

Poongol Vs. Union of India Represented by Chief of the Army Staff and Others

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Court : Armed forces Tribunal AFT Regional Bench Chennai

Decided On : Apr-06-2011

Judge : The Honourable Justice a.C. Arumugaperumal Adityan (Member-Judicial) & the Honourable Lt Gen (Retd) S. Pattabhiraman (Member €“ Administrative)

Appeal No. : O.A.No.38 of 2010

Appellant : Poongol

Respondent : Union of India Represented by Chief of the Army Staff and Others

Judgement :

(Order of the Tribunal made by Justice ACA Adityan)

1. An unfortunate mother, who had allowed her son to join in the Indian Army to serve the nation, was forced to approach this Tribunal due to the indifferent attitude met at the hands of the respondents, is claiming family pension for the missing of her son in the Indian Army.
2. The short facts relevant for the purpose of deciding this case sans irrelevant particulars are as follows:- The applicants younger son Raman got himself enrolled in the Indian Army as a Signal Man on 14.11. After successful completion of the training, he was sent to advance technical training to No.5 Technical

Training Regiment from 19th June 1986 to 23rd January 1987. Thereafter, he was posted to Eastern Command Signal Regiment at Calcutta. There was no information received from the applicants son thereafter. The husband of the applicant viz. Mr.N.Muthusamy became mental after receiving the telegram on 04.06.1987 from the respondents intimating that his son was missing from Army from 12th March 1987 and without recovering from the said shock he died on 10.11.2002. Before his death, he wrote a letter in the month of February 1987 to the Chief of the Army Staff asking the whereabouts of his son. The applicant received a telegram dated 04.06.1987 from the Army stating that her son was missing from 12th March 1987. After the receipt of the telegram, the applicant had deputed her elder son to Calcutta on 07.06.1987 in order to know about the whereabouts of her younger son Raman. Only at late evening, the elder son of the applicant was informed by the Commanding Officer that her younger son was sent to bed-man duty in Brigadiers Bungalow on 12th March 1987 and thereafter, he was missing. The elder son of the applicant was further informed that that the applicants younger son had received the salary of Rs.900/- on 28th February 1987 as per the acquittance Roll. The applicant came to know that due to the unbearable torture received at the hands of the 4th respondent her younger son could not be traced out from the afternoon of 12th March 1987. Not even the dead body of her younger son was handed over to the applicant by the respondents. The applicant had waited for the enquiry result from the local police regarding the missing of her son. But, till today, she has not received any information from the local police about her younger son. That is the only reason for the delay in approaching this Tribunal. Hence, the application for family pension and other consequential reliefs.

3. The respondents in their joint counter would contend that the applicants younger son Ex Signal Man Late Mr.M.Raman No.14269930H was enrolled in the Army (Corps of Signals) on 15th November 1984. After completion of his training, he was posted to Eastern Command Signal Regiment on 24th January 1987. He was absent without leave and not missing as mentioned by the applicant and an apprehension order was issued by the Unit to local police station as well as to his home town police station in March 1987. He has absented himself without leave from Unit lines with effect from 12th March 1987 at 15.00 hours. All the searches carried out by the Unit ended in vain. As per the provisions of Para 377 of

Regulations for the Army, Vol-I, 1987, an apprehension Role (IAFD-925) was issued by the Unit to civil police of home district of the individual and local civil police to apprehend the individual without further delay. The individual neither rejoined voluntarily in the Unit nor apprehended by civil police. Accordingly, under the provisions of Army Act Section 106, a Court of Inquiry was conducted after completion of 30 days by the Unit which declared the individual as deserter. Part II order to this effect was published by Unit for desertion with effect from 12th March 1987 and FSA documents were forwarded to Signal Records. The individual was dismissed from Army service under Army Act Section 30(3) by Comdt HQ ISTC after completion of three years from desertion and the same has been published by Signals Records vide Part II Order No.NER/054.56/90, dated 22nd May 1990. Since the individual has been dismissed from service, he is not entitled for pension and gratuity for the services he has rendered. As per Rule 212 of the Pension Regulations Part-I, 1961, the family pension is payable to the families of Armed Forces Personnel (Excluding reservists), who died/die in service or after retirement with a retiring/disability/invaliding/special/war injury pension on account of causes which are neither attributable to nor aggravated by Military service, accordingly, the mother of the deserter is not eligible for family pension. The representation dated 6th March 2010 submitted by the applicant through IHQ of MoD (Army) Signals 4(b) has been suitably replied vide letter No.P/14269930N/FSA/DES/NER, dated 29th April 2010. The applicant had sought information/documents under RTI Act 2005 vide her representation dated 3rd May 2010, which were provided to her vide office letter No.P/14269930/RTI/Wel/NER, dated 4th June 2010. The salary for the month of February 1987 was paid to the individual Ex Signal Man No.14269930N M.Raman. The individual was on duty till the afternoon of 12th March 1987 as admitted by the applicant. The individual was not harassed as alleged by the applicant in her affidavit to the application. After following the procedures contemplated under law, the individual was dismissed from service. The Court of Inquiry was conducted by the Unit, which found the individual illegally absented himself without leave and declared him as a deserter. The representation dated 6th March 2010 by the applicant was suitably replied by the respondents vide letter No.P/14269930N/FSA/DES/NER, dated 29th April 2010. Hence, the application is liable to be dismissed.

