

**Reserved**  
**Court No. 3**  
(Ser No. 24)

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

**Original Application No. 440 of 2022  
with M.A. No. 497 of 2022**

**Wednesday, this the 05<sup>th</sup> day of July, 2023**

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

Smt Sapna Devi, wife of (820231-A) Ex-NC(E) Late K Raju,  
resident of Jhapiya Road, Bamrauli, Behind Maszid, Prayagraj-  
211012.

.....Applicant

Counsel for the Applicant: **Wg Cdr AK Singh (Retd)**, Advocate

Versus

1. Union of India, through its Secretary, Ministry of Defence, New Delhi.
2. Chief of Air Staff, Air Force Headquarters (Vayu Bhawan), Rafi Marg, New Delhi.
3. Air Force Record Officer, Subroto Park, New Delhi.
4. Deputy CDA (Air Force), Subrto Park, New Delhi.

.....Respondents

Ld. Counsel for the Respondents: **Shri Amit Jaiswal**, Advocate  
Central Govt. Counsel.

## ORDER

1. This application under Section 14 of the Armed Forces Tribunal Act, 2007 has been filed by the applicant for the following prayers;-

*“(a) That the Hon’ble Tribunal may graciously be pleased to direct the respondents to give the family pension from 08.07.2017 i.e. 07 years from the day of absence i.e. 09.07.2010 and other balance arrears of pension to the applicant being legal heir / wife of Ex. Laskar K. Raju NC(E), who has been declared deserter by the respondents.*

*(b) This Hon’ble Tribunal may further be pleased to pass such other order or further order as deemed fit, proper and necessary in the circumstances of the case.*

*(c) Award cost to the applicant.*

2. As per office report, the present O.A. has been filed with delay of 02 years, 04 months and 29 days. Since the issue in the O.A. relates to pension which involves recurring cause of action, the delay in filing Original Application is condoned. M.A. No 497 of 2022 is disposed off.

3. Brief facts of the case are that applicant’s husband (No. 820231-A K. Raju Laskar) was enrolled in the Indian Air Force (IAF) on 09.01.1989 as NC (E). He was posted to 7 Sqn AF, C/o 56 APO w.e.f. 20.06.2008. While being posted there, he absented from duty without leave w.e.f. 09.07.2010. Since he neither rejoined voluntarily nor could he be apprehended by the police, he was declared as a deserter with effect from 09.07.2010 by a duly constituted Court of

Inquiry (C of I). After completion of three years, as a deserter, he was dismissed from service on 19.09.2013 on disciplinary grounds under section 20 (1) of Air Force Act 1950, read with Rule 18 (2) of Air Force Rules, 1969 vide AFRO letter dated 03.10.2013 (Annexure-4).

4. Smt Sapna Devi (NOK-wife) was informed by 7 Sqn AF regarding the absence of applicant's husband from duty w.e.f. 09.07.2010 at 07.00 hours and she was advised vide letter dated 16.08.2010 (Annexure A-6) to lodge report at the nearest police station in regard to her missing husband but she failed to lodge FIR. After a gap of 10 years, Ravi Kumar Swamy son of the missing personnel K. Raju approached In-Charge, Police Station-Maharajpur, Gwalior on 14.12.2021 to know whereabouts of his father. The record shows that after his desertion the matter was first reported at Police Station-Maharajpur, Gwalior, by Cpl Kundan, representative of 7 Sqn AF and acknowledgement dated 27.09.2010 was obtained. The lady seems to have moved RTI application dated 17.10.2017 to know where about of her missing husband and in response to his application the respondents vide letter dated 25.01.2018 intimated that her husband has already been dismissed from service on 19.09.2013. Applicant has filed this O.A. for grant of family pension keeping in view of her husband as 'missing presumed dead'.

