

(2010) 03 DEL CK 0246

In the Delhi High Court

Case No : Writ Petition (Criminal) No. 412 of 1997 and Criminal M.A. No's. 7680 and 11887 of 2005

Savitri Sharma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-03-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 114

Citation : (2010) 03 DEL CK 0246

Hon'ble Judges : Ajit Bharihoke, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Kamini Jaiswal and Divyesh Pratap Singh, for the Appellant; Manoj Ohri, Advocate/APP, for the Respondent

Judgement

A.K. Sikri, J.—This writ petition, as originally filed, was in the nature of a habeas corpus petition filed by the petitioner, who is the wife of Shri G.L. Sharma (hereinafter referred to as "Sharma") for the production of Sharma, who had gone missing while in the service of Army. However, with the passage of time, this petition has taken a different turn. Sharma has not been traced and we are now concerned with the terminal and other pensionary benefits, which could be admissible to the petitioner as widow of Sharma on the premise that he is presumed dead, though solving the mystery of Sharma's disappearance remains the focal point in shaping the relief to which the petitioner would be entitled to.

2. The events leading to the filing of the writ petition as well as the circumstances/developments, which led to altering the stance of the petition, may be recapitulated in brief.

3. Naib/Risaldar (RT) Shri G.L. Sharma had joined the Indian Army in the year 1982. At the relevant period, i.e., 1991-92, he was posted with 43rd Armed Regiment of the Indian Armed Forces at Pathankot. He was Naib/Risaldar working as a religious teacher. As per the averments made in the petition,

problem began when Col. Bikramjit Singh took over as the Commanding Officer in that Unit and when he was advised by Sharma not to do anything which might deteriorate the communal harmony of the Unit. It is alleged that the behaviour of Col. Bikramjit Singh, Commanding Officer was not such as to generate confidence and faith amongst his subordinates belonging to other communities. He had even ordered and got demolished a mosque in May 1991. He was also indulging in number of corrupt practices like embezzlement of Government funds, forgery of documents, illegal activities and using soldiers as personal servants and sending them to their relatives to do their household jobs, misuse of ration supply and issuance of railway warrants for wrong stations, etc. When Sharma apprised him of the deteriorating morale of Jawans and damage done to the communal harmony to the Unit, he was threatened by the Commanding Officer of dire consequences. Sharma was constrained to report to the Brig. Commander 94(I) Armed Brigade against Col. Bikramjit Singh as per the provisions of Rule 26 para 317 of Defence Service Regulations. However, he was shocked when, as a result of this complaint, he was reportedly discharged from the Unit. This discharge was triggered on the basis of forged letter dated 10.02.1992 allegedly written by Sharma seeking his resignation. On coming to know this fact, Sharma protested and wrote a letter of complaint to the Brigade Commander on 07.04.1992 complaining about the forged letter, as he had not given any application of discharge. In response, the Brigade Commander called Sharma on 18.04.1992 in the presence of C.O. However, even when Sharma maintained that he had not given any discharge letter, Brigade Commander refused to set up Court of inquiry in order to favour the then C.O. On the same night, various Jawans came to the house of Sharma at the behest of C.O. and threatened the entire family of dire consequences. Because of this threat, Sharma was forced to send his family back to his native place and after that he returned to the Unit. However, the petitioner thereafter did not receive any letter or communication from Sharma. When she did not hear about Sharma, she made representations to the Commanding Officer, Chief of Army Staff, the Defence Minister and the President of India on 20.11.1995, which was followed by another representation. After few days, she found that the discharge order of Sharma, her husband, was cancelled and now he had been declared as "absconder". According to the petitioner, her husband, Sharma was in the Unit in April, 1992, but his whereabouts had been concealed. She suspected that he was under illegal detention of Army Officers, particularly, Commanding Officer. This forced her to file the present petition for habeas corpus.

4. Notice to show cause was issued to the respondents on 30.05.1997. The respondents appeared and filed the affidavit taking the plea that Sharma was declared "deserter" as a result of a Court of Inquiry as he was not in illegal custody. This Court summoned the Court of Inquiry record. After going through the contents of the Court of Inquiry proceedings and various facts brought on record by the petitioner including affidavits of four officials/ex-officials of the Army, who had stated in the affidavits that Sharma was in the Unit on 19th/20th

April, 1992, this Court passed the order dated 13.04.1998 directing further probe into the matter by the Directorate of Military Intelligence. This order was modified on 21.09.1998 to the extent that inquiry would be conducted by the General Officer Commanding (GOC), 18, Infantry Division (RAPID) and report in this regard would be submitted to the Court after conducting the inquiry, the report was submitted. We shall refer to the findings of this Court of Inquiry later at an appropriate stage. We may also point out at this stage that after the report of the court of inquiry was received; the petitioner had moved application for amendment of the petition, which was allowed. In the amended writ petition, the petitioner had claimed the following relief:

a) issue rule nisi asking the respondents why a writ in the nature of habeas corpus or any other appropriate writ/writs, direction/directions, order/orders be not issued directing the respondents to produce the husband of the petitioner Sh. G.L. Sharma Nb. Risaldar 43 A.R.C/o 56 A.P.O.