4. We heard the learned counsel Mr.M.Selvaraj appearing for the applicant and the learned Senior Central Government Standing Counsel Mr.S.Haja Mohideen Gisthi and the learned JAG Officer Captain Jitender Singh appearing for the respondents and considered their respective submissions.

5. Now the points for determination in this application are-

(1) Whether the dismissal order against the applicants younger son M.Raman No.14269930N is sustainable?

(2) Whether the applicant is entitled to family pension under the existing Rules after setting aside the impugned order as prayed for?

6. POINT No.1:- According to the respondents, since the applicants younger son Ex.No.14269930N M.Raman was missing from the Unit from the afternoon of 12th March 1987, a Court of Inquiry was conducted and in the Court of Inquiry the individual was held to be a deserter from the Unit and accordingly, as per Section 23 of the Army Act, the competent authority has dismissed the said individual from service. Section 106 of the Army Act deals with the Inquiries in case of individual is absent without leave, which reads as follows:-

Inquiry into absence without leave. (1)When any person subject to this Act has been absent from his duty without due authority for a period of thirty days, a court of inquiry shall, as soon as practicable, be assembled, and such court shall, on oath or affirmation administered in the prescribed manner, inquire respecting the absence of the person, and the deficiency, if any, in the property of the Government entrusted to his care, or in any arms, ammunition, equipment, instruments, clothing or necessities; and if satisfied of the fact of such absence without due authority or other sufficient cause, the court shall declare such absence and the period thereof, and the said deficiency, if any, and the commanding officer of the corps or department to which the person belongs shall enter in the court-martial book of the corps or department a record of the declaration.

(2) If the person declared absent does not afterwards surrender or is not apprehended, he shall, for the purposes of this Act, be deemed to be a deserter.

In this connection, the Army Rules 181, 183, 179 narrate what are all the procedures to be followed during the Court of Inquiry. Army Rule 183 deals with the Court of Inquiry as to illegal absence under Section 106. Army Rule 183 reads as follows.

Court of inquiry as to illegal absence under Section 106.

(1) A Court of inquiry under Section 106 shall, when assembled, require the attendance of such witnesses as it think sufficient to prove the absence and other facts specified as matters of inquiry in that section.

(2) It shall take down the evidence given it in writing and at the end of the proceedings shall made a declaration of the conclusions at which it has arrived in respect of the facts it is assembled to inquire into.

(3) The commanding officer of the absent person shall enter in the court-martial book of the corps of department a record of the declaration of the court and the original proceedings will be destroyed.

(4) The court of inquiry shall examine all witnesses who may be desirous of coming forward on behalf of the absentee, and shall put such questions to them as may be desirable for testing the truth or accuracy of any evidence they have given and otherwise for eliciting the truth, and the court in making its declaration shall give due weight to the evidence of all such witnesses.

(5) An oath or affirmation shall be administered to the witnesses in the manner specified in rule 181.

Army Rule 181 specifically reads as follows-

Evidence shall be recorded on oath or affirmation when a court of inquiry is assembled-

a) on a prisoner of war, or

b) to inquire into illegal absence under section 106, or

c) in any other case when so directed by officer assembling the court.

