
(2000) 03 PAT CK 0126
In the Patna High Court
Case No : C.W.J.C. No. 10087 of 1997

Smt. Meera Devi and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 06-03-2000

Acts Referred:

Army Act, 1950 — Section 106, 142, 39

Citation : (2000) 2 BLJR 828 : (2000) 2 PLJR 314

Hon'ble Judges : R.M. Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Radha Mohan Pd., J.—In this writ petition, the petitioners who are widow and minor sons of late Pawan Kumar Singh of Fifth Bihar Regiment, has sought for issuance of a writ in the nature of mandamus commanding the respondent-authority to pay death-cum-retirement benefits including arrears of salary, family pension and all other legal dues.

2. During the pendency of this writ petition pursuant to the order dated 28.10.1998, the petitioners have been paid certain amounts on account of final settlement, army force provident fund and army group insurance. However, they have not been paid other dues like family pension, gratuity, etc.

3. In short, the relevant facts are that the deceased employee while in service of Fifth Bihar Regiment left the station without sanction of leave on 15.10.1996 and on 2.11.1996 he met with fatal train accident by Vaishali Express while he was returning from his field crossing the railway line. Further case of the petitioner is that the authorities were informed on 6.11.1996 about the death of the deceased employee in train accident. In support of this, the petitioners have produced copy of death certificate given by the Secretary of the Village Panchayat State Adhoc Committee. Manpur, Saran and also photostat copy of the receipt of the telegram sent by the Department of Telecommunication as Annexure-1/1 to the writ

petition. Petitioner No. 1 submitted her claim with respect to death-cum-retiral dues on 14.12.1996 vide Annexures 5 and 5/1, which have been finally rejected vide order dated 19.9.1997 contained in Annexure-7 on the ground that the deceased employee was declared deserter by the Unit by conducting Court of Inquiry. The petitioners are aggrieved by the said order (Annexure 7).

4. In the counter-affidavit filed on behalf of the respondents, it is stated that after the deceased absented without leava from 15.10.1996 an apprehension roll was issued by the Five Bihar vide their letter bearing No. AC/2007/10 dated 5.11.1996 to Civil Police authorities to apprehend him. Subsequently, the said Unit conducted a Court of Inquiry u/s 106 of the Army Act and after expiry of 30 days he was declared deserter with effect from 15.10.1996. It has further been stated that award for declaring the deceased employee a deserter by the Court of Inquiry has been strictly made in terms of the provisions laid down in the Army Act for Administrative and Enforcement of Army Force Discipline. However, some amounts have been found admissible in paragraph 11 of the said counter-affidavit and the same were paid after the orders of this Court.

5. According to the case of the respondents, the families of the deserted soldier/ individuals are not entitled for family pension/gratuity as per the provisions laid down under Rule 123 of the Pension Regulations for the Army part-1 1961. In paragraph 13 of the said counter-affidavit, it is admitted that it was reported by the wife of the deceased (petitioner No. 1) that her husband-died on 2.11.1996 in train accident in his village, but it is submitted that the said deceased died while he was on desertion. At the same time, in paragraph 23 of the said counter-affidavit it is stated that immediately after receipt of the information about the death of the deserter, petitioner No. 1 was asked to furnish certain documents mentioned therein vide letter No. 4262645/3/49/NE dated 23.6.1997, which were furnished by her on 6.9.1997.

6. Reply to the said counter-affidavit has been filed on behalf of the petitioners, in which it has been categorically stated that none of the procedures prescribed under the Rules for holding of a Court of Inquiry were adopted nor any notice was given to the affected persons although on 6.11.96 itself the authority concerned was informed about the death of the deceased employee. The learned Counsel for the petitioners has submitted that the so-called decision of the Court of Inquiry declaring the deceased as deserter was wholly illegal and in violation of the provisions of the Act and the Rules and the procedure prescribed therein, as is also evident from the very facts which axe either admitted or not disputed. It has further been submitted by the learned Counsel for the petitioners that the declaration of desertion of the deceased employee with effect from 15.10.96 itself is misconceived as per the provisions of law as enunciated in Note 8 of Section 39 of the Army Act, which provides that when a person has been absent without leave for 30 clear days or has over-stayed his leave without sufficient cause for that period, a Court of Inquiry will be assembled u/s 106 of the Army Act. In the instant case, 30 clear days of absence without leave had not elapsed

as the deceased employee died on 2.11.1996 itself, i.e., within 17 days when he had absented without leave.

7. On the other hand, the learned Counsel for the respondents has submitted that the petitioners are not entitled for any benefit other than what have been paid to them, as the deceased employee was declared deserter. This Court is unable to accept the said submission of the learned Counsel for the respondents.

8. Section 106 of the Army Act provides for holding of a Court of Inquiry when a person has been absented from duty without due authority for a period of 30 clear days. Rule 179 of the Army Rules, 1954 provides procedure for holding of such inquiry. Under Sub-rule (3) of Rule 179 previous notice is to be given of the time and place of meeting of the Court of Inquiry and of all adjournments of the Court to all the persons concerned in inquiry, except the person in war still absent. After death of the employee information was given to the authority on 6.11.1996 itself. It is not disputed that the petitioners being wife and sons of the deceased employee, were obviously the persons who are concerned in the matter of holding of Court of Inquiry against their husband/father.

9. It is not the case of the respondents that any such notice was ever given to the petitioners, except that it has vaguely been stated in the said counter-affidavit that the award for declaring the deceased employee as deserter by the Court of Inquiry with effect from 15.10.1996 has been strictly awarded in terms of the provisions laid down under the Army Act for Administration and Enforcement of the Army Force Discipline.

10. The petitioners have specifically stated in their reply to the said counter-affidavit that no notice were given to the petitioners although on 6.11.1996 itself the authorities were informed about the death of the deceased employee. Nothing has been brought on record by the respondents to show that the petitioners were ever given any notice as contemplated under Sub-rule (3) of Rule 179 of the Army Act. Moreover, it has rightly been submitted by the learned Counsel for the petitioners that the entire proceedings were misconceived as 30 days had not expired since when the deceased has been declared deserter. Even the so-called proceeding in that regard initiated vide letter No. AC/2007/10 dated 5.11.1996 contained in Annexure-"A" to the counter-affidavit was before expiry of 30 clear days since his unauthorized absence, i.e., from 15.10.1996. As per the provision contained in Note 8 of Section 39 of the Army Act when a person has been absent without leave for 30 clear days or has over-stayed his leave without sufficient cause for that period, a Court of Inquiry is to be assembled u/s 106 of the Act.

11. In the instant case, the deceased employee was not absent without leave for 30 clear days, as he undisputedly died within 17 days of his absence without leave from 15.10.1996, i.e., on 2.11.1996. As per the provision contained in Note 3 of Section 106 of the Army Act in calculating the period of 30 days the date on which the person became absent and the date on which the Court of

Inquiry assembled both are to be excluded. However, the Court of Inquiry is to assemble a committee to send the record of its declaration, but the same is not admissible in evidence as the entry is not made in the regiment book in accordance with Section 142(3) of the Army Act. However, a person can be declared illegally absent and charged for absence from the date on which the absence commenced. Thus, in my opinion, in the background of the aforesaid provision and undisputed fact, the Court of Inquiry u/s 106 itself was misconceived one.

12. Under such circumstances the order contained in Annexure-7 denying the death-cum-retirement benefits to the petitioners is vitiated. The writ application is thus allowed and the respondents are directed to release the entire death-cum-retiral dues accordingly within two weeks of the receipt/production of the copy of this order. There shall, however, be no order as to costs.