IN THE ARMED FORCES TRIBUNAL, CHANDIGARH BENCH

M A No. ……………of 2019

IN

O.A. No.91 of 2019

Smt. Kusum Lata …..Applicant

Vs.

Union of India & others ………..Respondents

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Note : (i) Main case if fixed for 19.12.2019.

1. Advance copy supplied to the opposite Counsel.

CHANDIGARH (SURESH AHLAWAT)

Advocate

Dated: 03-12-2019 Counsel for the Applicant

IN THE ARMED FORCES TRIBUNAL, CHANDIGARH BENCH

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Application u/s 151 CPC read with Rule 31 of AFT (Practice) Rules, 2009, seeking leave of the Hon'ble Tribunal for placing on record the Replication.

**Respectfully Showeth:**

1. That above noted Original Application is pending in this Hon'ble Tribunal and is now fixed for filing rejoinder on 19.12.2019.
2. That respondent have filed the written statement in the above said Original Application giving therein the wrong facts, this has necessitated the applicant to file the replication, giving herein the correct facts.
3. That the replication is necessary for the proper adjudication of the present petition.

It is therefore, respectfully prayed that this application may kindly be allowed for placing of record of replication, in the interest of justice.

CHANDIGARH ( SURESH AHLAWAT)

3.12.2019 Advocate

Counsel for the Applicant

IN THE ARMED FORCES TRIBUNAL, CHANDIGARH BENCH

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Affidavit of Smt. Kusum Lata Wd/o Late LN Rajvir Singh (No.4561244) PPO No. F/NA/6081/2003 Vill. Kalwan Tehsil Narwana Distt. Jind presently Residing H. No. 3192, Sector-11 ,Jind (Haryana).

I, the above named deponent do hereby solemnly affirm and declare as under:-

1. That above noted Original Application is pending in this Hon'ble Tribunal and is now fixed for hearing on 19.12.2019 for filing the rejoinder.
2. That the statement of facts mentioned in Misc. application in Para No. 1 to 3 have been read over, translated and explained in my own language to understand, which are correct to my knowledge and belief.
3. That the applicant wishes to place on record the rejoinder, which is very much necessary for the adjudication of above case.

Place: Chandigarh

Dated: -12-2019 Deponent

**Verification:**

Verified that the contents of para No. 1 to 3 of my affidavit are true and correct to the best of my knowledge. No part of it is false and nothing material has been concealed from therefrom.

Place: Chandigarh

Dated:- -12-2019 Deponent

IN THE ARMED FORCES TRIBUNAL, CHANDIGARH BENCH

O.A. No.91 of 2019

Smt. Kusum Lata …..Applicant

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Replication on behalf of the applicant, to the Reply filed by the respondents.

**Respectfully Showeth:-**

**Replication to Preliminary Submissions**

1. That the content of para No. 1 of preliminary submissions is matter of record and need no replication. However, it is submitted that in the Court of Inquiry, it was wrongly held that the injury suffered by the applicant during leave is not attributable to Military Service. As per Clause/Rule 12 (f) of Entitlement Rules for Causality Pensionary Awards, 1982 issued on 22-11-1983 as amended on 21-08-1984, explained the duty period and also injury suffered on duty period. Relevant clause:-

12. A person subject to the disciplinary code of the Armed Forces is on

“duty”:

(a) When performing an official task or a task, failure to do, which would

constitute an offence, triable under the disciplinary code applicable to him?

(b) to (e) ------

(f) An accident which occurs when a man is not strictly `on duty' as defined may also be attributable to service, provided that it involved risk which was definitely enhanced in kind or degree by the nature, conditions, obligations or incidents of his service and that the same was not a risk common to human existence in modern conditions in India. Thus for instance, where a person is killed or injured by another party by reason of belonging to the Armed Forces, he shall be deemed ‘on duty’ at the relevant time. This benefit will be given more liberally to the claimant in cases occurring on active service as defined in the Army/Navy/Air-Force Act.