5. Submission of learned counsel for the applicant is that applicant's husband was enrolled in the Indian Air Force as NC(E) on 09.01.1989 and while posted with 7 Squadron Air Force he went missing from duty place w.e.f. 09.07.2010. It was further submitted that despite the applicant being wife of the soldier, repeatedly pleading with respondents to trace her missing husband since 09.07.2010, the respondents have taken no meaningful action on her complaint and to establish the fact about the claim of her missing husband as per extant Government Orders on the issue of declaring a soldier 'missing presumed dead'. He contended that earlier in such cases, the families had to wait for seven years to declare a person 'missing presumed dead' for family pension, but the Government as per its benevolent provisions, introduced a policy vide Ministry of Defence Letter No. 12(16)/86D/(Pension/Services) dated 03.06.1988 amended from time to time in 2013 and 2014 as per which the family/NOK of missing soldier did not have to wait for seven years and based on an enquiry, the NOK of 'missing presumed dead' employee could start receiving family pension within six months of 'missing presumed dead' case.

6. Learned counsel for the applicant further submitted that applicant's husband be declared 'missing presumed dead' in terms of Section 108 of the Indian Evidence Act and she be granted family pension.

7. In support of claim for grant of family pension to the applicant, learned counsel for the applicant has relied upon order dated 29.01.2021 passed by this Tribunal in O.A. No. 307 of 2017, **Smt Maya Thapa vs UOI & Ors**, order dated 25.03.2010 passed by AFT (PB), New Delhi in T.A. No. 367 of 2010, **Smt Shakun Sharma vs UOI & Ors**, order dated 09.03.2016 passed by AFT (RB), Kolkata in O.A. No. 64 of 2015, **Smt Urmila Devi vs UOI & Ors**, order dated 06.12.2013 passed by AFT (RB), Guwahati in O.A. No. 01 of 2013, **Smt Sangita Das vs UOI & Ors**. He pleaded for grant of family pension to the applicant w.e.f. the date her husband went missing.

8. Per contra, learned counsel for the respondents submitted that the applicant's husband absented himself without sanctioned leave w.e.f. 09.07.2010. It was further submitted that since he did not rejoin his duties, a Court of Inquiry was convened which declared him as a deserter w.e.f. 09.07.2010. It was also submitted that after completion of waiting period of three years from the date of his absence he was dismissed from service on 19.09.2013.

9. Learned counsel for the respondents while filing counter affidavit in Para 3 has admitted that the applicant is wife of the dismissed soldier who has been corresponding with AFRO to find out the whereabouts of her husband and claiming that her husband is not a deserter. The learned counsel, however, claims that she was advised to lodge an FIR which she has failed to lodge and hence no follow-up action could be taken in this case. He further

submitted that based on a representation of the lady received through HQ Central Air Command, Allahabad letter dated 25.01.2018 stating that as per record 820231 NC (E) Kuppu Raju was enrolled in the Indian Air Force on 09.01.1989 and dismissed from service w.e.f.19.09.2013 on disciplinary grounds (desertion over three years). It was further submitted on behalf of the respondents that as per extant policy, an individual who is dismissed under the provisions of Air Force Act, 1950 is ineligible for pension/gratuity in respect of all previous serve. As NC(E) Kuppu Raj was not in receipt of any kind of pension, his wife is also not entitled for family pension as per extant policy and therefore, no documents were demanded from his NOK by Directorate of Air Veterans.

10. Learned counsel for the respondents further submitted that applicant has not lodged FIR with police station regarding his missing husband, instead copy of investigation report dated 10.09.2015 of Police Station - Maharajpur, District - Gwalior (MP), produced by the applicant is based on FIR lodged by the unit authorities in the year 2010. He concluded stating that since applicant has not lodged FIR with regard to his missing husband, therefore, her husband cannot be declared as 'missing presumed dead' and in the circumstances she is not entitled to family pension when her husband has already been dismissed from service in the year 2013. He pleaded for dismissal of O.A.

11. Heard Wg Cdr AK Singh (Retd), learned counsel for the applicant and Shri Amit Jaiswal, learned counsel for the respondents and perused the record.