b) after show cause if any, the rule may kindly be made absolute against the respondents.

c) the Haryana Govt. may please be directed to make necessary arrangements for the safety and security of lives of the members of family of the petitioner and so that the petitioner's may live at her village without fear of police, as an independent citizen of India.

c(a) to punish the guilty officials in accordance with law in view of the findings of the COI that the guilty officials have committed serious offences and have indulged in anti-national activities.

c)(b) the petitioner husband having been illegally removed and killed the respondent. The petitioner are (sic.) eligible for all salary, pay and allowance from 19.04.1992 till date. The petitioner is also eligible to suitable compensation.

d) and/or issue any other appropriate writ as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.

Prayers (a) to (c) reproduced above were the same, which were in the original writ petitions. Prayers C(a) and C(b) were added.

5. To complete the sequential narration of developments, we may point out that after perusing the record of Court of Inquiry, this Court passed the order dated 20.04.1999 directing that the petitioner, wife of missing Naib/Risaldar G.L. Sharma, shall be given the benefit in terms of Government of India Memorandum dated 03.06.1998 and all other Rules and provisions applicable in that behalf. The effect of this order was to grant terminal benefits and pensionary benefits to the petitioner. Writ petition was disposed of with these directions.

6. The petitioner was not satisfied with the disposal of the writ petition in this manner. She filed SLP (Crl.) 2553/1999 challenging the aforesaid order. In the said SLP, orders were passed on 13.10.2000 remanding the case back to this

Court for a decision on merits. Thereafter, on 23.10.2000, the following orders were passed:

During the course of arguments it was agreed by the petitioner that without prejudice to her rights she is prepared to accept the salary/pension/gratuity or whatever is due according to rules, from the year it was due i.e. 1992 till date. The question whether she is entitled to full salary or compensation will be considered when the petition is finally decided on merits. Major Vijay Kumar appearing on behalf of the respondent states that papers are already with the petitioner. Counsel for the petitioner states that the petitioner after signing the same will handover same to the respondent within two weeks. Respondent will pay her the dues within eight weeks thereafter. Belongings of Naib Subedar G.L. Sharma be given to his wife, petitioner herein.

Let the respondent file an affidavit indicating as to what action has been taken against the erring officials and the report of the enquiry. Affidavit be filed before the next date of hearing.

7. The petitioner, as a consequence, was paid gratuity, arrears and salary as well as pension. She is receiving monthly family pension as well with effect from 01.01.1996.

8. At the time of arguments of this writ petition before us, it was conceded by both the counsel that these are the additional prayers, introduced by way of amendment, with which we are concerned now and the learned Counsel for the petitioner did not press the prayer for production of Sharma accepting the fact that it was not possible when whereabouts of Sharma were not known for last 18 years and we have to proceed on the basis that he is presumed dead.

9. Insofar as action against guilty officials is concerned, the respondents filed the affidavit in which it was stated that administrative action was initiated against Col. Bikramajit Singh (now Brigadier) and Captain (now Major) P.K. Yadav and were punished and the grievance of the petitioner is that they are let off leniently. Insofar as claim of salary, pay and allowances to the petitioner from 19.04.1992 till date and the compensation is concerned, the petitioner is seeking on the plea that her husband G.L. Sharma had been illegally removed and killed by the respondent. It is on this aspect that counsel for both the parties had argued the matter at length.

10. In order to deal with this aspect, it would be necessary to go through the findings of the Court of Inquiry held pursuant to the directions on this Court. This Court of Inquiry was conducted by Brig. Rajendra Kumar, Deputy General Officer Commanding and three Members, two out of whom were Deputy Commander and the third was Commanding Officer. This Court of Inquiry examined various witnesses including four persons who had filed affidavit in this Court supporting the version of the petitioner. On that basis, it returned certain findings in respect of the allegations made by the petitioner in the writ petition regarding demolition of mosque in May 1991, corrupt practices and discharge of Sharma on the basis

of purported resignation letter.

11. Court of Enquiry is of the opinion that relocation of Masjid and making changes was part of the duty of the Commanding Officer and no offences had been committed; there was no embezzlement of funds and allegation that jawans were made to work as personal servants was based on hearsay. Insofar as allegation of threatening Sharma is concerned, the Court of Inquiry found that the Commanding Officer had asked him to participate in entertainment programme being organized for all ranks and their families on Regiment's raising day, but he refused to do so. His refusal had angered the Commanding Officer and the Commanding Officer, however, felt that he should not have lost his cool. In respect of alleged discharge application of Sharma, Court of Inquiry found that no such application was made by Sharma. Therefore, Sharma's reinstatement with full benefits to him was recommended.