Explanation:- The court shall administer the oath or affirmation to witnesses as if the court were a court-martial. The manner under which the oath or affirmation to be administered to the witness has been stated under the Army Rule 140. The respondents have produced the court of inquiry conducted relating to the missing/absent Individual M.Raman. The court of inquiry had examined three witnesses on the side of the prosecution. From the materials placed before us, We can infer that the procedures contemplated under Section 106 of the Army Act were not followed while conducting the said court of inquiry.

6(a) At this juncture, the learned Senior Central Government Standing Counsel Mr.S.Haja Mohideen Gisthi would interpret and say that Section 106 of the Army Act says that if a person declared absent does not afterwards surrender or is not apprehended, he shall, for the purposes of this Court, be deemed to be a deserter. In this connection, We have to see the apprehension report of the respondents. Unfortunately, a copy of the apprehension report was not marked to the parents of the individual M.Raman viz., to the applicant mother, or to the father N.Muthusamy, who was alive at that time. The apprehension report is dated 19th March 1987 addressed to the Superintendent of Police, North Arcot (Tamil Nadu). Even the district of North Arcot was not spelt correctly in the said apprehension report. The order of dismissal was passed on 19.05.1990. The apprehension report is dated 19th March 1987. But, without obtaining a report from the police as to the effect that the individual who was missing could not be apprehended by them, the order of dismissal was passed under Army Act Section 23 on 19.05.1990. It is not known how the competent authorities have come to the conclusion that the individual M.Raman could not be apprehended without getting a report from the concerned police as to the effect that the individual could not be apprehended. So, the respondents cannot take shelter under Section 106(2) of the Army Act and to contend that since the individual could not be apprehended, the respondents came to the conclusion that the individual has deserted the Indian Army. The competent authority has not followed the above provision of law before

passing the order of dismissal. Section 20 Clause 7 of the Army Act specifically says that the exercise of any power under this section shall be subject to the said provisions contained in this Act and the rules and regulations made thereunder. Since the order of dismissal dated 19.05.1990 passed under Army Act Section 23 is not in accordance with the provisions of the Army Act under Section 106 and the Army Rules 179, 181 and 182, We are of the considered view that the order of dismissal is liable to be set aside for the infirmities mentioned above. Point No.1 is answered accordingly.

7. POINT No:2:- The unfortunate mother, who has lost her younger son in the Army, has approached this Tribunal for family pension. To determine whether the applicant is entitled to the family pension under Law, We have to delve upon the relevant policy letters of the Government. Ministry of Defence vide letter No.12(16)/88-D (Pension/Services), dated 03.06.1988 had promulgated the provision for release of family pension and other benefits to families of those personnel who suddenly disappear both in operational and non-operational areas. The family members of missing personnel have to lodge a police report regarding the missing status of the individual and submit a copy of the same to the concerned Records Office which would further process the case with Principal Controller of Defence Accounts (Pension), Allahabad. Based on the principle of presumption of death as provided under Section 108 of the Indian Evidence Act, previously the families of missing personnel are disbursed benefit of family pension and other certain allied settlements as are admissible to families of deceased soldiers, after a lapse of a period of 7 years from the date of disappearance. To alleviate the problems being faced by families of missing personnel, the above MoD letter No.12(16)/88-D (Pension/Services), dated 03.06.1988 was promulgated to enable the families of missing personnel to get the necessary relief after a lapse of one year from the date of disappearance instead of waiting for 7 years.

7(a) Government of India, Ministry of Defence, Letter No.12(16)/86/D (pension Service), dated 3rd June 1998 reads as follows-

2. The president is therefore pleased to decide that when a member of the Indian Armed Forces is declared missing while in service, the family will be paid the following benefits subject to adjustment of outstanding dues in respect of the missing personnel, if any:-

(a) Immediately after the date of declaration of disappearance:

The amount of salary due, leave encashment due and DSOF/AFPP Fund amount subject to nomination made by the missing personnel.

(b) After the lapse of one year from the date of declaration of disappearance / presumption of death:

Family pension / DCRG etc. as admissible in normal conditions.

3. The above benefits may be sanctioned after observing following formalities:-

(i) The family must lodge a report with the concerned Police Station and obtain a report that the employee has not been traced after all effects had been made by the police.

(ii) The claimant will be required to furnish an indemnity bond with two solvent sureties to be effect that all payments thus made will be recovered from the amount due to the person if he/she reappears and makes any claims.

