

(b) Direct respondents to grant disability pension to the applicant after broad banding benefits as per Govt of India, Min of Defence letter No 1(2)/97/D(Pen-C) dated 31.01.2001 and law settled by Hon'ble Supreme Court in Civil Appeal No 418/2012 titled UOI & Ors v. Ram Avtar vide judgement dated 10.12.2014.

(c) Direct respondents to pay the due arrears of service pension and disability pension with interest @12% p.a from the date of retirement with all the consequential benefits.

(d) Direct respondents to supply the Release Medical Board Proceeding/Medical Documents to the applicant.

(e) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.

Brief Facts of the Case

2. The applicant was enrolled in the Army on 29.9.1983 in Infantry (8 RAJ RIF). He was plagued by a series of unfortunate domestic incidents as his wife died in 1994, father died in Jul 1999, and in Oct 1999 his daughter died. Later, his house was severely damaged in floods. It is the applicant's case that he requested for leave in Jan 2000 to repair his house and

manage his family. However, since he was not granted leave, he left for his hometown. It is the applicant's stance that due to the mental disturbance caused by all the family problems; he did not return to the unit. Thus, he was dismissed from service under the Army Act Sec 20(3) with effect from 27.10.2003. It is also the applicant's case that he was suffering from 'Peptic Ulcer' and was in low medical category CEE, and that his discharge on medical grounds had been ordered and he was to be discharged in Jun 2000.

3. Having deserted from the unit in Jan 2000, subsequently he submitted an application dated 13.05.2013 to Records RAJRIF seeking pension. This was replied by Records RAJRIF vide letter dated 29.05.2013 (Annexure-R4). Later he submitted an application for his AGIF benefits which paid to him. The applicant again submitted an appeal dated 31.08.2013 which was also replied by Records RAJRIF vide their letter dated 12.10.2013 (Annexure-R5). In Feb 2015, the applicant was issued a discharge certificate and in 2015, the applicant vide his letter 06.02.2015 submitted an application seeking pension (Annexure A-2 colly). It is therefore the applicant's case that he be granted pension even though he

was dismissed from service under section 20(3) of the Army Act 1950, being a deserter.

Arguments by the Counsel for the Applicant

4. The counsel reiterated the service profile of the applicant and added that he had been a diligent soldier and a good sports man and had always worked enthusiastically in the unit. The counsel then recapitulated the unfortunate domestic incidents starting with the demise of his wife in 1994, the demise of his father and daughter in 1999, and the heavy damage to his house in floods. The counsel then added that the applicant was mentally devastated by all these incidents and had therefore left the unit in Jan 2000.

5. The counsel then stated that the applicant was suffering from 'Peptic Ulcer' and had been placed in permanent low medical category. The unit had then taken up a case for his discharge under Army Rule 13(3)(iii)(v) read with Army Rule 13(3)(2A). The counsel then stated that the Records RAJRIF had approved the discharge and issued necessary discharge order vide letter dated 31.01.2000. The counsel further added that even though, his discharge had already been sanctioned, he left the unit in Jan 2000 due

to his disturbed mental condition because of various domestic issues. The counsel then emphasised that even though the applicant had been dismissed, he was entitled to disability pension, since the applicant was a permanent low medical category and was scheduled to be discharged on medical grounds on 01.06.2000, for which orders had been issued.

6. The counsel further stated since the respondents had dismissed the applicant in 2003, the applicant was left in penury without any pension. The counsel once again emphasized that since he was already due to be discharged in Jun 2000, therefore his dismissal be converted into discharge and his pensionary dues be paid to him at the earliest.

7. The counsel then drew our attention to Para 113(b) of the Pension Regulations for the Army and emphasized that the pension regulation clearly stipulated that an individual who was removed from service under Section 20 of the Army Act 1950, may be considered for grant of pension/ gratuity by the competent authority. The counsel then emphasized that since the applicant had been discharged under Section 20(3) of the Army Act 1950, he was entitled for such consideration.

