

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.431 of 2024
In
Civil Writ Jurisdiction Case No.7461 of 2021

Shanti Devi Wife of Late Bhubaneshwar Singh, resident of Village-Motichak,
P.O.-Kharasin, Karpi, District-Arwal, Bihar, Pin-804419.

... .. Appellant/s

Versus

1. The Union of India through Secretary, Ministry of Defence, New Delhi.
2. The Army Chief Central Secretariat, South Block, Integrated Headquarters of MoD (Army) New Delhi-110011.
3. The Principal Controller of Defense Accounts (Pension), Allahabad.
4. The Officer in Charge, Record Office, EME Records, Sekandarabad, Pin-900453.
5. The Senior Record Officer, OIC Records, EME Records, Sekandarabad.
6. The Public Information Officer RTI Cell, EME Records, Pin 900453, C/o 56 APO.
7. The Punjab National Bank through its Chief Manager, CPPC, Punjab National Bank, PCDA (P) Campus, Draupadi Ghat, Allahabad.
8. The Branch Manager, Punjab National Bank, Deokund, Aurangabad.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Kunal Tiwary, Advocate
For the Respondent/s	:	Dr. K.N. Singh, ASG
		Mr. Kanak Verma, CGC
		Mr. Devansh Shankar Singh, Advocate
		Mr. Amarjeet, JC to ASG
		Mr. Shaivaditya Dhari Sinha, Advocate
		Mr. Abhijeet Gutam, Advocate
For PNB	:	Mr. Mritunjay Kumar, Advocate
		Mr. Ram Ganesh, Advocate
		Mr. Vibuti Kumar, Advocate
		Mr. Shilpi Singh, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 09-09-2024

The appellant was the petitioner in the writ petition;
who in the present appeal is aggrieved with the impugned
judgment which declined Special Family Pension (for brevity,
SFP) to the appellant, who is the wife of a *Sepoy* in the Indian



Army; found missing while on guard duty.

2. We heard Sri Amit Srivastava, learned Senior Counsel for the appellant, and Dr. K.N. Singh, learned ASG for the respondent. The learned Single Judge found that the missing case of the appellant's husband does not come within the specific conditions prescribed for SFP under paragraph no. 213 of the Pension Regulations for the Army, 1961. However, the learned Single Judge directed consideration of entitlement of ex-gratia on account of death of the appellant's husband attributable to military service as applicable from Annexure-R/12 produced in the counter affidavit dated 28.06.2021 of the respondent nos. 1 to 5.

3. The learned Senior Counsel appearing for the appellant argued that Regulation 213 has to be read disjunctively as has been held in **CCE, Customs & Service Tax v. Shapoorji Pallonji & Co. (P) Ltd., (2024) 3 SCC 358**. It is argued that though the appellant's husband was found missing, there was no F.I.R. registered by the Authorities. Further, despite Section 108 of the Indian Evidence Act, 1872 (for brevity, the Act) providing for the declaration of death of a missing person after seven years; an enquiry was conducted far earlier and concluded, finding that there was no foul play and that the *Sepoy* is presumed to be dead; without any investigation



carried out and quite contrary to Section 108 of the Act. Reliance is placed on the decision of the Hon'ble Supreme Court in **LIC of India v. Anuradha, (2004) 10 SCC 131, Charanjit Kaur (Smt) v. Union of India, (1994) 2 SCC 1** for fortifying the grant of SFP.

4. The learned ASG, however, specifically pointed out Regulation 213, which does not include a missing person. Reliance was also placed on the decision of the Hon'ble Supreme Court in **Renu Devi v. Union of India., (2020) 14 SCC 600.**

5. On facts, it is to be noticed that appellant's husband was a *Sepoy* in the Indian Army. On 05.07.1989, when he was posted at Hisar, while he was on guard duty, he went missing and was declared a deserter with effect from 05.07.1989. A Court of Enquiry was constituted when there was no information regarding the missing *Sepoy* and he was declared presumed dead in the year 1992. Contention is raised against such declaration being contrary to Section 108 of the Act; which we cannot accept, especially looking at the context in which such Court of Enquiry was constituted to expedite the claim of pension to the dependent family members. The learned Single Judge has specifically referred to and extracted the provisions of AO No.1/2003/MP and the Govt. of India, Ministry of Defence



letter no. 12(16)86D (Pen/Sers) dated 03.06.1998. The said documents clearly speak of a number of cases being referred to the Ministry for grant of terminal and other pensionary benefits to the families; of service personnel who have disappeared while engaged in operational or non-operational service. Section 108 of the Act is specifically noticed, and it has been observed that the period of seven years prescribed therein creates hardship and distress to the families in so far as delay occasioned in sanction of terminal benefits. It is in this context that the Hon. President was pleased to decide that when a member of the Indian Armed Forces is declared missing; while in service, the retiral benefits subject to adjustment of outstanding dues are paid expeditiously. It is to facilitate the same that a Court of Enquiry was held, and this cannot be faulted. Further, as held by the learned Single Judge the appellant has not challenged the declaration; without which the appellant would not be entitled even for the family pension, leave alone the SFP.

