

SANTOSH DEVI

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v.

UNION OF INDIA. & ORS.

(Civil Appeal No. 4853 of 2016)

MAY 06, 2016

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[T. S. THAKUR, CJI AND R. BANUMATHI, J.]

Family Pension – Entitlement – To the next of kin of deceased territorial army personnel – Who died in disembodied state and who had not put in pensionable service – Held: When the territorial army personnel are in disembodied state, their service conditions are governed by Territorial Army Act, 1948 and not by Army Act, 1950 – As per the existing rules no family pension is payable to the legal heir of a territorial army personnel, who died during disembodied state and who had not put in pensionable service – However, such rule has led to a patent anomaly – The authorities concerned, despite having taken note of such anomaly have not taken any steps to rectify the same – The State is required to remove the anomalies and pay family pension to the next of kin of the deceased territorial army personnel who die while in disembodied state, by giving due weightage to their embodied service – In view of the peculiar facts and circumstances of the present case, in the interest of justice and in exercise of power under Art. 142 of the Constitution, award of ex-gratia grant of Rs. 10 lakhs – Territorial Army Act, 1948 – Army Act, 1950 – Pension Regulations for the Army, 1961 – Circulars dated 11.6.1985, 3.2.1998 and 12.11.2008 of Government of India, Ministry of Defence – Constitution of India – Art. 142.

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Disposing of the appeal, the Court

HELD: 1. The terms and conditions of service of personnel belonging to the regular Indian Army and the personnel belonging to Territorial Army are governed by two different Acts. The former is governed by Army Act, 1950 while the latter is governed by the Territorial Army Act, 1948. In terms of Section 9 of Territorial Army Act every officer/ enrolled person, when called out or embodied or attached to the regular army shall, subject to suitable adaptation, be subject to the provisions of the Army Act

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A 1950 and the rules and regulations made thereunder. When an
enrolled person is in disembodied state, he is not subject to the
Army Act and is not entitled to pay and allowances or other
entitlement as also medical allied benefits. Also their
disembodiment period is not counted as a qualifying service even
B for service pension. When the Territorial Army personnel are in
a disembodied state, then the Territorial Army Act, 1948 governs
their service conditions and this is the statutory scheme. Thus,
as per the existing rules, no family pension is payable to the legal
heir of a territorial army personnel who died during disembodied
state and who has not put in pensionable service. [Paras 10 and
C 16] [423-C-E; 425-G]

2. In the present case, it is an admitted position that the
deceased was disembodied on 31.03.2008 much before the new
Pension Regulations for the Army, 2008 came into effect.
Therefore, he was not in service on 01.07.2008 and hence new
D regulations cannot be pressed into service. The new regulations
are applicable only to those who were in service as on 01.07.2008
or thereafter. Therefore, the claim of the appellant cannot be
tested on the new Pension Regulations for the Army, 2008. The
entitlement of the appellant to family pension has to be examined
E in the light of the provisions of the Pension Regulations for the
Army, 1961 read with Government of India, Ministry of Defence
circulars dated 11.06.1985, 03.02.1998 and lastly circular dated
12.11.2008.[Paras 15 and 16] [425-D, E]

3. The rule that no family pension is payable to the legal
heir of a territorial army personnel who died during disembodied
F state and who has not put in pensionable service, has led to a
patent anomaly. Such anomaly was pointed out by Major, Addl.
Offr./TA-3, TA DTE, GS Branch in his inputs for VIth Pay
Commission dated 09.03.2007 thereby recommending to do the
needful to render fair treatment to Territorial Army personnel.
G Even though the anomalies have been taken note of by the
concerned authorities, the respondents have not so far taken
any decision to rectify the anomalies to give fair treatment to the
Territorial Army personnel by granting family pension to 'next of
kin' of Territorial Army personnel who die while in disembodied
state. Territorial Army personnel actually remain on rolls till they
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are retired from service and they are liable to be called out for military service at any time. During disembodiment, Territorial Army personnel wait in reserve. Ministry of Defence Report (Declassified on 18.02.2016) of the Committee of Experts constituted for Reduction of Litigation, Review of Service & Pension Matters 2015 has also recommended that families of Territorial Army personnels should not be refused family pension. In spite of repeated recommendations, no steps are being taken to remove the anomalies to pay family pension to 'next of kin' of Territorial Army personnel who rendered long service in Territorial Army and died while in disembodied state. Union of India should consider the issue favourably to remove the anomalies to pay appropriate family pension to next of kin of Territorial Army personnel who die while in disembodied state by giving due weightage to their embodied service. [Paras 17 and 18] [425-H; 426-A-B, H; 427-B, C, E-F]

4. Considering the peculiar facts and circumstances of the present case and the plight of the appellant, in the interest of justice and in exercise of power under Article 142 of the Constitution of India, it would be appropriate to award *ex-gratia* grant of rupees ten lakhs payable to the appellant. The impugned order of the tribunal is accordingly modified. [Paras 19 and 20] [427-H; 428-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4853 of 2016.