4. The family can apply to the concerned authority for grant of family pension and Gratuity after one year from the date of declaration of disappearance of the service personnel in accordance with the procedure for sanction of family pension and DCR Gratuity. In case the disbursement of DCR Gratuity is not effected within 3 months of the date of application, the interest shall be paid at the rates applicable and responsibility for the delay fixed.

5. In the case of officers, the respective Branch/Dte at Service HQs and in the case of JCOs/OR and equivalent in Navy and Air Force, there respective Records Offices will process such cases with CDA(O)/PAO/CDA(P)/CDA(Navy)/CDA(Air Force).

6. The provisions of this letter take effect from 29th August, 1986.

7. This issues with the concurrence of the Finance Division of this Ministry vide their u.o. No.802-Pen of 1988.

7(b) Government of India, Ministry of Defence, Letter No.12(16)86/D (Pension Service), dated 23rd March 1992, wherein the guidelines have been given for the grant of family pension and gratuity, reads as follows-

2. The date of disappearance of the serving Armed Forces personnel/pensioners will be reckoned from the date the First Information Report is lodged with the police by the family and the period of one year after which the benefits of family pension and gratuity are to be sanctioned, will be reckoned from this date. However, the benefits to be sanctioned to the family, etc., of the missing personnel will be based on and regulated by the emolument drawn by him and the rules / orders applicable to him as on the last date he/she was on duty including authorised periods of leave. Family pension at normal/enhanced rates, as may be applicable in individual cases, will be payable to the family of missing personnel. Family pension where sanctioned at pre- 1.1.1986 rates will be revised and consolidated with effect from 1.1.1986 in terms of the Government of India, letter No.1(4)/87/D (Pens/Sers), dated 27th July 1987, as amended from time to time.

3. In the case of missing pensioners, the family pension at the rates indicated in the PPO will be payable and authorised by the Pension Sanctioning Authority. Where the PPO does not contain this information, the Pension Sanctioning Authority will take necessary action to sanction the family pension as due, as provided in para 2 above.

4. Death gratuity will also be payable to the families, but not exceeding the amount which would have been payable as Retirement gratuity if the person had retired. The difference between retirement gratuity and death gratuity shall be subsequently payable after the death is conclusively established or on the expiry of seven years period from the date of missing.

5. An indemnity bond will be obtained for the above purpose from the family members etc. in the formats enclosed as Appendix A (for missing personnel) and as Appendix B (for missing pensioners) to this letter, which have been prepared by the Deptt of Pension and Pensioners, which are in consultation with Deptt of Legal Affairs.

7(c) Government of India, Ministry of Defence, Letter No.12(16)/85/D (pension/Service), dated 26th August 1993 reads as follows-

I am directed to refer to this Ministry's letter of even number dated 24th March 1992 on the above subject and to say that in accordance with the provisions contained therein the date of disappearance of the serving Armed Forces Personnel/pensioners is reckoned from the date the First Information Report is lodged with the police by the family and the period of one year after which the benefits of Family pension and Gratuity are to be sanctioned, is reckoned from this date. At present the Family Pension is sanctioned and paid to the eligible member of the family one year after the date of lodging the FIR with the police and no Family Pension is paid for the intervening period of one year from the date the F.I.R. is lodged to the date the family pension can be sanctioned.

2. The above practice is causing hardship to the families. It has, therefore, been decided that the Family Pension, which in pursuance of the earlier orders, will continue to be sanctioned and paid one year after the date of lodging the F.I.R. will accrue from the date of lodging the F.I.R. or expiry of leave of the service personnel who has disappeared whichever is later. At the time of issue of sanction of family pension, the payment of pension from the date of accrual will be authorized. The usual procedure of obtaining the Indemnity Bond etc. will continue to be followed while sanctioning payment of family pension as laid down in Govt. letter of even number dated 23rd March, 1992. It will be ensured by the concerned authorities that Family Pension is not authorised for any period during which payment of pay and allowances in respect of the disappeared service personnel has been made.

7(d) Army Order 1/2003, Section 3, deals with the Missing Personnel, which reads as follows-

55. During operations, some personnel will inevitably be reported missing and some time must necessarily elapse before information is available as to their probable fate. It is the duty of every person who comes into possession of information regarding missing Officers / JCOs / OR to bring this to the notice of appropriate authorities without delay.

