

COURT No.3  
ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

OA 122/2020

Mrs. Sumitra Devi W/O ..... Applicant  
Ex Rect Ashok Kumar Sehrawat  
VERSUS  
Union of India and Ors. .... Respondents

For Applicant : Mr. B.P Vaishnav, Advocate with  
Mr. Birjesh Sharma, Advocate  
For Respondents : Mr. K.K Tyagi, Sr. CGSC  
Capt. Abhishek Kumar, OIC Legal Cell

Dated: 26<sup>th</sup> August, 2025

CORAM

HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)  
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER

The applicant is the wife of Ex Rect Ashok Kumar Sehrawat who was declared a deserter and dismissed from service on 12<sup>th</sup> June, 1990.

2. Through this OA filed under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant seeks grant of family pension to her along with other benefits and setting aside of the POR entry of dismissal of her husband from service. The prayers made read as under:

- “(a) To the respondents to disclose the action taken about the missing of the husband of applicant in details and grant the family pension to the applicant along with other benefits as per rule.*
- (b) To set aside the POR entry of dismissal from service being AWOL/Deserter under section 20(3) of Army Act, 1950.*
- (c) Issue such other order/direction as may be deemed appropriate in the facts and circumstances of the case.”*

3. The facts in brief are that the applicant's husband was enrolled into the Indian Army on 19<sup>th</sup> January, 1985 and joined the training at EME Unit Secunderabad. After availing leave, he did not reach his place of duty. After some time when the applicant did not get any communication from her husband she along with her father-in-law went to EME Centre to find out the whereabouts of her husband, who as informed by the Officials, was not coming on duty. The applicant then gave a written missing complaint of her husband to the SHO, Najafgarh, Delhi on 5<sup>th</sup> February, 1987. However, as averred, she was advised to look for her husband with the Army Authorities where he was working as he was missing from service. Vide POR No. EME (R) DDII No. 40/NE/NE&P/125/90) dated 2<sup>nd</sup> July, 1990, the applicant's husband was dismissed from service for AWOL/desertion under Section 20(3) of the Army Act. The

applicant's First and Second Appeal for grant of family pension filed on 25<sup>th</sup> August, 2018 and 17<sup>th</sup> June, 2020 respectively, as averred, have not been responded.

4. Contention of learned counsel for the applicant is that denial of family pension to the applicant is violation of her fundamental rights guaranteed under Articles 14, 15, 19 and 21 of the Constitution of India. It is further contended that at the time of joining the Army the husband of the applicant was physically fit and completed the training with utmost dedication and devotion. It is further submitted that the respondents are not justified in taking no action to trace her husband who after completing his leave went back to his training centre. Further contention of the applicant is that her husband was absent without leave while he was on military duty and in the custody of the respondents and since the police did not take any action in spite of her making a complaint, it were respondents who are responsible to disclose the whereabouts of her husband. It is vehemently contended that dismissal of her husband from service for AWOL/Desertion under Section 20(3) of the Army Act is capricious, cynical and arbitrary and, therefore, the

dismissal of her husband from service is illegal and needs to be set aside. It is inter-alia contended that the respondents did not inform the family members of her husband as to when the applicant left the unit without leave or since when he was missing and thus declaring her husband as a deserter without holding any Court of Inquiry and following due process of law is bad in law. It is further contended that before declaring her husband as a deserter, even the local police was not informed and no effort was made to apprehend her husband. In this regard reliance has been placed by learned counsel for the applicant on the order of the AFT, Regional Bench, Lucknow in the case of Smt Bittan Devi, widow of No.15124675A Gnr Rajesh Kumar Vs. Union of India and Ors. (OA No.257/2016) decided on 22<sup>nd</sup> April, 2019 wherein the OA was partly allowed; the husband of the applicant was presumed dead and ordinary family pension and consequential benefits were granted. It is thus prayed that the OA be allowed.

