 3138517 Late Sep Nanu Ram was mustered out on 27.12.1954 after rendering 6 years 11 months and 19 days of service and was enrolled again on 09.09.1950 in the Indian Army in Jat Regiment and was again mustered out on 27.12.1954 after rendering 4 years 3 months 18 days of service and participated in the Second World War and expired on 07.01.1999, and the applicant thereof Smt. Chunki Devi was held entitled to the grant of special mustering out pension till the date of her husband as per Regulations 164 & 167 of the Pension Regulations for the Army, 1961 with effect from 27.12.1954 and thereafter family pension apart from directions for payment of the arrears of mustering out pension to be paid with interest @8% p.a.

13. The facts of the instant case of the applicant Smt. Tar Kanwar are in *pari materia* with the facts of the case in *Smt. Chunki Devi vs. UOI & Ors.* in OA 24/2011 and we find no reason to differ from the ratio of the said order as well as from the observations of the Hon'ble High Court of Rajasthan dated 14.07.2008 in S.B. Civil Writ Petition

No. 3617/2006 in *Smt. Fef Kanwar Vs. UOI & Ors.* and from the judgment dated in *Smt. Sajjan Kanwar vs UOI & Ors.* dated 21.03.2005. Furthermore, the scale of mustering out pension and gratuities as detailed in Section-318 of the Pension Regulations for the Army in India Part II 1940 at IX thereof are to the effect:-

***“318. Scale of mustering out pensions and gratuities  
The following is the scale on which mustering- out  
pension or gratuity may be sanctioned :-  
I. Other than the Indian Hospital Corps;***

Categories	Qualifying Service	Mustering- out pension or gratuity
(i) Risaldar- Major, Subadar-majors, risaldars and subadars.	24 years and over. 21 to 23 years.	Maximum ordinary pension admissible for their rank and grade.
(ii) Jemadars	20 years and over	Ordinary Pension admissible after 24 years qualifying service.
(iii) Warrant officers, class I, ex- capt head clerks.  Do.	21 years and over.  18 to 20 years.	Maximum ordinary pension admissible for their rank.  Ordinary pension admissible after 21 years' qualifying service.
(iv) Warrant officers, class 1. head clerks	21 years and over.  18 to 20 years.	Maximum ordinary pension admissible for their rank.  Ordinary pension admissible after 21 years' qualifying service
(v) Warrant officers, class II	18 years and over.	Ordinary pension admissible after 21 years' qualifying service

(vi) N. C. Os. and men who have, on the date of mustering out, qualified by length of service for an ordinary pension.	-----	Next higher rate of ordinary pension, if any, admissible for their rank and grade.
(vii) Viceroy's commissioned officers, warrant officers, and non-commissioned officers who have not qualified by length of service for an ordinary pension.	15 years and over	Lowest rate of ordinary pension admissible for their rank and grade.
(viii) Viceroy's commissioned officers, warrant officers, non-commissioned officers	10 years and over but under 15 years.	Special pension admissible for their rank and grade after 15 years' qualifying service.
(ix) Sepoys and those ranking such	10 years and over but under 15 years.	Lowest rate of ordinary pension admissible for their rank and grade
(x) Viceroy's commissioned officers, warrant officers, non-commissioned officers and men.	5 years and over but under 10 years	Gratuity of 11 months' pay including g.o., proficiency, g.s. pay and grade pay for each completed year of qualifying service.
(xi) Viceroy's commissioned officers, warrant officers, non-commissioned officers and men.	3 years and over but under 10 years	Gratuity of six months' pay including g.o., proficiency or g.s. pay and grade pay.
(xi) Viceroy's commissioned officers, warrant officers, non-commissioned officers	Under 3 years	Gratuity of three months' pay including g.o., proficiency or g.s. pay and grade pay

and men.		
----------	--	--

”

14. The applicant's late husband's period of service is recorded as 9 years 9 months and 28 days in the Army. In terms of Section-318 of the Pension Regulations for the Army in India Part II 1940 reproduced hereinabove, the qualifying length of service required for mustering out pension and gratuity as detailed as 10 years and over but under 15 years. In relation thereto, a contention has been raised on behalf of the applicant that as the husband of the applicant has been mustered out due to reduction of strength of Army service after World War II, his service period is to be counted double the normal period as per the Government of India, Ministry of Defence letter dated 30.04.2015 and thus the husband of the applicant is entitled for the grant of mustering out pension as per the Pension Regulations for the Army in India Part II 1940 as he had completed 9 years 9 months and 27 days and was thus entitled for condonation of shortfall of service as per Section-217 of the Pension Regulations for the Army in India Part II 1940:-

***“217. Condonation of a deficiency in service.***

***Except in the case of***

***(a) an individual who retires voluntarily,***

***b) an individual who is eligible for mustering-out pension or gratuity under sub-section XVI of section IV,***

or

*(e) an individual who is invalided with less than 15 years' service, deficiencies in service may be condoned by a competent authority up to six months in each case."*

15. Vide order dated 12.05.2016, the respondents were directed to file an affidavit relating to the existence or otherwise of the Government of India, Ministry of Defence dated 30.04.1951 of which there is a mention in the verdict of the Hon'ble High Court of Rajasthan in Sajjan Kanwar's case annexed as Annexure A-3 to the OA. The respondents vide the affidavit filed on 09.07.2018 vide Para-5 stated to the effect:-

