

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

**OA 1719/2018**

**Smt Munni Devi Wd/O  
Late Sep Awadesh Kumar  
VERSUS  
Union of India and Ors.**

**..... Applicant**

**..... Respondents**

**For Applicant : Mr. Amit Kumar and  
Mr. Romil Pathak, Advocates  
For Respondents : Mr. Anil Gautam, Sr. CGSC for R-1-3  
Ms. Anjali Vohra for R-4 Advocate**

**CORAM**

**HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)  
HON'BLE LT. GEN. C.P. MOHANTY, MEMBER (A)**

**ORDER**

The present application u/s 14 of the Armed Forces Tribunal Act, 2007, has been filed by the widow of late sepoy Awadesh Kumar for grant of family pension w.e.f 06.12.2002, i.e. from the date of death of her husband.

2. Facts in brief indicate that applicant's husband Late Awadesh Kumar was enrolled in the Army as Sepoy on 01.09.1986 in Army Medical Corps (AMC). Vide movement order dt. 09.01.2002, he was directed to report to 4004 Field Hospital on 19.01.2002 including joining time, however, he did not join his duty and remained absent without leave (AWOL) w.e.f. 20.01.2002. A Court of Inquiry was conducted at 4004 Field Hospital vide Part II Order No. 14.03.2002, and he was declared deserter w.e.f. 20.01.2002. Applicant's husband died

on 06.12.2002 due to Cardio Respiratory Failure (Shock of Burn) at Apollo Burns Hospital, Patna during desertion. The intimation of the death of late Awadesh Kumar, alongwith his death certificate and postmortem report was brought on record by the applicant vide letter dt. 06.02.2003. After receiving the intimation of the death of Awadesh Kumar, the Records Office, Army Medical Corps on 05.03.2003 sent three sets of forms/books for grant of family pension and the applicant submitted all the requisite documents for processing of her claim for family pension.

3. The applicant vide her letter dt 02.01.2004 and 26.12.2004 requested for grant of family pension. In response, Records Office, Army Medical Corps vide letter dt. 13.01.2005 rejected the claim of the applicant for grant of family pension on the ground that her husband late Awadesh Kumar was declared deserter w.e.f. 20.02.2002. It was further stated that since a deserter is not entitled for pensionary benefits, no pension is admissible to her late husband and hence, she is also not entitled to family pension. However, the legitimate dues of deceased as entitled were paid to the applicant on 16.08.2019.

4. Aggrieved by the rejection of the claim, the applicant approached Defence Pension Adalat, Danapur and thereafter, Dte Gen of Personnel took up her case and stated that although

the husband of the applicant was declared deserter w.e.f. 20.01.2002 and expired on 06.12.2002 but was not dismissed from service and therefore, the claim of the wife of the deceased is reasonable. Her claim for family pension was then forwarded by Records Office, AMC to PCDA (P) Allahabad with full facts of the case. PCDA(P) Allahabad vide their letter No. G4/V/Misc/AMC/06 dt 03 June/Jul 2006 rejected the claim of the applicant stating that Late Sep Awadesh Kumar, husband of the applicant was not a pensioner at the time of discharge from service as well as at the time of his death and therefore, his wife was also not eligible for family pension. The Records Office, AMC communicated to the applicant that as per existing policy deserters are not entitled for any kind of pensionary benefits.

5. According to the applicant, she is entitled to pensionary benefits as her husband had died in harness and no order of dismissal to do away with his service was passed. It is strenuously argued that though applicant's husband was declared a deserter, he was still on the supernumerary strength /roll of Army till he died of mental illness followed by his death due to an accident in the house where her husband died due to burning. Placing reliance on the case of Smt. Harnandi Vs UOI & Ors. 91(2001) DLT 54, wherein the Hon'ble Delhi High Court has held that the husband of the petitioner therein

should be deemed to have died in harness as no order of dismissal, removal or discharge from service was passed against him till his death making her eligible for family pension. It is stated that a similar view has been taken by the Regional Bench at Chennai in OA No. 158 of 2013, Smt. Kukkala Manga Devi vs Union of India & ors. It is contended that applicant being similarly situated is also entitled for family pension.

