

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 582 of 2019****Thursday, this the 17<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. Kalindi Devi  
W/o No. 15611573 Ex GDSM Late Manoj Kumar Chaturvedi  
S/o Sri Ram Tirath Chaturvedi  
Village – Khajuria, PO – Sarpathi (Khurd)  
District – Kushinagar (UP)

..... Applicant

Ld. Counsel for the Applicant: **Col Ashok Kumar (Retd) &**  
**Shri Rohit Kumar, Advocate**

Versus

1. Union of India through Secretary, Ministry of Defence, New Delhi-110011.
2. Chief of Army Staff, New Delhi – 110011.
3. Commandant cum Chief Records Officer, The Brigade of Guards, Kamptee.

..... Respondents

Ld. Counsel for the Respondents : **Shri Yogesh Kesarwani,**  
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 quash the rejection order issued by Brig. Pankaj Malhotra, officer in Charge Records, Guards Regimental Centre Kamptee dated 13 Feb 2019 received by the counsel for the applicant on 04 Jul 2019 after filing of the Execution Application No. 72 of 2019 with all the consequential benefits to the applicant.

(b) To direct the respondents to pay family pension to the applicant a hapless widow with effect from the date of death of the husband of the applicant.

(c) To issue any other order or direction considered expedient and in the interest of justice and equity.

(d) Award cost of the petition.”

2. The factual matrix of the case is that applicant's husband was enrolled in the Indian Army on 03.07.1999. During 02 years and 360 days of service, husband of the applicant was Absent Without Leave (AWL) for 83 days and Overstayal of Leave (OSL) for 10 days. As per procedure in vogue, an apprehension roll was issued to apprehend the soldier vide 14 GUARDS letter dated 28.09.2002. On completion of 30 days of unauthorized absence, a Court of Inquiry was held in the unit under the provisions of Army Act, Section 106 read in conjunction with Army Rule 183 and husband of the applicant was declared deserter from Army service w.e.f. 28.06.2002. After lapse of 30 months, soldier preferred a representation dated 01.11.2001 to reinstate him into service which was under process with competent authority. In the meantime, husband of the applicant filed a Writ Petition No. 6873/2004 in the Allahabad High Court which was disposed off with direction to the respondents to decide appeal of the soldier. The appeal of the soldier was decided by the Chief of the Army Staff and applicant was advised to rejoin duty forthwith at Guards Regimental Centre, Kamptee but the soldier failed to rejoin duty as per direction issued by competent authority. Later on, it was intimated by the applicant that her husband died on 20.06.2009 in

a road accident. The applicant preferred a mercy appeal dated 31.01.2017 to the Hon'ble President of India which was rejected and applicant was apprised vide Guards Records letter dated 18.03.2017. The applicant also filed OA NO. 579/2018 before this Tribunal which was disposed off vide order dated 05.12.2018 directing the respondents to decide appeal of the applicant dated 31.01.2017 within three months. The appeal of the applicant was examined afresh by the respondents and was disposed off in accordance with policy vide order dated 13.02.2019. Being aggrieved, the applicant has filed the present Original Application for grant of ordinary family pension.

3. Learned counsel for the applicant submitted that applicant's husband was enrolled in the Army on 03.07.1999. The husband of the applicant was placed in low medical category and was dispatched to Guards Regimental Centre and enroute, he became a victim of 'Jaharkhurani'. The husband of the applicant while moving from Guards Regimental Centre to 14 Guards on 28.06.2002, again became a victim of 'Jaharkhurani' and became a patient of 'Depression'. After recovery from 'Depression', husband of the applicant tried to report to 14 Guards but he was refused to join duty. The husband of the applicant filed a Civil Writ Petition No. 6873/2004 in the Allahabad High Court which was disposed off with direction to the respondents to decide appeal of the soldier. Later on husband of the applicant met with a road accident and died on 20.06.2009.

4. Learned counsel for the applicant further submitted that applicant's husband was entitled to all the privileges and

protections available in the Act and denial of which was against the Law on the statute (AIR 1966 SC 1313 / AIR 1990 SC 10 / AIR 1994 SC 1491) got attracted. It is also gross violation of Law reported in para 5 of AIR 1992 SC 417. He also submitted that actions of the respondents were against the Right to Equality and principles of natural justice (AIR 1987 SC 2386) being violative of Article 14 and 21 of the Constitution of India. He pleaded for grant of family pension to the applicant.

5. Learned counsel for the respondents submitted that husband of applicant was enrolled in the Army on 03.07.1999. During 02 years and 360 days of service, husband of the applicant was Absent Without Leave (AWL) for 83 days and Overstayal of Leave (OSL) for 10 days. As per procedure in vogue, an apprehension roll was issued to apprehend the soldier vide 14 GUARDS letter dated 28.09.2002. On completion of 30 days of unauthorized absence, a Court of Inquiry was held in the unit under the provisions of Army Act, Section 106 read in conjunction with Army Rule 183 and husband of the applicant was declared deserter from Army service w.e.f. 28.06.2002.

6. Learned counsel for the respondents further submitted that after lapse of 30 months, soldier preferred a representation dated 01.11.2001 to reinstate him into service which was under process with competent authority. In the meantime, husband of the applicant filed a Writ Petition No. 6873/2004 in the Allahabad High Court which was disposed off with direction to the respondents to decide appeal of the soldier. The appeal of the soldier was decided by the Chief of the Army Staff and applicant was advised

to rejoin duty forthwith at Guards Regimental Centre, Kamptee but the soldier failed to rejoin duty as per direction issued by competent authority. Later on, it was intimated by the applicant that her husband died on 20.06.2009 in a road accident. The applicant preferred a mercy appeal dated 31.01.2017 to the Hon'ble President of India which was rejected and applicant was apprised vide Guards Records letter dated 18.03.2017. The applicant also filed OA NO. 579/2018 before this Tribunal which was disposed off vide order dated 05.12.2018 directing the respondents to decide appeal of the applicant dated 31.01.2017 within three months. The appeal of the applicant was examined afresh by the respondents and was disposed off in accordance with policy vide order dated 13.02.2019.

7. Learned counsel for the respondents further submitted that an Army person, who deserts the Army, deserts the nation; when he joins the Army, trust is reposed on him that he shall remain disciplined while discharging his official duty. In the present case, applicant's husband seems to be an indisciplined soldier, who has not followed the oath, while serving the Army, hence, he does not deserve any leniency. The husband of the applicant was declared deserter after rendering 02 years and 360 days of total service, therefore, as per para 132 of Pension Regulations for the Army 1961 (Part-1), he is not entitled for grant of service pension. 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). He pleaded for dismissal of O.A.

8. We have given our earnest consideration to the submission of the learned counsel for the parties and find that husband of applicant was declared deserter from service after rendering 02 years and 360 days of total service and later on died in a road accident on 20.06.2009, hence, being a deserter case having served for less than 15 years service, the husband of the applicant is not entitled for any kind of pension in terms of para 113 & 132 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).

9. We find that applicant's claim for grant of family pension has rightly been rejected by the respondents as per rules, which needs no interference.

10. In view of above, we are of the opinion that O.A. is devoid of merit, deserves to be dismissed and is accordingly, **dismissed**.

11. No order as to costs.

12. Pending Misc. Application(s), if any, shall be treated to have been disposed off.

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

Dated: February, 2022

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