8. The counsel then relied on the following judgments in support of his prayer that the applicant's dismissal be converted into discharge, and he also be granted disability pension:

- (a) Hon'ble Supreme Court Judgment dated 17.01.2017 ***S. Muthu Kumaran v. Union of India.*** [2017 (4) SCC 609].
- (b) Hon'ble Supreme Court Judgment dated 05.10.1983 in ***Ram Pal Singh v. Union of India & Ors.*** [(1984) 1 SCC 32]
- (c) Hon'ble Supreme Court Judgment dated 15.12.2016 in ***Vijay Shankar Mishra v. Union of India & Ors.*** [(2017) 1 SCC 795]
- (d) AFT (RB), Guwahati Order dated 17.02.2011 in TA 19/2010 ***Ratna Bahadur Chetry v. Union of India & Ors.***
- (e) AFT (RB), Guwahati Order dated 07.10.2013 in OA 17/2013 ***Ex Hav Bhubaneswsar Das v. Union of India & Ors.***
- (f) AFT (RB), Chandigarh Order dated 20.03.2014 in OA 297/2012 ***Kulwinder Singh v. Union of India & Ors.***
- (g) AFT (PB), New Delhi Order dated 29.03.2016 in OA 328/2014 with MA 388/2014 ***Ex Sep Rajinder Singh v. Union of India & Ors.***

(h) AFT (PB), New Delhi Order dated 21.07.2016 in RA 6/2016 with MA 137/2016 in OA 460/2013 ***Sep Ashok Kumar v. Union of India & Ors.***

9. The counsel concluded stating that the case of the applicant be considered sympathetically, and his dismissal be converted to discharge based on the various judgements cited, and he be granted all the pensionary benefits including disability pension, the very grounds based on which his discharge order had been issued.

Arguments by the Counsel for the Respondents

10. On behalf of the respondents it was submitted that the applicant had deserted from service in Jan 2000 and as per policy, since he did not rejoin the unit, he was declared a deserter and dismissed from service with effect from 27.10.2003. Our attention was drawn to the contents of the OA along with various annexures to demonstrate how the applicant had left the unit lines on 13.01.2000, and that by his own admission, the applicant had stated that he never made any attempt to report back to the unit and that it was only in 2013 that the applicant then sent an application dated 13.05.2013 to Records RAJRIF requesting that he be granted pension.

11. The counsel then drew our attention to Para 3 of the counter affidavit and demonstrated how the applicant had been an habitual offender, having been absent without leave on five occasions between Oct 1994 and Dec 1999, and had been punished summarily by the CO each time for an offence under the Army Act Section 39(a). "*Absenting himself without leave*". The applicant finally deserted the unit on 13.01.2000 and was thus dismissed from service under the Army Act 20(3) on 27.10.2003 having waited for the laid down period of three years.

12. The counsel then stated that in May 2002, the applicant's sister had written to the Records RAJ RIF requesting that he be recalled and that he be permitted to rejoin the unit. The counsel then drew our attention to Records Office letter dated 04.06.2002 (Annexure R-3) vide which the applicant's sister was replied to stating that her brother (the applicant) had deserted from service on 13.01.2000, prior to when he had absented himself on five occasions. The letter then advised the applicant's sister that the applicant be handed over to the nearest police station who would then have him sent to the Regimental Centre/ Unit.

13. It was then emphasized on behalf of the respondents that there was no effort on the part of the applicant to rejoin the unit since Jan 2000, and that in May 2013 he submitted an application dated 13.05.2013 through his advocate which was replied to by the Records RAJRIF vide letter dated 29.05.2013 (Annexure R-4). The counsel further added that the applicant had subsequently submitted another appeal dated 31.08.2013 through his advocate for grant of pension. This was also replied to by Records RAJ RIF vide letter dated 12.10.2013 (Annexure R-5). The applicant had been informed that he had deserted from the service on 13.01.2000 and was therefore dismissed from service under Army Act Section 20(3) after three years from the date of desertion. The letter also informed the applicant that as per Para 113(a) of the Pension Regulations for Army Part 1 (1961), an individual who was dismissed was ineligible for pension or gratuity in respect of all previous service.

