

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW****ORIGINAL APPLICATION No. 72 of 2022**Wednesday, this the 14<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)”**

Suman Sambhaji Gavale, W/o GS Jognath, (Jaganath Gavale )  
(No. 6908373K Ex. Hav.) R/o GHR 841, Post Pethwadaj, Market  
Committee Parisar, Tehsil Kandhar, Pathwadaj, Nanded,  
Maharashtra-431714.

At Present R/o, 1, Mahatma Gandhi Marg, C/o D.K. Kashyap,  
Advocate, High Court Allahabad, District-Allahabad.

..... Applicant

Ld. Counsel for the : None is present on behalf of Applicant.  
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence,  
South Block, Delhi-110011.
2. The Officer In-charge Records, Army Ordnance Corps  
Centre, Pin 900453, C/o 56 APO.
3. Principal Controller of Defence Accounts (Pension),  
Draupadi Ghat, Prayagraj.

.....Respondents

Ld. Counsel for the : **Dr. Gyan Singh ,**  
Respondents. **Central Govt. Counsel**

**ORDER****“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

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

- (i) *This Hon’ble Court may graciously be pleased to direct the respondents to give the family pension and other emoluments w.e.f. 27.04.1998 to the applicant being legal heir /wife of GS Jognath (Jaganath Gavale, No. 6908373K Ex. Hav) who has been declared deserter from the respondents department w.e.f. 18.04.1995.*
- (ii) *This Hon’ble Court may further be pleased to pass other and /or further order as deem fit, proper and necessary in the circumstances of this case.*
- (iii) *Award costs to the applicant.*
- (iv) *The Hon’ble Court may be pleased to quash the impugned order dated 17.04.1998 (mentioned in Annexure No. A (2) of this O.A., copy of said order not supplied to the applicant) passed by the respondents’ department.*

2. Brief facts of the case giving rise to this application are that husband of the applicant Sri GS Jognath (Jaganath Gavale) was enrolled in Indian Army on 03.03.1975. In the year 1995, while going on leave his entire baggage including Identity Card was

stolen. Mental condition of husband of the applicant was deteriorated, hence he could not join duty. In the year 2007, after improving mental condition, husband of applicant made application for rejoining duty and payment of arrear of pay. He was informed by the respondents that he was declared 'deserter' wef 18.04.1995 and dismissed from service wef 27.04.1998, hence he was not entitled arrears of salary and pension. In the year 2011, mental condition of husband of the applicant again deteriorated and his where about is not known since 23.10.2011. Husband of the applicant has served in the Army for about 20 years. Applicant is living at Allahabad with her son since year 2012. Applicant represented her case for grant of family pension which was denied by the respondents. Being aggrieved, applicant has filed instant O.A. for grant of family pension to her.

3. Applicant in Original Application pleaded that she is legally wedded wife of Ex Hav GS Jognath. Her husband was enrolled in Indian Army on 03.03.1975. While going on leave, her husband became victim of 'Jahar Khurani' and his mental condition was deteriorated. Due to bad mental condition, her husband could not join duty. After improving mental condition, her husband in the year 2007 requested respondents for rejoining duty and payment of arrear of pay. He was informed that since he was declared

'deserter' due to overstaying leave wef 18.04.1995, he was dismissed from service wef 27.04.1998, therefore he was not entitled for any service benefit. Thereafter, her husband sent several letters to respondents for payment of arrears of salary and pension but the same was denied. When husband of the applicant came to know that he will not get any benefit of service, his mental condition again deteriorated and he became seriously ill. Where about of her husband is not known since year 2011. Applicant made all efforts to search her husband but of no avail. Applicant informed local police about missing of her husband on 23.10.2011. On 07.07.2020, applicant represented her case for grant of family pension, but no order has yet been passed by the respondents for grant of family pension. Applicant is about 75 years old lady. She is suffering from old age ailment. She is illiterate and unable to survive in these hard days without financial support. Husband of the applicant served in Army for more than 23 years therefore, the applicant is entitled for family pension and other retiral dues. Applicant prayed that directions be issued to respondents to grant family pension to her.