6. The only contention of respondents is that Late Awadesh Kumar being a deserter was not entitled to pensionary benefits under Regulation 113(a) of the Pension Regulation for Army 1961, Part-I, hence the widow of deceased deserter is also not entitled to family pension.

7. Heard rival submissions and perused the record. The issue whether an individual who died during desertion period be considered as an individual died in harness is no more *res integra*. The Hon'ble High court of Delhi in the case of Smt. Harnandi (supra) has dealt with this issue in the following manner:

*"7. There is no provision in the Act or Rules envisaging automatic termination of service of a member of armed forces on declaration of desertion. On the other hand, Army Regulation 376 provides to the contrary and says that deserter does not belong to cease to corps though he is no longer shown on its returns. This Regulation reads thus:*

*'376. Deserters from the Regular Army: A person subject to AA who is declared absent under AA, Section 106 does not thereby cease to belong to the corps in which he is enrolled though no longer shown on its returns, and can, if subsequently arrested, be tried by court-martial for desertion. When arrested he will be shown on returns as rejoined from desertion.'*

*9. It was thus evident that a desertion by itself did not and would not bring about cessation or termination of the service of a member of the armed forces whose service remained otherwise intact despite being declared a deserter; unless, of course, he was dismissed, removed or discharged under an appropriate order passed by the Competent Authority under the Act and the Rules.*

*13. It is submitted by learned counsel for respondents that there was no occasion to try petitioner's husband by Court Martial because of his death on 6.11.1984 and as such, he should be deemed to have committed offence of desertion without being convicted. The submission appears fallacious on the face of it because mere declaration of desertion may not necessarily lead to the conviction by the Court-Martial. If that was so, there was no need to hold a Court Martial to try a deserter for the offence of desertion. As such, there was no scope to fictionally deem the deceased gunner convicted by Court Martial to satisfy the pre-condition for application of APR 123 and so long this provision stood in its present form it would not be attracted to the case at all.*

*14. We accordingly hold that petitioner's husband should be deemed to have died in harness as no order of dismissal, removal or discharge from service was passed against him till his death and that declaration of desertion did not lead to automatic cessation of his*

*service and that he had not died of causes attributable to or aggravated by the military service. Consequently, Army Pension Regulation 123(a) (i) was not applicable to the case.”*

8. A perusal of the aforesaid makes it evident that a mere declaration of desertion by itself would not terminate the service of a member of Armed forces unless and until his services are terminated under an appropriate order of competent authority. In the instant case, the husband of applicant died on 06.12.2002, while he was still a deserter, before he could be tried by the Court Martial. No order terminating, removing or discharging his service was passed till his death, he therefore for all purposes continued to be a member of Armed Forces and deemed to have died in harness.

9. In so far as the question of applicant's entitlement to receive family pension is concerned, the same is governed by the Pension Regulations for the Army (Part-1) 1961. Regulation 113(a) of the Pension Regulation for Army 1961, Part-I provides for forfeiture of service for certain offences and its restoration as under:

*“113. (a) An individual who is dismissed under the provisions of Army Act, is ineligible for pension or gratuity in respect of the previous service. In exceptional cases, however, he may, at the discretion of the ‘President’ (Competent Authority) 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."*

Regulation 212 of the Pension Regulation for Army 1961, Part-I provides for grant of ordinary family pension and is reproduced as under:

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

*(i) either while in service provided he had been found fit after successful completion of the requisite training and medical examination for commission or at the time of enrolment in the case of personnel below officer rank.*

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

*(iii) Death due to suckle does not disqualify the heir from ordinary family pension.*

MoD Policy letter No. 1(2)/97/D/(Pen-C) dt. 31st January, 2001 prescribes the categories for determining the pensionary benefits on death or disability:

No. 1/21/97/D(Pen-C)  
Government of India/Bharat Sarkar  
Ministry of Defence/Raksha Mantralaya  
New Delhi dated the 31 January, 2001

To

The Chief of the Army Staff  
The Chief of the Naval Staff,  
The Chief of the Air Staff,

SUBJECT: IMPLEMENTATION OF THE GOVERNMENT DECISIONS ON THE RECOMMENDATIONS OF THE FIFTH CENTRAL PAY COMMISSION REGARDING DISABILITY