12. The bone of contention is the disappearance of Shama. The allegation of the petitioner is that on 18th/19th April, 1992, Sharma took his family out of Unit and after dropping them in the village he went back to the Unit and thereafter he had mysteriously disappeared and/or kept in illegal confinement by Col. Bikramajit Singh and/or eliminated by him/at his instance. The respondents, however, claimed that he never returned back to the Unit. The Court of Inquiry has specifically dealt with this aspect after narrating the circumstances leading to disappearance of Sharma on the basis of deposition of witnesses and materially produced before it. The Court of Inquiry is of the opinion that the claim of the petitioner that Sharma was held in illegal custody by the Army was not correct. However, at the same time, he could not be accused on desertion, as there was no intention on his part, but the circumstances created by the Unit forced him to abscond. The Court of Inquiry concluded that he was alive and was hiding himself. The Court of Inquiry blamed Col. Bikramajit Singh for creating circumstances leading to such a situation. This discussion contained in the Report runs as under:

Analysis by the Court

75. The start point of the conflict was transfer of Rs. 5500/- from religious fund and its highly irregular redistribution between mandir and gurudwara till departure of JCO RT i.e. Rs. 540/- to mandir and Rs. 5359/- to gurudwara while sikh pers were 14% of the total str of the unit. Col Bikramjit Singh did not take kindly to Nb/Ris (RT) GL Sharma's resistance and heaped insults on him when he refused to sing in the entertainment programme. Locking up of Golak was meant to cut Nb/Ris GL Sharma to size but it had opposite effect on mandir contributions. Col Bikramjit Singh decided to get rid of JCO by any means.

76. The forged application as positively rigged up by Ris Gurdial Singh, who is unlikely to have taken such a step on his own initiative. This fact was known to Col Bikramjit Singh who accelerated the process by instructing Capt Yadava Offg OC HQ Sqn through Adjut Maj DS Grewal to counter sign TRs application and then

sending his head clk to fetch the same. He did not follow correct procedure for discharge and did not interview the JCO. He, using his personal influence with OIC records Lt Col GSS Pall managed to get the discharge sanctioned even when supporting docu were not submitted by the unit. CO even kept the Bde Cdr in dark about the fact that he had not interviewed the RT before discharge.

77. Nb/Ris (RT) GL Shama's complaint reach Cdr 94 (I) Armd Bde on 10 Apr. 92 and he would have warned Bikramjit Singh to cover his tracks. Officially Cdr asked CO for an explanation on 16 Apr 92. Bikramjit Singh probably got JCO RT's 1988 application forged to prove that JCO was in the habit of threatening and feeling threatened.

78. If Birg DS Dhillon considered the complaint so serious so as to go to the unit personally he should have acted early enough and not waited for six days after receiving the application.

79. Bde Cdr's personal intervention was probably to assist Bikramjit Singh in browbeating the RT but he did not succeed in that. Cdr considered CO Bikramjit Singh to be outstanding offr and therefore meriting protection. In his meeting though all offrs and JCOs were present no one refuted JCO RTs charge that application was forged. If the application was genuine Ris Gurdial Singh would have spoken. Ris Gurdial Singh also ensured that LD Randhir Singh and Dfr Jai Bhagwan Keep quiet and also mislead the CO.

80. The court found all allegations made by the JCO RT vide para 23(a) to (d) above correct. Therefore, by inference JCO RT's allegation that there is threat to his safely was correct.

81. JCO was probably threatened into escaping so as to get rid of him from the unit. This could have been organized by Ris Gurdial Singh.

82. 2IC Lt. Co. HBS Pannu used his influence to get a favourable verdict from the forensic Science Laboratory. However, laboratory did not confirm that signatures are of Nb/Ris GL Sharma and hence he gets benefit of doubt. The application for discharge was forged.

83. Nb./Ris GL Sharma did not come back to the unit on 19 Apr or subsequently. The affidavits confirming this are thought off subsequently.

84. On 03 May Nb/Ris GL Sharma was present at his village when Ris Bachan Singh called on and stayed with him. There is no question of Bachan Singh staying in Sharma's house in the village if JCO was actually missing while needle of suspicion pointing at Bachan Singh among others.

85. A semi finished court of inquiry done by Maj JS Yadav of 43 Armd Regt and one done by 94(I) Armd Bde merely recorded the story put up by 43 Armd Regt. Col Bikramjit Singh managed to keep Cdr in dark and got away with it.

86. In collusion with the records office docu of this case were also destroyed.

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88. Court also does not find any substance in Mrs Savitri Sharma's claim that her husband is held in custody by the Army. By her own admission Nb/Ris (RT) GL Sharma moved out of the unit of his own free will and house is responsible for event after that he could have taken recourse to representation to 16 Corps HQ but did not do so. He, however, cannot be accused of desertion as there was no intention on his part but circumstances created by the unit compelled to abscond.

89. He has not helped his children since and they have been left at the same level of education they were in 1992. The family is badly off. His characteristic of sustaining any damage to get even with opponents is clearly visible in behaviour of Nb/Ris RL Sharma (sic. GL Sharma).

90. The Court is of the opinion that Nb/Ris GL Sharma is alive and is in hiding. His father and few relations in the village confirmed it. His wife declines but is not very emphatic about his having died. His son promised to find him and rang up on 24 Oct 98 to state he tried in Hardwar but has not been successful.