From the Judgment and Order dated 13.05.2011 of the Armed Forces Tribunal, Chandigarh Bench at Chandimandir in T. A. No. 242 of 2009.

N. K. Ghai, Naresh Kumar, Ravinder Kumar Singh, Advs. for the Appellant.

R. Balasubramanian, R. S. Nagar, R. K. Verma, Santosh Kumar, B. V. Balaram Das, Advs. for the Respondents.

The Judgment of the Court was delivered by

R. BANUMATHI, J. 1. Leave granted.

2. This appeal is preferred against the judgment dated 13.05.2011 passed by the Armed Forces Tribunal, Chandigarh in T.A. No.242 of 2009 dismissing the application filed by the appellant seeking family

A pension for the death of her husband Ex. Sepoy Raj Singh.

3. Undisputed facts of the case are as follows:- Raj Singh was enrolled in the 103 Infantry Battalion (Territorial Army) on 17.05.1995. He was disembodied from service with effect from 31.03.2008 under Rule 20 of the Territorial Army Rules, 1948 and during disembodiment Raj Singh died at his home on 04.08.2008 due to heart attack. Raj Singh rendered a total service of eleven years and two hundred eighty nine days. The family pension was denied to the appellant vide letter dated 12.12.2008 stating that as per the existing rules, territorial army personnel who died during disembodied state without completing fifteen years of embodied service are not entitled for service pension. The appellant, being the wife of the deceased, served a legal notice upon the respondents on 05.01.2009 for release of death-cum-retirement gratuity, service gratuity and family pension. The department issued a demand draft dated 21.10.2009 for Rs.1,82,448/- in favour of the appellant on account of service gratuity and death-cum-retirement gratuity. Aggrieved thereof, appellant preferred Writ Petition No.16566 of 2009 seeking direction against the respondents to release the family pension. Upon constitution of Armed Forces Tribunal, Chandigarh, the writ petition was transferred to the Armed Forces Tribunal, Chandigarh and renumbered as T.A. No.242 of 2009 before the Tribunal.

4. The Tribunal vide impugned order dated 13.05.2011 dismissed the application *inter alia* holding that, Raj Singh did not have the requisite minimum qualifying embodied service of fifteen years to earn service pension, and hence upon his death while he was in disembodied state, the appellant was not entitled to family pension. The tribunal held that persons in territorial army cannot at all times be treated on par with the army personnel, the territorial army personnel while in disembodied state does not stand on the same footing as compared to regular army personnel and thus held that the appellant was not entitled to family pension. Contention of the appellant that denial of family pension to 'next of kin' of territorial army personnel who died in harness while in disembodied state is discriminatory and violative of Article 14 of the Constitution of India, was held untenable.

5. Relying upon Regulation 289 of the Pension Regulation for Army (Part-I) 1961 Edition, Mr. Naresh Kumar learned counsel for the appellant has contended that the Pension Regulation for Army 1961 apply to the regular army personnel as well as to the personnel of territorial army in

certain contingencies. Learned counsel for the appellant therefore, submitted that, denial of family pension to the appellant when her husband admittedly died in harness is not justified when such a benefit is extended to the widow of a regular army personnel who died in harness. The Government circular dated 11.06.1985, especially paragraph 3(ii) thereof, read with subsequent circulars dated 30.10.1987, 03.02.1998 and 12.11.2008 was also pressed into service by the counsel for the appellant to substantiate his argument. It was contended that there is no statutory rule denying family pension to Territorial Army personnel dying at home and since the territorial army reservists during disembodied state are liable to be called at any time, failure of which is treated as absence without leave, denial of family pension in the event of Territorial Army personnel dying natural death during disembodied state would be arbitrary and discriminatory. Reliance was also placed upon judgments of various High Courts and tribunals.

