

COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA 1029/2019

Smt Sudarshana Widow of Applicant
Ex STD I Shiv Kumar
Versus
Union of India &Ors. Respondents

For Applicant : Mr. V.S. Kadian, Advocate
For Respondents : Mr. R.S. Chillar, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER

The applicant herein, Smt. Sudarshana, widow of Ex-STD I Shiv Kumar, has invoked the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, challenging the order dated 14.11.2011, by which her late husband, Ex-STD I Shiv Kumar, was dismissed from service.

2. The reliefs sought by the applicant in Para 8 of her application are as under:

(a) Quash and set aside the dismissal order of the husband of the applicant as intimated vide impugned letter dated 203/156542-B dated 14.11.2011 and or to notionally reinstate him in service till date or his death or completion of his terms of engagement.

(b) Direct respondents to grant Family pension to the applicant w.e.f the date of death of her husband and to pay the due arrears with interest @12% p.a.

2. Facts in brief indicate that Late Shiv Kumar was enrolled in the Indian Navy on 05.10.2003, having been found medically fit in category S1A1, following a thorough medical examination conducted by the Recruiting Medical Board at New Delhi on 07.08.2003. While serving at INHS Trishul, he developed a disability diagnosed as Lumbago Sciatica Syndrome and was placed before a medical board at INS Asvini on 24.12.2005, where he was categorized in a low medical category S3A2 (P) T-24. Subsequently, he was again subjected to a medical board at INHS Angre on 12.07.2006, where his medical condition was found to have improved and his category was upgraded to S1A1. Following this improvement, he was promoted to the rank of STD-I and posted to Port Blair. In February 2008, he was diagnosed with Bipolar Affective Disorder and was placed in S3A3 (S) T-24 medical category on 15.04.2008. His condition remained unchanged as per the subsequent medical board on 13.10.2008. He was again assessed on 13.03.2009, and finally, on 07.12.2009, at INHS Kadamba, he was placed in S2A2 (S) (Pmt) category for a period of two years with his disability assessed @40%.

3. Thereafter, while on annual leave, he received treatment at a private hospital in his hometown. The records show that during this period, he became bedridden and unable to report back for duty. He was scheduled to rejoin duty on 02.11.2009 but failed to do so. As per Navy Order 126/2002, having not reported back for duty, he was declared an absconder on 03.05.2010.

4. It is the case of the applicant that her husband was suffering from Bipolar Affective Disorder, which prevented him from performing his duties. Consequently, he was proceeded against under Section 49(2)(B) of the Navy Act for the offence of desertion and was dismissed from service on 14.11.2011, having been treated as a deserter. According to the respondents, he passed away on 21.10.2017 while at home. After his death, the applicant (his wife) made several representations to the authorities. When no action was taken, she approached this Tribunal on 05.07.2019 seeking appropriate relief. She contends that her husband's mental illness was the reason for his inability to perform his duties and considering his medical condition, she should now be granted all the benefits.

5. The respondents have filed a detailed counter affidavit, raising a preliminary objection regarding the inordinate and unexplained delay of more than eight and a half years in filing the present application. They submit that during the lifetime of the employee, Late Shiv Kumar, STD-I, neither he nor his wife challenged the dismissal order, which declared him a deserter. It is only after his death that this application has been filed, and that too without submitting any representation or appeal to the Competent Authority.

6. The respondents admit the medical condition of the applicant and state that he was provided treatment at Naval Hospitals, as detailed in Para 4 of the counter affidavit. Para 4 reads as under:-

4. Late Shiv Kumar, Ex STD I, No. 156542-B was brought before the commanding officer, INS Angre for summary trial for the offences of desertion. The sailor whilst borne in INHS Kadamba proceeded on annual leave and was due to report on 02 Nov 09. However, he failed to report on the due date. Subsequently, actions in accordance with NO 126/02 were initiated, abscond genform raised (Annexure R-1) and the sailor was marked Run wef 02 Nov 09 vide Genform No. 0904611/S dated 09 Nov 09 (Annexure R-2). Warrant for arrest was also issued against the sailor on 09 Nov 09. On 17 Nov 09, INS Kadamba received a registered mail containing the permanent identity card and canteen card of the sailor. On 10 Dec 09 at about 2300h Shri Ramphal (father of the sailor) brought the sailor back to Naval Base Karwar and persuaded him to surrender. Statement of Ramphal, in this regard is placed at Annexure R-3 Genform No. 0905283/S dated 10 Dec 09 of surrender

is placed at Annexure R-4. Shri Ramphal also submitted an application on a non-judicial stamp paper witnessed by Sarpanch of Gram Panchayat, Meham (Rohtak) requesting to allow Shiv Kumar, STD-I to resign, as his household could not function without him and that he was the sole heir to him (Annexure R-5). Similarly, Smt Sudarshana, W/o Shiv Kumar also submitted an application in the similar manner urging permission to be given to Shiv Kumar STD I to resign from service (Annexure R-6).