14. Further referring to the claim by the applicant that since he was a low medical category for 'Peptic Ulcer' and the fact that his discharge had been sanctioned under AR 13(3)III(v) read with AR 13(3)(2A) of 1954, and that he was entitled to disability pension, the counsel elaborated that as per the details in the applicant's record, he was placed in LMC CEE (Permt)

with effect from 29.12.1998 for 'Peptic Ulcer'. Since he was a permanent LMC, the CO issued a Show Cause Notice (SCN) asking him to show cause as to why his service should not be terminated on medical grounds. The applicant replied vide his letter of December 1999 stating that he was physically unable to work in the Army and therefore he be discharged with pensionary benefits (Annexure R-1). The counsel further elaborated that based on the case then initiated by the unit, the Records RAJRIF approved the discharge vide letter dated 31.01.2000 with direction that the applicant will be discharged w.e.f. 01.06.2000 under Army Rule 13(3)III(v) read with AR 13(3)(2A) of 1954. The counsel then emphasized that had the applicant not deserted in Jan 2000, he would have been discharged normally in June 2000, with full pensionary benefits as he had served for 17 years. Drawing our attention to the Discharge Order dated 31.01.2000 (Annexure A-2), the counsel further elaborated that as per the instructions in this letter, since the discharge was on medical grounds, the applicant was to be brought before a Release Medical Board (RMB), which would then have assessed the percentage of his disability and the attributability factor, based on which, if eligible, the applicant would have been granted disability pension too. The counsel then explained that since the applicant had deserted in

Jan 2000, it was not possible to bring him before a RMB, and that thus, there was no record of the assessment of his disability, the mandatory input to decide his eligibility for disability pension. It was then submitted on behalf of the respondents that in the absence of a RMB, the applicant was clearly not entitled to any consideration for grant of disability pension.

15. Referring to the case laws relied upon by the Counsel for the applicant, the counsel stated that the cases were of no help as the facts and circumstances of all of them were distinctly different from the applicant's case. The counsel further relied on the following cases:

(a) Judgment dated 17.01.2017 ***S. Muthu Kumaran v. Union of India***. [2017 (4) SCC 609] of the Hon'ble Supreme Court.

(b) Judgment dated 19.07.2022 ***Union of India (UOI) and Ors. v. Ex. Sep R. Munusamy*** [MANU/SC/0900/2022] of the Hon'ble Supreme Court.

Consideration of the Case

16. Having heard both sides at length, the only issue for consideration is whether the applicant is entitled to pensionary benefits including disability pension having been dismissed under Section 20(3) of the Army Act 1950.

Desertion

17. Notwithstanding the assertions by the counsel for the applicant that due to certain domestic issues, the applicant was mentally disturbed and had thus left the Unit, the fact of the matter is as per the records, the applicant deserted from the unit lines on 13.01.2000. The statutory provision of Section 106(1) of the Army Act 1950 stipulates an inquiry into absence without due authority, and deficiency, if any, in the property of the Government entrusted to his care, or in any arms, ammunition, equipment, instruments, clothing or necessaries; declare and record such absence and deficiency, if any. In terms of Section 106(2) of the Army Act 1950, " if the person declared absent does not afterwards surrender or is not apprehended, he shall, for the purposes of the Army Act, be deemed to be a deserter".

Sec 106 of the Army Act is reproduced below :-

106. Inquiry into absence without leave.

(1) When any person subject to this Act has been absent from his duty without due authority for a period of thirty days, a court of inquiry shall, as soon as practicable, be assembled, and such court shall, on oath or affirmation administered in the prescribed manner, inquire respecting the absence of the person, and the deficiency, if any, in the property of the Government entrusted to his care, or in any arms, ammunition, equipment, instruments, clothing or

necessaries; and if satisfied of the fact of such absence without due authority or other sufficient cause, the court shall declare such absence and the period thereof, and the said deficiency, if any, and the commanding officer of the corps or department to which the person belongs shall enter in the court-martial book of the corps or department a record of the declaration.

(2) If the person declared absent does not afterwards surrender or is not apprehended, he shall, for the purposes of this Act, be deemed to be a deserter.

