

**(1995) 03 SHI CK 0010**  
**In the High Court Of Himachal Pradesh**  
**Case No : C.W.P. No. 346 of 1994**

Soma Wati and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 28-03-1995

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Evidence Act, 1872 — Section 108

**Citation :** (1995) 1 ILR HP 403

**Hon'ble Judges :** S.N. Phukan, C.J; Bhawani Singh, J

**Bench :** Division Bench

**Advocate :** K.D. Sood, for the Appellant; P.A. Sharma, Sr. Central Govt. Standing Counsel for Respondent Nos. 1 and 3 and Inder Singh, General for Respondent Nos. 2 and 4, for the Respondent

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## Judgement

S.N. Phukan, C.J.—This Civil Writ Petition under Article 226 of the Constitution has been filed by Smt. Soma Wati and Shri Beli Ram Tegta, parents of Jagtinder Singh, who was a Sepoy in Dogra Regiment. According to the Petitioners, the Company Commander, Himachal Scouts informed them that their son was missing from the unit w.e.f. 6.8.1985 and his whereabouts were not known. The said Jagtinder Singh at the relevant time was posted at Samdhu in Kinnaur, which is on the border of India-China. According to the Petitioners, being a border area, entry and exit into this area has to be under permit and any person entering or leaving the area has to be recorded in the check posts established by the Government. By the above letter dated 6.8.1985, the Petitioners were informed that as their son had run away from the unit without any leave, if he had reached home, he should be sent back to the army unit. The copy of the letter is at Annexure P-1. The father Petitioner No. 2 visited Samdhu on 21.10.1985 to obtain information about his son. The matter was also brought to the notice of the higher authorities, but till date son of the Petitioners Jagtinder Singh is still missing. The police was also informed by filing First Information Report. Hence, the present petition praying, inter alia, to direct the Respondents

to investigate the F.I.R. (Annexure P-14) and also for a compensation of Rs. 5 lakhs.

2. In the reply filed on behalf of Respondents No. 2 and 4, namely, State of Himachal Pradesh and the Station House Officer, Rohru, it is admitted that the written complaint was filed on 8.7.1993 at Rohru Police Station about the missing of the son of the Petitioners. Various steps were taken and the Superintendent of Police, Shimla District was asked to issue lock out notices to all concerned as well as in the neighboring States. No clue regarding missing person has been found so far. It has also been stated that First Information Report was lodged after a considerable delay.

3. The reply-affidavit has been filed by Lt. Col. Haripal Singh on behalf of the army authority and the Union of India, namely, Respondents No. 1 and 3. The affidavit has been filed on the basis of the record maintained in the "Dogra" Records. It is not disputed that Sepoy Jagtinder Singh joined the army in August, 1984 and was posted at Himachal Scouts. It has also been stated that he went on leave and thereafter he was detailed as Sahayak to Major S.M. Mishra, the Medical Officer of the unit. It is admitted that Sepoy Jagtinder Singh was missing from the army unit without any reason or notice from 6th August, 1985, at about 2230 hours. It has also been stated that inspite of efforts, he could not be traced. It has been contended that Samdhu where the unit is located is a field area and the entry/exit into the border area has to be through a permit/pass, but it is applicable only to civilian persons and there is no restriction for any army personnel and that these check posts established by the civil administration do not record the particulars of army personnel. Therefore, according to the Respondents, Sepoy Jagtinder Singh could have passed through the check posts without any problem. The visit of Petitioner No. 2 along with two other civilians to Samdhu on 21st October, 1985 is not disputed. It is stated that one Major S.K. Sejpal and Jawans serving along with Jagtinder Singh explained about the desertion of Jagtinder Singh to them. According to these Respondents, a unit Court of Inquiry was held on 12th September, 1985 to investigate into the circumstances and as per information of the Court of Inquiry, Sepoy Jagtinder Singh was declared as a deserter. The relevant documents regarding the said Court of Inquiry are at Annexure R-1. It is also admitted that the Petitioners have approached the higher authorities regarding missing of their son. In the reply-affidavit, it has been stated that as per information of the Court of Inquiry, Jagtinder Singh joined the army against the wishes of his parents and his parents influenced him to desert and leave the army for ever. In the affidavit, it has further been stated that Jagtinder Singh was reported to be alive after his desertion. The proceedings of the staff Court of Inquiry, have been annexed as Annexure R-III. On the basis of the report of the Staff Court of Inquiry, Jagtinder Singh was dismissed from the army. According, to the answering Respondents, as per witness No. 6, who deposed before the Staff Court of Inquiry, Jagtinder Singh was reported to be seen at Delhi after 6th August, 1985.

4. Heard Mr. K.D. Sood, learned Counsel for the Petitioners, Mr. P.A. Sharma, Senior Central Government Standing Counsel and Mr. Inder Singh, learned Advocate General.