5. The respondents by way of filing the counter affidavit have controverted the averments made in the OA.

6. It is stated that the applicant's husband had been absenting himself without leave on the following occasions:

*"05.10.1985 till 25.01.1986 - 112 days Apprehension Roll issued to civil police to apprehend the individual (R-1). The applicant's husband resigned voluntarily on 26.01.1986.*

*Absented again with leave before any disciplinary action could be taken on 02.02.1986. Apprehension Roll issued to civil police to apprehend the individual on 05.02.1986 (R-3).*

*Since neither, he rejoined the duties nor apprehended he was declared deserter on 30.05.1986 (R-4).*

*However, the individual again joined voluntarily on 04.10.1986 and a summary of evidence ordered but before completion again absented himself.*

*Absented again on 24.11.1986 without leave Apprehension Roll issued to Civil Police (R-5) Applicant's husband was again declared deserter on 11.05.1987."*

7. Respondents' contention is that since the individual was neither apprehended nor did he rejoin the Army Services after being declared deserter on 11<sup>th</sup> May, 1987, after completion of three years, as per Section 20(3) of the Army Act he was dismissed from Service as AWL/Deserter on 12<sup>th</sup> June, 1990 and other formalities with regard to finalising the accounts and payment of credit balance were undertaken and DSS & A Board, Delhi, was approached to trace the whereabouts of applicant's husband (Annexure R-6). Vide Annexure R-7 the Mandate

Forms and AGI Maturity claim forms to be returned after signature of the applicant's husband were sent at the address of the army personnel. However, no reply was received.

8. Learned counsel for the respondents has also contended that after a long period of about 29 years, the applicant - wife of Ex-Rect Ashok Kumar Sehrawat filed the First Appeal on 25<sup>th</sup> August, 2018 and Second Appeal on 14<sup>th</sup> January, 2019 for grant of family pension, which were duly replied ( Annexure R-8).

9. In support of his case, the learned counsel for the respondents has relied on the judgment of 'Armed Forces Tribunal, Regional Bench, Lucknow in the case of Ex-Sep Goverdhan Vishwakarma Vs. Union of India and Ors. (MA 1665/2016 in OA No. 'Nil'/2016) decided on 8<sup>th</sup> March, 2017 wherein it was held that since the husband of the applicant was dismissed from service being on desertion, he is not entitled to any pensionary benefits in terms of Para 113 of Pension Regulations for the Army, 1961 (Part-I) which reads as under :

*“(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.”*

10. It is further contended that since the husband of the applicant was not entitled for any kind of pension, the applicant is also not entitled for grant of family pension in terms of Para 2(ii) of Regulation 212 of Pension Regulations for the Army, 1961 (Part-I). Para 2(ii) of Regulations 212 reads as under :

*“2. Ordinary Family Pension when admissible. When and individual dies on account of causes, which are neither attributable to nor aggravated by Military Service.*

*(i)           xxx                   xxx                   xxx*

(ii) *or after retirement/discharge from service and was on the date of death in receipt of or eligible for retiring/special/Reservist/disability/invalid/War injury pension.”*

11. The respondents, therefore, submit that since in the present case also the applicant has approached this Tribunal after about 29 years from the date when her husband was declared a deserter, the OA is liable to be dismissed on the ground of delay.

12. It is further contended that all efforts were made by the respondents to trace out the whereabouts of applicant's husband by taking appropriate action and approaching the Civil Police authorities but all their efforts went in vain and whereabouts of the applicant's husband could not be located and, therefore, the action of the respondents dismissing the applicant's husband is just, fair, legal and in consonance with the policies laid down in this regard. It is further submitted that every time the applicant's husband did not report for duty or was absent without leave, his family was informed.

13. It is to this backdrop that we have heard learned counsel for the parties and have also gone through the record.

14. Learned counsel for the applicant submitted that the applicant's husband has remained untraceable and, therefore, he cannot be declared a deserter and thus dismissed from service. Whereas learned counsel for the respondents submitted that the applicant husband remained, absent from duty on two to three occasions for the period from 5<sup>th</sup> October, 1985 to 2<sup>nd</sup> February, 1986 and as such was declared a deserter and the applicant being his wife is not entitled to family pension.

