

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No. 50 of 2021****Wednesday, this the 25th day of August, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)Smt Urmila Devi
W/o Late Sh. Narender Kumar No. 14463304A
Vill – Sikhera, PO – Pilkhuwa
Distt – Ghaziabad (UP)

..... Applicant

Ld. Counsel for the Applicant: **Shri A.K. Singh**, Advocate

Versus

1. Union of India through Secretary, Ministry of Home Affairs, North Block, New Delhi.
2. The Commanding Officer, 73 Med Regiment, C/o 56 APO.
3. Director General of Arty, (Art III), Mech Forces (Personnel), General Sena Bhawan, Army HQ, New Delhi.
4. Chief Record Officer, Topkhana Abhilekh, Artillery Record, Nasik Road Camp – 422102

..... Respondents

Ld. Counsel for the Respondents : **Shri Kaushik Chatterji**,
Central Govt Counsel.**ORDER**

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following relief:-

“(a) To allow the present O.A. directing the respondents to provide all legal, financial and pensionary benefits to the applicant treating widow of deceased L.NK Narender Kumar since 07.01.1987.

(b) Pass any other or further order as this Hon'ble Tribunal may deem fit and proper in favour of the applicant, in the interest of justice."

2. The factual matrix of the case is that applicant's husband was enrolled in the Indian Army on 02.08.1980. While serving with 73 Medium Regiment, husband of the applicant was granted 62 days annual leave for the year 1986 from 06.11.1986 to 06.01.1987. However, husband of the applicant failed to rejoin duty on completion of his annual leave. Accordingly, an apprehension roll was issued to the SSP, Ghaziabad to apprehend the soldier and to handover him to the army authorities vide 73 medium Regiment order dated 18.01.1987. Despite all out efforts made by army authorities, soldier or his family members did not revert back to army authorities about the whereabouts of the deserted soldier and he could not be apprehended by UP Police nor the Gnr Narender Kumar voluntarily reported back to any army authorities within stipulated time. Therefore, after 30 days, soldier was declared deserter w.e.f. 07.01.1987 by a Court of Inquiry held under the Army Act. Thereafter, the applicant after 9 months of desertion, claimed credit balance of her deserter husband in October 1987 through Zila Sainik Board, Ghaziabad. As per Section 108 of the Evidence Act, after passing of statutory period of 7 years, applicant intimated Artillery Records vide her petition dated June 1994, alleging that she had not received any letter from her husband since 8-9 years, she has neither any intimation about him nor she is receiving any financial support from him and she requested for family pension and death benefits but she

concealed the knowledge of desertion roll inquiry by police. Since husband of the applicant had not surrendered himself even after 10 years, he was dismissed from service on 29.04.1997, being a filed deserter under the provisions of Army Act, Section 20 (3) read with Rule 17 of Army Rules 1954 and SAO 9/S/89 after obtaining sanction of the competent authority. On receipt of intimation regarding dismissal of her husband, applicant lodged an FIR on 10.10.1997 at Police Station Pilkhua, Ghaziabad. Final settlement of account i.e. credit balance and AFPP Fund balance has been paid to the applicant being NOK. The applicant filed O.A. No. Nil/2010 before this Tribunal which was dismissed as withdrawn vide order dated 14.12.2010 in which it was also directed that the applicant can approach the competent civil court for declaration of her husband's death as provided under law. Thereafter, Mr. Sanjeev Kumar, son of the applicant filed a Civil Original Suit No. 38/2014 before the Civil Judge (Junior Division), Hapur (UP), seeking declaration that his father being missing unheard and unseen since more than 7 years be presumed dead but did not make the respondents as necessary defendants in the said Original Suit. The case was decided on 19.08.2014 and a decree declaring Gnr Narender Kumar as normally dead was passed. Accordingly, Artillery Record issued a detailed letter dated 14.05.2015 to 73 Medium Regiment with a copy to the applicant covering all aspects of the case and intimated that soldier has been declared dead by the Court of Civil Judge (Junior Division), Distt- Hapur and the applicant has already submitted her husband's death certificate, therefore convening of Court of Inquiry

