

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 602 of 2022**Wednesday, this the 22<sup>nd</sup> day of March, 2023**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Atul Kumar Jain, Member (A)**

No. 15203759P gunner Zala Vijay Singh Nathu Singh, Son of Nathu Singh, Resident of Village Khera mastan, Post : Khera Mastan, Tehsil : Budhana, District – Muzaffarnagar.

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

Versus

1. Chief of the Army Staff, DHQ PO, New Delhi-110011.
2. Commandant cum Chief Records Officer, Artillery Centre Regimental Centre, Nasik Road Camp, Maharashtra.
3. Union of India, through Secretary, Ministry of Defence, New Delhi-110011.

**... Respondents**Ld. Counsel for the Respondents : **Shri Kaushik Chatterjee**, Advocate  
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, whereby the applicant has sought following reliefs:-

- (a) To quash the rejection order of the Officer in Charge Records, Artillery Records bearing no. 15203759P/Ld. Counsel/11/NE-5(A) dated 19 Feb 2022 with all the consequential benefits to the applicant.

- (b) Quash dismissal in absentia claimed to be effective from 20 Oct 2015 contained in discharge certificate bearing no. AA/5021-M dated 19 Jul 2019 under section 20(3) of the Army Act, 1950 with all the consequential benefits to the applicant.
- (c) To direct the respondents to grant the benefits of disability pension to the applicant as the case of the applicant falls under the category of IED Blast that too on bonafide military duty and was treated to be a battle casualty.

ALTERNATIVELY

- (d) Direct the respondents to conduct Re Survey Medical Board of the applicant to assess the percentage of disability of the applicant and then grant disability pension to the applicant with all the consequential benefits of the applicant.

ALTERNATIVELY

- (e) Direct the respondents to treat the applicant as having continued in colour service till completion of minimum pensionable service.
- (f) To issue any other order or direction considered expedient and in the interest of justice and equity.
- (g) Award cost of the petition.

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 15.03.2003. While serving with 13 Rashtriya Rifles (KUMAON) on 24.06.2005 at about 16.15 hours there was an IED Blast near Niashant Garden, Srinagar, which resulted in total damage of Bus No. JK 02 N 8707 carrying army personnel from Srinagar to Manasbal. The applicant along with other army personnel who were travelling by the Bus were injured and evacuated by road to 92 Base Hospital on 24.06.2005. Subsequently, as per Army Order

1/2003/MP, 13 Rashtriya Rifles (KUMAON) had initiated the initial report dated 25.06.2005 and detailed report of Battle Casualty dated 24.06.2005 for intimation to all concerned. The injuries sustained by the applicant on 24.06.2005 were certified as Battle Casualty and occurrence to this effect was published vide Artillery Records Part II Order No. 01/BC/0042/002/2005. After prolonged treatment and operations when the condition of the applicant had improved, and the applicant was declared to be fit for duty, the applicant had attempted/tried to report Command Hospital, Northern Command, where the applicant was told to go and report to 92 Base Hospital, where the applicant was advised to report to Unit i.e. 13 Bn. Rashtriya Rifles in J & K, as such applicant had attempted to report to 13 Bn. Rashtriya Rifles, where the applicant was further directed to report to Artillery Centre, as such the applicant had attempted to report at Artillery Centre and Records, where the applicant was called upon to hand over the documents relating to his treatment in Shree Ram Eye Hospital which was obeyed and it was thereafter after lapse of about two days the applicant was told to go to his hometown and the applicant's case will be progressed/processed/discussed in detail with the higher authorities, and the applicant will be informed the date on which/as to when he is to report for duty, as such applicant had returned back to his home town and was awaiting for a call. Later on a notice was received wherein applicant had been shown to be a 'deserter' with effect from 20.09.2005 and further applicant had been shown to have been dismissed from service with effect from