13. Col. Bikramajit Singh, Capt. P.K. Yadav and Lt Col. GSS Pall were held responsible for certain lapses in the following manner:

91. The court finds col (now Brig) Bikramjit Singh responsible for the failure of command due to:

(a) Allowing controversial situation to develop as a personal one to one between himself and Nb/Ris GL Sharma.

(b) Taking deliberate and unethical actions to ensure the discharge of NB Ris (RT) GL Sharma from service using coterie of lower rank.

(c) Did not follow the correct and laid down procedures of processing the discharge application of NB Ris (RT) GL Sharma.

(d) Using his personal position as CO to get the discharge of Nb Ris (RT) GL Sharma, without the support of documents certificates required.

(e) Mismanagement of Regt 1 Accounts incl Soda Water Factory Accounts.

(f) Creating and supporting circumstances which led to religious disharmony in the unit.

(g) Not taking appropriate and immediate action to apprehend Nb Ris (RT) GL Sharma.

(h) Intimidating witnesses by asking them to file affidavit in court when a court of Inquiry was in progress and he was himself a witness.

(j) Removing traces of the plot from official docus like records of JCO RT destroyed in AC Centre, papers removed from file (letter of JCO RT to 2 IC), supporting docus of Rs. 5000/- tfr.

(k) Misrepresenting facts of the case to higher authorities.

92. Capt (now Maj) PK Yadav, Offg OC HQ Sqn is held responsible for the following lapses:

(a) Failed to interview NB Ris (RT) GL Sharma when his discharge application was put up in Feb 92 again on return from A/L and even after the JCO (RT) had represented against his discharge to the Bde Cdr.

(b) Extreme carelessness in performance of his duties in that he did not know that the JCO (RT), an important functionary of his sqn, proceeded on A/L or whether he was in stn during leave.

(c) For dereliction of above duties as Offg OC of HQ Sqn.

(d) No offr could be so ignorant of his duties and be so deficient of mental ability that he does not remember any details. He was obviously part of the plot to remove NB/RIs GL Sharma from the unit.

93. CRO Armed Corps Records Ahmednagar Lt Col. GSS Pall is guilty of:

(a) Colluding with CO 43 Armd Regt in discharging NB/Ris (RT) GL Sharma without supporting docu and NOC from the CO.

(b) Deliberately incl related docu of NB/Ris (RT) GL Sharma's case in a bd of destruction knowing fully well that the case is still in progress and rendering a false certificate that important docu have been preserved. However no action is recommended against him as he was since expired. The discharge procedures followed at Armd Corps Centre be streamlined.

14. After the aforesaid analysis, the Court of Enquiry has recorded its opinion in the following manner:

OPINION OF THE COURT

The court is of the opinion that:

1. JC-12861 1A NB/Ris (RT) Girdhari Lal Sharma left his qr in 43 Armd Regt unit lines at 0300 hrs on 19 Apr 92 alongwith his wife and two children of his own accord and without proper authority. It was prompted by duress consequent to perceived threat to his own life and safety of his family members. Indian Army is not responsible for his security till he rejoins or is apprehended.

2. Nb/Ris (RT) Girdhari Lal Sharma is not held in any type of military custody.

3. IC-29186x Col (Now Brig) Bikramjit Singh then CO of 43 Armd Regt is blamed for lapses leading to creation of circumstances which were partially responsible for the disappearance of Nb/Ris (RT) Girdhari Lal Sharma. Adm action be taken against Col (Now Brig) Bikramjit Singh for failure of command due to:

(a) Being responsible for promoting and maintaining disharmony in the unit during his command tenure.

(b) Resorting to unethical practice in the fraudulent discharge of JC-12861 1A Naib Risaldar (RT) Girdhari Lal Sharma.

4. IC-45372X Capt (Now Maj) PK Yadav then offg OC HQ Sqn is blamed for dereliction of duty and disciplinary action be taken against him for not adhering to proper procedures in processing the case of discharge of JC-12861 1A Nb/Ris (RT) GL Sharma of 43 Armd Regt.

5. JC-195318P Ris Bachan Singh is guilty of not apprehending a deserter when sent there specifically to do so.

6. Lt. Col. GSS Pall, now dead, then CRO Armd Corps Records is guilty of malpractices in discharge of Armd Corps pers and wrongful destruction of records. Since the offr has expired necessary procedures be streamlined in the Armd Corps Centre to prevent their reoccurrence.

7. IC-15871X Brig DS Dhillon then Cdr 94(I) Armd Bde is also guilty of not taking prompt action on application of Nb/Ris (RT) GL Sharma and extending unwarranted protection to his favourite subordinate.

8. JC-138122H Ris Gurdial Singh (now retd as Hony Lt) is guilty of creating disharmonious atmosphere in the unit by his unethical behaviour and forgery of docu in the unit. Appropriate action be taken against him through civil authorities.

