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**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT  
NEW DELHI**

TA No.555/2009

[WP (Civil) No.7097/99 of Delhi High Court]

Smt.Kalawati Devi

.....Petitioner

Versus

Union of India &amp; Others

.....Respondents

For petitioner: None

For respondents: Maj Ajeen Kumar

**CORAM:**

**HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.  
HON'BLE LT. GEN. M.L. NAIDU, MEMBER.**

**ORDER  
17.12.2009**

1. The present petition was transferred from Hon'ble Delhi High Court to this Tribunal on its constitution.

2. Petitioner by this writ petition has prayed for grant of family pension from the date of missing of her husband i.e. with effect from 23.08.1977 along with arrears of back period pension

after quashing the impugned order dated 04.11.1991 and further pleased to quash the impugned dismissal order dated 23.10.1980 being illegal.

3. Brief facts which are necessary for disposal of present petition are that petitioner was married to Ex Gnr Ganpat Ram resident of village Lukhi District Rewari as per Hindu Rites. The husband of petitioner was enrolled in the Indian Army as Gunner on 12.12.1967. He was allotted his service number as 1290497-F. Husband of petitioner was one of the soldiers who fought the Indo-Pak war of the year 1971 and he served the Army till his missing from the hospital till 23.08.1977. In October, 1977 the husband of petitioner fell sick and was taken to Base Hospital Delhi Cantt for treatment. When he was undergoing treatment at Base Hospital, he slipped away and his whereabouts were not known. He never returned back to his village. Petitioner being wife of Ex-Gnr Ganpat Ram tried her best to find whereabouts of her husband. Since Ex-Gnr Ganpat Ram was found missing, therefore court of inquiry was held and he was declared deserter. It is alleged that after declaring as deserter, Ex-Gnr Ganpat Ram



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was dismissed from service. Since he was not found alive, therefore petitioner being wife made protest and requested for grant of family pension but that was denied to her. Consequently, she approached the Hon'ble Delhi High Court by filing present writ petition praying that she may be granted family pension since her husband was not reported alive till filing of writ petition in the year 1999.

4. <sup>affidavit</sup> Written <sub>L</sub> has been filed by respondents in the year 2000 and in that they have said that since petitioner was found missing from Army Base Hospital, court of inquiry was held in which he was declared deserter and after three years his services were struck off. It is also stated that all the efforts were made to find out the whereabouts of the incumbent. A communication was sent to nearest Police Station as well as to the Army unit but without any result. It is also stated that since incumbent has been dismissed from service with effect from 23.10.1980, as per Regulation 113 (a) his wife is not entitled to family pension.

5. None appears for the petitioner. We have heard Maj Ajeen Kumar appearing on behalf of respondents.

6. After going through the record we find that the petitioner's husband who was found missing from Army Base Hospital as he was undergoing treatment and he has not been reported alive till date despite efforts made by Indian Army to apprehend him. Since husband of petitioner has not been reported alive from 1977 to 2007 i.e. till 30 years, there is no reason why family pension should be denied to wife of so called deserter Ex-Gnr Ganpat Ram. It is unfortunate that Authorities have not been able to trace out the whereabouts of Ex-Gnr Ganpat Ram whether he is alive or not. Normally after missing of a person till 7 years a presumption can be drawn that the man is not surviving. Maj Ajeen Kumar appearing on behalf of respondents submitted that they may be given one more opportunity to make further investigation to find out whereabouts of petitioner's husband. Let the respondents may make a further effort. They shall complete their enquiry within 3 months. In case they are not able to trace out his whereabouts then it will be



presumed that he is not alive and he will not be treated as deserter and be treated as missing person and his wife/petitioner shall be granted family pension from the date when she filed the writ petition and all arrears of salary for the last three years from the date of filing of writ petition i.e.25.11.1999. The entire amount shall be released with interest @12% per annum. This whole exercise should be done within a period of 4 months from today.

7. Petition is accordingly disposed of with no order as to costs.

**A.K. MATHUR**  
(Chairperson)

**M.L. NAIDU**  
(Member)

**New Delhi**  
**December 17, 2009**