

**RESERVED**  
**Court No. 2**  
 (Ser No 14)

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
 LUCKNOW**

**ORIGINAL APPLICATION No. 757 of 2021**

Monday, this the 10<sup>th</sup> day of April, 2023

**"Hon'ble Mr. Justice Anil Kumar, Member (J)**  
**Hon'ble Maj Gen Sanjay Singh, Member (A)"**

Smt. Munni Mishra, W/o Shri No. 13688818M Ex Gdsm Vijay Narayan Mishra s/o Shri Radheyshyam Mishra Permanent Address- R/o- Vill& Post- Markara, P/S- Bhaluwani, Teh- Barhaj, District- Deoria (U.P.)-274601, Present Address- S- 17, Security Barrack ITI, Mankapur, Gonda (U.P.), 271308.

..... Applicant

Learned counsel for the: **Shri Vijay Kumar Pandey** and  
 Applicant **Shri Girish Tiwari**, Advocates

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, R.K. Puram, New Delhi-110011.
2. Dte Gen Mech Forces (Pers), General Staff Branch Integrated HQ of MoD (Army) D.H.Q., New Delhi-110 011.
3. OIC Records, Records Brigade of The Guards, PIN-900746, C/O 56 APO.
4. Principal Controller of Defence Accounts (P), Draupadighat, Allahabad, (U.P.)-PIN-211014.
5. Commandant, 7 Guards, PIN-910907, C/o 56 APO.

.....Respondents

Learned counsel for the: **Shri Sunil Sharma**, Advocate  
 Respondents. Central Govt. Counsel

## **ORDER**

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

*(i). That this Hon'ble Tribunal may kindly be pleased to quash the impugned dismissal order dated 31.03.2011 after summoning the same passed by opp. Party no. 11, and treat the husband of the applicant dead/missing on duty w.e.f. 14.02.2000, and direct the opp. Parties to grant the Special Family Pension and other entire related service benefits of her husband to the applicant from the date of disappearance i.e. 14.02.2000, and provide the interest on the aforesaid delayed amount with interest @ 18% p.a. since due date to actual date of payment in the interest of justice..*

*(ii). That this Hon'ble Tribunal may kindly be awarded the cost Rs. 2,0020,000/- (Rs Two Crore and Twenty Thousand) to the applicant against the opposite parties..*

*(III). That this Hon'ble Tribunal may be pleased to pass any other order or direction which this Hon'ble Court may deem just and proper be passed in favour of the applicant.*

2. Brief facts of the case are that applicant's husband was enrolled in the Army on 30.12.1986 and after completion of due military training he was posted to 7 GUARDS on 11.02.1988. In the year 2000, he proceeded on 20 days casual leave for the period 24.06.2000 to 13.07.2000 and did not report back to unit. Accordingly, apprehension roll was issued followed by court of inquiry (C of I) (Annexure R-1) which declared him as a deserter w.e.f. 14.07.2000. Thereafter, being a field area deserter, after completion of 10 years from the date of declaring him as a deserter, he was dismissed from service under Section 20 (3) of Army Act, 1950 read with Rule 17 of the Army Rules, 1954. The

casualty of his dismissal from service was notified by Records, Brigade of the Guards Part-II Order No. 1/0186/0001/2011 (Annexure R-2). The individual had rendered only 13 years and 194 days service at the time of desertion. Applicant has filed this O.A. for quashing dismissal order dated 31.03.2011 and grant Special Family Pension treating her husband to be missing presumed dead in terms of Section 108 of the Indian Evidence Act, 1872.

3. Submission of learned counsel for the applicant is that applicant's husband was enrolled in Brigade of the Guards of the Indian Army on 31.12.1986. His further submission is that in the year 1990 applicant was married to her husband. It was further submitted that in the year 2000 applicant's husband was granted 20 days casual leave and after termination of leave when he proceeded to join his duty he went missing and till date his whereabouts are not known.

4. Learned counsel for the applicant further submitted that instead of searching whereabouts of her missing husband, the Army authorities had first declared her husband as a deserter and thereafter, he was dismissed from service without following due procedure. It was further submitted that at the time when her missing husband was declared a deserter, he had put in 13 years and 196 days unblemished service.

5. Further submission of learned counsel for the applicant is that the applicant had approached Zila Sainik Welfare Office, Deoria and on their intervention she was provided job on contractual basis. It was further submitted that since the period of her husband's missing she was thrown out of the house of her in-laws and she is living with her parents.