*"5. That the Govt. of India, Min. of Def letter year 1951 with contents that service of any war will be counted as double is not held with this establishment. However the applicant herself has attested copy of Govt. of India, MoD letter No.F/142/50/4109/D/(GD) dated 30 Apr 1951 with OA No.36/2016 regarding Mustering Out concession for State Force personnel who served Ex State in a Field Service Area. As per ibid letter, if an individual elects the option to receive Mustering Out concession under the normal State Forces Rules, he will be entitled to count his service rendered ex- state as double for purpose of pension and gratuity, if admissible under the respective State Force Rules. In the instant case, it is observed that no such option was found to be exercised by the deceased soldier. Had the option been exercised by him, he would have been granted pension as applicable either by State Forces or by the Army."*

16. The contents of Para-5 of the compliance affidavit filed by the respondents dated 19.07.2016 does not refute specifically that such letter dated 30.04.1951 had not been issued and rather state that it is not held with this establishment. Furthermore, the respondents state that the applicant's late husband had not exercised the option to receive Mustering out concession under the normal State Force Rules and thus not entitled to count his service rendered ex-state as double for purpose of pension and gratuity and state that if the option had been exercised by him, he would have been granted pension as applicable either by State Forces or by the Army. Significantly, vide the judgment dated 21.03.2005 of the Hon'ble High Court of Rajasthan in *Smt. Sajjan Kanwar vs UOI & Ors.* 2005(3) WLC 152, it has been categorically observed vide Paras-5,6,7,8 thereof to the effect:-

*"5. I have heard learned counsel for the parties and with their assistance examined the records of the case. The entitlement of individual for mustering out pension and gratuity is governed by Regulation 310 of the Pension Regulations for the Armed Forces in India, 1940 (Hereinafter to be referred in short as 'the Regulations of 1940'), which is quoted as under;*

*"316. Viceroy's Commissioned Officer and other Ranks of the Indian Army and similar rank holding combatant status in ancillary services, including Reservist.*

*The Governor General may, at his discretion, sanction the grant of mustering out the pension and gratuity to the individuals of above categories in the following circumstances:-*

*(a) Discharge on account of disbandment of a unit and consequent elimination of its reserve.*

*(b) Discharge on account of reduction of establishment.*

*(c) Discharge on becoming unsuitable for retention owing to change of class composition, provided that the individual cannot be absorbed in another unit.*

*(d) In any other circumstances approved by the Governor General."*

*6. It is not disputed during the course of arguments that the petitioner was disengaged of his second tenure on account of reduction in the Armed Forces. It is thus an admitted position that the case of the petitioner is covered under Clause (a) of Regulation 316 of the Regulations of 1940. In so far as the plea raised by the learned counsel appearing for the Union of India that the husband of the petitioner had not rendered 10 years of service is concerned, the same is factually incorrect. The combined two periods if counted, the husband of the petitioner had served Armed Services for more than 14 years. Even if, it is to be assumed that the petitioner after he was first engaged voluntarily left service, in the second period the husband of the petitioner had served in Army was more than 6 years. It is an admitted position as would be clear from the pleadings made in paragraph 7 and corresponding para of the written statement that the service of an Armed Personnel if rendered during World War II, shall have to be counted double for the purpose of pensionary benefits. This pleading has been made in paragraph 7, on the basis of Government of India, Ministry of Defence's letter dated 30.4.1951. If the first period of engagement of the husband of the petitioner is excluded even then he is deemed to have rendered double of service of his second, engagement which comes out to more than 10 years.*

*7. Indeed there is considerable delay in filing the present writ petition/The cause as such in the present case with regard to the pension is however a recurring one. The petition thus cannot be dismissed only on the*

*ground of delay and laches, the court was, however, inclined to limit the relief to the petitioner for three years immediately preceding filing of the present writ petition but the learned counsel for the petitioner has brought to my notice the judgment of the Hon'ble Supreme Court in S.K. Mastan Bee v. General Manager, South Central Railway and Anr., 2003-1 LLJ 328, where in the matter of pension laches did not come in the way of the petitioner in getting the full and complete relief.*

*8. The learned counsel appearing for the respondents Union of India has half-heartedly urged that the language employed in Regulation 316 of the Regulations of 1940 is such that it is always in the discretion of the concerned authority to grant mustering out pension and gratuity or not. The husband of the petitioner had thus no right which may be indefeasible in any circumstances whatsoever. This contention of the learned counsel for the Union of India has to be rejected as the Regulation cannot be interpreted in such a way that in two identical cases the competent authority may grant mustering out pension to one and deny to the other. If, therefore, Rule is tested on the anvil of Article 14 of the Constitution of India, the same shall perhaps have to be struck down. In the circumstances, the aforesaid Rule has to be read down and made applicable to all who may answer the pre-requisites for entitlement to mustering out or family pension."*

17. Vide Para-8 reproduced hereinabove in *Smt. Sajjan Kanwar*(Supra), it has been categorically observed that the Regulation-316 of the Pension Regulations for the Army in India Part II 1940 has to be read down to be made applicable to all who may answer the pre-requisites for entitlement to mustering out or family pension.

**CONCLUSION**

18. In these circumstances and taking into account the verdict of the Hon'ble Supreme Court in *S.K. Mastan Bee v. General Manager, South Central Railway and Anr.*, 2003-1 LLJ 328, we consider it appropriate to direct the respondents to calculate and sanction the mustering out pension of the No. 1699 Ex Sep Sakat Singh husband of the applicant from the date of disengagement in the Army and to make the payment of the same to the applicant with further directions to the respondents to make the payment of family pension to the applicant from the day next after the demise of the applicant's late husband who expired on 04.11.2006.

19. The arrears of the mustering out pension as well as the family pension be paid to the applicant by the respondents within a period of three months, failing which, the applicant would be entitled to interest @ 6% p.a, till the date of payment.

Pronounced in the open Court on the 30<sup>th</sup> day of August, 2024.

[REAR ADMIRAL ~~DHIREN VIG~~  
MEMBER (A)

[JUSTICE ANU MALHOTRA]  
MEMBER (J)

/TS/