

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No. 313 of 2017****Monday, this the 3rd day of January, 2022****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)Smt Mithilesh
W/o Ram Sudhare
R/o Vill – Behra Balai Veer
Post – Maharajganj, District – Basti (UP)

..... Applicant

Ld. Counsel for the Applicant: **Shri SSL Srivastava**, Advocate

Versus

1. Union of India through the Secretary, Ministry of Defence, Govt. of India, New Delhi.
2. The Chief of Army Staff, Army Headquarters, New Delhi.
3. The Officer Commanding 63, Engineer Regiment through 56 APO.
4. The Officer-in-Charge, Records, Bengal Engineer Group, Roorkee – 247667.

..... Respondents

Ld. Counsel for the Respondents : **Mrs. Deepti P Bajpai**,
Central Govt Counsel.**ORDER (Oral)**

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:-

“(i) WHEREFORE, it is most respectfully prayed that this Hon'ble tribunal may kindly be pleased to direct the opposite parties to release the entire dues of the husband of the petitioner to the applicant and to make payment of family pension and other allied settlements to the applicant.

(i-A) The Hon'ble Tribunal may kindly be pleased to set aside the impugned opinion of the Officiating Commanding Officer, C/o 56 APO dt 23.11.1985 as communicated to the applicant along with the supplementary counter affidavit dt 25.01.2016, with all consequential benefits.

(ii) And any other appropriate order or direction as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case may also be passed in favour of the applicant.

(iii) And to award costs.”

2. The factual matrix of the case is that applicant's husband was enrolled in the Indian Army on 28.12.1981. The husband of the applicant while serving with 63 Engineer Regiment was granted 20 days casual leave w.e.f. 14.08.1985 to 02.09.1985. As the husband of the applicant failed to rejoin duty after expiry of casual leave, a Court of Inquiry was held in the unit on 14.11.1985 and husband of the applicant was declared deserter w.e.f. 03.09.1985. The husband of the applicant was dismissed from service w.e.f. 12.10.1988 on expiry of three years from the date of desertion being peace deserter under Army Act, Section 20 (3). Hence, being a dismissal case, the applicant has not been granted family pension. Being aggrieved, the applicant has filed the present Original Application for grant of ordinary family pension.

3. Learned counsel for the applicant submitted that a telegram was received by the applicant on 19.09.1985 from the unit of her husband to confirm spending of leave at home as her husband proceeded on leave on 14.08.1985 for 20 days casual leave but did not come back to unit after availing leave. The applicant

apprised to Commandant BEG Centre that her husband did not come home on any leave and requested to make proper enquiry to find out her husband. The applicant, in response to her letter dated 16.12.1985 addressed to the Chief of the Army Staff was informed vide letter dated 31.01.1986 that *'Ram Sudhare has left unit lines on 13 Aug. 1985 for proceeding on 20 days casual leave, on the same day, a bomb explosion had occurred in 52 Dn. Sealdah Express near Samba Railway Station, however, it is not known whether your husband boarded the same train on 13.08.1985 or not. It is just a possibility that your husband, might have boarded this ill fated train. The Station Superintendent Samba Railway Station has confirmed that the name of the applicant's husband was not in railway list of persons declared dead/injured in the above mentioned accident. On 04.10.1985, applicant's husband has been declared as deserter, his whereabouts are not yet known'*. Thereafter District Soldier Welfare & Resettlement Officer approached army authorities. A FIR was lodged in the office of SP Basti and SP Jammu and Pathankot were also approached to trace out applicant's husband but could not be traced out.

4. Learned counsel for the applicant further submitted that no proper Court of Inquiry was conducted under the provisions contained in Rule 180 and 183(4) of Army Rules, 1950. No action has been taken as per Army Order 1/2003 with regard to missing husband of the applicant. The concerned unit cannot shirk its responsibilities and deprived the presumed duties by just conveniently declaring the applicant's husband deserter. It is not only against the humanitarian approach but challengeable in the

eyes of law on various grounds. The action of the respondents declaring the husband of the applicant as a deserter without taking recourse to the procedure prescribed merely on the surmises and conjectures is wholly erroneous and not sustainable in the eyes of law and the procedure prescribed for declaring the husband of the applicant a deserter has not been followed and as such the action of the respondents is wholly unjust and arbitrary.

5. Learned counsel for the applicant further submitted that a candidate whose whereabouts are not known for more than 7 years is deemed to have died in view of the legal presumptions as per the provisions provided under Section 108 of Indian Evidence Act. Therefore, the applicant is entitled to all the benefits to which a dependant of a Army personnel who has died during service is entitled. Hence, action of the respondents procrastinating aforesaid claims is violative to Articles 14, 16 & 21 of the Constitution of India. He pleaded to release family pension and other benefits as per Govt. of India letter dated 03.06.1988.

6. Learned counsel for the respondents submitted that husband of the applicant while serving with 63 Engineer Regiment was granted 20 days casual leave w.e.f. 14.08.1985 to 02.09.1985. As the husband of the applicant failed to rejoin from casual leave, a Court of Inquiry was held in the unit on 14.11.1985 and husband of the applicant was declared deserter w.e.f. 03.09.1985. As per Para 22 of Army Order 43/2001/DV, a person subject to the Army Act who does not surrender or is not apprehended will be dismissed from the service under Army Act Section 19 read with Rule 14 or Army Act Section 20 read with Army Rule 17.

Accordingly, husband of the applicant was dismissed from service w.e.f. 12.10.1988 on expiry of three years from the date of desertion being peace deserter under Army Act, Section 20 (3) and struck off strength w.e.f. 12.10.1988 in accordance with IHQ of MoD (Army) letter dated 11.03.1980. Hence, being a dismissal case, the husband of the applicant is not entitled for grant of any kind of pension in terms of para 113 of Pension Regulations for the Army, 1961 (Part-1).

7. Learned counsel for the respondents further submitted that as per 113 (a) of Pension Regulations for the Army 1961 (Part-1), *'an individual who is dismissed under the provisions of the Army Act, is ineligible for pension or gratuity in respect of all previous service'*. Since, husband of the applicant was dismissed from service under Army Act Section 20 (3) due to desertion and he was not in receipt of any kind of pension hence, the applicant is not entitled for family pension in terms of Para 212 of Pension Regulations for the Army, 1961 (Part-1). She pleaded for dismissal of O.A.

8. Heard learned counsel for the parties and perused the material on record.

9. We have given our earnest consideration to the submission of the learned counsel for the parties and find that husband of applicant was dismissed from service on expiry of three years from the date of desertion under Army Act, Section 20 (3), hence, being a dismissal case, the husband of the applicant is not entitled for any kind of pension in terms of para 113 of Pension Regulations

for the Army, 1961 (Part-1). There is nothing on record to convince us that applicant's husband went missing after being proceeded on twenty days casual leave. As the husband of the applicant was not in receipt of any kind of pension, the applicant is also not entitled for grant of family pension in terms of Para 212 of Pension Regulations for the Army, 1961 (Part-1).

10. In the result, we find that applicant's claim for release of family pension has rightly been rejected by the respondents as per rules, which needs no interference.

11. The Original Application is devoid of merit, deserves to be dismissed and is accordingly, **dismissed**.

12. No order as to costs.

13. Pending Misc. Application(s), if any, stand disposed of.

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

Dated: January, 2022
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