PENSION/WAR INJURY PENSION SPECIAL FAMILY  
PENSION/LIBERALISED FAMILY PENSION/ DEPENDENT  
PENSION/LIBERALISED DEPENDENT PENSION FOR THE  
ARMED FORCES OFFICERS AND PERSONNEL BELOW OFFICER  
RANK RETIRING, INVALIDING OR DYING IN HARNESS ON OR  
AFTER 1.1.1996

Sir,

The undersigned is directed to state that in pursuance of Government decisions on the recommendations of the Fifth Central Pay Commission sanction of the President is hereby accorded to the modifications, to the extent specified in this letter, in the rules/regulations concerning above mentioned pensionary benefits of the Commissioned Officers (including MNS) and Personnel Below Officer Rank (PBOR) including NCs (E) of the three Services, Defence Security Corps and the Territorial Army (here-in-after collectively referred to as Armed Forces personnel).

1.2 The provisions of the Pension regulations of the three Services and various Service Instructions/Government orders which are not affected by the provisions of this letter, will remain unchanged.

**Part I-Date of effect and Definitions**

2.1 The provisions of this letter shall apply to the Armed Forces personnel who were in service on 1.1.1996 or joined/join service thereafter unless otherwise specified in this letter.

2.2 Where pension has already been sanctioned provisionally or otherwise in cases occurring on or after 1.1.1996, the same would be revised in terms of these orders. In cases where pension has been finally sanctioned under the pre-revised orders and if it happens to be more beneficial than the pension

becoming due under these orders, the pension already sanctioned shall not be revised to the disadvantage of the pensioners.

### Definitions

#### 3. Reckonable Emoluments

3.1 Unless otherwise specified in this letter, the term 'Reckonable emoluments shall mean:

(a) For Officers Pay including Rank Pay, Non-practising Allowance, Stagnation Increment, if any, last drawn by the officer (Ref SAI 2/S/98, SNI 2/8/98 and SAFI 2/S/98)

(b) For Personnel Below Officer Rank (PBOR) Pay including Classification allowance, Stagnation Increment, if any, last drawn by the individual. (Ref SAI 1/S/98, SNI 1/S/98 and SAFI 1/S/98)

3.2 In the case of individuals who opt/opted to continue to draw pay in the pre-revised scales beyond 31.12.95 and remain/remained in that scale till retirement/discharge/invalidment/death in harness pension/family pension and retirement/death gratuity shall be regulated in terms of Para 3.3 and 3.4 of Ministry of Defence letter No 1(6)/98/D(Pen/Ser) dated 03 Feb 98.

### PART II-PENSIONARY BENEFITS ON DEATH/DISABILITY IN ATTRIBUTABLE/AGGRAVATED CASES

4.1 For determining the pensionary benefits for death or disability under different circumstances due to attributable/aggravated causes, the cases will be broadly categorised as follows:-

Category A

*Death or disability due to natural causes neither attributable to nor aggravated by military service as determined by the competent medical authorities. Examples would be ailments of nature of constitutional diseases as assessed by medical authorities: chronic ailments like heart and renal diseases, prolonged illness, accidents while not on duty.*

Category B

*Death or disability due to causes which are accepted as attributable to or aggravated by military service as determined by the competent medical authorities. Diseases contracted because of continued exposure to a hostile work environment, subject to extreme weather conditions or occupational hazards resulting in death or disability would be examples*

4.2. Cases covered under category 'A' would be dealt with in accordance with the provisions contained in the Ministry of Defence letter No. 1(6)/98/D(Pena/Services) dated 3.2.98 and cases under category 'B' to 'C' will be dealt with under the provisions of this letter.

Notes

*(i) The illustrations given in each category are not exhaustive. Cases not covered under these categories will be dealt with as per Entitlement Rules to casualty pensionary awards in vogue.*

*(ii) The question whether a death/disability is attributable to or aggravated by military service will be determined as per provisions of the Pension Regulations for the Armed Forces and the Entitlement Rules in vogue as amended from time to time.*

(iii) in case of death while in service which is not accepted as attributable to or aggravated by Military Service or death after retirement/discharge/invalidment. Ordinary Family Pension shall be admissible as specified in Min of Def letter No 1(6)/98/D(Per/Ser) dated 03 Feb 95, as modified vide Ministry of Defence letter No. 1(1)/99/D(Perver) dated 7.6.99.

