

RESERVED
Court No. 2

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 303 of 2022

Friday, this the 19th day of April, 2024

Hon'ble Mr. Justice Anil Kumar, Member (J)

Hon'ble Maj Gen Sanjay Singh, Member (A)

Smt. Uma

W/o No. 14361049F Ex Nk (Opr) Hargovind Singh

R/o House No. 1455 Yogendra Vihar, Naubasta,

Near Pal Chauraha, Post – Galla Mandi,

District – Kanpur Nagar

.... **Applicant**

Ld. Counsel for the Applicant: **Shri Vinay Pandey** and
Shri Prasoon Kumar Anjor, Advocates

Versus

1. Union of India through Secretary, Ministry of Defence (Army), DHQ PO, New Delhi-11.
2. The Chief of the Army Staff, Army Headquarters, Sena Bhawan, New Delhi.
3. The Officer-in-charge, Records, The Army Air Defence Records, PIN-908803, C/o 99 APO.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (UP).

... **Respondents**

Ld. Counsel for the Respondents : **Shri Namit Sharma**,
Central Govt Standing 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) Issue/pass an order or direction of appropriate nature to direct the respondent to process the regularization of illegal retention of the applicant’s husband in the army services that is without any salary.
- (b) Issue/pass an order or direction of appropriate in nature directing the respondents to grant the salary for the period of irregular retention of applicant’s husband after completion of his discharge wef 31 Jan 2003 (AN) till 19 April 2006 (FN).
- (c) Issue/pass an order or direction of appropriate nature to direct the respondents to process the pensionary documents at the earliest and grant the pensionary benefit and all other retiral benefits including monthly salary in favour of applicant’s husband till his death, i.e. 27.08.2022 and thereafter the admissible family pension in favour of applicant.
- (d) Issue/pass an order or direction of appropriate nature to the respondents to make the payment of arrears along with interest accrued to the applicant due to delayed processing of the case and revision of his pension and continue to pay regular pension to the applicant in the revised rate.
- (e) Issue/pass an order of appropriate in nature to include the name of NOKs in service records of the applicant’s husband i.e. No. 14361049F Ex Naik (Opr) Hargovind Singh.
- (f) Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.
- (g) Allow this application with costs.”

2. Brief facts of the case giving rise to this application are that the husband of the applicant was enrolled in the Army on 16.12.1981 and he was locally discharged from service on 18.04.2006 (AN). The

husband of the applicant while serving with 325 Light AD Regiment was downgraded to low medical category S2 (Permt) w.e.f. 04.10.2000 for the diagnosis, 'PERSISTENT DELUSIONAL DISORDER'. Since the husband of the applicant was unwilling to continue further service, he was not granted sheltered appointment by the Commanding Officer of the unit, 325 Light AD Regiment (Comp). Thereafter, call up order was issued by Army Air Defence (AAD) Records vide letter dated 22.08.2002 to discharge husband of the applicant from service w.e.f. 31.01.2003 (AN). Since husband of the applicant was declared deserter w.e.f. 29.10.2002 and voluntarily rejoined duty from desertion on 09.04.2003, he was tried under Army Act Section 39 (a) by the CO of the unit and was awarded punishment of 'Severe Reprimand'. Thereafter, pension documents alongwith Release Medical Board were prepared and handed over to the soldier for obtaining signature of Next of Kin (NOK), however, husband of the applicant misplaced the pension documents in transit and absented himself again without leave w.e.f. 04.05.2003 and voluntarily surrendered at AAD Centre on 20.01.2005. As per AAD Records letter dated 22.08.2002 and Discharge Roll dated 04.06.2004, husband of the applicant is already struck of strength from Army w.e.f. 31.01.2003 on medical grounds. Since, husband of the applicant was erroneously declared deserter for a period commencing after date of struck of strength from the Army w.e.f. 04.05.2003, he is required to report in Depot Regiment of AAD Centre. Then AAD Records issued a signal dated 07.02.2006 to 325 Lt AD Regiment to discharge the

