

COURT NO. 3  
ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

OA 164/2019

Ex Sep Barge Vinayak Rao Jotiram (Deceased)  
through Smt. Lata Vinayak Barge ..... Applicant  
Versus  
Union of India & Ors. .... Respondents

For Applicant : MS. Archana Ramesh, Advocate  
For Respondents : Mr. Neeraj, Sr. CGSC, Advocate with  
Mr. Rudra Paliwal, Advocate and  
Mr. Sanjay Pal, Advocate

Dated: 19<sup>th</sup> March, 2026

CORAM

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

ORDER

The applicant in the present OA filed under Section 14 of the Armed Forces Tribunal Act, 2007, seeks the following reliefs:

*(i) Quash and set aside the rejection order dated 19.03.2018 issued by the GOC-in-C, South Western Command, as conveyed through letter dated 08.04.2018 issued by 16 MARATHA LI (Annexure A-1); and*

*(ii) Direct reconsideration of his mercy appeal by the ADGPS, Army Headquarters, contending that the said authority is the competent authority in terms of the Government of India, Ministry of Defence policy letter dated 14.08.2001 (Annexure A-4), and to grant service pension to the applicant from the date of his dismissal from military service, i.e., 10.11.1988, with arrears and penal interest at the rate of 12%, in terms of the Pension Regulations for the Army, 1961, and in the light of the*

*judgments rendered by the Principal Bench and the Chandigarh Bench of this Tribunal.*

2. During the pendency of the proceedings, on 5<sup>th</sup> March, 2019, learned counsel for the applicant informed the Tribunal that the applicant had expired in January 2019. Thereafter, the widow of the applicant, Smt. Lata Vinayak Barge, was brought on record as the legal representative.

3. The facts of the case, in brief, are that the deceased was enrolled in the Army on 4<sup>th</sup> February, 1972 and was thereafter posted to 16 MARATHA LI with effect from 16<sup>th</sup> February, 1973. Despite being a senior Non-Commissioned Officer and discharging the duties of Company Havildar Major (CHM) in the Battalion, while deployed in a Field Area, the deceased exhibited a lackadaisical attitude and committed repeated acts of indiscipline. After remaining absent from duty from 11<sup>th</sup> September, 1988, when he was asked to move to forward area, the deceased ultimately rejoined duty voluntarily after 22 days on 2<sup>nd</sup> October, 1988, as per the applicant (since deceased) he absented due to ill health of his spouse. In view of his willful absence despite being

specifically detailed and ordered to report to a Forward Company of his Battalion deployed in a High Altitude Area and finding him to be an indisciplined soldier his further retention in service was considered prejudicial to the interest of the organization and he was accordingly tried by a Summary Court Martial on 10<sup>th</sup> November, 1988 for the offence under Section 39(a) of the Army Act and was sentenced “to be reduced to the ranks, to undergo rigorous imprisonment for six months by confinement in a civil prison, and to be dismissed from service.” He was thereafter rendered ineligible for pension or gratuity in respect of his previous service. The deceased thereafter on 18<sup>th</sup> November, 2016 submitted a mercy petition seeking grant of service pension and other terminal benefits in terms of the policy dated 28<sup>th</sup> March, 2009. The said petition was duly considered and rejected as being devoid of merit and substance, leading to the filing of the present OA.

4. Learned counsel for the applicant submitted that the rejection of the mercy petition by the GOC-in-C, South Western Command, is without jurisdiction and is not in terms of the Government of India, Ministry of Defence policy

letter dated 14<sup>th</sup> August, 2001. As per the said policy, in cases involving dismissal from service, the Additional Director General of Personnel Services (ADGPS), Army Headquarters, is the competent authority to consider mercy petitions and since the rejection order has been issued by an authority lacking competence, the same is liable to be quashed on this ground alone. It is further contended that the mercy appeal has been rejected in a mechanical manner, without due consideration of the fact that the applicant had rendered more than 16 years of qualifying service prior to dismissal. Learned counsel also argued that dismissal from service does not *ipso facto* disentitle an individual from pensionary benefits, particularly where the employee has completed the requisite qualifying service. The deceased had completed the minimum qualifying service prescribed under the Pension Regulations for the Army, 1961 for grant of service pension and therefore his claim for service pension ought to have been considered independently of the punishment of dismissal. It is submitted that his case deserves consideration in the light of the policy dated 28<sup>th</sup> March, 2009 which has been applied retrospectively in several cases to ease hardship

and the applicant ought not to be excluded merely on account of dismissal, especially when the misconduct did not involve moral turpitude or acts against national security. The learned counsel further submitted that the punishment awarded by the Summary Court Martial is grossly disproportionate to the alleged misconduct. Even assuming the offence under Section 39(a) of the Army Act stood proved, the extreme penalty of dismissal resulting in forfeiture of pension is unduly harsh. It is argued that the delay in submission of the mercy petition, which was due to lack of legal awareness, should not be used to deny substantive relief to the deceased. The deceased seeks parity with similarly situated ex-servicemen who, despite dismissal or discharge under penal circumstances, have been granted pensionary relief by the Armed Forces Tribunal, Principal Bench and Regional Bench, Chandigarh. Therefore, denial of similar relief to the applicant amounts to discrimination and is violative of Article 14 of the Constitution.