12. No. 820231-A NC (E) K Raju Laskar was enrolled in the IAF on 09.01.1989. He went missing while on duty w.e.f. 09.07.2010 when he was serving with 7 Squadron Air Force, C/o 56 APO. Accordingly, unit authorities conducted C of I and he was declared deserter w.e.f. 09.07.2010. The unit authorities also lodged FIR on 27.09.2010 with Police Station-Maharajpura, District-Gwalior (MP), receipt of which is placed with record as Annexure A-1. The respondents have waited for three years for his return and thereafter, he was dismissed from service on 19.09.2013 under Section 20 (I) of Air Force Act, 1950 read with Rule 18 (2) of Air Force Rules, 1969.1

13. In the year 2015, applicant's son visited Police Station-Maharajpura to inquire whereabouts of his father based on FIR lodged by the unit authorities in the year 2010 where he was provided a certificate dated 10.09.2015 stating that whereabouts of his father are not available. For convenience sake, copy of certificate No 2046/2015 dated 10.09.2015 is reproduced as under:-

“प्रमाणीकरण

*प्रमाणित किया जाता है कि थाना महाराजपुरा में दिनांक  
27.09.2010 को दर्ज गुम इंसान क्र. 19/10 में गुमशुदा के. राजू पुत्र ए.के.  
स्वामी 43 साल नि. एयरफोर्स स्टेशन महाराजपुरा , ग्वालियर का थाना  
अभिलेख के अनुसार अभी तक कोई पता नहीं चल सका है /”*

14. In view of the fact that applicant's son visited Police Station-Maharajpura and obtained certificate dated 10.09.2015 with regard to his missing father on the basis of FIR registered by the unit in the year 2010, we are of the view that applicant was aware of FIR lodged by the unit which we find sufficient. We also find that before filing of this O.A. applicant's son submitted application dated 14.12.2021 (Annexure A-7) to Police Station-Maharajpura for obtaining status report on the basis of FIR dated 27.09.2010 and certificate dated 10.09.2015.

15. In the backdrop of the case as narrated above, the questions which arise for determination in this case are of twofold:-

(i) Whether the case of husband of the applicant, who is missing since 2010, is a case of 'missing presumed dead' in view of Section 108 of the Indian Evidence Act or a case of a desertion?

(ii) If it emerges that he is a missing case, then what is the date of his 'missing presumed dead'?

16. From the facts explained above, it is established that applicant's husband absented without leave w.e.f. 09.07.2010 while he was serving with 7 Air Force Squadron, C/o 56 APO. On this point, the Govt of India, Ministry of defence letter dated 03.06.1998 has issued following benevolent orders:-

*"1. A number of cases have been referred to this Ministry for grant of terminal and other pensionary benefits to the families of service personnel who have suddenly disappeared while in operational and*

*non-operational service and whose whereabouts are not known. At present all such cases are considered on merits. In the normal course unless a period of 7 years has elapsed from the date of disappearance of the employee, he cannot be deemed to be dead and therefore, the retirement benefits cannot be paid to the family. This principle is based on Section 108 of the Indian Evidence Act which provides that when the question is whether the man is alive or dead and it is proved that he has not been heard of for 7 years by those who would naturally have heard of him had he been alive, the burden of proving that he is alive is shifted to the person who affirms it. This has resulted in great hardship and distress to the families who have to wait for 7 years before any terminal benefits could be paid to them.*

2. *The President is therefore pleased to decide that when a member of the Indian Armed Forces is declared missing while in service the family will be paid the following benefits subject to adjustment of outstanding dues in respect to the missing personnel, if any:-*

*(a) Immediately after the date of declaration of disappearance, the amount of salary due, leave encashment due and DSOP/AFPP Fund amount subject to nomination made by the missing personnel.*

*(b) After the lapse of one year from the date of declaration of disappearance/presumption of death Family pension/DCRT etc. as admissible in normal conditions.*

3. *The above benefits may be sanctioned after observing following formalities:-*

*(i) The family must lodge a report with the concerned police station and obtain a report that the employee has not been traced after all efforts had been made by the police.*

*(ii) The claimant will be required to furnish an indemnity bond with two solvent sureties*

*to the effect that all payments thus made will be recovered from the amount due to the person if he/she reappears and makes any claims.*

*4. The family can apply to the concerned authority for grant of family pension and DCR Gratuity after one year from the date of declaration of disappearance of the service personnel in accordance with the procedure for sanction of family pension and DCR Gratuity. In case the disbursement of DCR Gratuity is not effected within 3 months of the date of applicant, the interest shall be paid at the rates applicable and responsibility for the delay fixed.*