6. Mr. Balasubramanian, learned counsel appearing for Union of India at the outset fairly submitted that the Pension Regulations for the army govern the entitlement to various types of pensions including, family pension to family of deceased regular army personnel, as well as to family of deceased personnel of the territorial army, read with various circulars that are issued by the Government of India from time to time. But it was strenuously canvassed before us by the learned counsel for the Union of India that, in the case of family pension to the family of deceased personnel of the Territorial Army, the entitlement has to flow either from the fact that the deceased soldier had put in minimum qualifying embodied service of fifteen years, and thus had become entitled to service pension, in which case the family pension gets granted to the widow or other eligible person(s) as per rules, or alternatively, the deceased ought to have died in harness when he was in an embodied state i.e., while he was on active duty having been called out or attached to any part of the regular army. Conversely, it was argued that if the death had occurred when the deceased was in a disembodied state, and if the deceased individual had not put in minimum period of qualifying service of fifteen years, then the entitlement to family pension arising out of death in harness would not arise. In this regard the counsel for the Union of India drew our attention to Pension Regulations for the Army, Part-I (2008) which has superseded the Pension Regulations for the Army 1961 with effect from 01.07.2008. Our attention was especially drawn to Section 2 titled 'Ordinary Family Pension' Regulation 62, which

A *inter alia* lays down that, the regulations shall not apply to the members of the Territorial Army other than those who die while rendering ‘embodied service’ or after retirement with pension under the said Regulations.

7. We have considered the rival submissions and also perused the impugned order & materials placed on record.

B 8. The distinctive features of Territorial Army and regular army are significant in the present case. As per Army Order 77/1984, the Territorial Army is a part of the regular Indian Army. The role of Territorial Army is to relieve the regular army from static duties, assist civil administration in dealing with natural calamities and maintenance of essential services in situations where life of the communities is affected or the security of the country is threatened, and to provide units for the regular army as and when required. As explicit in the Statement of objects and reasons of the Territorial Army Act, 1948, the role of the Territorial Army is:-

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- D (a) to provide a second line to and a source of reinforcement for the regular army;
- (b) to assist in internal defence duties in a national emergency;
- (c) to be responsible for anti aircraft and coastal defence; and
- E (d) to give the youth of India an opportunity of training themselves to defend their country.

9. Section 4 of the Act provides that the personnel of the Territorial Army comprise of two classes—(a) officers and (b) enrolled persons. As per Section 6, any person who is a citizen of India may offer himself for enrolment and may if he satisfies the prescribed conditions, be enrolled for such period and subject to such conditions as may be prescribed. According to Section 6A, every person employed under the government in a public utility service who is between the age group of 20-40 years, subject to other provisions and rules, is liable, when so required, to perform service under the territorial army. Section 7 provides for liability for military service. Section 7A casts a duty on every employer by whom a person who is required to perform military service under Section 7 was employed, to re-instate him in his employment on termination of military service in an occupation and under conditions not less favourable than those which would have been applicable to him at his employment. As per Section 9, every officer while rendering service as such officer and every enrolled

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person when called out, or embodied, or attached to the regular army shall, subject to suitable adaptation, be subject to the provisions of the Army Act and the Rules or Regulations made thereunder. In terms of Section 14(2)(b) of Territorial Army Act, Central Government is empowered to make rules prescribing the manner in which, the period for which, and the conditions subject to which any person may be enrolled under the Act or may be required to perform compulsory service in the Territorial Army.

10. The terms and conditions of service of personnel belonging to the regular Indian Army and the personnel belonging to Territorial Army are governed by two different Acts. The former is governed by Army Act 1950 while the latter is governed by the Territorial Army Act 1948. It is implicit in Section 9 of the Territorial Army Act that when the person enrolled in the Territorial Army is not called out during that period of disembodied state, he is not subjected to the provisions of the Army Act. It is thus clear from the statutory scheme that a fine distinction is made between regular army personnel and personnel enrolled in territorial army. Further distinction has to be made between the Territorial Army personnel who are embodied and those who are in disembodied state. It is only when the Territorial Army personnel get embodied, which means that when they are called out or attached to any portion of the regular army for active duty, that the provisions of Army Act 1950 are applied to the Territorial Army personnel. When the Territorial Army personnel are in a disembodied state i.e., when they are not called out or attached to any portion of the regular army for active duty, then the Territorial Army Act 1948 governs the service conditions and this is the statutory scheme.

