

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW  
(CIRCUIT BENCH, NAINITAL)**

**Original Application No. 711 of 2021**

Tuesday, this the 6<sup>th</sup> day of September, 2022

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

No. 4427020 Ex Hav Balbir Chand  
S/o Gambhir Chand  
R/o Village – Bhajanpur, PO – Chandani  
District – Champawat (Uttarakhand)

.... **Applicant**

Ld. Counsel for the Applicant : **Shri Kishore Rai**, Advocate

**Versus**

1. Union of India, Ministry of Defence through its Secretary, South Block, New Delhi-110001
2. Chief of Army Staff, New Delhi-110011.
3. Senior Record Officer, The Assam Regiment-900332.
4. PCDA, Allahabad, Uttar Pradesh.

... **Respondents**

Ld. Counsel for the Respondents : **Shri Neeraj Upreti**,  
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:-

- “i. A direction to set-aside the dismissal order dated 11.11.2012 passed by respondent no. 4.

- ii. A direction to grant service pension to the applicant w.e.f. 11.11.2012.
- iii. To summon the entire records of the applicant pertaining to computation of his service pension.
- iv. Any other relief to which the applicant is found entitled may also very kindly be granted to the applicant.”

2. Brief facts of the case are that the applicant was enrolled in Assam Regiment on 18.10.1994. The applicant became deserter from service w.e.f. 11.11.2002 and was dismissed from service w.e.f. 11.11.2012 under the provisions of Army Act Section 20(3) and Para 22 (a) of Army Order 43/2001/DV. The applicant was a habitual offender having absented himself without leave on four occasions for which he was awarded four red ink entry punishments of 28 days RI on 18.07.2000, 20.01.2001, 19.09.2001 and 22.03.2002 respectively. The applicant finally deserted on 11.11.2002 from the unit which was then deployed in filed area at Kargil (J&K). Since the applicant was dismissed from service w.e.f. 11.11.2012 under the provisions of Section 20(3) of Army Act, 1950 and his total qualifying service is less than 8 years, therefore, as per Para 113 of Pension Regulations for the Army 1961 (Part-1), applicant was denied service pension. Being aggrieved with his dismissal from service, applicant has filed instant Original Application.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army (Assam Regiment) in 1994 and was dismissed from service on 11.11.2012 under Section 20(3) of Army Act, 1950 by declaring him deserter from service. The applicant has served more

than 8 years with utmost dedication and the character of the applicant was unblemished and exemplary during entire period of his service. The wife of the applicant approached respondent No. 4 and requested for payment of dues in respect of her husband but she was informed that applicant has been declared deserter from service w.e.f. 11.11.2002 from filed area and as per policy, AGI maturity benefit of deserter can only be released when the applicant is administratively dismissed from service which is due in April 2013. Thereafter, wife of the applicant approached for payment of AFPP Fund and grant of service pension which was rejected by the respondents.

4. Learned counsel for the applicant further submitted that no Show Cause Notice was served upon the applicant before passing the order of dismissal from service which is mandatory under Rule 17 of the Army Rules, 1954 and cases of dismissal or removal under this rule where the prescribed procedure has not been complied with shall be reported to the Central Government. It is admitted case of the applicant that no compliance of the provisions of Army Act and Army Rules has been made and no notice before declaring the applicant as deserter has been served upon the applicant. Therefore, order of desertion passed by the respondent authority is in complete violation of the rules and regulations and suffers from vice of arbitrariness. Hence, order of dismissal is in violation of the principle of natural justice and therefore, dismissal order be set aside and applicant be granted service pension w.e.f. 11.11.2012.

5. On the other hand, Ld. Counsel for the respondents submitted that applicant was enrolled in Assam Regiment on 18.10.1994. The applicant became deserter from service w.e.f. 11.11.2002 and was dismissed from service w.e.f. 11.11.2012 under the provisions of Army Act Section 20(3) and Para 22 (a) of Army Order 43/2001/DV. The applicant has rendered total 18 years and 24 days of service including 10 years, 4 months and 6 days of non qualifying service. As per service records, applicant was a habitual offender having absented himself without leave on four occasions and was awarded four red ink entry punishments of 28 days RI on 18.07.2000, 20.01.2001, 19.09.2001 and 22.03.2002 respectively. The applicant finally deserted on 11.11.2002 from unit which was deployed in filed area at Kargil (J&K) and a Part II Order to this effect was published declaring him as a deserter.

6. Learned counsel for the respondents further submitted that Final Settlement of Account of the applicant was carried out and after adjusting debit balance of Rs. 13,093/- from the balance in AFPP Fund of Rs. 50,849/-, the remaining amount was sent to the wife of the applicant after taking Consent Certificate from her. On 11.02.2015, AGIF, New Delhi also released a sum of Rs. 22,680/- towards AGI claim to the applicant vide letter dated 11.02.2015.

7. Learned counsel for the respondents further submitted that since the applicant was dismissed from service w.e.f. 11.11.2012 under the provisions of Section 20(3) of Army Act, 1950 and his total qualifying service is less than 8 years, therefore, as per Para 113 of

Pension Regulations for the Army 1961 (Part-1), he is ineligible for pension or gratuity in respect of all his previous service. There being no such provision to provide pensionary benefits to a person who is dismissed from service being deserter, Original Application is liable to be dismissed being devoid of merit.

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

9. We find that applicant was an indisciplined soldier displaying an irresponsible attitude towards his duty and had absented without leave on several occasions. Finally when he was AWL w.e.f. 11.11.2002, a Court of Inquiry was also held, and thereafter, as per rules, applicant was declared deserter from service. The applicant has been dismissed from service w.e.f. 11.11.2012 after completion of desertion period of ten years being a case of field area deserter. Hence, his prayer with regard to setting aside his dismissal order is against the rules and is therefore, rejected. The prayer of the applicant for grant of service pension is also rejected being contrary to the provisions of Regulation 113 of Pension Regulations for the Army, 1961 (Part-1).

10. In the result, we do not find any illegality or illogicality in declaring the applicant deserter from service being absent without leave and thereafter, dismissal from service under the provisions of Army Act Section 20(3) and Para 22 (a) of Army Order 43/2001/DV after completion of desertion period of ten years being a field

