

COURT No.3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

17

OA 355/2018

Smt Kabita W/o Ex Rfn Naresh Kumar Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Sukhbir Singh, Advocate proxy for
Mr. V S Kadian, Advocate
For Respondents : Mr. K.K. Tyagi, Sr. CGSC with
Maj Arjun Singh Chauhan, OIC Legal Cell

CORAM

HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)
HON'BLE RASIKA CHAUBE, MEMBER (A)

ORDER
24.09.2025

The applicant who is widow of Ex Rfn Naresh Kumar has filed this application seeking both the disability pension and the family pension after the death of her husband.

2. The facts as enumerated shows that the late husband of the applicant was enrolled in the Indian Army as soldier on 12.12.2000 and he was locally discharged from service on 13.04.2010 by an Administrative Order of the Commanding Officer 21 Rajputana Rifles as undesirable soldier under item 13(3) III(V) of the Army Rules, 1954.

3. Late Ex Rfn Naresh Kumar was challenged his order of discharge vide OA 202/2011. This OA was however, dismissed and

his discharge was upheld vide order dated 25.05.2011. He was, however, given a liberty and to make a representation in the form of Mercy Petition to the authorities concerned, as he had put in 09 years and 122 days of service but along with his wife was also suffering from HIV.

4. This liberty to file a mercy petition was extended to the applicant on compassionate ground and the authorities were also directed to consider the matter sympathetically. Despite this direction, Ex Rfn Naresh Kumar did not file any representation or Mercy Petition during his lifetime, as was directed vide order dated 25.05.2011 in OA 202/2011. Thereafter, he passed away on 26.06.2015.

5. Following his death, his wife had filed a Mercy Petition dated 28.07.2015 for grant of financial benefits, as it is reflected from the letter No. 89553/COAS/RAJ RIF/Inf-6(Pers) dated 13.08.2015 addressed to Records RAJ Rifles. This letter also indicates that one petition dated 31.06.2015 was also submitted seeking grant of service pension. This Mercy Petition of the widow was decided and rejected by the OIC Records on 02.05.2017.

6. As per the policy of the order No. 4(24)/2015/D(Pen/Legal) issued by the Government of India, MoD, Department of Ex-Servicemen Welfare dated 01.09.2016, the authority to decide a Mercy Petition which is preferred beyond the period of two years from the date of cashiering/dismissal/removal

from service lies with the Secretary Department of Ex-Servicemen Welfare. Since the Mercy Petition of the applicant has been decided by the authority who had no power to do so. The respondents are directed to reconsider the Mercy Petition filed by the applicant and to have it decided afresh by the authority concerned i.e., Secretary Department of Ex-Servicemen Welfare. This exercise shall be completed within a period of twelve weeks, and a speaking order be passed. We expected that the authority concerned will keep in view that the sentiments expressed by the Tribunal vide order dated 25.05.2011.

7. With these directions, this present application (OA 355/2018) stands disposed of.

(JUSTICE NANDITA DUBEY)
MEMBER (J)

(RASIKA CHAUBE)
MEMBER (A)

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