

COURT No.1 (E-COURT)**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION No. 524 of 2021**

Friday, this the 06th day of May, 2022

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Smt Hem Lata wife of No. 13747999-H Ex Rfn Puran Bahadur of 3 J&K Rifles, R/o Village-Gajiawala, Post Office-Ghanghora, Tehsil and District-Dehradun (Uttarakhand)-248003.

..... Applicant

Learned counsel for the : **Shri KK Singh Bisht**, Advocate
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence, (Army), South Block, New Delhi-110011.
3. Officer-in-Charge Records, Records JAK Rifles, PIN-901124, C/o 56 APO.
4. Principal Controller Defence Accounts (Pension), Draupadi Ghat, Prayagraj (U.P)-211014.

.....Respondents

Learned counsel for the: **Dr. Shailendra Sharma Atal**, Advocate
Respondents. Sr. Central Govt. Standing Counsel

ORDER

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

- (a) *Issue /pass an order or direction to the respondents to pay Family Pension to the applicant, the wife of No. 13747999-H Rfn Puran Bahadur who is missing since 12-02-1997 and his whereabouts are not known to the persons who should have in ordinary course heard of him i.e. his kith and kin.*
- (b) *Issue/pass an order or direction to the respondents to pay all pensionary benefits viz. provident Fund, Group Insurance, Leave Encashment, Gratuity etc as per the existing provisions on the subject and the respondents be directed to follow the produce as given in the Government of India letter dated 03.06.1988.*
- (c) *Issue /pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.*
- (d) *To allow this application with cost.*

2. Brief facts of the case giving rise to this application are that the applicant's husband was enrolled in the Indian Army on 22.10.1982. While serving with 3 Jammu and Kashmir Rifles (JAK RIF) he was tried by Summary Court Martial (SCM) and dismissed from service w.e.f. 13.12.1996 and awarded sentence of 02 months rigorous imprisonment in civil jail. Accordingly, he was lodged in civil jail Ambphalla (J&K). He was released from civil jail on 12.02.1997 and went missing. Initially, the applicant submitted an application dated 04.09.1997 to find out whereabouts of her husband and in reply to it she was apprised of all the details. Thereafter, numerous applications/representations were preferred by the applicant and they were suitably replied by the respondents giving all details. Records show that AFPP fund balance of Rs 23,420/- was paid to the applicant vide letter dated 23.02.2006 (Annexure V). Applicant has filed this O.A. for grant of family pension on

the premise that her husband is missing w.e.f. 12.02.1997 after release from civil jail and his whereabouts are not known since then.

3. Learned counsel for the applicant submitted that husband of the applicant was lodged in civil jail on 13.12.1996 to undergo two months rigorous imprisonment and after having undergone incarceration he was released from jail on 12.02.1997. He further submitted that after release from jail he neither reported to the Commanding Officer 3 JAK RIF nor did he reach at his native place. He has also not been heard of by his kith and kin including the applicant since 12.02.1997. Thus, she, being sole successor, is entitled to family pension and other allied benefits as per procedure and policy in vogue. His further submission is that in terms of Section 108 of the Indian Evidence Act, 1872 a missing person should be treated as presumed dead after 7 years of missing. The learned counsel for the applicant further submitted that more than 24 years have lapsed from the day the applicant's husband had been missing but no concrete action has been taken by the respondents to alleviate her sufferings and she is running from pillar to post without getting any benefit. Relying upon policy letter dated 03.06.1988 as amended vide letter dated 23.12.2014 learned counsel for the applicant further submitted that the applicant be granted family pension which she is deserving being wife of an Army soldier who had put in 14 years, 01 month and 20 days service prior to award of sentence.