(iv) Where an Armed Forces personnel is invalided out of service due to non-attributable/non-aggravated causes, Invalid pension/ gratuity shall be paid in terms of para 9 of Ministry of Defence letter No 1(6)/98/D(Perver) dated 03 Feb 98 as amended modified vide Ministry of Defence letter No. 7(1)/90/D(Pen/Serj) dated 7.6.90

Further, Integrated HQ of MoD (Army) letter No. A/20037/Pen/MP/8(I of R) (A1) dated 02.08.2022, provides for grant of family pension in case of death during deserter cases, reads to the effect:-

1. Refer the fwg:-

(a) Para 41 of Pension Regulation for the Army (Part-I), 2008.

(b) IHQ of MoD (Army) letter No. 90716/Redel/AG/PS2(b)/776/D(AG) dated 16 Feb 1982.

2. Large no of cases with regard to death of JCOs/OR during desn period are reported every yr. NOKs of such sdrs request for grant of Family Pension. However, in the absence of any policy to grant Family Pension in such cases Record Office denies grant of any relief on the grounds of desertion of the indl.

3. A case recd from GoI, Min of Defence, Deptt of ESM Welfare, was deliberated upon by the competent auth to

*avoid ambiguity in policy and follow std procedure by all Record Offices.*

4. *In such cases, it has been laid down that as per Reg 41 of Pension Regulation for the Army (Part-I), 2008 an individual who is dismissed under the Army Act 1950 or removed under the Rules there under as a measure of penalty. However, if an indl dies during desertion before discp proceedings could be initiated against him for dismissal, disch or removal from service as no discp proceedings had commenced till his death.*
5. *Therefore, an indl who dies during AWL/OSL/Desertion before dismissal remains govt servant for all practical purposes and the family of the indl would be eligible for all pensionary benefits.*
6. *All Record Offices are reqd process such cases accordingly after checking genuineness of the cases.*

10. Admittedly late Sep Awadesh Kumar, applicant's husband had completed more than 15 years of service which would fetch a pensionable service to the applicant's husband. The only contention of the respondents was that the applicant was declared a deserter on 20.01.2002 and died during the desertion period. No order of removal, dismissal or discharge was passed against him till his death. Therefore, in view of the law laid down in the case of *Smt. Harnandi* (supra), the applicant's husband who died during desertion period should have been treated as died while on the rolls of the army, i.e., died in harness.

11. The provisions of Para 113(a) of the Pension Regulations for the Army, 1961 (Part-I) would not be applicable to the present case, as the late sepoy was not dismissed under

the provision of Army Act, rather, the case of the applicant is covered by Regulation 212 and MoD policy letter dated 31.01.2001 and also IHQ MoD letter dated 02.08.2022, whereby family pension remains admissible to the widow of service personnel, who dies in service but of causes which are neither attributable to nor aggravated by military service. Since the applicant's name was entered as next of kin, she is certainly entitled to family pension as asked for by her from one day after the date of death of her husband. The impugned order No. 13969828A/FP/PEA (deserter) dt 13.01.2005 (Pg. 14 of OA) and 13969828A/FP/15 dt 14.10.2015 (Pg. 15 of OA) passed by the respondents is liable to be quashed and the application is therefore allowed.

12. Accordingly, the application is allowed. The respondents are directed to pay the arrears of family pension to the applicant and to issue Pension Payment Order (PPO), however, the arrears of family pension are directed to commence from period of three years prior to the institution of the present OA, in terms of the verdict of the Hon'ble Supreme Court in Union of India & Ors Vs Tarsem Singh reported in 2008 8 SCC 648, which shall be paid by the respondents, failing which the applicant will be entitled for interest @ 6% p.a. from the date of receipt of copy of the order by the respondents.

Pronounced in the open Court on this 10<sup>th</sup> of July, 2025.

[JUSTICE NANDITA DUBEY  
MEMBER (J)]

[LT GEN C.P. MOHANTY]  
MEMBER (A)]

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