4. On the other hand, learned counsel for the respondents submitted that husband of the applicant was defaulter and undisciplined soldier. Her husband was awarded four red ink

entries for absenting himself without leave. Husband of the applicant was granted 64 days Annual Leave from 13.02.1995 to 17.04.1995. He failed to rejoin duty on termination of Annual leave. Apprehension Roll was issued and her husband was declared deserter. Applicant was requested by the respondents to advise her husband to report for duty forthwith but her husband did not join duty. A Court of Inquiry was held in terms of Army Act Section 106 and her husband was declared deserter. After three years from the date of desertion, husband of the applicant was dismissed from service under the provisions of Army Act Section 20 read in conjunction with Army Rule 17. Applicant has not enclosed copy of FIR which can establish that husband of the applicant was victim of 'Jahar Khurani'. Husband of the applicant was dismissed from service, hence he was not eligible for grant of service pension in terms of Para 113 (a) of Pension Regulations for the Army (Part-1), 1961. Husband of the applicant was not eligible for service pension as he was dismissed from service under the provision of Army Act Section 20 read with Army Rule 17. Since husband of the applicant was not granted service pension, therefore, the applicant is also not eligible for family pension. Learned counsel for the respondents pleaded that instant O.A.. has no substance and is liable to be dismissed.

5. We have heard learned counsel for the parties and perused the documents available on record.

6. The question before us to decide is “whether the applicant whose husband has been dismissed from service is entitled for grant of family pension and other retiral dues”?

7. As per Para 113 (a) of Pension Regulations for the Army (Part-1), 1961, ***“An individual who is dismissed under the provision of the Army Act, is ineligible for pension or gratuity in respect of all previous service. In exceptional case, 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”***. Husband of the applicant was not eligible for service pension as he was dismissed from service under the provision of Army Act Section 20 read with Army Rule 17. Since husband of the applicant was not granted service pension, therefore, the applicant is also not eligible for family pension in terms of Para 212 of Pension Regulations for the Army (Part-1), 1961, Note 2 (ii) of Para 212 is reproduced as under:-

***“2. Ordinary Family Pension When Admissible. When an individual dies on account of causes which are neither attributable to nor aggravated by Military Service.***

- (i) xxx xxx xxx.
- (ii) *or after retirement/discharge from service and was on the date of death in receipt of or eligible for retiring/ special/ reservist/ disability/ invalid/ war injury pension”.*

8. In the instant case, no copy of FIR has been produced by the applicant to prove that her husband was victim of ‘Jahar Khurani’ in the year 1995. Applicant has not produced any medical document to ascertain that her husband was a mental patient and he was taking medicines for mental ailment. Husband of the applicant was dismissed from service in the year 1998 and applicant filed case for grant of family pension in the year 2022 after about 23 years. It creates a doubt that applicant has concocted story for grant of family pension. Further husband of the applicant was awarded four red ink entries on various occasions for absenting himself without leave and he was perpetual offender during service. Husband of the applicant was declared deserter and after three years he was dismissed from service from the date of desertion under the provisions of Army Act Section 20 read in conjunction with Army Rule 17. After dismissal from service, husband of the applicant was granted his dues i.e. AGI Insurance Rs. 31,868/- and AFPP Fund Rs. 42,882/- after deducting Debit Balance of Rs. 14,092/-. As husband of the applicant was dismissed from service, he was not granted service pension. Since

husband of the applicant was not granted service pension, therefore, the applicant is also not eligible for grant of family pension.

9. We, therefore do not find any merit in the application to interfere with the impugned order passed by the respondent authority in not granting family pension to the applicant. Consequently, the application being devoid of merit is liable to be **dismissed**. Resultantly, O.A. is **dismissed**.

10. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)  
Member (A) Member (J)  
Dated : 14 September, 2022

Ukt/-