6. The respondent had raised a preliminary objection of *res judicata* with reference to the earlier writ petition filed. The appellant had first moved this Court by C.W.J.C. No. 15598 of 2017, which was disposed of by order dated 15.03.2019 directing consideration of the entire retiral benefits, including family pension with admissible interest. We have called for the



judges papers and perused the same, wherein the only claim was for payment of the arrears of the family pension along with statutory interest. Though the principle of *res judicata* may not apply; it is evident that the petitioner did not raise the claim for SFP at that stage. The Code of Civil Procedure, though not applicable to writ proceedings; the Hon'ble Supreme Court has time and again declared that it can be treated as guidelines even regulating the equitable jurisdiction under Article 226 of the Constitution of India. Order II Rule 2 of the Code of Civil Procedure requires a litigant to sue for the entire claim when the litigation is first initiated, and if there are more than one relief arising from the same cause of action; all of which have not been claimed at the first instance, then the plaintiff would be prohibited from raising the omitted claim, which is deemed to have been relinquished. The said principle squarely applies in the case of the appellant; but we would still consider the claim raised based on the specific provision relied on.

7. Before we look at the facts of the case, we have to go through the decisions placed before us.

8. **Charanjit Kaur (Smt)** (supra) was a case in which a Major in the army was completely immobilized; who was joined by his wife. On the assurance of the army to airlift the Major to his home town, the wife had proceeded to Srinagar



where she was informed to rush back to Leh; where the lady was shown the burnt body of her husband. There was no disclosure of any reason for the mishap. It was found by the Hon'ble Supreme Court that there was culpable negligence and cynical indifference insofar as the actions of the respondent-authorities were concerned. There was no enquiry carried out, and the death of the Officer in mysterious circumstances was found to be attributable to and aggravated by military service.

9. **Renu Devi** (supra) was a case in which a service personnel died in a road accident while on casual leave, which did not enable him for SFP. It was held that though casual leave counts as duty, Regulation 213 was specific and it cannot take in an accident which occurred while the service personnel was on casual leave.

10. In this context, we have to extract Regulation 213 which is as follows:

213. A special family pension may be granted to the family of an individual if his death was due to or hastened by

(a) a wound, injury or disease which was attributable to military service,

OR

(b) the aggravation by military service of a wound, injury or disease, which existed before or arose during military service.



11. We also extract the OM dated 31.01.2021 issued by the Govt. of India granting SFP to two other categories as seen from the decision in **Renu Devi** (supra).

“4.1. For determining the pensionary benefits for death or disability under different circumstances due to attributable/aggravated causes, the cases will be broadly categorised as follows:

Category B

Death or disability due to causes which are accepted as attributable to or aggravated by military service as determined by the competent medical authorities. Disease contracted because of continued exposure to a hostile work environment, subject to extreme weather conditions or occupational hazards resulting in death or disability would be examples.

Category C

Death or disability due to accidents in the performance of duties such as:

(i) Accidents while travelling on duty in government vehicles or public/private transport.

(ii) Accidents during air journeys.

(iii) Mishaps at sea while on duty.

(iv) Electrocution while on duty, etc.

(v) Accidents during participation in organised sports events/adventure activities/expeditions/training.”

“5. Special Family Pension (SFP)



5.1. In case of death of an Armed Forces Personnel under the circumstances mentioned in Category “B” or “C” of Para 4 above, special family pension shall continue to be admissible to the families of such personnel under the same conditions as in force hitherto.”

12. There is no question of reading the Regulation 213 conjunctively since the word employed is ‘or’ and not ‘and’. The different circumstances therein are definitely disjunctive. SFP is entitled only if the death was due to a wound, injury or disease which was attributable to military service or the aggravation by military service of a wound, injury or disease; whether it existed before or arose during military service. Even read, as any cause attributable to military service or aggravated by it; that is not the situation in the instant case. The missing of the *Sepoy* cannot by any stretch of imagination be attributed to or said to have been aggravated by military service, since the *Sepoy* was on guard duty and did not go missing in an operation.

13. There is no wound, injury or disease attributable to military service or the aggravation of which, by military service resulted in the death of the appellant’s husband. The husband of the appellant was missing, which was also not during any operation; which could have probably fallen under



Category B of paragraph no. 4.1 of O.M. dated 31.01.2001. The appellant's husband was on guard duty and was found missing from his post. Despite passage of considerable time, there was no information regarding the missing person and in that circumstance the Court of Enquiry constituted by the respondents declared the appellant to be presumed dead, enabling grant of retiral benefits. This does not however lead to grant of SFP which can only be on the specific contingencies.

14. **Anuradha** (supra) was a case in which a life insurance policy was taken by a person who later went missing. The Hon'ble Supreme Court held that the declaration after seven years under Section 108 of the Act is limited to presuming the factum of death of the person without any presumption as to the date or time of death to successfully maintain the claim for benefit under the insurance policy. It was held that the policy should have been kept alive by punctual payment of premiums until the claim was made. Similarly the limited presumption as available under Section 108 of the Act or as declared by the Court of Enquiry, cannot be extended to the death being attributable to military service or caused by aggravation of military service, and is confined to that of death and no further.

15. We find absolutely no reason to interfere with the judgment of the learned Single Judge but make it clear that



we have not made any observation with respect to the direction to consider ex-gratia as per Annexure-R/12; against which there is no appeal filed by the respondents.

16. The appeal stands rejected.

(K. Vinod Chandran, CJ)

Partha Sarthy, J: I agree

(Partha Sarthy, J)

aditya/-

AFR/NAFR	
CAV DATE	23.08.2024.
Uploading Date	10.09.2024
Transmission Date	

