

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

OA 970/2023

Smt Rinu Kumari Wd/o	...	Applicant
Late Nk Narendra Kumar		
Versus		
Union of India and Ors.	...	Respondents

For Applicant	:	Mr. Ajit Kakkar, Advocate with Ms. Eti, Advocate
For Respondents	:	Ms. Jyotsana Kaushik, Advocate for R 1-3 & 5 Ms. Anjali Vohra, Advocate for R-4

CORAM

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

ORDER

Invoking Section 14 of Armed Forces Tribunal Act, 2007,
the instant OA has been filed praying for following prayers:-

- (a) To set aside the desertion/Absence of the husband of the Applicant;*
- (b) To direct the respondents to regularise the leave of the applicant*
- (c) To direct the Respondents to release the family pension and all other pensionary benefits in favour of the Applicant with 12% interest on arrears;*
- (d) To direct the Respondents to release the AGIF in favour of the Applicant;*
- (e) To direct the Respondents to furnish the documents relating to Court of Inquiry of the husband of the Applicant;*

(f) To grant such relief appropriate to the facts and circumstances of the case as deemed fit and proper.

2. It is clear from the prayer that the case of the applicant revolves around two main grievances - first, grant of family pension to the applicant and second, release of AGIF benefits in her favour, in response to which, the Counter Affidavit dated 12.12.2023 filed on behalf of the Respondents 1 to 3 & 5 specifies vide Para 7 of the said Counter Affidavit to the effect:

"Subsequently, on receipt of requisite mandatory documents from 153 General Hospital, Army Medical Corps Record Office vide letter No 15433798M/Pension/FP/FSA dated 25 May 2023 (Photocopy annexed as Annexure R-10) processed pension claim documents, LPC-cum-Data Sheet, sheet roll and its connected documents to Office of the PAO (OR) AMC for their vetting for grant of family pension in favour of the applicant. After due examination, Office of the PAO (OR) AMC vide letter No PAO/CC/TECH/2022-23 dated 21 Jun 2023 (Photocopy annexed as Annexure R-11) has intimated to Army Medical Corps Records Office that, "...Clarification on release of Leave Encashment was asked on the basis of said Adjutant General's Branch order. It is pertinent to mention that the said personnel died on 22 Feb 2022 i.e before desertion DO II i.e 08 Mar 2022. It is further informed that the said case has been forwarded to HQs Office Delhi through PCDA (CC) Lucknow on 31 May 2023 for guidelines as the said Adjutant General's Branch letter dated 02 Aug 2022 is not received in the Office of the PAO AMC through PCDA(CC)/CGDA, New Delhi." On receipt of the same from Office of the PAO (OR) AMC, her claim will be further submitted to PCDA (P) Allahabad for their adjudication. The entire process will take few months as the multiple agencies are involved to release terminal/death benefits to the applicant."

3. From aforesaid Para 7 of the Counter-Affidavit, it can be safely concluded that the applicant is entitled for grant of family pension in view of reliance placed by the Respondents on the

Para 5 of the IHQ of MoD (Army)/MP-8(I&R) Letter No. A/20037/Pen/MP-8 (I&R)(A1) dated 02.08.2022 which reads to the effect:

“... An individual who dies during AWL/OSL/Desertion before dismissal remains Govt servant for all practical purposes and the family of the individual would be eligible for all pensionary benefits....”

4. With this issue clear and settled by the submissions in the Counter Affidavit, we are of the opinion that there is no dispute with respect to the grant of family pension for which the applicant is entitled, though we are constrained to make an adverse observation on the unreasonable delay on part of the Respondents in processing the claim, since, no update has been supplied to his Tribunal till 23.05.2025 when the case was heard on final arguments, and that it has been more than three years since the process for grant of family pension was initiated.

5. Moving ahead, we note that though the claim pertaining to grant of family pension has been settled, the issue with respect to grant of Leave Encashment has not been addressed by the PAO (OR) on the ground that the IHQ of MoD (Army)/MP-8 (I&R) Letter No. A/20037/ Pen/MP-8(I&R)(A1) dated 02.08.2022 has not been received by them.