soldier locally forthwith and Commanding Officer, 325 Light AD Regiment by invoking the provisions of Army Act Section 123, read in conjunction with Army HQ letter dated 14.12.1990 and AAD Records signal dated 07.02.2006, discharged the soldier locally from service w.e.f. 18.04.2006 and the casualty of the same was published vide Part II Order dated 19.04.2006. Thereafter, 325 Light AD Regiment forwarded draft Statement of Case to regularise the period of irregular retention beyond the terms of engagement to PAO (OR) AAD but FSA documents were returned by PAO (OR) to AAD Records with observation stating that FSA can only be finalised after regularisation of irregular retention beyond contractual terms of engagement from 01.01.2004 to 18.04.2006. Thereafter, a lot of correspondence was made between the unit, 325 Lt AD Regiment and AAD Records and IHQ of MoD (Army), no sanction was granted by any of the competent authority to regularise illegal retention in service for the period from 01.01.2004 to 18.04.2006 and thus, neither the salary to husband of the applicant nor pension has been granted to the husband of the applicant and family pension to the applicant after death of her husband on 27.08.2022. Being aggrieved, the applicant has filed the present Original Application for grant of salary for the period from 01.01.2004 to 18.04.2006, service pension to her husband and after death of her husband, family pension to herself.

3. Learned counsel for the applicant submitted that husband of the applicant (Nk Hargovind Singh) was enrolled in the Army on 16.12.1981. The soldier was placed in low medical category S2

(Permanent) w.e.f. 04.10.2000. The husband of the applicant was unwilling to serve further, hence, he was not recommended to continue in service and call up order was issued by AAD Records vide letter dated 22.08.2002 to discharge from service w.e.f. 31.01.2003 (AN). However, husband of the applicant was Absent Without Leave (AWL) from 29.10.2002 till 09.04.2003, he was declared deserter and taken on strength w.e.f. 09.04.2003 on rejoining duty. Hence, his call up letter was cancelled by AAD Records vide letter dated 05.02.2003 being absent without leave. The pension documents alongwith Release Medical Board were prepared and handed over to the husband of the applicant for obtaining signatures of NOK, however, soldier misplaced the pension documents in transit and again absented himself without leave w.e.f. 04.05.2003. He was declared deserter and voluntarily rejoined at AAD Centre on 02.01.2005. He was taken on strength of the unit and tried under Army Act Section 35 and was awarded punishment of 'Severe Reprimand'. By the advice of DJAG, HQ 16 Corps, Summary Trial proceedings against the soldier were cancelled by Commander 616 (I) AD Brigade as the soldier had completed his colour service as on 31.12.2003. Thereafter, CO 325 Lt AD Regiment while invoking the provisions of Army HQ letter dated 14.12.1990 and AAD Records signal dated 07.02.2006 directed that the applicant's husband should be locally discharged from service w.e.f. 18.04.2006. Since then, discharge paper of the husband of the applicant have not been completed by the department after over lapse of 17 years from local

discharge date, i.e. 18.04.2006, applicant alongwith her children are living without any pensionary benefits.

4. Learned counsel for the applicant further submitted that husband of the applicant had served the Indian Army for more than 25 years including non qualifying service and 22 years qualifying service. Due to Psychiatric disability, husband of the applicant was not able to furnish the details of his NOKs for publishing Part II Order to include their names in service records and hence, the names of the NOKs (Divyanshi Singh Rathour (Daughter), Viraj Singh Rathour (Son) and Rajveer Singh (Son) be recorded in service record of the soldier. He further submitted that due to inaction on the part of the respondents, processing of pension documents of the applicant is delayed which is equivalent to denial of pensionary benefits which is against the spirit of Article 300A of the Constitution of India. Letter of AAD Records dated 15.01.2022 reveals that finalization of FSA has not yet been done by the AAD Records Office and applicant and her family members are suffering financial losses and hardships without any fault.