18. When a person who is declared a deserter does not surrender or is not apprehended, he is to be dismissed from service under the provisions of Para 22 of Army Order 'AO/43/2001/DV on 'DESERTION' which reads as under :-

"22. A person subject to the Army Act or a reservist subject to Indian Reserve Forces Act, who does not surrender or is not apprehended, will be dismissed from the service under Army Act Section 19 read with Army Rule 14 or Army Act Section 20 read with Army Rule 17, as the case may be, in accordance with instructions given below :-

(a) After 10 years of absence/desertion in the following cases :-

(i) Those who desert while on active service, in the forward areas specified in Extra Ordinary Gazette SRO 172 dated 05 Sep 77 (reproduced on page 751 of MML Part III) or while serving with a force engaged in operations, or in order to avoid such service.

(ii) Those who desert with arms or lethal weapons.

(iii) Those who desert due to subversive/espionage activities.

(iv) Those who commit any other serious offence in addition to desertion.

(v) Officers and JCOs/WOs (including Reservist officers and JCOs, who fail to report when required).

(vi) Those who have proceeded abroad after desertion.

(b) *After 3 years of absence/desertion in other cases.*

(c) *The period of 10 years mentioned at sub- para (a) above may be reduced with specific approval of the COAS in special cases."*

19. Section 105 of the Army Act 1950 deals with the capture of deserters, and issue of apprehension roll to the civil police seeking their assistance to capture the deserter, is one among the modes for taking the deserter into military custody. Thus, when a soldier is declared a deserter, an apprehension roll for his arrest is also issued. Section 105 of the Army Act reads thus:-

105. Capture of deserters.---(1) Whenever any person subject to this Act deserts, the commanding officer of the corps, department or detachment to which he belongs, shall give written information of the desertion to such civil authorities as, in his opinion, may be able to afford assistance towards the capture of the deserter; and such authorities shall thereupon take steps for the apprehension of the said deserter in like manner as if he were a person for whose apprehension a warrant had been issued by a magistrate, and shall deliver the deserter, when apprehended, into military custody.

(2) Any police officer may arrest without warrant any person reasonably believed to be subject to this act, and to be a deserter or to be travelling without authority, and shall bring him without delay before the nearest magistrate, to be dealt with according to law.

20. The Hon'ble Supreme Court vide its judgement dated 13.02.1986 in the case of **Capt Virendra Kumar (Through His Wife) Vs Chief Of The Army Staff**, (1986) 2 SCC 217, in Paras 12,13 & 14, thereof held as under:-

"12.Sections 38 and 39, and Sections 104 and 105 make a clear distinction between 'desertion' and 'absence without leave', and Section 106 prescribes the procedure to be followed when a person absent without leave is to be deemed to be deserter. Clearly every absence without leave is not treated as desertion but absence without leave may be deemed to be desertion if the procedure prescribed by Section 106 is followed. Since every desertion necessarily implies absence without leave the distinction between desertion and absence without leave must necessarily depend on the animus. If there is animus deserendi the absence is straightaway desertion.

13. As we mentioned earlier neither the expression 'deserter' nor the expression 'desertion' is defined in the Army Act. However we find paragraph 418 of the Artillery Records Instructions, 1981 refers to the distinction between desertion and absence without leave. It says:

418. A person is guilty of the offence of absence without leave when he is voluntarily absent without authority from the place where he knows, or ought to know, that his duty requires him to be. If, when he so absented himself, he intended either to quit the service altogether or to avoid some particular duty for which he would be required, he is guilty of desertion. Therefore, the distinction between desertion and absence without leave consists in the intention. (AO 159/72). When a soldier absents himself without due authority or deserts the service, it is imperative that prompt and correct action is taken to avoid complications at a later stage.

We also find the following notes appended to the Section 38 of the Army Act in the Manual of the Armed Forces:

2. Sub Section (1)-Desertion is distinguished from absence without leave under AA Section 39, in that desertion or attempt to desert the service implies an intention on the part of the accused either (a) never to return to the service or (b) to avoid some important military duty (commonly known as constructive desertion) e.g., service in a forward area, embarkation for foreign service or service in aid of the civil power and not merely some routine duty or duty only applicable to the accused like a fire picquet duty. A charge under this section cannot lie unless it appears from the evidence that one or other such intention existed; further, it is sufficient if the intention in (a) above was formed at the time during the period of absence and not necessarily at the time when the accused first absented himself from unit/duty station.

3. A person may be a deserter although here-enrolls himself, or although in the first instance his absence was legal (e.g. authorised by leave), the criterion being the same, viz., whether the intention required for desertion can properly be inferred from the evidence available (the surrounding facts and the circumstances of the case).