is optional and also requested to publish Part II Order regarding death of individual based on Civil Court, Hapur judgment and Decree dated 19.08.2014 and cancel the part II Order regarding desertion and also prepare a statement of case for regularization of absence from 07.01.1987 to 19.08.2014 in terms of Rule 33 (e) of Leave Rules Note 1. Subsequently, the competent authorities at Army Headquarters examined the case and stated vide letter dated 10.10.2017 that as the soldier has not been heard of and missing since 07.01.1987, there is no occasion to regularize the period of absence of such a person who is missing and presumed dead since last 27 years. However, wife of deceased soldier is eligible for family pension and other applicable dues in terms of Ministry of Defence letter dated 03.06.1988. Accordingly, Artillery Records vide its letter dated 03.11.2017 asked the applicant to furnish under mentioned documents for sanction of family pension :-

- (a) Original copy of FIR under Section 154 (3) of CrPC.
- (b) Final verification report of concerned Police Station to the effect that missing soldier has not yet been traced out.
- (c) indemnity bond signed by two sureties and witnesses in pursuance of Art. 299 (i) of Constitution of India.

The applicant was issued four reminders by the Artillery Records but above mentioned documents have not yet been supplied by the applicant. Aggrieved, the applicant has filed the present Original Application for grant of financial and pensionary benefits.

3. Learned counsel for the applicant submitted that applicant's husband came to annual leave to his native place on 05.11.1986 and after passing the annual leave he left his village on 05.01.1987 to attend his duty but no information of his arrival at unit received by the applicant till many months from his date of departure. After 9 months, family members went to parent unit of the soldier at Sangrur where they came to know that L.Nk Narender Kumar was declared as deserter by the unit. After returning from Sangrur the family members informed the police. Thereafter, applicant gave many representations to the respondents to get the pensionary and other benefits but it was refused by the respondents. Thereafter, applicant sent many letters to the respondents which were replied but no financial assistance was provided. Thereafter, applicant filed O.A. No. Nil of 2010 before this Tribunal which was dismissed as withdrawn with liberty to file a fresh in the event of presumption of civil death of husband of the applicant is decided by a competent civil court. Thereafter, applicant filed a Civil Suit No. 38/2014 before the Court of Civil Judge, Junior Division, Hapur (UP) and an order dated 19.08.2014 declaring L. Nk Narender Kumar as dead was passed. On the basis of Civil Court decree, learned counsel for the applicant pleaded for grant of financial and pensionary benefits to the applicant treating widow of deceased soldier since 07.01.1987.
4. Learned counsel for the respondents submitted that since husband of the applicant had not surrendered voluntarily even after 10 years, he was dismissed from service on 29.04.1997

under the provisions contained in Army Act, Section 20 (3) read with Rule 17 of Army Rules 1954 and SAO 9/S/89 after obtaining sanction of the competent authority. On the basis of Civil Judge (Junior Division), Hapur (UP) decree dated 19.08.2014, declaring Gnr Narender Kumar as normally dead, Artillery Record issued a detailed letter dated 14.05.2015 to 73 Medium Regiment with a copy to the applicant covering all aspects of the case and intimated that soldier has been declared dead by the Court of Civil Judge (Junior Division), Distt- Hapur and the applicant has already submitted her husband's death certificate, therefore convening of Court of Inquiry is optional and also requested to publish Part II Order regarding death of individual based on Civil Court, Hapur judgment and Decree dated 19.08.2014 and cancel the part II Order regarding desertion and also prepare a statement of case for regularization of absence from 07.01.1987 to 19.08.2014 in terms of Rule 33 (e) of Leave Rules Note 1. Subsequently, the competent authorities at Army Headquarters examined the case and stated vide letter dated 10.10.2017 that "as the individual has not been heard of and missing since 07.01.1987, there is no occasion to regularize the period of absence of such a person who is missing and presumed dead. Once the fact of his not having been heard or missing since last 27 years has been acknowledged by a competent Court based on evidences produced before it, there is no question of regularization of leave of such a person who have died at any point of time within last 27 years, hence the proposal is not in tune with fact of the case and the judicial declaration of the Court vide its order dated 19.08.2014. However,