5. In view of the provisions of Section 108 of the Indian Evidence Act, as Sepoy Jagtinder Singh is missing for more than seven years, he is presumed to be dead. As the army authority has taken the plea that even after he left the unit on 6th August, 1985, he was seen in Delhi, the burden is on the army authority to show that he is still alive. Except the proceedings of the Staff Court of Inquiry held in the month of May, 1994, nothing has been produced to show that he is still alive. From the proceedings of the Staff Court of Inquiry, the remarks recorded by the Company Commander are that the said officer was of the opinion that "Sepoy Jagtinder Singh may have deserted". Therefore, from the above remarks, it can be safely held that the evidence produced before the above Staff Court of Inquiry was not conclusive that Sepoy Jagtinder Singh deserted the army unit, as alleged. For the above reasons, we hold that Sepoy Jagtinder Singh is dead.

6. We have perused the proceedings of both the Courts of Inquiry ordered to be held on 12th September, 1985 and May, 1994. We may add here that though Jagtinder Singh was missing from 6th August, 1985, the Staff Court of Inquiry was "held after about 9 years. Therefore, we are of the opinion that the army authority was not prompt in this regard.

7. According to the reply-affidavit filed on behalf of the army authority, it has been stated that after return from leave, Sepoy Jagtinder Singh was detailed as Sahayak to Major S.M. Mishra, Medical Officer of the unit. But, he was not examined either in the Court of Inquiry or before the Staff Court of Inquiry. He was the best witness to prove regarding the whereabouts of Jagtinder Singh, and also his mental and other conditions before he was missing on 6th August, 1985. No explanation is forthcoming for non-examination of this witness.

8. That apart, according to the army authority, Jagtinder Singh was missing on 6th August, 1985 at 2230 hours, but by Annexure P-1 annexed to the petition, which is a letter dated 6th August, 1985 sent by Major, B Company Commander for Officiating Commanding Officer, Petitioner No. 2 was informed about the running away without leave of Jagtinder Singh. It is quite surprising how this letter could be sent on 6th August, 1985, though Jagtinder Singh was missing on the same day at about 2230 hours. In other words, the army authority without making any inquiry to find out Jagtinder Singh immediately informed his parents. Such action of the army authority is suspicious.

9. Before the Staff Court of Inquiry, Major S.K. Sejpal deposed as witness No. 6. According to this witness, he went to Delhi to buy certain items and met Ex. Captain D.S. Khimta, who told him that he learnt through reliable source that Jagtinder Singh was seen in Delhi sometime back. The said Ex. Captain D.S. Khimta has not been examined and the reliable source has also not been

disclosed. The date when this witness got the above information has also not been mentioned. Such a vague statement is not at all acceptable and that apart, the source has not been disclosed and as stated above, Ex-Captain Khimta was also not examined. On the basis of the statement of witness No. 6, the Staff Court of Inquiry gave his finding. This finding is also un-acceptable.

10. For the reasons stated above, we hold that the findings of both the Courts of Inquiries regarding the desertion of Jagtinder Singh cannot be accepted and, therefore, are rejected. Therefore, we set aside the above findings.

11. We are of the opinion that Jagtinder Singh was missing while he was under the control of the army authority at the unit posted at the border. The army authority has admitted that nobody can enter and go out from the area without a permit and that too through the check posts. Though in the reply-affidavit filed on behalf of the army authority, it has been stated that for the purpose of army personnel, no permit is necessary and that no entry is made at the check posts, but the documents have not been produced.

12. Mr. K.D. Sood, learned Counsel for the Petitioners have placed reliance on a decision of the apex Court in Smt. Charanjit Kaur Vs. Union of India and others, in support of the claim of the Petitioners for compensation. Of course, Mr. P.A. Sharma, learned Senior Standing Counsel for the Union of India has rightly urged that the facts of this case are different from the facts in the case in hand, but Mr. Sood in reply has drawn our attention to para 14 of the judgment, wherein the apex Court came to the finding that the Officer in the case before the apex Court died while in service in mysterious circumstances and his death is attributable to and aggravated by the military service. It was also held that responsibility of his death was prima facie traceable to the act of criminal omissions and commissions on the part of the authorities concerned. On this finding, compensation of Rs. 6 lakhs and special family pension and children allowance were granted. In the case in hand, for the reasons stated above, we hold that Jagtinder Singh was missing under mysterious circumstances while he was under the control of the army authority and in view of Section 108 of the Indian Evidence Act, he is now presumed to be dead. Therefore, we hold that army authority was negligent for missing of the above said person and was, therefore, responsible, as he was on duty. On query from us, Mr. Sharma, learned Senior Standing Counsel for the Union of India informed us that at the time of missing, pay and allowances of Jagtinder Singh was around Rs. 2200/-. That apart, as he was in military service, he used to get free food and clothes etc. As Jagtinder Singh put in about one year of service, his parents, namely, the present Petitioners will not be entitled to get any family pension. Therefore, it is a fit case to grant compensation, as naturally Jagtinder Singh contributed money to his parents for their maintenance. Considering the entire facts and circumstances of the case, we are of the opinion that a sum of Rs. 1,50,000/ will be adequate compensation in this case and accordingly we direct Respondents No. 1 and 3 to pay this amount of compensation within two months from today. As we awarded compensation,

we do not propose to give any costs to the Petitioners.

13. In the result, the writ petition is allowed. The parties to bear their own costs.

14. Petition allowed