4. Intention to desert may be inferred from a long absence, wearing of disguise, distance from the duty station and the manner of termination of absence e.g., apprehension but such facts though relevant are only prima facie, and not conclusive, evidence of such intention. Similarly the fact that an accused has been declared an absentee under AA. Section 106 is not by itself a deciding factor if other evidence suggests the contrary.

In Black's Law Dictionary the meaning of the expression 'desertion' in Military Law is stated as follows:

Any member of the armed forces who-(1) without authority goes or remains absent from his unit, organization, or place of duty with intent to remain away there from permanently; (2) quits his unit, organization, or place of duty with intent to avoid hazardous duty or to shirk important service; or (3) without being regularly separated from one of the armed forces enlists or accepts an appointment in the same or another one of the armed forces without fully disclosing the fact that he has not been regularly separated, or enters any foreign armed service except when authorized by the United States; is guilty of desertion. Code of Military Justice, 10 U.S.C.A. 885.

14. *As we mentioned earlier, the Army Act makes a pointed distinction between 'Desertion' and 'Absence without leave simpliciter, 'Absence without leave' may be desertion if accompanied by the necessary animus deserendi' or deemed to be desertion if the Court of Inquiry makes the declaration of absence prescribed by Section 106 after following the procedure laid down and the person declared absent had neither surrendered nor been arrested."*

21. In the case of the applicant, he had absented himself without leave from the unit on 13.01.2000. At the end of three years and ten months of absence/desertion, the applicant was dismissed from service under Section

20(3) of Army Act, 1950. The intention of the applicant to desert is very clear, in that since his absence, he never surrendered or returned to the unit on his own. Even when his sister had made a plea that he be recalled and she had been intimated that the applicant should go and surrender himself to the police, but he did not.

Admissibility of Pension

22. The admissibility of pension is governed by the Pension Regulations. Regulation 113 of Pension Regulations for the Army (1961) stipulates that an individual who is dismissed under the provisions of the Army Act, is ineligible for pension or gratuity in respect of all previous service. He may however, be granted pension at the discretion of the President. Regulation 113 is reproduced below :-

Individual Dismissed/Removed or Discharged under the Army Act

113. (a) An individual who is dismissed under the provisions of the Army Act, is ineligible for pension or gratuity in respect of all previous service. In exceptional cases, 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.

(b) An individual who is removed from service under Army Act, Section 20, may be considered for the grant of pension/gratuity at the rate not exceeding that for which he would have otherwise qualified had he been discharged on the same date. The competent authority may, however, make, if considered necessary, any reduction in the amount of pension/gratuity on the merits of each case.

(c) An individual who is discharged under the provision of Army Act and the rules made there under remains eligible for pension or gratuity under these Regulations.

Note: Those discharged from service due to misconduct, corruption, lack of integrity or moral turpitude are not normally eligible for gratuity, but they may be sanctioned gratuity in exceptional cases at the discretion of the President at a rate not exceeding that for which they are normally qualified.

The Pension Regulations for the Army (Revised Edition 2008) at para 41 are similar in spirit which is reproduced below:-

INDIVIDUAL DISMISSED/REMOVED OR DISCHARGED UNDER THE ARMYACT 1950

41. (a) An individual who is dismissed under the provisions of Army Act, 1950 or removed under the Rules made there under as a measure of penalty, will be ineligible for pension or gratuity in respect of all previous service. In exceptional case, however, the competent authority on submission of an appeal to that effect may at its discretion sanction pension/gratuity or both at a rate not exceeding that which would be otherwise admissible had he been retired/discharged on the same date in the normal manner.

(b) An individual who is compulsorily retired/discharged or removed on grounds other than misconduct or discharged under the provisions of Army Act, 1950 and the Rules made there under, remains eligible for pension and/or gratuity as admissible on the date of discharge. This will suo-moto apply to cases of dismissal/removal converted into discharge subsequently.

(c) All appeals to the competent authority in this regard will be preferred within 2 years of the date of dismissal/removal.