11. The only question falling for consideration is whether in the facts and circumstances of the case, the appellant is entitled to family pension and whether denial of family pension to the appellant is justified. It is the admitted position that late Sepoy Raj Singh was enrolled in the territorial army on 17.05.1995 and he died on 04.08.2008 due to heart attack in his village. It is also admitted by both parties that Raj Singh had been disembodied on 31.03.2008 and that Raj Singh died while he was in disembodied state from the Territorial Army.

12. Learned counsel for the appellant laid emphasis upon Regulation 289 of the Pension Regulations for Army (Part I) 1961 Edn. to contend that members of the Territorial Army shall be governed by the same regulations as applicable to the army personnel. Pension

A Regulation 289 reads as under:-

“289. The grant of pensionary award to the members of the Territorial Army shall be governed by the same general regulations as applicable to the corresponding personnel of the Army except where they are inconsistent with the provisions of Regulations in this Chapter.”

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13. A plain reading of the aforesaid provision makes it clear that the grant of pension award to personnel of the Territorial Army is governed by same general pension regulation as applicable to regular army personnel except wherever it is dealt with differently in the said regulations. Therefore, unless an exception has been carved out in the case of personnel of the Territorial Army, the Pension Regulations for the Army 1961 would govern the field in the matter of grant of various pensionary awards. This is made further clear from paragraph 3 (ii) of Government of India, Ministry of Defence Circular No.68699/221/GSITA-3(a)/1131/B/D(GS-VI) dated 11th June 1985 which reads as under:-

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“3.(ii). *Death-cum-retirement-Gratuity and ordinary Family Pension will be admissible, as applicable to the Regular Army.*”

E This has also been further reiterated in the circulars dated 03.02.1998 and 12.11.2008 issued by the Government of India, Ministry of Defence which are made applicable to the Territorial Army amongst others.

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14. Plea urged by the appellant was that while the wife of a regular army soldier, who dies in harness is entitled to family pension even if the deceased soldier had not put in the minimum qualifying service to earn service pension, the same is denied to wife of a deceased Territorial Army soldier on a specious plea that the deceased soldier was in disembodied state when the death took place. This according to the appellant is discriminatory. By elaborate reasoning, the tribunal held that a regular army person and a person enrolled in the Territorial Army are governed by different set of terms and conditions of service. They are not similarly situated and therefore they do not form part of the same class in the matter of grant of service benefits and hence, there cannot be a violation of Article 14 of the Constitution of India. We concur with the view taken by the tribunal. It is therefore not necessary for us to refer to number of judgments relied upon by the learned counsel for

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the appellant as those cases were determined in the light of facts and circumstances of those cases. A

15. No doubt, with effect from 01.07.2008, new Pension Regulations for the Army 2008 have come into operation superseding the earlier one. In Section 2-Ordinary Family Pension of the new Regulation of 2008, Regulation 62 lays down that the regulations shall not apply to members of the Territorial Army other than those who died while rendering embodied service or after retirement with pension under these regulations. Learned counsel for the Union of India laid emphasis upon the Pension Regulations for the Army 2008 to contend that, as Raj Singh died while in disembodied state, appellant-wife was not entitled to family pension. In the preface of the said regulations issued by the Government of India, Ministry of Defence dated 01.07.2008, it is specifically mentioned that it is applicable to army personnel who are in service as on 01.07.2008. In the present case, it is an admitted position that the deceased-Raj Singh was disembodied on 31.03.2008 much before the new regulations came into effect. Therefore, he was not in service on 01.07.2008 and hence new regulations cannot be pressed into service. The new regulations are applicable only to those who were in service as on 01.07.2008 or thereafter. Therefore, the claim of the appellant cannot be tested on the new Pension Regulations for the Army 2008. B
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16. Having said that, we are of the view that the entitlement of the appellant to family pension has to be examined in the light of the provisions of the Pension Regulations for the Army 1961 read with Government of India, Ministry of Defence circulars dated 11.06.1985, 03.02.1998 and lastly circular dated 12.11.2008. As discussed earlier, in terms of Section 9, every officer/ enrolled person when called out or embodied or attached to the regular army shall, subject to suitable adaptation, be subject to the provisions of the Army Act 1950 and the rules and regulations made thereunder. When an enrolled person is in disembodied state, he is not subject to the Army Act and is not entitled to pay and allowances or other entitlement as also medical allied benefits. Also their disembodiment period is not counted as a qualifying service even for service pension. As per the existing rules, no family pension is payable to the legal heir of a territorial army personnel who died during disembodied state and who has not put in pensionable service. E
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17. As per the rules, no family pension is payable to the legal heir of a territorial army personnel who died during disembodied state and H

