

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

SWP No. 2264/2002.

Date of order: 30-05-2011

Kanta Devi and ors. v. Union of India and others.

Coram:

MR. JUSTICE J. P. SINGH.

Appearing Counsel:

For petitioner (s) : Mr. S.C.Gupta, Advocate.

For respondent (s) : Mr. Tashi Rabstan, CGSC.

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| i) | Whether approved for reporting in Press/Journal/Media | : | Yes/No |
| ii) | Whether to be reported in Digest | : | Yes/No |
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N-Sepoy Om Parkash of 20th Bn Jammu and Kashmir Rifles was convicted by a Summary General Court Martial convened by 2 Mountain Division and sentenced to suffer rigorous imprisonment for ten years, besides dismissal from service, for committing the offence punishable under Section 376 (2) (g) read with Section 34 of the Indian Penal Code. His conviction and sentence and the order of dismissal was set aside by this Court allowing his Writ Petition OWP No.354/1998.

Questioning the judgment delivered in the petitioner's Writ Petition, Union of India preferred a Letters Patent Appeal against the judgment.

It was during the pendency of Union of India's Appeal that Om Parkash again approached this Court by his second Writ Petition SWP No.2264/2002 seeking issuance of directions to the Union of India and its functionaries to sanction and release his service pension to which he had become entitled under the Pension Rules in view of the setting aside of his conviction and sentence.

During the pendency of the Writ Petition and Union of India's Appeal, Om Parkash died. Union of India's Appeal against judgment delivered in OWP No.354/1998 was, therefore, dismissed on 14.05.2010 having abated.

Om Parkash's widow, daughter and sons have been substituted as petitioners in SWP No.2264/2002.

Union of India has not filed any Response to the petitioners' Writ Petition.

I have heard learned counsel for the parties and considered their submissions.

With the dismissal of the Union of India's Appeal and setting aside of Om Parkash's conviction, sentence and dismissal, there remains no stigma or punishment against the predecessor-in-interest of the petitioners, on the basis whereof, he could be denied pension.

On the hearing of the Petition, it was, therefore, not disputed by the learned counsel appearing for Union of India that with the setting aside of the findings and sentence awarded by the Summary General Court Martial, the deceased soldier had become entitled to pension under the Army Rules.

In these circumstances, when the deceased soldier had earned pension rendering requisite service in the Army, in terms of the Rules governing the grant of Pension, the members of his family cannot be denied Pension, which is permissible under rules to the family of the deceased soldier.

This Writ Petition, therefore, succeeds and is, accordingly, allowed. A direction shall issue to the Union of India and its functionaries to consider the petitioners' case in view of their entitlement to Pension being the family members of the deceased soldier, and pass appropriate orders, within a period of three months, for sanction of Pension in their favour in terms of the rules governing the grant of Family Pension.

**(J. P. Singh)
Judge**

**Jammu
30-05-2011
Vinod.**