

**Court No.1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 306 of 2020****Friday, this the 4<sup>th</sup> day of February, 2022****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

Smt Akhtarul Nisha

W/o Late Gnr Mohd. Aneesh Khan No. 14465819P

R/o Village – Singhpur, Post Office – Singhpur, Tehsil – Tiloi

Distt- Rai Bareli (UP)

..... Applicant

Ld. Counsel for the Applicant: **Dr. Ashish Asthana &**  
**Shri Prabhav Srivastava, Advocate**

Versus

1. Union of India through its Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. The Chief of Army Staff, Army Headquarters, Sena Bhawan, New Delhi – 110011.
3. The Officer in Charge Records, Artillery Records, Nasik Road, Nasik - 422102.
4. PCDA (P), Draupadi Ghat, Allahabad – 211014 (UP).

..... Respondents

Ld. Counsel for the Respondents : **Dr. Shailendra Sharma Atal,**  
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. Quash the impugned orders/letters dated 29.06.2017 (Annexure A-14).

B. Direct the respondents to pay the ordinary family pension to the applicant from 02.10.1993 (w.e.f. after the one year from the date of missing) along with interest @ 10% p.a.

C. Issue such further appropriate order/direction as this Hon'ble Tribunal may be deem fit and proper in facts and circumstances of the case.”

2. The factual matrix of the case is that applicant's husband was enrolled in the Army on 10.05.1980. While serving with 299 Field Regiment, he was granted 44 days Balance of Annual Leave (BAL) w.e.f. 04.10.1992 to 16.11.1992. Instead of reporting back to the unit he overstayed the leave w.e.f. 17.11.1992. Accordingly, an apprehension roll was issued and after clear 30 days of his absence, he has been declared deserter w.e.f. 17.11.1992 by a Court of Inquiry held on 18.12.1992 under Army Act Section 106. Accordingly, husband of the applicant was dismissed from service w.e.f. 20.04.2003 on expiry of ten years from the date of desertion being a field deserter under Army Act, Section 20 (3) read in conjunction with Army Order 43/2001/DV after obtaining sanction of competent authority. 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 according to 299 Field regiment, husband of the applicant was granted balance annual leave from 02.10.1992 to 16.11.1992 but did not report back to join duty after completion of the leave. In this

regard, it is specifically mentioned that husband of the applicant never reached his home after sanction of the leave. On an inquiry by father-in-law of the applicant vide letter dated 10.04.1993, it was informed that his son was granted 46 days annual leave from 02.10.1992 to 16.11.1992 and thereafter, he has failed to rejoin the unit and was overstaying leave. Vide a letter dated 05.07.1993, father-in-law of the applicant again sought information from the Commanding Officer 299 Field Regiment about whereabouts of his son on an apprehension that his missing son has joined the unit or not after his long overstay of leave. The unit vide letter dated 12.07.1993 informed to father-in-law of the applicant that his son Mohd Anees Khan did not rejoin the unit. Thereafter, applicant approached Adjutant General vide letters dated 22.02.1994, 19.07.1994 and 08.09.1997 and she was replied by the Adjutant General about her husband's desertion and not reported back to unit. Thereafter, applicant wrote a letter dated 14.05.2002 to C.R.O. Artillery Records for grant of family pension but nothing materialized.

4. Learned counsel for the applicant further submitted that as per Ministry of Defence letter No. 12(16)/D(Pension/Service) dated 03.06.1988, family of a deceased/missing employee is entitled for grant of ordinary family pension after lapse of one year from the date of declaration/presumption of death of an employee. 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 seven 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 to the applicant as per Govt. of India letter dated 03.06.1988.

6. Learned counsel for the respondents submitted that husband of the applicant was enrolled in the Army on 10.05.1980. While serving with 299 Field Regiment, he was granted 44 days Balance of Annual Leave (BAL) w.e.f. 04.10.1992 to 16.11.1992. Instead of reporting back to the unit he overstayed the leave w.e.f. 17.11.1992. Accordingly, an apprehension roll was issued by 299 Field Regiment vide letter dated 05.12.1992 to the Superintendent

of Police, Rai Bareilly (UP) for apprehension of the individual. After clear 30 days of his absence, he has been declared deserter w.e.f. 17.11.1992 by a Court of Inquiry held on 18.12.1992 under Army Act Section 106. 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. 20.04.2003 on expiry of ten years from the date of desertion being a field deserter under Army Act, Section 20 (3) read in conjunction with Army Order 43/2001/DV after obtaining sanction of competent authority. The applicant was also intimated about dismissal of her husband vide Records letter dated 10.03.2005 and amount as per final settlement of accounts was paid to the applicant. 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 ten years from the date of desertion being a field deserter under Army Act, Section 20 (3). There is nothing on record to convince us that applicant's husband went missing enroute after being proceeded on Balance of Annual Leave. No efforts have been made by the applicant by approaching Army authorities/civil authorities to show that her husband was missing from the Army. She neither lodged a complaint with police for missing of her husband nor she approached any court of law to get declaration of legal death.

10. Therefore, 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). 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).

11. 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.

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

13. No order as to costs.

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

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

Dated: February, 2022  
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