6. Learned counsel for the applicant further submitted that the applicant tried her best to lodge an FIR at Police Station but it could not be registered on the ground that for lodging FIR, recommendation of opposite party No. 5 was mandatory and when the applicant approached respondent No. 5 she was told that there was no need to lodge FIR. Thereafter, she preferred several petitions dated 28.03.2008, 14.02.2007, 08.02.2007, 21.07.2014, 14.05.2008 and 21.02.2007 ventilating her grievance but no fruitful result could be obtained. It was further submitted that despite protracted correspondence on the subject, when nothing tangible could be achieved, the applicant has approached this Tribunal based on Section 108 of the Indian Evidence Act, 1872 which is applicable in this case for grant of Special Family Pension as neither there is any presumption of his being alive for a period of seven years from the time he was last heard of, nor any presumption of his having died immediately after his disappearance, nor any presumption of his being alive or dead

at any particular time antecedent to the suit or proceeding in which the question of his being dead or alive arises.

7. On the other hand, learned counsel for the respondents submitted that No. 13688818m Ex Gdsm Vijay Narayan Mishra was enrolled in Brigade of the Guards Regiment on 30.12.1986. On completion of basic military training he was posted to 7 GUARDS on 11.02.1988. The individual was a habitual offender and committed various offences repeatedly on different occasions and was awarded the following punishments under Army Act Sections as under:-

<i>Ser No</i>	<i>Date of Award</i>	<i>Army Act Section</i>	<i>Details of offence</i>	<i>Punishment awarded</i>
(a)	09.01.1992	39 (a)	<i>Absenting himself without leave</i>	<i>28 days RI in military custody</i>
(b)	07.04.1994	54 (b)	<i>Loss of Identity Card</i>	<i>14 days RI in military custody</i>
(c)	24.08.1994	48	<i>Intoxication</i>	<i>28 days RI in military custody</i>
(d)	29.01.1998	39 (a)	<i>Absenting himself without leave</i>	<i>28 days RI in military custody</i>

8. Learned counsel for the respondents further submitted that the individual while posted with 7 GUARDS was granted 20 days casual leave for the period 24.06.2000 to 13.07.2000 and on termination of leave he did not report back to unit. It was further submitted that on his not being rejoining within the stipulated period, he was dealt under Army Act Section 39

(b) and thereafter, under the provisions of Section 106 of the Army Act, 1950, after continuous absence of 30 days, her husband was declared as a deserter w.e.f. 14.07.2000 by a Board of Officers convened for the said C of I. It was further submitted that after completion of 10 years from the date of his being declared a deserter, he was dismissed from service w.e.f. 14.07.2000 under Section 20 (3) of the Army Act, 1950 read with Rule 17 of the Army Rules, 1954 and casualty was published vide Part-II Order No 1/0186/0001/2011.

9. Learned counsel for the respondents further submitted that after her husband's desertion the matter was communicated to Zila Sainik Board with a copy to the applicant vide letter dated 09.09.2003. The learned counsel submitted that on 15.10.2000 applicant submitted petition dated 15.10.2006 asking for whereabouts of her husband which was replied vide letter dated 15.12.2006 intimating about her husband's desertion. Thereafter, several correspondences were made between applicant and the unit and finally when her husband was dismissed from service she was intimated to process the case for final settlement of claim. A cheque of Rs 43,312/- was issued to be credited to her husband's account held with Punjab National Bank, Deoria (UP). In the year 2014, an application was received from Master Rahul Mishra S/o ex Gdsm Vijay Narayan Mishra for

issue of relationship certificate but it was turned down stating that since his father has been dismissed from service, the subject certificate cannot be issued.

10. A submission has also been made by learned counsel for the respondents that since applicant's husband has not completed 15 years pensionable service he is not entitled to service pension in terms of Para 132 of Pension Regulations for the Army, 1961 (Part-I). The learned counsel further submitted that Para 113 (a) of Pension Regulations for the Army, 1961 (Part-I) envisages that 'an individual who is dismissed under the provisions of Army Act, is ineligible for pension or gratuity in respect of all previous service. In exceptional cases, however, he may, at the discretion of the 'President' (competent authority) be granted service pension or gratuity at a rate not exceeding that for which he would have otherwise qualified had he been discharged on the same date. He pleaded for dismissal of O.A. on the ground that since husband of the applicant is ineligible for grant of pension, applicant is also not entitled to receive either family pension or Special Family Pension.