7. Despite being under medical care, Late Shiv Kumar failed to report for duty after 02.11.2009. Several letters were sent to his father, and eventually, Late Shiv Kumar was brought to the unit. For further treatment, he was transferred from INHS Patanjali to INHS Asvini on 30.01.2010.

8. While being taken for treatment to INHS Asvini, he was travelling by Train No. 2134 Karwar Special. Upon reaching Panvel Railway Station at approximately 0345 hours on 31.01.2010, he went to the toilet along with his escorts, namely Ajit Ranjan (Sea I) and Amit Kumar Gaud (WTR II). When the train started moving out of the station, Late Shiv Kumar suddenly pushed back his escorts, jumped out of the train from the toilet, and fled. Despite efforts made by Ajit Ranjan (Sea I) to apprehend him, he could not be caught and absconded. His whereabouts remained unknown. The matter was promptly reported by the escorts at around 0515 hours on 31.01.2010 to INS Kadamba and

INHS Patanjali. Treating him as a missing person, a Missing Person FIR was registered at Panvel Railway Police Station. Subsequently, in accordance with the provisions of Section 83 of the Navy Act, 1957, disciplinary action was initiated and he was declared a deserter through a summary trial. The impugned order of dismissal was passed in the year 2011. Since then, no communication or representation was received regarding him until the filing of the OA.

9. However, it is now, after eight and a half years, that this OA has been filed without any prior intimation or representation being submitted. The respondents have raised serious objections to the manner in which the late Shiv Kumar left without authorization and to the fact that none of his family members reported the matter to the Naval Authorities.

10. The respondents have submitted the documents of the entire proceedings (Annexure R-10). These documents demonstrate that the facts detailed in the counter affidavit are correct. Action was taken against the late Shiv Kumar after following due process of law. He was put on trial during which he admitted that he had left his duty and failed to return. Consequently, he was declared a deserter.

11. From the material on record, it is evident that the applicant has been treated as a deserter and action has been taken against him based on the available evidence, following a trial as contemplated under the Navy Act and the rules framed thereunder. Since the employee was proceeded against and action was taken in accordance with the applicable statutory rules, no interference is warranted in the matter.

12. Although there is an inordinate and unexplained delay of more than eight years in approaching the Tribunal, we are not inclined to dismiss this OA solely on the ground of delay.

The records show that the applicant was enrolled on 05.10.2003 and was dismissed from the Naval Service, being treated as a deserter on 14.11.2011 after serving for approximately eight years. As he has not rendered the qualifying service required for pension and even if his dismissal were converted to discharge, he would still not be eligible, no relief can be granted to the applicant in the form of pensionary benefits.

13. Taking note of the facts and circumstances of the case, we find that the respondents have acted in accordance with the law. A summary trial was conducted as provided under

the Navy Act and the relevant Rules. At this stage, no relief can be granted to the applicant based on the facts that have come on record and have been detailed hereinabove.

14. However, it is only by way of a mercy petition, if permissible under law, that the applicant may approach the Chief of the Naval Staff or the Hon'ble President of India, as the Supreme Commander of the Armed Forces, for any sympathetic benefit or consideration on mercy grounds.

15. As we find no statutory violation or breach of rules or regulations in the action taken against the applicant, we are unable to grant any relief. The Armed Forces is a disciplined force, and discipline as well as rendering service in accordance with the statutory requirements contemplated in the Navy Act and Navy Rules is of paramount importance.

16. When an employee is declared a deserter, and the procedure for such declaration has been followed in accordance with the applicable Navy Order, interference in the matter under our limited jurisdiction conferred by Section 14 of the Armed Forces Tribunal Act, 2007, is not warranted. Therefore, this Tribunal cannot interfere with the punishment order or grant family pension to the applicant on grounds of sympathy.

17. Sympathetic consideration, if any, may only be extended through a mercy petition submitted to the competent authority empowered to grant such relief and not by this Tribunal.

18. Accordingly, finding no case made out for granting any relief, the OA is disposed of with the above observations and liberty granted to the applicant as indicated hereinabove.

19. No order as to costs.

Pronounced in the open Court on this day of 28 July 2025.


[JUSTICE RAJENDRA MENON]
CHAIRPERSON


[RASIKA CHAUBE]
MEMBER (A)

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