20.10.2015 in absentia, but without looking into the facts that the applicant was a case of 'Battle Casualty' that too during OP Rakshak, which was notified by 13 RR wherein it has been said Battle Casualty : Wounded (Terrorist Action : IED Blast) on 24.06.2005, further when the condition of the applicant during treatment in 92 Base Hospital/Command Hospital, Northern Command, was not improving, the applicant repeatedly complaining of the same, the authorities had advised him to get himself treated at a Hospital of his choice. The applicant had earlier filed Original Application No. 09 of 2020 before this Tribunal which was disposed of with direction to the respondents to decide the applicant's Statutory Complaint dated 30.09.2020 by a speaking and reasoned order in accordance with law within a period of four months from the date of receipt copy of the order. In compliance thereof the applicant's Statutory Complaint was decided by the respondents vide their letter dated 19.02.2022. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned counsel for the applicant pleaded that the applicant while serving with 13 Rashtriya Rifles (KUMAON) on 24.06.2005 there was an IED Blast near Nishant Garden, Srinagar, which resulted in total damage of Bus carrying army personnel from Srinagar to Manasbal in which the applicant was injured. The injuries sustained by the applicant on 24.06.2005 were certified as Battle Casualty and occurrence to this effect was published vide Artillery Records Part II Order No. 01/BC/0042/002/2005, as such the

applicant is entitled for the grant of disability pension. He further submitted that the applicant tried on various occasion to report his duty but he was not allowed to join the duty but was declared a deserter.

4. On the other hand, Ld. Counsel for the respondents submitted that the injury of the applicant was certified as Battle Casualty and occurrence to this effect was published vide Artillery Records Part II Order No. 01/BC/0042/002/2005. He further submitted that applicant was granted 08 weeks sick leave with effect from 26.07.2005 to 19.09.2005 vide Movement Order dated 25.07.2005. On termination of the said leave, the applicant neither reported back to Command Hospital, Northern Command nor to 13 Rashtriya Rifles (KUMAON) and continuously overstayed Leave (OSL) with effect from 20.09.2005. Subsequently, an apprehension roll was issued, but neither the applicant was apprehended by Civil Police authorities nor he was handed over by his family/relatives. Thereafter, in accordance with Section 106 of Army Act, 1950, on completion of 30 days continuous absence, a Court of Inquiry was held on 02.01.2006 at 13 Rashriya Rifles (KUMAON) to declare him as a deserter. Further, on conclusion of the Court of Inquiry the applicant was declared as a deserter from operations area (Field) with effect from 20.09.2005. Furthermore, on completion of ten years of absence/desertion, the applicant was dismissed from service with effect from 20.10.2015 being a Field Deserter. At the time of dismissal the applicant had rendered 02 years, 06 months and 05 days of qualifying service only.

In compliance of order dated 10.01.2022 in Original Application No. 09 of 2022, the applicant's Statutory Complaint was decided vide letter dated 19.02.2022. He further submitted that the applicant is not entitled for any kind of pension as he has been dismissed from service being a filed deserter under Section 20(3) of the Army Act, 1950 read in conjunction with Para 22 of the Army Order 43/2001/DV. Further, since the applicant was not invalidated out on medical grounds, also no medical board was carried out to assess his disability, he is not entitled for the disability pension as provided in Regulation 173 of the Pension Regulations for the Army, 1961 (Part-I) read with Regulation 81 of the Pension Regulations for the Army, 2008 (Part-I). He pleaded for dismissal of the Original Application.

5. We have heard learned counsel for the respondents and perused the material placed on record.

6. We find that the applicant sustained injuries in an IED Blast which was certified as Battle Casualty by the respondents. Later on the applicant was granted 08 weeks sick leave from 26.07.2005 to 19.09.2005 but he did not report to his duty, despite issuance of apprehension roll to the Superintendent of Police, Sabar Kantha (Gujarat), the SHO Police Station, Sardoi (Gujarat) with copy to his father Shri Nathu Singh vide letter dated 20.12.2005. When the applicant did not join his duty, a Court of Inquiry was held on 02.01.2006 and based on the conclusion of the Court of Inquiry the applicant was initially declared as deserter with effect from