5. Learned counsel for the applicant pleaded for early process of regularization of illegal retention of the applicant's husband and grant of salary for the period of irregular retention after completion of applicant's husband discharge from service w.e.f. 31.01.2003 (AN) till 19.04.2006 (FN). Since, husband of the applicant died on 27.08.2022, respondents to release service pension of applicant's husband from

19.04.2006 to 27.08.2022 and grant family pension to the applicant w.e.f. 28.08.2022 for life.

6. Learned counsel for the applicant placed reliance on the judgments of the Hon'ble Apex Court in Civil Appeal No. 1698 of 2022, **Dr. A. Selvaraj vs. C.B.M. College and Ors.**, decided on 04.03.2022, **Dr. Uma Agarwal vs. State of U.P. & Another**, decided on 22.03.1999 and Patna High Court judgment in Civil Writ Jurisdiction Case No. 6852 of 2021, **Lilawati Mishra vs. The State of Bihar**, decided on 11.05.2022 and submitted that applicant be paid interest on delayed payment of retirement benefits of her husband.

7. On the other hand, learned counsel for the respondents submitted that husband of the applicant was enrolled in the Army on 16.12.1981 and he was locally discharged from service on 18.04.2006 (AN). The husband of the applicant while serving with 325 Light AD Regiment was downgraded to low medical category CEE (Temporary) w.e.f. 04.06.1999 for the diagnosis, 'PERSISTENT DELUSIONAL DISORDER' and permanent low medical category S2 w.e.f. 04.10.2000. Since the husband of the applicant was unwilling to continue further service, he was not granted sheltered appointment by the Commanding Officer of the unit, 325 Light AD Regiment (Comp). Thereafter, call up order was issued by Army Air Defence (AAD) Records vide letter dated 22.08.2002 to discharge husband of the applicant from service w.e.f. 31.01.2003 (AN). Since husband of the applicant was declared deserter w.e.f. 29.10.2002 and voluntarily

rejoined duty from desertion on 09.04.2003, he was tried under Army Act Section 39 (a) by the Commanding Officer of the unit and was awarded punishment of 'Severe Reprimand'. Thereafter, pension documents alongwith Release Medical Board were prepared and handed over to the soldier for obtaining signature of Next of Kin (NOK), however, husband of the applicant misplaced the pension documents in transit and absented himself again without leave w.e.f. 04.05.2003 and voluntarily surrendered at AAD Centre on 20.01.2005. Thereafter, unit approached to HQ 616 (I) AD Brigade for further course of action and HQ 616 AD Brigade advised unit to take action as per Deputy JAG, HQ 16 Corps letter dated 19.04.2005. On that basis, husband of the applicant was tried under Army Act Section 39(a) by invoking Army Act Section 123 and was awarded punishment of 'Severe Reprimand' by CO 325 Lt AD Regiment on 30.04.2005. Thereafter, Summary Trial proceedings against the husband of the applicant carried out under Army Act Section 39(a) were cancelled by the Commander 616 (I) AD Brigade as per para 442 of the Regulations for the Army 1987 and Note 8 of Army Act Section 80 vide letter dated 09.07.2005 and directed to attach husband of the applicant with 45 AD Regiment for fresh disciplinary proceedings, however, no action was taken by 45 AD Regiment.

8. Learned counsel for the respondents further submitted that as per AAD Records letter dated 22.08.2002 and Discharge Roll dated 04.06.2004, husband of the applicant is already struck of strength from Army w.e.f. 31.01.2003 on medical grounds. Since, husband of