1. That the content of para No. 2 of preliminary submissions is wrong, hence denied. However, it is submitted that non grant of pension is continuing wrong, which gave rise to a recurring cause of action each time, till the pension is not paid.
2. That the content of para No. 3 of preliminary submissions is wrong, hence denied. However, it is submitted that non-payment of pensionary benefit, it gives a cause every day and it is recurring cause of action and can’t be barred by delay and laches as held by Hon'ble Supreme Court of India in case titled as **“Union of India Vs. Tarsem Singh**” reported as **(2008) 8 SCC 648**.
3. That the content of para No. 4 of preliminary submissions needs no replication.
4. That the content of para No. 5 of preliminary submissions, it is submitted that the law cited in this para is not applicable in the present facts and circumstances of the case. **As per Entitlement Rule for Casualty Pensionary Awards, 1982, the person on casual leave is also deemed to be on duty as defined in Clause 12 (f) of the said Rules.**
5. & 7. That the content of para No. 6 & 7 of preliminary submissions is wrong, hence denied. However, it is submitted that joint reading of Rule 12 (f) & Rule 13 of the ENTITILEMENT RULES FOR CASUALTY PENSIONARY AWARDS, 1982, it is clear that if the man is strictly not on duty, then he will be deemed to be on duty. The Court of Inquiry did not blame the applicant for the injury. Rule 13 is reproduced as under:-

INJURIES

13. In respect of accidents or injuries, the following rules shall be observed: (a) Injuries substained when the man is ‘on duty’ as defined, shall be deemed to have resulted from military service, but in cases of injuries due to serious negligence/misconduct the question of reducing the disability pension will be considered. (b) In cases of self-inflicted injuries whilst on duty, attributability shall not be conceded unless it is established that service factors were responsible for such action; in cases where attributability is conceded, the question of grant of disability pension at full or at reduced rate will be considered.

1. To 10. That the content of para No. 6 & 7 of preliminary submissions is wrong, hence denied. However, it is submitted that it is settled law that the pensionary matter are not hit by delay and latches and gave cause of action every day.

**REPLICATION ON MERITS:-**

1. **Para 1** That the content of this para of reply is totally wrong, hence denied and the averments made in this para are reiterated and not repeated for the sake of brevity.
2. **Para 2**That the content of this para of reply need no replication.
3. **Para 3** That the content of this para of reply is wrong, hence denied. However, it is submitted that non-payment of pensionary benefit, it gives a cause every day and it is recurring cause of action and can’t be barred by delay and laches as held by Hon'ble Supreme Court of India in case titled as **“Union of India Vs. Tarsem Singh**” reported as **(2008) 8 SCC 648**.
4. **Para 4**That the content of this para of reply is wrong, hence denied. However, it submitted that the law cited in this para of reply is not applicable in the present facts and circumstances of the case and the averments made in this para of OA are reiterated and not repeated for the sake of brevity.
5. **Para 5** That the content of this para of reply is wrong, hence denied. The submissions made this para of OA are reiterated and not repeated for the sake of brevity.
6. & 7. **Para 6 &7** That the contents of these para of reply need no replication.
7. **Para 8** That the content of this para of reply is wrong, hence denied. The submissions made this para of OA are reiterated and not repeated for the sake of brevity.
8. To 12. **Para 9 to 12** That the contents of these para of reply need no replication.

**PRAYER**

It is therefore, respectfully prayed that the present replication may kindly be allowed, and the respondent authorities may be directed to release the disability pension to the applicant @ 40 % with benefits of rounding off @ 50 % w.e.f. 01-08-2000 onwards with interest @ 12 %, in the interest of justice.

CHANDIGARH

Dated: 03-09-2019 Applicant

Through Counsel

(Balraj Singh Rathee)

Advocate

Counsel for the Applicant

**VERIFICATION:**

Verified that the contents of para No. 1 to 10 of replication to preliminary submissions and para No. 1 to 12 of replication on merits is true and correct to the best of my knowledge and belief. No part of it is false and nothing relevant has been kept concealed therein.

CHANDIGARH

Dated: 03-09-2019 Applicant

IN THE ARMED FORCES TRIBUNAL, CHANDIGARH BENCH

O.A. No.91 of 2019

Smt. Kusum Lata …..Applicant

Union of India & others ………..Respondents

Affidavit of Smt. Kusum Lata aged 43 years Wd/o Late LN Rajvir Singh (No.4561244) PPO No. F/NA/6081/2003 Vill. Kalwan Tehsil Narwana Distt. Jind presently Residing H. No. 3192, Sector-11 ,Jind (Haryana).

I, the above named deponent do hereby solemnly affirm and declare as under:-

1. That above noted Original Application is pending in this Hon'ble Tribunal and is now fixed for hearing on 19-12-2019 for filing the rejoinder.
2. That the contents of Para No. 1 to of replication have been read over, translated and explained to me, in my own language to understand, which are correct to my knowledge and belief.
3. That no part of rejoinder is wrong and nothing material has been concealed therefrom.

Place: Chandigarh Deponent

Dated: -12-2019

**Verification:**

Verified that the contents of para No. 1 to 3 of my affidavit are true and correct to the best of my knowledge. No part of it is false and nothing material has been concealed from therefrom.

Place :-Chandigarh Deponent

Dated : .12.2019