4. Per contra, learned counsel for the respondents submitted that husband of the applicant was enrolled in the Army on 22.10.1982 and while posted with 3 JAK RIF he overstayed leave/absented without leave on four occasions. He further submitted that after committing each

offence he was counselled by his superiors and provided adequate opportunities to improve his conduct and allowed to continue in service by awarding minor punishments. His other version is that despite granting ample opportunities to mend his conduct and habit of being absent from duty, he again overstayed leave for 72 days, therefore, finding no improvement in his attitude, the Commanding Officer 3 JAK RIF convicted him under Section 39 (b) of Army Act, 1950 and he was tried by SCM on 13.12.1996 and sentenced to dismissal from service with two months rigorous imprisonment in civil jail. Accordingly, after dismissal from service, he was sent to civil jail Ambphalla (J&K) on 13.12.1996 and he was released from civil jail on 12.02.1997 after expiry of his sentence. He further submitted that the applicant is not entitled to family pension in terms of para 113 (a) of Pension Regulations for the Army, 1961 (Part-I) according to which 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. Further averment made by learned counsel for the respondents is that the applicant has already been paid a sum of Rs 23,420/- vide letter dated 23.02.2006 (Annexure V) which was related to her husband's AFPP Fund. He pleaded for dismissal of O.A. on the ground that since applicant's husband was a dismissal case, she is not entitled to any type of pension.

5. Heard Shri KKS Bisht, learned counsel for the applicant and Dr. Shailendra Sharma Atal, learned senior standing counsel for the respondents and perused the material placed on record.

6. There is no dispute that husband of the applicant was enrolled in the Army on 22.10.1982. It is also not disputed that while serving with 3 JAK RIF he absented without leave/overstayed leave at different intervals as under:-

S No	Cause	Period of absence		Total absence	Punishment awarded
		From	To		
1.	Without sufficient cause overstayed leave	14.07.1990	30.07.1990	17 days	10 days pay fine u/s 39 (b)
2.	Absent without leave	20.05.1992	25.05.1992	06 days	14 days Rigorous Imprisonment in military custody u/s 39 (a)
3.	Without sufficient cause overstayed leave	11.12.1993	19.02.1994	71 days	28 days Rigorous Imprisonment in military custody and 14 days pay fine u/s 39 (b)
4.	Without sufficient cause overstayed leave	15.09.1996	25.11.1996	72 days	Dismissal from service and 02 months Rigorous Imprisonment in civil jail u/s 39 (b)

7. Perusal of records reveals that applicant's husband was a perpetual offender and after each offence he was awarded minor punishments with a view to give him opportunity to improve his conduct. On 13.12.1996 he was awarded punishment-dismissal from service with 02 months civil jail under Section 39 (b) of Army Act, 1950. Accordingly, he was sent to civil jail Ambphalla (J&K) on 13.12.1996 and after expiry

of 02 months he was released on 12.02.1997. In para 4.6 of the O.A. the applicant has stated that after release from civil jail her husband neither reported to the unit nor did he reach his native place. In this regard it may be submitted that after completion of two months rigorous imprisonment in civil jail husband of the applicant was supposed to go to his native place and not to the unit as he had already been dismissed from service and after dismissal, Army authorities had no role. On the contrary it was a matter of police investigation.

8. In her appeal dated 09.09.2005 a prayer was made asking for family pension and other pensionary benefits treating her husband as 'missing presumed dead'. This averment made by the applicant could have been agreed to in terms policy letter dated 03.06.1988, according to which if a member of the Armed Forces is declared **missing while in service**, the family of such missing person shall be paid the amount of salary due, leave encashment and AFPP fund amount subject to nomination made by the missing person, after lapse of one year from the date of declaration of disappearance/presumption of death of serving personnel. However, in the present case the provisions of aforesaid policy letter does not apply to the applicant as her husband **had been missing after his dismissal** from Army service and after completion of sentence of two months rigorous imprisonment in civil jail. Also applicant's husband was neither in receipt of service pension being dismissed from Army under section 39 (b) of the Army Act, 1950 nor was he declared missing during the service.

9. In this regard, Regulation 113 of the Pension Regulations for the Army 1961, (Part-I) clearly lays down that an individual who is dismissed

from service under the provisions of the Army Act, is ineligible for pension or gratuity in respect of all previous service.

10. In view of the above, since applicant's husband was missing after being dismissed from service and he was not in receipt of any pension, the applicant is not entitled to family pension.

11. The O.A. is accordingly **dismissed**.

12. No order as to costs.

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

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 06.05.2022

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