

**COURT No.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A No. 621 of 2022 WITH MA 780 of 2022

Leela Devi W/o N Hav (GD)

Pradeep Kumar

.....

Applicant

Versus

Union of India and Ors.

.....

Respondents

For Applicant : Shri Durgesh Thapa, Advocates

For Respondents : Ms. Jyotsna Kaushik, Advocate

CORAM

**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C. P. MOHANTY, MEMBER (A)**

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, the applicant Leela Devi who is wife of late Hav (GD) Pradeep Kumar has filed this application and the reliefs claimed in Para 8(a) is to the effect that the applicant be granted family pension with back wages, cost of Rs. 50,000 and interest @ 18% on all the monetary benefits.

*OA 621/2022 with MA 780/2022
Leela Devi W/o N Hav (GD) Pradeep Kumar*

2. The facts in brief, which are relevant for deciding the application indicates that late Hav Pradeep Kumar was enrolled in the Regiment of Artillery on 26.10.1996 for a period of 17 years of colour service and two years in reserve liability. However, after completing his military training at Artillery Centre, Hyderabad, he was posted to 269 Field Regiment w.e.f 12.11.1997. While serving with 269 Field Regiment, he was granted 20 days casual leave from 30.08.2009 to 18.09.2009. Even after the leave period was over, the applicant's husband Pradeep Kumar failed to rejoin duty. Accordingly, an apprehension roll dated 22.09.2009 was issued to the Superintendent of Police, Almora (UA) to apprehend and hand him over to the Army authorities. Despite all efforts made by the Army and the police authorities neither Hav Pradeep Kumar surrendered before the authorities nor rejoined duties. Therefore, as per the Army Act and the Rules framed there under, after waiting for 30 days, a CoI was ordered under Section 106 of the Army Act and he was declared as a deserter w.e.f 19.09.2009. However, even after the CoI when Hav Pradeep Kumar did not surrender or join duties for about 10 years, he was dismissed from

service on 19.09.2009 after declaring him as a deserter. His dismissal was ordered since he had not surrendered voluntarily even after ten years in accordance with the provisions of Section 20(3) of the Army Act read with Rule 17 of the Army Rules. Subsequently on his dismissal a final settlement of account of Hav Pradeep Kumar was made and the entire amount was paid to the applicant being his lawful wife. The terminal benefits calculated were (i) credit balance of Rs.1,16,108/-, AFPP Fund of Rs.1,36,684/- and AGI Maturity of Rs.72,910. Accordingly, the husband of the applicant was advised by the Arty Record vide letters dated 24.10.2019, 14.02.2020, 13.08.2020 and 20.02.2021 to submit certain documents. However, he failed to do so. Thereafter, the applicant filed a petition before the Pension Sanctioning Authority claiming grant of family pension. Since the applicant's husband was dismissed under the provisions of the Army Act as a deserter, he was not granted any type of pension. Therefore, the applicant was not granted family pension as well, in terms of Para 212 of the Pension Regulations for the Army 1961

(Part I) read with Para 63 of the Pension Regulations for the Army 2008 (Part I) as her husband was a non-pensioner.

3. Learned counsel for the applicant Mr. Durgesh Thapa placed heavy reliance on the facts of the case and judgment of the Hon'ble Supreme Court in the case of **S.K Mastan Bee v. General Manager, South Central Railway and another** (2003) 1 SCC 184 to say that denial of the claim of an illiterate widow for grant of family pension is denial of her right under Article 21 of the Constitution and as the right to livelihood is a fundamental right under Article 21 of the Constitution, claim for family pension can be entertained in spite of delay and laches. Similarly, the learned counsel invited our attention to the judgments of the Punjab and Haryana High Court in **Bidhi Chand v. State of Punjab** (CWP No.13702/1997 decided on 24.09.1998) and the Hon'ble Supreme Court in the case of **Maj G.S. Sodhi v. Union of India** (1991) 2 SCC 371 in support of his contention that the applicant is entitled to family pension.

4. On the contrary, the respondents submit that Hav Pradeep Kumar was declared as a deserter as he did not join duty and once he was dismissed from service on 19.09.2019 in accordance with the provisions of Para 113 (a) of the Pension Regulations for the Army 1961 (Part I) read with Para 41(a) of the Pension Regulation for Army 2008 (Part I), once an individual is dismissed from service under the provisions of the Army Act, he is not eligible for grant of pension or gratuity in respect of the previous services rendered by him. It is the case of the respondents that in the instant case the applicant was declared as a deserter w.e.f 19.09.2009 and subsequently he was dismissed on 19.09.2019 being a field deserter. He was not granted any type of pension and once the individual has not been granted any type of pension, the applicant cannot claim family pension in terms of Para 212 of the Pension Regulations for Army 1961 read along with Para 63 of the Pension Regulations for the Army 2008 (Part I).

5. We have heard the learned counsel for the parties and perused records.

6. Admittedly, the applicant is the wife of Hav Pradeep Kumar, who has been declared as a deserter and dismissed from service. Dismissal from service debars grant of pension to a dismissed employee. Para 113(a) of the Pension Regulations read in conjunction with Para 41(a) clearly provides for the same. Similarly, when the individual is not in receipt of pension even after his death his legal heirs are not entitled to family pension. In this case, the Hav Pradeep Kumar's whereabouts are not known. It is even not known whether he is alive or not, but the fact remains that he has been dismissed from service being a deserter in accordance with the statutory provisions of the Army Act and the statutory rules governing pension does not provide for grant of pension to a dismissed employee. That being so, when pension is not payable to the dismissed employee, the right to claim family pension would not arise. Family pension is granted only to the legal heir of an original employee who is in receipt of pension as per the statutory rules. When the employee himself is not in receipt of pension or is not entitled to the same on account of the statutory provision, the legal heir cannot claim any family pension.

7. The judgments relied upon by the learned counsel for the applicant do not help the applicant in any manner, whatsoever. This is a case where the employee deserted from service after taking action in accordance with the Army Act and the Rules framed there under. He has been dismissed from service and once his dismissal is a bar for grant of pension under the Statutory Pension Rules in violation to the same or in ignorance or contrary to the same, this Tribunal cannot issue any direction for grant of family pension to the applicant. In our considered view, the reliefs claimed for by the applicant being contrary to the mandate of the legal provisions applicable for grant of family pension, we see no reason to make any indulgence into the matter. Contrary to the statutory rules and the legal principles, merely on the basis of sympathy and human consideration, nothing can be granted by a statutory Tribunal which is not permissible under the statutory rules or regulations.

8. Accordingly, finding no case for any indulgence, we dismiss the application. No order as to costs.

9. Pending miscellaneous application(s), if any, stands closed.

10. Pronounced in open Court on this 27th the day of
September, 2023.

(RAJENDRA MENON)
CHAIRPERSON

(C. P. MOHANTY)
MEMBER (A)

/Jyoti/