5. The learned counsel for the applicant also submitted that even though under sub section (e) and sub section (h) of Section 71 of the Army Act, 1950 the GCM has powers to

award the punishment of dismissal from service and forfeiture of service for the purpose of increased pay, pension or any other prescribed purpose, but it chose not to do so and limited the punishment only to dismissal from service because it had considered that dismissal alone was sufficient punishment for the offence(s) and there was no need to inflict an additional punishment of forfeiture of pension. She further submitted that merely because the punishment of cashiering, dismissal or removal has been imposed by the Court Martial, the pensionary benefits under Regulation 16(a) or other benefits do not stand forfeited. In support of her contentions learned counsel has placed reliance on the following judgments of this Tribunal to contend that this Tribunal has consistently exercised equitable jurisdiction to prevent disproportionate hardship in cases where long and otherwise qualifying service stood forfeited solely on account of dismissal and, therefore, even without disturbing the finding of guilt, this Tribunal may direct reconsideration of the mercy petition by the competent authority or grant limited pensionary relief in order to

uphold the constitutional mandate of fairness under Article 14.

(a) *Swr Manoj Singh Bhadauriya Vs. Union of India and others* (OA No.527 of 2013 decided by this Tribunal on 26.11.2024);

(b) *Sep Pravin Kumar Mohan Lal Vs. Union of India and others* (OA No.439 of 2013 decided by this Tribunal on 21.01.2015);

(c) *Ex Sep Mohd. Allaudin Ansari Vs. Union of India and others* (OA No.1080 of 2016 decided by this Tribunal on 23.12.2016);

(d) *Brig GS Kahion Vs. Union of India and others* (TA No.321 of 2009 decided by the Chandigarh Bench of this Tribunal on 23.04.2010); and

(e) *Ex Hav Parshuram Keru Mathane Vs. Union of India and others* (OA Nos.745 of 2015 decided by this Bench on 12.07.2016);

6. Learned counsel for the respondents, on the other hand, submitted that the deceased was lawfully tried by a Summary Court Martial for an offence punishable under Section 39(a) of the Army Act. The trial was conducted strictly in compliance with the provisions of the Army Act and the Rules framed thereunder. The sentence of reduction to ranks, rigorous imprisonment for six months and dismissal from service was awarded by a competent authority and has attained finality in view of the fact that the deceased has

neither challenged the court martial proceedings nor the sentence for all these years.

7. In this context, reliance is placed on the decision in Union of India and others Vs. Subedar Ram Narayan [(1998) 8 SCC 52], wherein the Hon'ble Supreme Court rejected the claim for pension, holding that unless the order of dismissal itself is set aside, the individual is not entitled to invoke the pension regulations. The Court further observed that in view of the gravity of misconduct whenever the individual absented himself instead of moving to the forward area, interference with the dismissal order was not warranted. Learned counsel further submitted that similar principles have been reiterated by the Hon'ble Supreme Court in the cases of Shish Ram Vs. Union of India and others [(2012) 1 SCC 290], Ex-Sepoy Madan Prasad Vs. Union of India and others (Civil Appeal No. 246 of 2017 decided on 28.07.2023) and Shamsher Singh Vs. Union of India and another (Criminal Appeal No. 216 of 2016 decided on 3<sup>rd</sup> March, 2020). It is, therefore, contended that the applicant having neither challenged nor succeeded in setting aside the Summary Court Martial proceedings or the

dismissal order cannot seek pensionary benefits by invoking mercy jurisdiction or liberalised policies.

8. Learned counsel for the respondents further submitted that the reliance placed by the applicant on the decisions in *Swr Manoj Singh Bhadauriya, Sep Pravin Kumar Mohan Lal, Ex Sep Mohd. Allaudin Ansari, Brig GS Kahion* and *Ex Hav Parshuram Keru Mathane* (supra) is wholly misconceived, as each of those cases turned on their own peculiar facts where either the dismissal itself was interfered with or justifying and reasonable considerations were found warranting limited relief; whereas in the present case the applicant was tried by a duly constituted Summary Court Martial for unauthorized absence in a Field Area at a critical operational stage, the dismissal order dated 10<sup>th</sup> November, 1988 has attained finality and has never been challenged and Regulation 113(a) of the Pension Regulations for the Army, 1961 expressly renders a dismissed individual ineligible for pension in respect of past service.