Disability Pension

23. It is not disputed that the applicant was a permanent low medical category and based on his reply to the SCN, the unit had initiated a case for his discharge on medical grounds, and that the discharge on medical grounds had been approved and order dated 31.01.2000 issued with

instructions that the applicant would be discharged on 01.06.2000. Based on the instructions in the Discharge Order, being a case of discharge on medical grounds, the applicant was to be brought before a RMB to ascertain the percentage of disability and attributability/aggravation due to military service. Relevant extracts of the Discharge Order date 31.01.2000 are reproduced below:-

" Med Discharge Order No: 01/2000

Tele:5666584

REGD/STS
Records The Rajputana Rifles
Delhi Cantt-10
31 Jan 2000

PAC/4/2/Med/G

DISPOSAL OF PERMANENT LOW MEDICAL CAGTEGORY

1. Under the provisions of para 2 (a) of AQ 46/80 disch in respect of pers mentioned in Appx att to this letter is hereby approved under the provisions of Army Rules 13 (3) (III) (V) read with AR 13(3)(2A) of 1954.
2. The indls may please brought before release med board immediately on receipt of this letter and fwd docus forthwith to this office,
3. Please despatch the indls to Depot Coy for disch drill on the date as mentioned against their names at Appx att.

4. It may be noted that the final date of SOS given cannot be changed. Therefore, it is imperative that the indls report to Depot Coy for release drill on the date no mentioned in Appx att.

5. Any excess grant of leave to them must be regularised as per leave rules before they report to Depot Coy for release drill. Personal occurrence to this effect be published in unit part II order accordingly.

6. All pension docus along with Annexure I, II and III of Govt of India, Min of Def letter No 1/(1)/98/ D(Pen/Services) dt 15 Jun 98 copy fwd vide this office letter No ENS/Pen-Coord/8/4 dt 01 Sep 98 may please be fwd to this office immediately.

7. Please fwd the consolidated list of outstanding adjustment if any regarding pay and allowances as par ROI 105/90 immediately as asked for vide this office letter No. ERG (Coord)/43/Gen/LC dated 20 Sep93, 14 Oct 93 and CDA (OR) North IO letter No AT/II/CC/95 Pune dated 04 Mar 93 copy fwd under our letter No EEG (Coord)/9/1/LC dated 03 Nov 93. If there are no outstanding dues, a cert to this effect may please be obtained from indls and fwd the same to this office for onward submission to PRO (OR) RAJ RIF.

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9----- "

Appx
(Refer to Records RAJRIF letter No
RAC/4/2/Med/v dt 31 Jan 2000

Ser	Army No	Rank and Name	Unit	Date of Reporting	Date of SOS
1	2880449F	Rfn Munendar Pal Singh	8 RAJRIF	01 May 2000	01 Jun 2000

2 to 7	xxxxxx
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24. Reliance was placed on behalf of the applicant on a catena of verdicts in support of his contentions. On the other hand, the respondents relied on the verdict of the Hon'ble Supreme Court in **Union of India (UOI) and Ors. v. Ex. Sep R. Munusamy (Supra)** decided on 19.07.2022 seeking thereof that the OA be dismissed. In the case of **S. Muthu Kumaran v. Union of India & Ors** [2017 (4) SCC 609] the applicant's service had been terminated for alleged involvement in a fraudulent recruitment racket and obtaining illegal gratification. Though the AFT upheld the termination, the Hon'ble Supreme Court observed that the punishment of dismissal from service was an extreme punishment and modified the order of dismissal from service observing vide paras 10 & 11 of the verdict to the effect:

10. As a matter of record, the appellant was enrolled in the Indian Army on 26-4-1994 and till his termination on 10-7-2011, he is said to have discharged his services diligently for more than seventeen years. During the period of his service, he had no adverse remarks in his service record except the present one. In our view, when the dismissal order was passed in case of the appellant, the GOC could have taken into account the unblemished service record of the appellant and his long service. If

an order of discharge would have been inflicted against the appellant, he still would have been restricted from continuing in service and at the same time, the appellant, who had served diligently for more than 17 years, would have been granted with the benefits accrued on his service rendered so far.