6. With respect to the limited aspect of Leave Encashment,

we are of the considered opinion that with the acceptance by the Competent Authority that the deceased soldier is deemed to be in service even if declared deserter, there exists no doubt that the Leave Encashment has to be granted to the applicant, since, the applicant would have still been entitled had the deceased soldier been dismissed from service, as has been the settled law by this Tribunal. Thus, the applicant shall be entitled for grant of Leave Encashment.

7. We find that the second issue pertains to grant of AGIF benefits, to which vide Para 8 of the Counter Affidavit dated 12.12.2023 filed on behalf of the Respondents 1 to 3 & 5 responds to the effect:

As far as Army Group Insurance Fund is concerned, Army Medical Corps Record Office vide letter No 500622/Pen/AGIF/Death/2022 dated 23 Sep 2023 (Photocopy annexed as Annexure R-12) approached Army Group Insurance Fund, New Delhi for necessary clarifications/directions in this regard. After due examination, Army Group Insurance Fund, New Delhi vide letter No A/56273/Claim/Ins/AMC dated 19 Oct 2022 (Photocopy annexed as Annexure R-13) has intimated to Army Medical Corps Records Office that, "....No 15433798M Naik (Late) Narender Kumar was deserter wef 24 Nov 2021 and died during desertion period i.e 22 Feb 2022. As per MP-8(I of R) letter under ref, the indl is eligible for all pensionary benefits only. However, as per Para 26 of AO 23/2002/AGI 'no recovery will be made by PAO (OR) AMC in respect of deserter for the period of desertion. However, if an individual is re-instated, PAO (OR) concerned will recover the arrears of the deductions for the period of desertion'. In the instant case, the individual was not re-instated prior to his death and no recovery of AGI premium was made from the date of his desertion till his death. Hence, at the time of his death he was not a member of AGIF being deserter and consequently his NOK is not entitled for

regular insurance benefits under AGI Scheme. However, NOK of the indl is entitled for maturity benefits and the same can be preferred accordingly".

8. While similar averments have been made in the Para B (1) of the Counter Affidavit dated 30.05.2023 filed on the behalf of Respondent No. 4 i.e AGIF, there has been an addendum to the effect:

"However, the applicant is entitled to receive maturity benefit only from the Answering Respondent which has not yet been paid to her due to non-receipt of the claim documents from the AMC Records. The Answering Respondent will make the payment of maturity benefit to the Applicant immediately on receipt of claim documents from the AMC Records."

9. However, at this point, we find that vide Para 4 of the aforesaid Counter Affidavit, it has been stated by the R-4 to the effect:

"...During desertion period no pay & allowances are paid and accordingly no AGIF subscription is paid to AGIF to provide death insurance cover by the PAO (OR). However, the same may be considered for regular insurance benefit, subject to regularisation of the absence period by the competent authority as per Rules & Regulations and recovery of monthly subscription through respective Pay Account Office."

10. Admittedly, the deceased soldier was declared as 'Deserter' and his period of AWL has not been regularised. During his desertion period, deceased soldier died on 22.02.2022, at which point he was 'deserter'. Notwithstanding, we note that Para 26 of Army Order 23/2002/AGI deals with the grant of AGIF benefits to the soldiers declared as 'Deserter',

and the same reads to the effect:

"26. Deserters. No recoveries will be made by CDA (O)/PAO (OR) in respect of deserters for the period of desertion. However, if an individual is reinstated, the CDA (O)/ PAO (OR) will recover the arrears of the deductions for the period of desertion."

11. An analysis of the aforesaid provision would make it clear that since there is no recovery or subscription being deducted for the period of desertion, the individual no longer remains a beneficiary of AGIF, and the said position continues until the individual is reinstated, which in instant case has admittedly not happened.

12. Therefore, in view of the aforesaid observations, we are of the considered opinion that the applicant is entitled for grant of family pension including leave encashment and other consequential benefits. Alongside, applicant is further held entitled to maturity benefits of AGIF as accepted by the R-4 in their Counter Affidavit.

13. Noting the exceptional delay in processing the claims even when accepted by the authorities, Respondents are directed to ensure that the claim is processed and the benefits are granted to the applicant within two months from the date of pronouncement of this order, failing which the respondents shall have to pay interest @ 6% per annum till the date of actual

payment.

14. No order as to costs.

15. Pending miscellaneous application(s) if any, stand closed.

Pronounced in open Court on this 30th day of July, 2025.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

Akc/-