56. It is also likely that officers, JCOs and OR who are separated from their units might subsequently be able to join another unit. It will be the responsibility of the latter unit to immediately intimate Army Headquarters, Adjutant Generals Branch, MP 5 (d), Record Offices and parent unit by OP IMMEDIATE signal, giving full particulars of the individual concerned.

57. Subsequent information regarding missing personnel, ie., confirmed killed, confirmed prisoner or rejoined, will be reflected in battle casualty reports.

58. Army personnel may be found missing when there are no operations / hostilities. Great care must be exercised in dealing with such cases. They would be reported as deserters only after conclusive evidence is obtained. A few examples are cited below:-

(a) A person may have drowned in a river and his dead body may not been recovered or seen by a reliable witness.

(b) A person may have been abducted.

(c) A person may have been on board an aircraft or a ship which is missing, and consequently no trace has been found of it.

(d) A person involved in a skirmish whilst in aid of civil authorities to maintain internal security and fighting against armed hostilities, may have been killed but his dead body may not have been recovered or seen by a reliable witness.

(e) A person having gone on Annual Leave or in transit through a disturbed area does not report back from Annual Leave or goes missing while in transit. Such a person may have been killed / rendered incapable of reporting in time and as such should be reported missing till conclusive evidence of desertion is found.

Rules for Reporting Personnel Missing:-

59. Following instructions will be observed whilst reporting personnel as missing:-

(a) A person will be regarded as missing with effect from the date following on which he was last seen.

(b) A missing casualty will not be reported until 72 hours from the date he was missing ie., 96 hours after he was seen, e.g. a man last seen on 17th November will be reported on 21st November as missing with effect from 18th November.

As per Government of India, Ministry of Defence, Department of Ex- Servicemen Welfare, letter No.1(1)/2010/D (pen/pol), dated 15th February 2011, in case of Armed Forces personnel/pensioners who have suddenly disappeared or whose whereabouts were not known, from the date of lodging of FIR or expiry of the authorised leave of the Armed Forces Personnel, the eligible family members of the Government servant/pensioner reported missing and whose whereabouts are not known, are authorised for family pension within six months from the date of registration of FIR with the Police subject to fulfilment of other conditions, instead of one year from the date of lodging the FIR.

7(e) Only from the telegram dated 04.06.1987, the applicant was intimated about the missing of her son M.Raman from the Army. It is only a reply to her husbands letter dated 30.05.1987.

7(f) We take this opportunity to record our opinion that the respondents are more responsible to vouch for life and safety of the individual who have been sacrificed by their parents in allowing them to join in defence force for the sake of our nation. But, unfortunately in this case, the respondents are not in a position to say even the whereabouts of M.Raman, the younger son of the applicant. Once the individual come into the ambit of the Indian Army, till his retirement or dismissal or discharge from service concerned, the respondents are responsible for the life and security of the said individual, who has come forward to lay his life for the interest of our nation. But, in this case unfortunately the respondents are not in a position to say what had happened to M.Raman after the afternoon of 12th March 1987.

Admittedly, the individual was missing from the Unit from the afternoon of 12th March 1987. But, the respondents without giving any explanation for his absent from the Unit, coolly say that he was a deserter that too without following the procedures contemplated under the Army Rules. This act of the respondents is to be deprecated in our view. So, We are of the considered view that the impugned order of the respondents is liable to be set aside and the same is hereby set aside and the applicant is entitled to the family pension as per Rules and also after following the mandatory procedures required as contemplated under para 3 of Government of India, Ministry of Defence, Letter No.12(16)/86/D (pension Service), dated 3rd June 1998, which We extract below for the benefit of the applicant:-

3. The above benefits may be sanctioned after observing following formalities:-

(i) The family must lodge a report with the concerned Police Station and obtain a report that the employee has not been traced after all effects had been made by the police.

(ii) The claimant will be required to furnish an indemnity bond with two solvent sureties to be effect that all payments thus made will be recovered from the amount due to the person if he/she reappears and makes any claims.

Point 2 is answered accordingly.

8. In fine, the impugned order No.P/14269930M/FP-1/NER dated 7th April 2010, passed by the 5th respondent and the order No.82/0068/1A/3/87, dated 19.03.1990 of the 4th respondents, are set aside and the application is allowed holding that the applicant is entitled to the family pension from the date of missing of her son M.Raman ie., 12th March 1987. For compliance four months from today. Failure in compliance will entail the applicant to claim an interest at the rate of 12% per annum. No costs.

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