9. Nb/Sub (RT) Girdhari Lal Sharma's absence cannot be treated as desertion and should be regarded as "absconding". He is guilty of:

a) Not taking recourse through proper channel of Comd for redressal of his grievances.

b) Absconding military service since 19 Apr 92 till date.

10. If Nb/Sub (RT) Girdhari Lal Sharma rejoins duty he be:

a) Reinstated into the Army Service with full benefits.

b) Disciplinary action be taken against him for charges at para 9.

c) Posted to another unit.

11. If Nb/Sub (RT) Girdhari Lal Sharma is proved dead a family pension from eh date of death is recommended for Mrs. Savitri Sharma.

12. If Nb/Sub (RT) Girdhari Lal Shama does not rejoin and is not proved dead a petition be made to AWWA Chairperson for alleviation of poverty. A one time grant of Rs. 20,000/- is recommended.

13. The household effects of Nb/Sub Girdhari Lal Sharma still lying in custody of 43 Armd Regt be returned to Mrs Savitri Sharma after a unit conditioning board. Damages caused due to storage be paid for by 43 Armd Regt.

15. The reading of the aforesaid extracts of the Enquiry Report brings out the

following significant aspects:

(a) Col. Bikramajit Singh did not like Sharma's resistance to some irregular activities of the Col. and, therefore, he decided to get rid of Sharma by any means. Application for discharge of Sharma was forged by Ris. Gurdail Singh, who could not have taken such a step on his own initiative. This was known to Col. Bikramajit Singh, who not only accelerated the process of discharge, but followed corrupt procedure for discharge. He even kept the Brigade Commander in dark about the fact that he had not interviewed Sharma before discharge.

(b) Even Brig. D.S. Dhillon did not take remedial measures when Sharma complained against Col. Bikramajit Singh. His personal intervention was to assist Col. Bikramajit Singh in browbeating Sharma.

(c) Further, circumstances were created which forced Sharma to leave the unit. Even semi-finished inquiry was conducted by Maj. J.S. Yadav and in collusion with the records of his documents of this case were also destroyed.

(d) Though the Court of Inquiry was of the opinion that Col. Bikramajit Singh and others were responsible in harassing Sharma, at the same time, the Court of Inquiry did not accept the claim of the petitioner that Sharma had returned back to Unit on 19th April, 1992 or subsequently. Versions of Dfr Raghvinder Singh and Dfr Ramesh Pal Singh in the affidavits filed in the Court were accepted by the Court of Inquiry. These persons appeared as witnesses in the Court of Inquiry also. However, according to the Court of Inquiry, circumstances narrated in Para 87 and reproduced above did not support the story contained in those affidavits.

16. The aforesaid report of the Court of Inquiry clearly holds that the then Col. Bikramajit Singh and few other names are squarely responsible for creating unbearable circumstances for Sharma. Therefore, it cannot be denied that Sharma felt that he and his family members were unsafe in the Unit because of the various illegal acts on the part of the superior officers. Admittedly, under these circumstances, he was forced to leave the unit on 18/19th April, 1992. According to the petitioner, his intention was to ensure safety of his wife and children and after leaving them at their village, he returned back to the Unit. Thereafter, since 19.04.1992, he went missing. The Court of Inquiry has, however, found that he did not return to the Unit at all.

17. Since this is the difficulty in the way of the petitioner, which she has to surmount, the learned Counsel for the petitioner made fervent effort to dislodge the aforesaid finding of the Court of Inquiry. Her submission was that on this aspect, the Court of Inquiry erred. She highlighted the illegal and threatened acts of the then Commanding Officer and other officials and their irresponsible behaviour, who acted in a motivated, partially and biased manner throughout. Her submission was that the petitioner's husband was on duty when he was abducted. The guilty officers named herein are fully responsible for his disappearance and murder. He was "not missing" but had been "eliminated/murdered". Placing strong reliance upon four persons who had filed affidavits,

she submitted that they were eye witnesses to the petitioner's husband in illegal custody of the guilty officials, who very well know as to what they had done to Sharma. She argued that in such a scenario, ratio of Sucha Singh Vs. State of Punjab, shall get attracted wherein the Supreme Court has held that it is only the abductors who can tell about the whereabouts of an abducted person. If the abductors do not want to tell, then the Court is free to consider that the abductors have killed the abducted person.

18. Her alternate submission was that in any case, Sharma could be treated as "dead on duty" on account of circumstances created by the guilty officials. It was more so when the Army Authorities had failed to unearth the genesis behind the disappearance of Sharma from 19.04.1992 to date. They had also failed to trace out Sharma, although it was their responsibility. Dilating her submission predicated on Supreme Court judgment in the case of Sucha Singh (supra), she argued that the following dicta laid down by the Supreme Court in above noted case, while making reference to the case of State of West Bengal Vs. Mir Mohammad Omar and Others etc., this Court will be justified to draw a presumption that the abductors themselves could be the killers of the abducted victim, unless they explained as to what they did with the victim. This approach would be in tune with Section 114 of the Indian Evidence Act in a situation like this. She specifically placed reliance on the following observations:

The pristine rule that the burden of the proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilized Doctrine, as though it admits no process of intelligent reasoning. The Doctrine of presumption is not alien to the above rule. On the other hand, if the traditional rule relating to burden of proof of prosecution is allowed to be wrapped in pedantic coverage, then the offenders would be major beneficiaries and the society would be the casualty". The Supreme Court has further held in the above case that: "presumption of fact is an inference as to the existence of one fact from existence of some other facts, unless the truth of such inference is disproved. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the Court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above principle has gained legislative recognition in India when Section 114 is incorporate in the Evidence Act. It empowers the Court to presume the existence of any fact, which it things likely to have happened. In that process, the Court shall have regard to the common course of natural events, human conduct etc. in relation to the facts of the case.