9. It is contended that the deceased individual's service record reveals repeated acts of indiscipline, including punishments for overstaying leave under Section 39(b) of the

Army Act in January 1987 and December 1987 as reflected hereunder.

| Sl. No. | Date and Place of Award    | Army Act Section | Offences                                   | Punishment Awarded             |
|---------|----------------------------|------------------|--|--------------------------------|
| (a)     | <u>23.01.1987</u><br>Field | AA Section 39(b) | Without sufficient cause overstaying leave | Severe Reprimand               |
| (b)     | <u>02.12.1987</u><br>Field | AA Section 39(b) | Without sufficient Cause overstaying leave | 10 days' Rigorous Imprisonment |

Despite being a senior Non-Commissioned Officer and functioning as Company Havildar Major, the deceased continued to exhibit lack of discipline. It is further submitted that his absence on 11<sup>th</sup> September, 1988, at a critical time when the Battalion was deployed in a Field Area and he being specially detailed and ordered to report to a Forward Company, is a very serious offence and clearly established him as a habitual offender whose continued retention in service was prejudicial to military discipline and such conduct cannot be equated with routine civil misconduct. The punishment awarded was thus commensurate with the

gravity of the offence. It is submitted that under the Pension Regulations for the Army, 1961, dismissal from service as a measure of punishment entails forfeiture of past service, rendering the individual ineligible for pension and gratuity and, therefore, his past service stood forfeited by operation of law.

10. The respondents have further submitted that the deceased's mercy petition dated 18<sup>th</sup> November, 2016 was duly examined and rejected as being devoid of merit. A mercy petition does not confer a statutory right to relief but it is a discretionary remedy. Merely because the decision was adverse does not render it illegal or arbitrary. The Competent Authority considered the nature of offence, past conduct and the circumstances under which the dismissal was ordered. There is no document or pleadings by the deceased to demonstrate any enforceable legal right requiring reconsideration of his mercy petition by another authority. Accordingly, learned counsel for the respondents submitted that the rejection of the deceased mercy petition and the denial of service pension are strictly in consonance with the statutory regulations and the law laid down by the Hon'ble

Supreme Court and thus the OA is liable to be dismissed. It is further submitted that the deceased's claim is an afterthought, raised nearly 28 years after dismissal and is liable to be rejected on this count as well.

11. Learned counsel further submitted that the policy dated 28<sup>th</sup> March, 2009 relied upon by the deceased has no application to cases of dismissal awarded as a punishment by court martial. The said policy cannot override the statutory provisions of the Army Act and the Pension Regulations. Personnel dismissed for grave misconduct are expressly excluded from pensionary benefits and the applicant cannot claim retrospective benefit of a liberalised policy contrary to law. The respondents also contended that the judgments of the AFT Principal Bench or RB Chandigarh relied upon by learned counsel for the deceased are distinguishable on facts.

12. In support of the impugned action and to deny the reliefs claimed by the deceased, learned counsel for the respondents has placed reliance on the pronouncements of the Hon'ble Supreme Court and the relevant statutory regulations governing court martial proceedings and pensionary entitlements. It is submitted that the punishment

awarded to the applicant by the Summary Court Martial was well within the statutory discretion vested in the court martial. The Hon'ble Supreme Court has categorically held that nothing contained in Regulation 448 of the Defence Services Regulations can be construed as limiting the discretion of the court martial to award any legal or higher sentence depending upon the facts and circumstances of the case. With respect to the claim for pension and gratuity, learned counsel has drawn attention to Regulation 113(a) of the Army Pension Regulations, 1961, which provides that an individual who is dismissed from service under the provisions of the Army Act is ineligible for pension or gratuity in respect of all previous service. The Regulation makes it clear that only in exceptional cases and purely at the discretion of the Hon'ble President of India such a person may be granted service pension or gratuity, subject to the prescribed limitations.

### **ANALYSIS**

13. There are two questions before us (i) whether the mercy appeal has been dealt with by the incorrect Competent Authority and should be sent for the reconsideration of the

Authority as per MoD Policy dated 14<sup>th</sup> August, 2001. ( In the present case it was dealt with by GoC-in-C whereas as per 2001 policy it should be considered by the ADG PS.) and (ii) Can pension be granted in cases of dismissal despite Regulation 113(a) of the Pension Regulations for the Army, 1961?