A who has not put in pensionable service. Contention of respondents that
 admissibility of such a relief would be contrary to the rules in force has
 led to a patent anomaly. Such anomaly was pointed out by Major, Addl.
 B Offr./TA-3, TA DTE, GS Branch in his inputs for VI Pay Commission
 dated 09.03.2007 (Annexure P-8) thereby recommending to do the
 needful to render fair treatment to Territorial Army personnel. We deem
 it appropriate to reproduce it as under:-

**“GRANT OF FAMILY PENSION TO NoK OF TA PERS
 WHO THOUGH IN SERVICE BUT DIES DURING
 DISEMBODIED STATE.**

C **4. Anomaly is:-**

(i) Person ‘A’ is in embodied state for the last 10 years, he gets
 disembodied today and dies tomorrow, in such case NoK is not
 being granted ordinary family pensions.

D (ii) Person ‘B’ is in disembodied state for the last 10 years, he
 gets embodied today and dies tomorrow. In this case NoK is
 being granted ordinary family pension.

Note: Point to be noted is both indls are in service and have not
 been discharged from service.

E 18. In response to the above communication relied upon by the
 appellant, Mr. Balasubramanian, learned counsel appearing for the
 respondents has drawn our attention to the comments on ‘General Staff
 Branch’ dated 09.03.2007 (Annexure R-1 series). After referring to the
 aforesaid recommendation of Additional Officer/TA-3, TA Dte, GS
 Branch it was observed as under:-

F “(ae) In view of the above case, though has been referred to me
 CGOA to issue instructions to PCDA (Allahabad) to entertain
 ordinary family pension to NoK of pers dying during disembodied
 state. The same is still under consideration with CGDA.

G (af) It is recommended that the issue be addressed in
 recommendations of 6th CPC to remove the anomaly for which
 no orders to the effect exist.”

H Even though the above anomalies have been taken note of by the
 concerned authorities, the respondents have not so far taken any decision
 to rectify the anomalies to give fair treatment to the Territorial Army

personnel by granting family pension to 'next of kin' of Territorial Army personnel who die while in disembodied state. Territorial Army personnel actually remain on rolls till they are retired from service and as noticed earlier, they are liable to be called out for military service at any time. During disembodiment, Territorial Army personnel wait in reserve. It was contended by the learned counsel for the appellant that when gratuity and other benefits are paid to the territorial army personnel dying during disembodied service as a death in harness, they should also be eligible for service pension. Learned counsel for the appellant has drawn our attention to Ministry of Defence Report (Declassified on 18.02.2016) of the Committee of Experts constituted for Reduction of Litigation, Review of Service & Pension Matters 2015:-

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“Report Page 223, 8th line: ... We also find that widows/families of TA personnel dying in harness but during the period of 'disembodiment, (demobilized state) are not granted Ordinary Family Pension. We feel that this issue may be considered favourably since such pers remain on the strength of the TA and also on the rolls of their unit while on disembodied state. If the families of regular military pers who die due to non-service related causes or while on leave or while on furlough are entitled to Ordinary Family Pension, then by same logic even families of TA pers should not be refused the same.”

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Inspite of repeated recommendations, it is not known why steps are not being taken to remove the anomalies to pay family pension to 'next of kin' of Territorial Army personnel who rendered long service in Territorial Army and died while in disembodied state. We hope that the Union of India considers the issue favourably to remove the anomalies to pay appropriate family pension to next of kin of Territorial Army personnel who die while in disembodied state by giving due weightage to their embodied service.

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19. On behalf of the appellant, it was submitted that Raj Singh had unblemish service record and had rendered a total service of about twelve years in Territorial Army (11 years and 289 days) including service in operational area. For quite sometime, the appellant has been pursuing the litigation seeking family pension. Considering the peculiar facts and circumstances of the case and the plight of the appellant, in the interest of justice and in exercise of our power under Article 142 of the Constitution of India, we deem it appropriate to award ex-gratia grant of

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A rupees ten lakhs payable to the appellant.

20. The impugned order of the tribunal is accordingly modified with the direction that the respondents shall pay an ex-gratia amount of rupees ten lakhs to the appellant within a period of three months from today.

B 21. The appeal is accordingly disposed of. No costs.

Kalpana K. Tripathy

Appeal disposed of.