15. So far as reliance placed by learned counsel for the applicant on the judgment in the case of *Smt. Bittan Devi* (supra) is concerned, we may note that these two cases are clearly distinguishable. In the case *Smt. Bittan Devi* the applicant made tireless efforts to inquire about her husband's whereabouts, made multiple representations to the Chief of the Army Staff, approached the concerned police station and additionally also sought information under the Right to Information Act. In fact it has been stated in the *ibid* judgment dated 24<sup>th</sup> April, 2019 that "*there is hard evidence of the lady approaching the respondents repeatedly*" and also it is "*very*

*clear that the police have already submitted a report in 2015 on the matter of desertion/missing aspect of the applicant's husband which apparently indicates that his whereabouts are not known."*

16. On the contrary, as per the pleadings on record the applicant in the case before us, except approaching the police once, took no positive steps either to trace her husband or to get to know his whereabouts. Even after passing of 38 years, as on date she does not know whether his husband is alive or not. There is no documentary proof from the police about the whereabouts of the applicant's husband. There is nothing on record to declare him "presumed dead", based on which all entitlements will accrue to the Applicant. Moreover, whereas the army personnel in the case of *Smt. Bittan Devi* (supra) had more than seven years of service, the applicant's husband in the instant case was under training when he disappeared and absented himself without leave. It is clearly evident that he was not willing to serve the army. Therefore, the case relied on by learned counsel for the applicant is of no support to him.

17. The undisputed fact is that the applicant's husband was declared a deserter and dismissed from service and as on date also remains untraceable. Under these circumstances, unless the wife proves the death of her husband through a death certificate or a certificate from the police authorities regarding his whereabouts being unknown for the last seven years or so, she will not be entitled to family pension and other consequential benefits..

18. There is also no denial of the fact that Apprehension Rolls having been issued against the applicant's husband thrice and he having been advised to report back to his unit, the applicant's husband for all these years never approached his unit and continued to remain a deserter. As has rightly been held by The Armed Forces Tribunal, Regional Bench, Lucknow in the case of *Ex-Sep Goverdhan Vishwakarma* (supra), we quote:

*“An Army personnel who deserts the Army, deserts the nation. When he joins the Army, trust is reposed on him that he shall remain disciplined while discharging his official duty. In the present case, the applicant seems to be an undisciplined person who has not followed the oath while serving the Army. He does not deserve any leniency and has rightly been dismissed from service.”*

19. The facts on record indicate that the applicant joined the Indian Army on 19<sup>th</sup> January, 1985 and sent for training to EME Centre, Secunderabad. It was about after nine months of the training that he overstayed the leave and about after 112 days voluntarily joined the training centre on 26<sup>th</sup> January, 1986. Thereafter, again with effect from 2<sup>nd</sup> February, 1986, i.e., after a week, the applicant's husband absented himself without leave and once again after eight month voluntarily rejoined the unit on 4<sup>th</sup> August, 1986. Again for one more time the applicant's husband absented himself without leave on 24<sup>th</sup> November, 1986. Apprehension Rolls on all these three occasions were issued to the civil authorities which facts indicate that the applicant's husband was never interested to serve in the Army.

20 The applicant after a long gap of 29 years from the date of dismissal of her husband has awakened and filed this OA in the year 2020. We do not find any satisfactory reason and/or action taken on the part of the applicant to condone such a huge delay. It is also evident from the records that the applicant did not make serious efforts to trace her husband which casts a doubt

on the veracity of the case. To claim any benefit the applicant first has to initiate appropriate action with the police/civil authorities to get a declaration that her husband is missing since more than seven years and may be presumed to be dead.

21. In view of the above the OA is dismissed both on the ground of delay and merit.

(JUSTICE NANDITA DUBEY)  
MEMBER (J)

(RASIKA CHAUBE)  
MEMBER (A)

/vks/