

(1998) 04 SHI CK 0003

High Court of Himachal Pradesh

Case No: Civil Writ Petition No. 405 of 1996

Smt. Kanta Devi

APPELLANT

Vs

Union of India (UOI)
and Others

RESPONDENT

Date of Decision: April 17, 1998

Citation: (1998) 2 ShimLC 415

Hon'ble Judges: Surinder Sarup, J; Kamlesh Sharma, J

Bench: Division Bench

Advocate: Poonam Tanwar, for the Appellant; Abhilasha Kumari, Addl. C.G.S.C., for the Respondent

Final Decision: Allowed

Judgement

Kamlesh Sharma, J.

The Petitioner is a poor hapless woman from a remote village Dehrubar, Tehsil Jaisinghpur, District Kangra. She has filed this petition to bring back her husband, who is stated to be languishing in Mental Health Centre, Trivendrum, Kerala and pay her his service and pensionary benefits, including family pension, besides the compensation for not making any attempt to search him since his disappearance.

2. The husband of the Petitioner, namely, Sansar Singh, was enrolled as Gunner in the Indian Army on 27.9.1995 for a period of 10 years in Colours and 5 years in Reserve or till attaining of 36 years, whichever is earlier. He remained in active military service for more than 9 years and took part in Indo-Pak War in 1971 while serving with 201, Divisional Locating Battery (now re-designated as 201 Surveillance and Target Acquisition Battery) at Deolali where from he was granted annual leave from 11.9.1974 to 13.11.1974. After availing his leave at his native village, he left on 12.1.1974 to resume his duty in his unit at Deolali on 14.11.1974. According to the Petitioner, during his leave period and at the time of his departure from his native village her husband was in normal health and sound mental disposition. From the apprehension roll issued by the military authorities on 16.11.1974 to the

Superintendent of Police, Distt. Kangra, the Petitioner came to know that her husband had not reached his destination at Deolali. When despite the best efforts on the part of the District Police as well as the members of the family of the Petitioner, the whereabouts of her husband could not be found out, she wrote number of letters to the Army authorities to search for her husband. In reply to her letter dated 31.1.1975 the Army authorities informed the Petitioner vide letter dated 14.2.1975 (Annexure P-2) that after 30 days of absence of her husband a Court of inquiry was held and he was declared a "deserter". Since the Army authorities had not heard anything from the husband of the Petitioner, they showed their inability to throw any light regarding his whereabouts and regretted that they could not help her in this regard. A copy of the letter dated 14.2.1975 was also endorsed to the Superintendent of Police, Kangra enquiring whether the husband of the Petitioner was apprehended by the police in pursuance to their apprehension roll dated 16.11.1974. The Superintendent of Police, Kangra was asked to communicate the result of investigation conducted by the police directly to the Petitioner with intimation to them. Thereafter, to the utter surprise of the Petitioner, letter dated 20.11.1986 was received by her mother-in-law, namely, Smt. Chandrani Devi, from the Superintendent Mental Health Centre, Trivandrum, Kerala, informing her that a person by name Sansar Singh was admitted on 19.4.1979 with reception order from Chief Judicial Magistrate, Kotayam, Kerala, since he was found wandering in the street. it was requested that arrangements may be made to get him discharged from the Mental Health Centre as his mental condition had improved with treatment and he could manage at home.

3. According to the Petitioner, owing to extreme poverty she could not visit Mental Health Centre, Trivendrum to bring her husband home but she wrote to the Army authorities as well as the District Police, Kangra informing the whereabouts of her husband and requested them to help her out by bringing him back to her home, but in vain. In reply to her letter dated 8.1.1987, the Army authorities vide their letter dated 19.1.1987, for the first time, intimated her that her husband has been dismissed from service with effect from 24.4.1978 being a "deserter" for more than three years and his services are no longer required by the Army. Since then the Petitioner has been continuously writing letters to the Army authorities to release A.F.P. Funds, gratuity and other service benefits and family pension but ultimately the Army authorities vide letter dated 15.7.1995 (Annexure P-2) informed the Petitioner that payment of A.F.P. Fund balance is under consideration and family pension and other pensionary benefits cannot be granted to her as the status of her husband was "deserter-dismissed". It was in these circumstances, that the Petitioner has approached this Court.

4. The stand taken by the Army authorities in their reply affidavit is simple that on the failure of the husband of the Petitioner to report on duty on 14.11.1974 apprehension roll was issued on 16.11.1974 and after 30 days of his absence an inquiry was held and he was declared a "deserter". Referring to the extract of

Para-20 of Special Army order 9/S/89: Desertion it is stated that since the husband of the Petitioner was not apprehended, he was dismissed from service after completion of three years of his desertion. It is further pointed out that having been dismissed from service the husband of the Petitioner is not eligible for pension or gratuity in respect of his previous service under Para-113 of the Pension Regulations for the Army 1961 Part-I (Annexure R-2). According to the Army authorities, they were not liable to bring the husband of the Petitioner back from the Mental Health Centre, Trivandrum, Kerala or to provide any assistance to the Petitioner in this regard as her husband was no longer in the service of the Army.

