

Sr. No.

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

WP(C) No. 2296/2023

CM No. 5341/2023

Reserved on : 15.02.2024.

Pronounced on: 22.02.2024.

Jyoti Guleria , Age 70 years
Wd/o Ex POEL (P) no.88730

Late Om Parkash Guleria

R/o D-57/1, Sainik Colony, Jammu-110011

....Petitioner(s)/Appellant(s)

Through :- Mrs. S. Kour, Senior Advocate with
Ms. Mandeep Kour, Advocate.

V/s

1. Union of India through Defence Secretary,
Ministry of Defence,
Government of India, New Delhi-110011.

2. Chief of Naval Staff,
Sena Bhawan,
P.O. AHQ/NHQ/DHQ, New Delhi-110011.

3. Staff Officer Logistic,
Naval Pension Office,
C/O INS Tanaji,
Sion-Trombay Road,
Mankhurd Mumbai-400058

4. Lieutenant Commander,
Staff Officer (GP),
Naval Pension Office,
C/O INS Tanaji,
Sion-Tombay Road,
Mankhurd Mumbai-400058

5. Principal Controller of Defence Accounts
(Pension), Draupadighat, Allahabad-211014.

6. Director,
PDPA (Navy),
New Dehi-110011

....Respondent(s)

Through :- Mr. Vishal Sharma, DSGI.

**Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE**

ORDER

TASHI RABSTAN,J:

1. In this writ petition filed under Article 226 of the Constitution of India,
the petitioner has prayed for the following directions:-

- i. *To quash order dated 24.07.2023 passed by Hon'ble Armed Forces
Tribunal, Srinagar Bench at Jammu in O.A. No. 162/2023 titled*

'Jyoti Guleria v/s Union of India & Ors.' by which the Armed Forces Tribunal Srinagar Bench at Jammu has dismissed the original application in limine, by issuance of writ of Certiorari;

- ii. To issue directions to the respondents to grant/sanction special pension in favour of late husband of petitioner (Om Parkash Guleria) under the provisions of Regulation 95 of Navy (Pension) Regulations 1964, to fix and release family pension in favour of the petitioner, to release the arrears of pension retrospectively and to give similar treatment to the petitioner as is given to other similarly situated persons, by issuance of writ of Mandamus;
 - iii. To declare the order dated 24.07.2023 passed by Hon'ble Armed Forces Tribunal Srinagar Bench at Jammu in O.A. No. 162/2023 entitled *Jyoti Guleria V/s Union of India and Ors* by which the Hon'ble Armed Forces Tribunal Srinagar Bench at Jammu has dismissed the original application in limine as ultra-virus, illegal, arbitrary, unconstitutional, unjust and contrary to the provisions of law and rules and against the provisions of principles of natural justice by issuance of writ of Mandamus.
2. The precise ground taken by Mrs. Surinder Kour, learned senior counsel in this petition is that the learned Tribunal has not appreciated the judgment passed by the Supreme Court in ***T. S. Das and Ors. v. Union of India and anr.*** reported at (2017) 4 SCC 218 and judgment passed on 28.07.2022 by the Armed Forces Tribunal, Regional Bench, Mumbai in ***O.A. No.12/2021 titled Ex. LME Krushnarao Patil v. Union of India and Others***, in its correct perspective.
3. On the other hand, learned DSGI has supported the order passed by the learned Tribunal and prayed for dismissal of the writ petition.
4. Heard learned counsel for the parties and given our thoughtful consideration to the submission made by learned counsel for the parties and perused the judgments relied upon by the learned counsel for the petitioner.

5. Paras 3 and 25 of the judgment in the case *T. S. Das (supra)* is reproduced as:

“3. Admittedly, the applicants before the Tribunal in both cases were appointed as Sailors in the Indian Navy before 1973. The appointment letter noted that the concerned applicant was engaged as a Sailor for 10 years active service and 10 years on Fleet Reserve Services thereafter, if required. The applicants were continued for a brief period beyond the initial term of 10 years in active service/engagement and discharged without drafting them to Fleet Reserve Services. Thus, each applicant was discharged by the Indian Navy after July, 1976, on completion of their active service and was paid gratuity. As the Tribunal granted a relief to similarly placed persons by directing the Authorities to grant Reservist Pension/Special Pension, even these applicants moved the Tribunal for a similar relief.

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25. Thus understood, all Sailors appointed prior to 3rd July, 1976 and whose tenure of initial active service/empanelment period expired on or after 3rd July, 1976 may be eligible for a Special Pension under Regulation 95, subject, however, to fulfilling other requirements. In that, they have not exercised the option to take discharge on expiry of engagement (as per Section 16 of the Act of 1957) and yet were not and could not be drafted by the competent Authority to the Fleet Reserve because of the Policy of discontinuing the Fleet Reserve Service w.e.f 3rd July, 1976. The cases of such Sailors (not limited to the original applicants before the Tribunal) must be considered by the Competent Authority within three months for grant of a ‘Special Pension’ from three years prior to the date of application made by the respective Sailor and release payment after giving adjustment of Gratuity and Death-cum-Retirement-Gratuity (DCRG) already paid to them from arrears. They shall be entitled for interest @9% P.A. on the arrears, till the date of payment.

6. Regulation 95 of the Navy (Pension) Regulations, 1964 reads as under:-

“95. Special Pension and Gratuity to Sailors – When Admissible- A special pension or gratuity may be granted at the discretion of the Central Government, to sailors who are not transferred to the reserve and are discharged in large number in pursuance of Government Policy.

(i) of reducing the strength of establishment of the Indian Navy; or

(ii) of re-organisation which results in paying off of any ships or establishments.

7. The petitioner has sought parity for grant of special pension with the petitioners before the Supreme Court, who were granted the benefit of pension in the case of **T.S. Das (Supra)**. In our view, the judgment relied upon by the learned senior counsel for the petitioner in the case of T.S. Das(Supra) is of no help to her as the applicants in the said petition retired from service after July 1976 and the applicants in the case of **Ex. LME Krushnaraao Patil (supra)** retired in the year 1976 itself; whereas the petitioner in the present case had been discharged from service in the year 1974. Moreover, the Supreme Court had categorically stated in its judgment that the judgment should not be a precedent for other cases.

8. In that view of the matter, we notice no illegality in the impugned order passed by the learned Tribunal. The same is accordingly upheld. The petition being found bereft of merit, is accordingly dismissed.

9. No order as to costs.

Jammu:
22.02.2024
Raj Kumar

(Puneet Gupta)
Judge

(Tashi Rabstan)
Judge

Whether the order is speaking?: Yes/No.
Whether the order is reportable?: Yes/No.