11. No doubt, the dismissal order passed against the appellant was within the powers of the authorities concerned. However, as far as the dismissal from service is concerned, it is an extreme punishment imposed against the appellant. The appellant has to thrive in civil life by doing an appropriate job suitable to his qualification. In the facts and circumstances of the present case, we are inclined to modify the punishment of dismissal from service into discharge from service. The modification of the sentence of dismissal from service into that of discharge will not change the position of the appellant, so as to claim any reinstatement into service. Even if he was discharged from service, in lieu of dismissal from service, the appellant cannot seek for any employment or re-employment into the Army. Therefore, there would not be any grievance for the respondents in the event of punishment of dismissal being modified into that of discharge. At the same time, interest of justice would be served as the appellant would get the benefits like gratuity and other attendant benefits for the service rendered by him and the appellant would also get an opportunity to lead an honourable life in the society.

The facts of the present case are wholly distinguishable from that in **S. Muthu Kumaran** as the applicant herein had been absent without leave on five occasions between 1994 and 1995, had then deserted the unit w.e.f. 13.01.2000 and made no effort to return and rejoin the unit,

thus reliance on ***S. Muthu Kumaran*** does not aid the applicant in any manner.

25. In the case of ***Vijay Shankar Mishra v. Union of India &Ors.*** [(2017) 1 SCC 795], the appellant who was in a low medical category had been discharged from service after serving 13 years and 8 months due to unsatisfactory conduct and was denied both pension and disability pension. His petitions to the High Court and the Tribunal were also dismissed. However, the Supreme Court observed that the authorities had failed to consider relevant and germane circumstances for discharge, such as (i) the nature of the violation which led to the award of red ink entries; (ii) whether the Appellant had been exposed to duty in hard stations and to difficult living conditions; (iii) long years of service, just short of completing the qualifying period for pension. The Tribunal's decision was set aside, and the Appellant was directed to be treated to have been in service till the time he would have completed the qualifying service for grant of pension without back-wages, though the benefit of continuity of service for all other purposes including pension was held to be granted to the applicant. However, the facts and circumstances of this case are also distinguishable from the case of the applicant herein. In ***Vijay Shankar Mishra (supra)***

the appellant had been dismissed from service just short of the qualifying service for pension, on the ground of being an undesirable soldier having earned six red ink entries whereas, in the case of the applicant herein, he had been dismissed from service on the grounds of **desertion**.

26. Reliance was placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in ***Ram Pal Singh v. Union of India & Ors*** [(1984) 1 SCC 32] wherein the appellant thereof, had sustained an injury during the 1965 Indo-Pakistan conflict with 20% disability which was confirmed by the RMB but on account of being found undesirable after repeated court martials held against him on several occasions respondents disputed his entitlement, claimed his discharge was unrelated to the injury. The Hon'ble Supreme Court held that the appellant was entitled to disability pension. This case is also of no aid to the applicant, as the appellant in that case had been injured in a war and was brought before a RMB which assessed his disability at 20%. However, in the case of the applicant herein, since the applicant **deserted** from the unit, he was never brought before a RMB and therefore there is no assessment of his disability and thus, in the absence of the RMB proceedings there can be no adjudication of the disability pension entitlement of the soldier.

27. The facts of the case ***Sep Ashok Kumar v. Union of India & Ors.*** (AFT (PB), New Delhi Order dated 21.07.2016 in RA 6/2016), relied upon on behalf of the applicant herein are wholly distinguishable as that case pertained to rounding off of the period of service and then condoning the shortfall of service to grant pension. In the present case the applicant had deserted from service and was therefore dismissed from service.

28. Reliance placed on behalf of applicant on ***Kulwinder Singh v. Union of India & Ors*** [AFT (RB), Chandigarh Order dated 20.03.2014 in OA 297/2012] is equally misplaced as the applicant herein deserted from service, before being brought before the RMB, and was thus dismissed from service on grounds of desertion, and there was thus no assessment of his disability.

29. The case of ***Ex Sep Rajinder Singh v. Union of India & Ors*** [AFT (PB), Order dated 29.03.2016 in OA 328/2014], is also distinguishable as the applicant herein was dismissed from service on grounds of **desertion and no RMB could be conducted.** Hence it does not help the applicant.