Smt. Urmila Devi wife of deceased soldier is eligible for family pension and other applicable dues in terms of Ministry of Defence letter No. 12 (16)/88-D (Pension/Service) dated 03.06.1988 with effect from 10.10.1997 i.e. date of lodging FIR at Police Station Pilkhua, the then Distt. Ghaziabad (UP). Integrated Headquarters of Ministry of Defence (Army), Arty-10 has also directed to release family pension and death benefits to Smt. Urmila Devi, wife of deceased soldier. Accordingly, Artillery Records vide its letter dated 03.11.2017 asked the applicant to furnish under mentioned mandatory auditable documents for sanction of family pension :-

- (a) Original copy of FIR under Section 154 (3) of CrPC showing date of lodging the same with Police Station Pilkhua, Ghaziabad (UP).
- (b) Final verification report of concerned Police Station to the effect that missing individual has not yet been traced out even after concerted efforts.
- (c) Indemnity bond signed by two sureties in presence of two witnesses and accepted by the Officer directed and Authorized in pursuance of Art. 299 (i) of Constitution of India on behalf of the President.

The applicant was issued four reminders by the Artillery Records but above mentioned documents have not yet been supplied by the applicant. He pleaded for dismissal of O.A.

5. Heard Shri Kaushik Chatterji, learned counsel for the respondents and perused the record.

6. We observe that the Court of Civil Judge, Junior Division, Hapur (UP) vide its order dated 19.08.2014 declared L.Nk

Narender Kumar, husband of the applicant, as dead. The decree passed by the Civil Court declaring husband of the applicant dead, cannot be ignored by the respondents saying they were not a party in the Suit and therefore, the same is not binding on them. The decree passed by the Civil Court has also not been challenged by the respondents before any court of law. On contrary, the respondents have admitted in para 13 of their counter affidavit that Smt. Urmila Devi wife of deceased soldier is eligible for family pension and other applicable dues in terms of Ministry of Defence letter No. 12 (16)/88-D (Pension/Service) dated 03.06.1988 with effect from 10.10.1997 i.e. date of lodging FIR at Police Station Pilkhua, the then Distt. Ghaziabad (UP). Integrated Headquarters of Ministry of Defence (Army) Arty-10 has also directed to release family pension and death benefits to Smt. Urmila Devi, wife of deceased soldier. Accordingly, Artillery Records vide its letter dated 03.11.2017 asked the applicant to furnish mandatory auditable documents as mentioned in Para 4 above for sanction of family pension.

7. We also observe that in para 5 (H) of Original Application, applicant has also submitted that she has forwarded all the required documents to the respondents alongwith a copy of order passed by Civil Court, Hapur declaring her husband dead and death certificate issued by the concerned Registrar, Birth & Death.

8. In view of above, we find that applicant is held entitled for family pension in terms of Ministry of Defence letter dated 03.06.1988 with effect from 10.10.1997 i.e. date of lodging FIR with police as accepted by the respondents.

9. In view of above, Original Application is allowed and the impugned orders are set aside. The respondents are directed to grant Ordinary Family Pension to the applicant from the date on which FIR was lodged with police i.e. 10.10.1997. However, due to law of limitations settled by the Hon'ble Supreme Court in the case of ***Shiv Dass v. Union of India and Others*** (2007 (3) SLR 445), the arrears of Ordinary Family Pension will be restricted to three years preceding the date of filing of the instant O.A. The date of filing of this O.A is 08.03.2018. The respondents are directed to give effect to this order within four months from the date of receipt of a copy of this order. Default will invite interest @ 8% per annum till actual payment.

10. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) **Member (J)**

Dated: 25th August, 2021

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