*5. In the case of officers, the respective Branch/Dte at Service HQrs and in the case of JCOs/OR and equivalent in Navy and Air Force, their respective Records Offices will process such cases with CDA (P)/PAO(Navy)/CDA(Air Force).*

*6. The provisions of this letter take effect from 29th August 1986.*

*7. This issues with the concurrence of the Finance Division of this Ministry vide their U.O. No. 802-Pen of 1988.”*

17. We have also noted that the Govt has improved upon the beneficial nature of the initial policy issued in 1988 through subsequent amendments whereby the period of waiting for family pension has been reduced to 06 months from one year and it has been clarified that ‘In the case of a missing Armed Forces personnel/pensioner/family pensioner, the family can apply for grant of family pension, amount of salary due, leave encashment due and the amount of DSOP/AFPP fund and gratuity (whatever has not already been received) to the IHQ/Record Office concerned, where the officers and JCOs/ORs in Army and equivalent in Navy and Air Force, have last served, six months after lodging of police report.’ In

the instant case the FIR/missing report was lodged on 27.09.2010 by the unit authorities and applicant's son visited Police Station-Maharajpura on 10.09.2015 to know whereabouts of his father.

18. We find that there was no meaningful response from the respondents as per the guidelines issued by the Govt of India on 'missing presumed dead' policy of 1988, 1998 and subsequent amendments. The respondents have continuously stated that the husband of the applicant has been declared a deserter w.e.f. 09.07.2010 and dismissed from service w.e.f. 19.09.2013 after three years of desertion. However, they have failed to extend any initiative to find out whether it is a case of 'missing presumed dead' or desertion. In the instant case, the applicant admittedly was aware of the fact that FIR was lodged by unit authorities on 27.09.2010 and therefore, her son visited the Police Station-Maharajpura on 10.09.2015 and obtained a certificate stating that his father's whereabouts could not be found. On 14.12.2021 i.e. before filing this O.A. applicant's son again moved application to concerned police station to know whereabouts of his father. During the pendency of this O.A., a report dated 16.05.2023 of concerned police station is also filed by the applicant in which it is certified that whereabouts of his father is still unknown. So the requirement with regard to police complaint stands fulfilled.

19. We have also taken note of the fact that the respondents have taken no immediate action in the matter of disappearance of

applicant's husband, instead they have simply lodged FIR/missing report, conducted a court of inquiry, declared him as a deserter and dismissed him from service after three years from the date of declaring deserter. As per pleadings on record, there is hard evidence that the lady has approached concerned authorities to enquire about the whereabouts of her husband, but we are constrained to note with concern that the respondents have failed to provide any meaningful guidance or help to the distressed lady. Therefore, in accordance with policy laid down, respondents should provide all benefits to the applicant, but instead of taking action to extend benefit of welfare policy, the respondents have dismissed applicant's husband from service after lapse of three years from the date of desertion, and therefore, the husband of the applicant must be 'missing presumed dead' when the order of dismissal was passed which renders the order of dismissal unsustainable in the eyes of law. Further, it is specifically clear before us that the husband of the applicant has never been seen or heard by anyone after 09.07.2010.

20. Thus, considering the specific evidence in this case and the fact that the applicant's husband was away from home on military duty, we are of the considered opinion that in the interest of substantive justice, and under the provisions of Section 108 of the Indian Evidence Act and prevailing Govt of India orders on the subject, the husband of the applicant is to be 'missing presumed dead' and his dismissal on 19.09.2013 is null and void because it

would tantamount to action taken against a dead person. Consequently, the applicant is entitled to receive family pension with effect from 09.01.2011.

21. In view of the above, we are of the view that the O.A. is liable to be allowed.

22. The O.A. is **allowed**, accordingly. The impugned orders are set aside. The husband of the applicant is held to be 'missing presumed dead' with effect from 09.01.2011 and applicant is entitled to Ordinary Family Pension and all other consequential benefits with effect from 09.01.2011, but due to law of limitation, she is entitled to receive arrears of Ordinary Family Pension from three years prior to the filing of the O.A. The O.A. was filed on 24.05.2022. The respondents are directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 8% p.a.

23. No order as to costs.

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

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

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

Dated: 05.07.2023  
*rathore*