11. Heard Shri Vijay Kumar Pandey, learned counsel for the applicant and Shri Sunil Sharma, learned counsel for the respondents and perused the record.

12. No. 13688818M Ex Gdsm Vijay Narayan Mishra was enrolled in Brigade of the Guards Regiment of the Indian Army on 30.12.1986. On completion of basic military training he was posted to 7 GUARDS on 11.02.1988. As per record the individual has been a habitual offender as he was punished on four occasions on various charges prior to desertion as mentioned in Para 7 above.

13. The Army person was granted 20 days casual leave up to 13.07.2000 and he did not report back to unit on termination of leave. Accordingly, an apprehension roll was issued and after 30 days, C of I was held in terms of Section 106 of the Army Act, 1950 which declared him as a deserter w.e.f. 14.07.2000. He was dismissed from service w.e.f. 14.07.2000 under the provisions of Army Rule 17 and Army Act Section 20 (3) being a field area deserter and casualty was notified vide Part-II Order No 1/0186/0001/2011. At the time of dismissal from service he had 13 years and 194 days service to his credit which is insufficient for grant of service pension.

14. It is not disputed that the applicant is wife of the dismissed soldier as in Army records her name is entered as NOK of the soldier. The applicant has made several correspondence for grant of Special Family Pension on the ground of missing presumed dead in terms of Section 108 of the Indian Evidence Act, 1872. In Section 108 of Indian

Evidence Act it is provided that *“when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it”*. For presumption of death under Section 108 of Indian Evidence Act it has to be proved by the applicant that her husband has not been heard for more than seven years by those who would naturally have heard of him if he had been alive but the record shows that applicant failed to lodge FIR with police authorities which is a mandatory document to take shelter of aforesaid Para of Indian Evidence Act. Besides as stated in Para 10 of counter affidavit (Annexure R-18) it has not been specifically denied by the applicant in RA that photo and signature on Annexure 18 of the CA is not of her husband Vijay Narain Mishra.

15. In the instant case, ex Gdsm Vijay Narayan Mishra had rendered only 13 years and 194 days of qualifying service (including 877 days as non qualifying service) and he was dismissed from service w.e.f. 14.07.2000 under the provisions of Army Rule 17 and Army Act Section 20 (3) being a deserter for more than 10 years, hence the dismissed soldier is not entitled for grant of service pension in terms of Para 113 (a) of Pension Regulations for the Army, 1961 (Part-I) and which

in turn also disqualifies the applicant for grant of Special Family Pension as claimed. For convenience sake Para 113 (a) of aforesaid Pension Regulation is reproduced as under:-

*"113. (a) An individual who is dismissed under the provisions of the Army Act, is ineligible for pension or gratuity in respect of all previous service. In exceptional cases, however, he may, at the discretion of the President be granted service pension or gratuity at a rate not exceeding that for which he would have otherwise qualified had he been discharged on the same date."*

16. During the course of hearing learned counsel for the applicant made a statement that applicant's husband after missing is now leading his life as a hermit and since a hermit has no relation to his family he should be presumed to be dead for his family, but it is not a case of this Original Application nor there is any evidence of renunciation of the world and leading the life of hermit by the husband of the applicant. Moreover, we find that on one hand the applicant is taking shelter of Section 108 of the Indian Evidence Act, 1872 but on the other hand it is submitted that the missing soldier is leading his life as hermit, therefore, in our opinion Section 108 of the aforesaid act would not apply in this case.

17. In view of the fact that applicant's husband being a habitual offender deserted the Army and never returned to his unit, he was rightly dismissed from service before completion of pensionable service. Consequently, he is not entitled to service pension. With regard to applicant's submission that

her husband be presumed to be dead as per Section 108 of the Indian Evidence Act, 1872 and she be granted Special Family Pension, an inference may be drawn from submission of the applicant that her husband being becoming hermit is not counted as part of the society and therefore, he be presumed dead, is not tenable in the eyes of law, resultantly, she is not entitled to Special Family Pension as claimed.

18. In view of the above, application for grant of Special Family Pension being devoid of merit is **dismissed**.

19. No order as to costs.

20. Miscellaneous application(s), pending if any, stand disposed off.

**(Maj Gen Sanjay Singh)**  
**Member (A)**

Dated: 10.04.2023

*rathore*

**(Justice Anil Kumar)**  
**Member (J)**