5. In the rejoinder to the reply affidavit, the Petitioner has brought on record information sent from the Mental Health Centre, Trivandrum in response to the inquiry made by the learned Counsel for the Petitioner that the husband of the Petitioner developed severe Broncho Pneumonia and died on 12.10.1991 and his body was handed over to Trivandrum Corporation Authorities for cremation on 14.10.1991 since he had no relative. The Petitioner had also stated in the writ petition that on receipt of information from the Army authorities that her husband was missing, her in-laws started maltreating her and compelled her to leave her matrimonial home along with her minor daughter and she has taken shelter in the house of her father. According to the Petitioner, she is working as an agricultural labourer to earn her livelihood. In respect of these above-mentioned facts, the Petitioner has placed on record a certificate issued by the Pradhan, Gram Panchayat countersigned by the Patwari Halqua (Annexure P-3).

6. We have learned Counsel for the parties and gone through the record. We find that the approach of the Army authorities is too careless, technical and pedantic, if not negligent and inhuman. The husband of the Petitioner had served the Indian Army for more than nine years and had also participated in Indo-Pak War of 1971 but when he failed to report for duty after availing annual leave they made no efforts to search him except mechanically following the procedure of issuing an apprehension roll, holding Court of inquiry after 30 days of his absence and declaring him a "deserter" and dismissing him from service after three years of desertion. From the endorsement of letter dated 14.2.1975 (Annexure P-2) to the Superintendent of Police, District Kangra, it is clear that the Army authorities had not even pursued their apprehension roll and did not care to know the result of the investigation conducted by the Police of District Kangra in respect of the whereabouts of the husband of the Petitioner. Even the formality of holding the Court of Inquiry was fulfilled in order to declare the husband of the Petitioner "deserter" without intimating her in this regard. When the information that the husband of the Petitioner was languishing in Mental Health Centre, Trivandrum was given to the Army authorities seeking their help for bringing him back to his home and for re-habilitating him they showed a cold shoulder without realising that the husband of the Petitioner had put in nine years of service and he might not have been able to report for duty after availing his annual leave due to his mental

incapacity. Had they cared to make enquiry from the police of District Kangra and taken into consideration the stand taken by the Petitioner that her husband had left on 12.11.1974 for joining his duty at Deolali in a fit, physical and mental health, they would have reconsidered the matter of declaring him a "deserter" and would have helped the Petitioner in getting him discharged from the Mental Health Centre, Trivendrum for bringing him back to his home for his further rehabilitation. The plight of the Petitioner can be better imagined than expressed in words that desertion of her husband by the Indian Army had not only led to her desertion from being ousted from her matrimonial home but also loss of her husband who died on 12.10.1991 in the Mental Health Centre, Trivandrum, Kerala, and his dead body was cremated as unclaimed. Had the Army authorities applied their mind they would have come to the conclusion that in the facts and circumstances on record the husband of the Petitioner was not a deserter" and the order declaring him so as well as dismissing him from service was required to be revoked. For taking this view, we have relied upon a Division Bench judgment of this Court in Smt. Sandhaya Devi Parmar v. Union of India and Ors. 1997 (2) Sim.L.C. 310 and Smt. Soma Wati and Anr. v. Union of India and Ors. 1995 (2) Sim. L.C. 3.

7. Learned Additional Central Government Standing Counsel appearing for the Respondents has not placed before us any rule or order wherein the word "deserter" has been defined. However, in [Ibrahim and Others Vs. State of West Bengal and Another](#), learned Judges of the Supreme Court were examining desertion by sea men who were governed by the Merchant Shipping Act, 1958. In the absence of definition of the word "desertion" in the said Act they had referred to a judgment in Moore v. Canadian Pacific Steamship Co. 1945 1 All E R 128, wherein Mr. Justice Lynskey gave a definition of the word "deserter" from an earlier case as follows:

The gist of desertion therefore is the existence of an animus not to return to the ship or, in other words, to go against the agreements under which the employment of Seamen for Sea voyages generally takes place.

8. Applying this definition to the present case, from the peculiar circumstances of that case more specifically that the husband of the Petitioner was found wandering in the street of Trivandrum and was admitted in Mental Health Centre, Trivandrum after he had left his home in a fit physical and mental health we have no hesitation to hold that he had no animus not to return to his unit at Deolali to join his service in defiance of any provision of law governing his service conditions. Therefore, the orders declaring him a "deserter" and thereafter dismissing him from service after completion of three years of desertion are declared bad. The absence of the husband of the Petitioner from service with effect from 14.11.1974 till the completion of his 10 years service in Colours and five years service in Reserve was beyond his control due to his mental illness and cannot be treated as wilful. Therefore, he is held entitled to all the service benefits of his full service, which

should be given to the Petitioner being his widow. She is also entitled to family pension in accordance with rules.

9. So far as the claim of the Petitioner for granting her compensation for the complained of acts of omission and commission of Respondents, as a result of which, her husband languished in Mental Health Centre, Trivandrum and could not be brought home after his recovery and had ultimately died as a lonely person having no relation, is concerned, we are not able to pin down the military authorities for negligence in view of the procedure followed by them for declaring the husband of the Petitioner as a "deserter" and thereafter dismissing him after three years of desertion, though mechanically without application of mind to the peculiar facts and circumstances of this case.

10. In the result, the writ petition is accepted and the Petitioner is held entitled to all the service benefits of her husband for his service of 10 years in Colours and five years in Reserve and also the family pension in accordance with law, which the Respondents are directed to release within a period of four months. The Petitioner is also awarded costs quantified at Rs. 5,000/-.