the applicant was declared deserter for a period commencing after date of struck of strength from the Army, this was an error as the soldier was not required to serve in the Army after his date of struck of strength as the soldier was in low medical category S2 (Permanent). Thereafter, 325 Lt AD Regiment intimated to AAD Records vide signal dated 03.08.2005 that husband of the applicant was erroneously declared deserter w.e.f. 04.05.2003 as soldier being in low medical category (Psychiatric case), he is required to report in Depot Regiment of AAD Centre. AAD Records directed the unit to take advice from higher Headquarters, then 325 Lt AD Regiment approached HQ 616 (I) AD Brigade vide letter dated 12.08.2005 and to AAD Records vide letter dated 06.09.2005 to take up the case with appropriate authority to condone the retention period and discharge the soldier after granting pension. HQ 616 (I) AD Brigade vide letter dated 20.10.2005 asked clarification from AAD Records regarding retention of the soldier beyond the terms of engagement being illegal. Then AAD Records issued a signal dated 07.02.2006 to 325 Lt AD Regiment to discharge the soldier locally forthwith and publish Part II Order accordingly and also prepare pension document of the soldier. The Commanding Officer, 325 Light AD Regiment by invoking the provisions of Army Act Section 123, read in conjunction with Army HQ letter dated 14.12.1990 and AAD Records signal dated 07.02.2006, discharge the soldier locally from service w.e.f. 18.04.2006 and the casualty of the same was published vide Part II Order dated 19.04.2006. Thereafter, 325 Light AD Regiment

forwarded draft Statement of Case to regularise the period of irregular retention beyond the terms of engagement vide letter dated 22.04.2006. AAD Records vide letter dated 21.07.2006 forwarded documents for Final Settlement of Account (FSA) to PAO (OR) AAD but FSA documents were returned by PAO (OR) to AAD Records with observation stating that FSA can only be finalised after regularisation of irregular retention beyond contractual terms of engagement from 01.01.2004 to 18.04.2006. Thereafter, a lot of correspondence was made between the unit, 325 Lt AD Regiment and AAD Records and IHQ of MoD (Army), then Release Medical Board of the soldier was conducted at Command Hospital, Lucknow on 17.03.2008 and his disability was assessed @ 30% for five years as neither attributable to nor aggravated by service. Then statement of case for regularisation of pay and allowances for irregular retention was again forwarded to PAO (OR) but it was returned with observation for which sanction of Ministry of Defence was required as per Rule 164 of Regulations for the Army, 1987, however, after making a lot of correspondence between the unit, Records and IHQ of MoD (Army) from the year 2006 to 2022, no sanction was granted by any of the competent authority to regularise illegal retention in service for the period from 01.01.2004 to 18.04.2006.

9. Learned counsel for the respondents further submitted that since the husband of the applicant has rendered 21 years, 11 months and 12 days (excluding non qualifying service and including irregular retention period from 01.01.2004 to 18.04.2006), he is entitled for

service pension from the next of discharge from service, i.e. w.e.f. 20.04.2006. He further submitted that prayer of the applicant to grant of the salary for the period of irregular retention after completion of his terms of engagement w.e.f. 31.01.2003 till 19.04.2006, to grant of pensionary benefits with all retiral benefits, to make the payment of arrears alongwith interest due to delay processing of the case, revision of pension and to include the name of NOKs in service records of applicant's husband is not tenable in the eyes of law till receipt of sanction from Ministry of Defence and same is liable to be dismissed.

10. We have heard learned counsel for the parties and perused the material placed on record.

11. In the instant case, we observe that husband of the applicant overstayed leave from 09.09.2001 to 14.10.2001 (36 days) and from 06.05.2002 to 02.07.2002 (58 days) and absented without leave from 29.10.2002 to 09.04.2003 (163 days) and 04.05.2003 to 20.01.2005 (625 days) for which he was awarded punishment of 'Severe Reprimand' on all four occasions of absence. Since the applicant was enrolled in the Army on 16.12.1981 and call up order was issued by AAD Records vide letter dated 22.08.2002 to discharge husband of the applicant from service w.e.f. 31.01.2003 being in low medical category but due to absence of husband of the applicant from 29.10.2002 to 09.04.2003, erroneously his call up letter was cancelled by AAD Records vide letter dated 05.02.2003 being absent without leave and husband of the applicant was taken on strength w.e.f.