19. She also submitted that the reasons given by the Court of Inquiry discarding the deposition of Dfr Raghvinder Singh and Dfr Ramesh Pal Singh were totally unfounded. In the above edifice, her plea was that following reliefs and submitted that following relief be granted to the petitioner as detailed in rejoinder affidavit dated 12.04.2005:

i. Period from 19.04.1992 to March Full pay and allowance for 24 1994 - full pay and allowances months for Nb/Ris.Rt 6300x12x2 for Nb. Ris RT Rs.1,51,200.00 ii. Period from April 94 to 05.04.2004 Full pay and allowances for 7 when the JCO would have reached years for Risaldar 95000x12x7 superannuation on attaining the age Rs.7,98,000.00 of 55 years JCO would have promoted up to the rank of Risaldar Major iii. Liberalised special family pension to For 20 years for Risaldar as the petitioner Savitri Devi from admissible 9500 x 12 x 20 April 2001 to April 2021 when she Rs.22,80,000.00 would attain the age of 70 years normal expectancy of life under G.O.I. letter dated 30. 10.1987 iv. Liberal special pension after April 2021 if the petitioner survives v. Mental torture, harassment and Rs.15,00,000.00 loss of consortium and irreparable loss of studies and Careers of three children Total Rs. 47,29,200.00

In support of her plea that the petitioner was entitled to special benefits and liberalized pension, she referred to OM dated 03.02.2000 and 30.10.1990 respectively.

20. Learned Counsel for the respondent, on the other hand, submitted that there was no challenge to the Court of Inquiry and, therefore, it WP was not permissible for the petitioner to question the findings of the Court of Inquiry, that too when the petitioner had herself largely relied upon the same inquiry to support her claim insofar as findings related to the harassment of Sharma are concerned. It was further submitted that in any case the findings were based on the evidence produced before the inquiry and there was no reason to disturb the same. It was also submitted that case of the petitioner was not covered by OM dated 03.02.2000 or OM dated 30.10.1990.

21. We have given our thoughtful consideration to the respective submissions. We are forced to comment that the circumstances leading to missing of Sharma were the creation of Col. Bikramajit Singh and his other accomplices, who acted at his instance. Sharma was repeatedly harassed by these officials, who went to the extent of even forging the application of discharge to ease him out of the service. When Sharma protested against such a discharge to the higher officers, viz. Col. Dhillon in the case, even he, instead of setting the things right, shielded Col. Bikramajit Singh. All these must have emboldened Col. Bikramajit Singh and his accomplices who extended threats to him and forced him to leave the unit on 18.04.1992. Thus, compelled by the circumstances/situation created by Col. Bikramajit Singh and others, he left the Unit for his safety and that of his family. These facts not only emerge from the records, there are also categorical findings to this effect by the Court of Inquiry itself. Report of the Court of Inquiry was accepted by Maj. General, Officer Commanding who made following recommendations while approving the findings:

I recommend that:

(a) The following action be taken as regard JC-12861 1A Naib Risaldar (RT)

Girdhari Lal Sharma of 43 Armoured Regt. and his family:

(i) In case JC-12861 1A Naib Risaldar (RT) Girdhari Lal sharma reports back to Army Authorities, he be re-instated with full financial benefits from the date of his absence from the unit i.e. 19 Apr. 1992 and be posted to any unit other than 43 Armoured Regiment.

(ii) In case JC-12861 1A Naib Risaldar (RT) Girdhari Lal Sharma is not found and concrete proof of his death is furnished, full family pension be admitted to the family with retrospective effect from the date of his disappearance from the unit i.e. 19 Apr. 1992.

(iii) In case JC-12861 1A Naib Risaldar (RT) Girdhari Lal Sharma is not found and concrete proof of his death is not available, a one time distress elevation grant of Rs. 20,000/- (Rupees Twenty Thousand Only) be remitted from appropriate Welfare Funds.

(iv) JC-12861 1A Naib Risaldar (RT) Girdhari Lal Sharma cannot be absolved of the responsibility of absconding instead of taking recourse to approaching a higher commander in the chain for redressal of grievances. In the event of his reporting back to Army Authorities, disciplinary action be initiated against Naib Risaldar (RT) Girdhari Lal Sharma for absence without leave from the unit with effect from 19 April, 1992."

