

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

T.A. No. 619/2009

[W.P. (C) No. 1440/2008 of Delhi High Court]

Smt. Kusum Devi

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh. S.M. Dalal, Advocate

For respondents: Ms.Rashmi Singh, Advocate for Mr.Mohan  
Kumar, Advocate with Capt Alifa Akbar.

**CORAM:**

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

**ORDER  
24.02.2010**

1. The present petition has been transferred from Hon'ble Delhi High Court to this Tribunal on its formation.
2. The petitioner by this petition has prayed that order dated 01.12.1999 passed by respondent No. 2 may be quashed being arbitrary and perverse and respondents may be directed to

grant special family pension to the petitioner w.e.f. 31<sup>st</sup> March, 1993.

3. Brief facts which are relevant for the disposal of present petition are that the petitioner is said to be the wife of deceased Sepoy Santosh Kumar who was enrolled in Rajputana Rifles on 18.08.1984 and after successful completion of training at Rajputana Rifles Centre, Delhi, he was posted to 11 Rajputana Rifles on 23.09.1985. He got married with the petitioner as per Hindu Rites. Thereafter, husband of the petitioner was granted two months annual leave from 06.01.1992 to 07.03.1992 by his Commanding Officer. After expiry of the said leave husband of the petitioner reported back in time for duty to his Unit and at that time, his unit was deployed on Indo-Pak Border in J&K. After a few months, the petitioner stopped receiving letters from her husband nor did he come on leave again. Ultimately, she lodged an FIR in Police Station Majhigawan, District Hamirpur, U.P. on 15<sup>th</sup> August, 1995 stating therein that her husband was missing and remained untraceable. Thereafter, she wrote many letters to various Authorities for release of family pension to her but without any result. Therefore, she was driven to file the present writ

petition before Hon'ble Delhi High Court which has been transferred to this Tribunal after its formation.

4. A reply was filed by the respondents wherein they have pointed that the husband of petitioner was discharged from service because he was a habitual defaulter. A show cause notice was given to him and thereafter, he was discharged from service. They have also pointed out that he reached back to his home town as per the statement of his father that he spent time with him. Therefore, the petitioner is not entitled to any family pension.

5. We have heard learned counsels for the parties and gone through the record.

6. Original record has been placed before us and we perused the same. In original record, there is a clear endorsement in the service record that husband of petitioner was discharged from service. A show cause notice was shown to us which says that show cause why his services be not terminated being habitual defaulter. Thereafter, his services were terminated under Army Rule 13 (3) (III) (V).

7. After going through the original record and after hearing both the counsels we are of the opinion that the husband of petitioner was lawfully discharged from service and thereafter, he was found missing and a report was lodged. This is a case where the incumbent has not died in the service of the Army so as to enable us to direct the respondents to release the pension to the petitioner. We are satisfied that the incumbent was discharged and after discharge he was found missing as such it cannot be attributable to the Army service so as to enable the Army to release family pension to petitioner. Hence, we do not find any merit in the case. Same is dismissed. No order as to costs.

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

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

**New Delhi**  
**February 24, 2010.**