09.04.2003. The husband of the applicant again absented himself without leave while carrying pension documents for obtaining signatures of NOK and thus, he was again declared deserter w.e.f. 04.05.2003 and voluntarily rejoined duty on 20.01.2005 at AAD Centre. The unit of the soldier approached AAD Records to take up the case to condone the retention period beyond 31.01.2003 to onwards and as advised by the Records vide letter dated 07.02.2006, husband of the applicant was locally discharged from service w.e.f. 18.04.2006. A Statement of Case for regularisation of period of irregular retention beyond the terms of engagement was forwarded to higher authorities and PAO (OR) AAD was approached for FSA of the soldier but after making huge correspondence between the unit, Records and IHQ of MoD (Army), case for regularisation of irregular retention beyond contractual terms of engagement from 01.01.2004 to 18.04.2006 could not be finalised. Due to this, neither salary of irregular retention period released to husband of the applicant nor service pension granted. The husband of the applicant died on 27.08.2022 without getting service pension, though he has rendered about 22 years of qualifying pensionable service.

12. We also find that the respondents in Paras 16 & 17 of their counter affidavit has mentioned that husband of the applicant has been paid pay & allowances amounting to Rs. 1,43,499/- for irregular retention period from 01.01.2004 to 18.04.2006. Since, husband of the applicant was retained beyond the contractual period from 01.01.2004 to 18.04.2006 and he was AWL for the period from

04.05.2003 to 20.01.2005 (Deserter), therefore, husband of the applicant is entitled pay and allowances only for the period from 21.01.2005 to 18.04.2006 for which he was on duty with the respondents. Therefore, if the respondents have paid Rs. 1,43,499/- to husband of the applicant during his irregular retention for the period from 01.01.2004 to 18.04.2006, the same be adjusted accordingly and balance amount of complete pay & allowances for the period from 21.01.2005 to 18.04.2006 for which husband of the applicant was retained in service with the respondents, be paid to husband of the applicant.

13. The husband of the applicant has completed pensionable service after deducting non qualifying service period of OSL and AWL, he is entitled to service pension from the next date of his discharge from service under the provisions of Regulation 47 of Pension Regulations for the Army, 2008 (Part-1). Since, husband of the applicant died on 27.08.2022, respondents to pay service pension to husband of the applicant from 19.04.2006 till his death, i.e. 27.08.2022.

14. After death of her husband on 27.08.2022, the applicant being wife (NOK) is held entitled to family pension from 28.08.2022 for life under the provisions of Regulation 63 of Pension Regulations for the Army, 2008 (Part-1).

15. As a result of foregoing observation/discussion, the Original Application is **allowed**.

16. The respondents are directed to :-
- (a) Pay full pay & allowances of husband of the applicant for the period from 21.01.2005 to 18.04.2006 for which he was retained in service after deducting overlapping desertion period from 04.05.2003 to 20.01.2005 and adjust Rs. 1,43,499/-, if the respondents have paid to husband of the applicant towards pay and allowances during his irregular retention for the period from 01.01.2004 to 18.04.2006 as mentioned in Paras 16 & 17 of the counter affidavit.
 - (b) Grant Service Pension and all consequential benefits to husband of the applicant from next date of discharge from service, i.e. 19.04.2006 till date of death, i.e. 27.08.2022.
 - (c) Grant Family Pension to the applicant from next date of death of her husband, i.e. 28.08.2022 for life and issue PPO accordingly.
 - (d) Include name of NOKs in service records of the deceased soldier as given in Para 4.11 of the Original Application.
17. The respondents are further directed to pay complete amount of arrears of salary, service pension and consequential benefits of her husband, as per Para 16 (a) & (b) above, to the applicant being wife (NOK). The arrears of service pension from 19.04.2006 to 27.08.2022 shall be paid to the applicant along with 6% interest on account of delayed payment.

18. The respondents are also directed to give effect to this order within a period of four months from the date of receipt of a copy of this order. Default will invite interest @ 8% per annum till actual payment.

19. No order as to costs.

20. Pending Misc. Application(s), if any, shall be treated to have been disposed off.

(Maj Gen Sanjay Singh)
Member (A)

Dated: April, 2024
SB

(Justice Anil Kumar)
Member (J)