He also directed administrative action again Col. Bikramajit Singh (then Brig.) and disciplinary action against P.K. Yadav and Bachhan Singh.

22. The crucial question, however, is as to whether Sharma returned back to the Unit on 19.04.1992 or 20.04.1992 after ensuring the safety of his family and thereafter went missing while in the Unit? Findings of the Court of Inquiry are categorically in this behalf, which are based on detailed analysis of the evidence produced before it, as is clear from the following:

83. Nb./Ris GL Sharma did not come back to the unit on 19 Apr or subsequently. The affidavits confirming this are thought off subsequently.

84. On 03 May Nb/Ris GL Sharma was present at his village when Ris Bachan Singh called on and stayed with him. There is no question of Bachan Singh staying in Sharma's house in the village if JCO was actually missing while needle of suspicion pointing at Bachan Singh among others.

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87. Dfr Raghvinder Singh is not very sure of the date. As per him it could be 19 Apr 92 or 20 Apr 92. However, the following circumstances do not support the story:

a) Dfr Raghvinder Singh is not very sure of the date. As per him it could be 19 Apr 92 or 20 Apr 92.

b) Dfr Ramesh Pal Singh's statement to this Court was inconsistent.

c) Both the above indls had their own problems with Col Bikramjit Singh. Dfr Ramesh Pal Singh himself gave an application against the CO on 18 Apr 92, the date on which the Bde Cdr came to the Unit.

d) The distance involved between Mamun and Barwala is approx 450 km one way. The nearest taxi stand was 6 to 7 KM form Nb Ris (RT) GL Sharma's qtr at Mamun. Working 7 Kms with 2 children would have taken two hours or more. Finding a taxi at around 0500h in 1992 at Mamun was a distant possibility. Start time could be easily 0800h.

e) The travel time from Mamun to Barwala and back, waiting time for the bus, likely police barricades, in 1992, enroute etc. would easily take approx 24 hours. The earliest that the JCO(RT) could have reached back in the unit was not before day time on 20 Apr 92 and in a very tired state. During day time could not have been trapped by the unit pers even if they wished to do so. Since there was no night bus service in 1992 he may be likely to have reached during AN of 20 Apr 92 for which there is no witness. It is obvious that both these individuals have filed wrong affidavits. There was no mention of these sightings in both the C of IS in 1992 and have been added as on afterthought in 1995 onwards. It is because of this he could not have been killed by any unit pers.

88. Court also does not find any substance in Mrs Savitri Sharma's claim that her husband is held in custody by the Army. By her own admission Nb/Ris (RT) GL Sharma moved out of the unit of his own free will and house is responsible for event after that he could have taken recourse to representation to 16 Corps HQ but did not do so. He, however, cannot be accused of desertion as there was no intention on his part but circumstances created by the unit compelled to abscond.

23. This Court while exercising its power under Article 226 of the Constitution of India is not sitting as the appellate authority. The scope of judicial review is limited. There is no procedural or other infirmity in conducting the inquiry, which was conducted by senior officials in a totally impartial manner. In fact, it is the petitioner who relies upon the same very report for the purpose of demonstrating the unfair and illegal treatment meted out to Sharma.

24. We are thus confronted with a situation where Sharma did not come back to the Unit on 19.04.1992 and, therefore, was not kept in illegal custody by the Army authorities or any of its officials. At the same time, blame squarely falls on the Commanding Officer and others, who were at the helm of affairs, and ensured that he is eased out of service and for achieving these nefarious motive, they did not leave any stone unturned. It appears that after leaving his family to his village, Sharma went in the hiding. Thereafter, his whereabouts are not known. May be a person like him, who was a spiritual teacher, renounced the world after being fed up with the cruel treatment given to him by his superiors and his senior officials to bring culprits to books also failed. As he is not seen or heard since 1992 i.e. 18 years, he can be presumed dead in view of the provision of Section 114 of the Evidence Act. On this premise, we have to adjudge the

admissibility of the claims made by the petitioner.

25. The petitioner is granted family pension from 19.04.1992 itself. She has also been released other terminal benefits. One time distress element grant of Rs. 20,000/- from Welfare Fund is also given to her. Since Sharma did not attend the duties, he cannot be paid any salary from 19.04.1992 till March 1994 or from 1994 to 05.04.2001 when he would have attained the age of superannuation on the premise that he would have become JCO as claimed by the petitioner.