30. In the case of ***Ratna Bahadur Chetry v. Union of India & Ors*** [AFT (RB), Guwahati Order dated 17.02.2011 in TA 19/2010], the appellant

had overstayed leave due to certain domestic issues, and was later declared a deserter and dismissed from service. He filed for pensionary benefits, which were denied, leading to his appeal challenging the dismissal and refusal of benefits. Since the applicant had completed pensionable service, and considering his peculiar circumstances, the dismissal was converted to voluntary discharge. Here again the circumstances of the applicant's case are entirely different from that of the appellant in the case.

31. In the case of ***Ex Hav Bhubaneswar Das v. Union of India &Ors*** [AFT (RB), Guwahati Order dated 07.10.2013 in OA 17/2013], the appellant had left his post due to illness and proceeded home without leave, and was thus declared a deserter and dismissed from service. The Tribunal held the dismissal invalid as it was held that there was no follow up action in terms of the apprehension roll by the respondents and nothing was produced by the respondents on record to show that it made any serious effort or attempt to find out the applicant in his original address or even writing a letter to the appellant therein proposing him to hold any inquiry. The facts of the case in ***Ex Hav Bhubaneswar Das*** are not in *pari materia* with the facts of the instant case and thus there is no valid reason to revoke the dismissal of the applicant.

32. Reliance was placed on behalf of the respondents on the verdict of the Hon'ble Supreme Court in the case of ***Union of India and Ors. Vs. Ex Sep R. Munusamy (Supra)*** dated 19.07.2022, where the respondent, enrolled in the Army on 26.03.1987, was discharged on administrative grounds as an undesirable soldier on 05.04.1997, having served for nine years, seven months, and one day. He did not challenge the discharge on administrative grounds and filed OA for disability pension nearly 20 years later, which the Tribunal allowed. However, the Hon'ble Supreme Court observed that *"In this case, since the discharge was on administrative grounds and not medical grounds, there was no occasion for the Release Medical Board or for that matter, the Resurvey Medical Board to give any opinion as to cause and nature of the ailment of the Respondent of "Right Partial Seizure with Secondary Generalisation 345" as diagnosed, whether such disability/ailment could reasonably have gone undetected at the time of appointment of the Respondent, in terms of Rule 14(b) of the Entitlement Rules. The Appellants did not get the opportunity to show that the ailment was not caused or aggravated by military service in terms of Rule 14(b) and 14(c) of the Entitlement Rules referred to above. The claim of the Respondent for disability pension should not have been entertained*

and that too, 20 years after his discharge." Thus, the applicant in the present case too, likewise cannot be granted pension as his dismissal was due to desertion and for more than a decade, he did not question his dismissal on these grounds.

Conclusion

33. The applicant had enrolled on 29.09.1983 and had 17 years of service in 2000, when his discharge on medical grounds had been approved on 31.01.2000. However, since the applicant deserted the service on 13.01.2000, he had been dismissed from service under Section 20(3) of the Army Act 1950 read in conjunction with AR 13(3) III(v) and AR 13(3) (2A) of 1954 after an absence of three years from the date of his first absence. Further, since he had deserted, he was never brought before a Release Medical Board to assess his percentage disability and attributability. The applicant never returned to the unit, nor did he surrender to the authorities, which if it had been so done, he may have been taken back on the rolls of the unit. In view of the above consideration, we conclude that the applicant had deserted the service and was dismissed from service as per the statutory provisions and policy on the subject. We also conclude that since the applicant was dismissed from

service, he is not eligible for pension for his past service. The applicant is clearly not eligible for any consideration of disability pension in the absence of not having been assessed by a RMB, a mandatory requirement to assess eligibility of disability pension. We thus uphold the actions of the respondents declaring the applicant a deserter and subsequently dismissing him from service. However under the provisions of Regulation 113(a) of the Pension Regulations (1961), the applicant has the liberty to submit a mercy petition to the President for grant of pension.

34. The OA is therefore dismissed with liberty to the applicant to submit an appropriate mercy petition, if so advised, to the Hon'ble President for grant of pension. The respondents are directed to dispose of the mercy petition, if any, within a period of three months of its receipt.

Pronounced in open Court on this ²² day of August, 2024.

LT. GEN P. M. HARIZ

MEMBER (A)

JUSTICE ANU MALHOTRA

MEMBER (J)

/ashok/