26. Insofar as claim of liberalized special family pension is concerned, the same is governed by OM dated 30.10.1990 read with OM dated 03.04.2000 which deals with special benefits in case of death and disability in service. This is issued pursuant to the recommendation of the 5th Central Pay Commission. It enumerates five categories, viz., (a) to (e) under which such special benefits can be granted. In those cases, which fall under category (d) and (e), this OM stipulated that family pension shall be determined under the provisions of "the liberalized pensionary award scheme". Learned Counsel for the petitioner submitted that the petitioner falls under category (d), which reads as under:

Category "D" Death or disability attributable to acts of violence by terrorists, anti-social elements, etc. whether in their performance of duties or otherwise. Apart from cases of death or injury sustained by personnel of the Central Police Organizations while employed in aid of the civil administration in quelling agitations, riots or revolt by demonstrators, other public servants including police personnel, etc. bomb blasts in public places or transport, indiscriminate shooting incidents in public, etc. would be covered under this category

27. On a bare reading, it is clear that case is not covered under this category as the purported "death" is not the result of any act of violence, resistance or anti-social elements. No doubt, if death of military officer, while in service, occurs in mysterious circumstances, then that is to be treated as attributable to or aggravated by military service and in such circumstances, wife of the petitioner is entitled to special family pension and children allowance. This is the mandate of the judgment of the Supreme Court in the case of Smt. Charanjit Kaur Vs. Union of India and others, . However, that was the case where husband of the petitioner therein was found dead under mysterious circumstances when he was in the custody of the Army authorities. The authorities had not disclosed to the widow the circumstances under which circumstances her husband had received burns as his burnt body was found. The Court of Inquiry was conducted more than seven years thereafter returning the finding that death of her husband was not attributable to military service. It was, however, admitted that in the Court of Inquiry it could not be conclusively proved that cause of death was murder or suicide. In the counter affidavit filed to the writ petition, many averments were not specifically traversed and casual approach was adopted. Influenced by all these circumstances, the Supreme Court made the following observation on the facts of the case:

7. We are pained at the utterly irresponsible conduct of the authorities in the present case right from the inception. We see a good deal of substance in the allegation of the petitioner that her husband met with his death in mysterious circumstances. It is surprising that when the officer was not in a condition to move on account of his ailment, and when on 16.6.1978 his condition was considered so delicate that even his wife and children were permitted to see him only after a great deal of persuasion, and when he was all the while accompanied by the specialist doctor, he was allowed to move on his own and go for his private business to the cook house, if the version of the respondent- authorities is to be believed. It is also difficult to believe that when he was being airlifted at his own request, he had refused to board the plane and instead had left for his said alleged private business. All that thereafter was found was his charred body with 98% burns. No enquiry whatsoever seems to have been made and if made, its results are kept a secret. That such an incident should have occurred in the presence of the responsible Army officers and should go uninvestigated and in fact completely ignored is all the more baffling. There is a good deal in this case for which the authorities have to answer. This is apart from the fact that till this day, the case has been handled with culpable negligence and cynical indifference. This is a matter which requires investigation at the highest level. We, therefore, desire that this matter be personally looked into by the Chief of the Army Staff.

28. It was in those peculiar and abnormal circumstances that the Court concluded that the officer died while in service in mysterious circumstances and his death was attributable to and aggravated by the military service. In the present case, it is difficult to arrive at such a conclusion in view of the aforesaid findings of the Court of Inquiry, which was conducted pursuant to the orders of this Court that after leaving the Unit on 18.04.1992, Sharma did not return to the Unit at all. Therefore, we are of the opinion that the petitioner would not be entitled to special family pension as his case is not covered by the aforesaid OMs. Judgments cited by the petitioner are not applicable in the instant case. She will, therefore, continue to draw ordinary pension.

29. Insofar as claim for compensation is concerned, we are of the opinion that it is well founded. The harassment and cruel treatment meted out to Sharma and his family members including the petitioner herein has led to the disappearance of Sharma. It is established on record that he was dealt with by rough hands by his superiors. Sharma's democratic way of protest to the anarchic and despotic functioning of Col. Bikramajit Singh was met with vengeance. Apart from continuous harassment and threats, a serious illegality, nay, a serious offence of forging his application for discharge was committed to ensure that he does not remain in the Army Service. His legitimate grievance to even the higher authorities fell into deaf ears and was taken casually, who instead shielded Col. Bikramajit Singh. Emboldened by this, they started extending threats to Sharma and a fearful atmosphere was created. All this made him to run for his safety as well as safety of his family members. If he did not return to the Unit and went somewhere else without even informing his family about his whereabouts and did

not come into the contact with his familiar surroundings ever again, entire blame thereof has to be borne by Col. Bikramajit Singh who was the Commanding Officer and his associates. The Army is known as more disciplined force. It's senior officers are supposed to give helping hands to their subordinates rather than act in an autocratic and dictatorial manner. Shabby and awful treatment meted out to Sharma and his family is nothing short of violation of his human rights and those violators have virtually been let off as the administrative action taken against them is mockery of justice. This not only sent Sharma into oblivion, but had torturous and agonizing effect on his wife and small children. The petitioner was deprived of the company of her husband and her children that of their father at young age. They have, naturally, suffered mental torture and undergone immense financial crunch. Loss of her husband cannot be compensated in terms of money. Taking into consideration all these factors, we award compensation of Rs. 10,00,000/- (rupees ten lakhs) to the petitioner. The petitioner shall also be entitled to the cost of these protracted proceedings, which we assess at Rs. 50,000/-. These payments shall be paid to the petitioner within two months from today.

30. Writ petition along with CMs is disposed of in the aforesaid terms.