14. There is no denial of the fact that the deceased was tried by a Summary Court Martial on 10<sup>th</sup> November, 1988 for an offence under Section 39(a) of the Army Act and was awarded the punishment of reduction to ranks, rigorous imprisonment for six months and dismissal from service. The deceased did not challenge either the court martial proceedings or the order of dismissal at any point in time, however submitted a mercy petition in 2016 which was turned down by the GoC-in-C duly stating as under:

*"1. I have examined the mercy petition dated 16 November 2016 submitted by Number 2765149N Ex Sepoy Barge Vinayakrao Jotiram of 16 MARATHA LIGHT INFANTRY, in light of recommendations of Commanders in chain, relevant documents placed on records and relevant rules on the subject.*

*2. Perusal of the individual's disciplinary records show that the individual had been punished twice for offence under Army Act 39 (b) (overstayal of leave) in the year 1987. The individual in 1988, while serving in an operational area, absented himself without leave, when he was ordered to proceed to a forward locality/post. He remained absent from 11 September 1988 to 02 October 1988. For the offence, the*

*individual was tried under Section 39 (a) of the Army Act and was awarded the punishment of "To be reduced to ranks, Rigorous Imprisonment for six months by confinement in civil prison and to be dismissed from service", by Summary Court Martial held on 10 November 1988.*

*3. The petitioner has prayed in his petition that, he was neither given copy of Court of Inquiry, Summary of Evidence nor given copy of Court Martial proceedings, hence he could not appeal, that he should be pardoned by setting aside the punishment of dismissal by the Summary Court Marital and the punishment be diluted to the extent that the dismissal be read with grant of pension commensurate with the qualifying service rendered.*

*4. Perusal of the documents on record (Records MARATHA LIGHT INFANTRY letter dated 21 May 1991) reveal that the petitioner was provided with all the documents relevant to the case before his trial, namely, copy of Summary of Evidence and the charge sheet, and a proper receipt was obtained from the individual*

*5. As regards the issue of setting aside the punishment of dismissal, it is evident from the Memorandum given by the Commanding Officer under Army Rule-130, that award of dismissal was given to him since he had committed the offence fully knowing that he was detailed to go and join a Forward Company of the Unit in a high altitude area. He had absented from Unit lines from 11 September 1988 to 02 October 1988 while under orders to move to operational area. Besides, he had committed the offence of overstayal on two earlier occasions also and was punished for the same. The offence of Absent Without Leave from field, when he was ordered to proceed to a Forward Company in operational area, is a serious offence, for which he has been suitably punished. The punishment in the given facts and circumstances of the case, appears to be commensurate with the offence committed by the petitioner.*

*6. As regards the question of granting him service pension, there does not seem to be any valid and legal ground for the same, that too after almost 30 years of his dismissal from the service. Additional Directorate General Personnel services, Adjutant General's Branch letter Number 13/38022/Misc/AG/PS-4 (IMP-1) dated 26 March 2009 stipulates that each case should be examined on its merits and pensionary benefits be recommended only in deserving cases. Given the present facts. of the case, no special situation has been brought on record, to merit sympathetic consideration. The authorities in chain have recommended against grant of pensionary benefits to the individual and I agree with the same.*

*7. In view of the foregoing, I direct that the mercy petition dated 18 November 2016 submitted by Number 2765149N Ex Sepoy Barge Vinayakrao Jotiram of 16 MARATHA LIGHT INFANTRY with request for pardon by setting aside of Summary Court Martial proceedings and alternatively the punishment of*

*dismissal from service be diluted to the extent that he can be granted pensionary benefits, be rejected, being devoid of any merit and substance.*

Station : Jaipur  
Dated: 19 March 2018 General Officer Commanding-in-Chief

*Sd/-*  
*Cherish Mathson*  
*Lieutenant General*

15. The principal challenge raised by the deceased pertains to the competence of the authority that rejected the mercy petition stating that the same is in violation of para 1(a)(x) and 5 of the policy letter dated 14<sup>th</sup> August, 2001. Policy letter dated 14<sup>th</sup> August, 2001 reads as under:

*No 4684/DIR (PEN) 2001*  
*Government of India*  
*Ministry of Defence,*  
*Department of Defence,*  
*New Delhi, the 14<sup>th</sup> August, 2001*

**ORDER**

*1. Sanction is hereby accorded in pursuance of MOD ID No. 34(3)/2001/D(O&M) dated 03.08.2001 for delegation of administrative powers with the approval of Raksha Mantri to the Service Headquarters in respect of the subjects indicated below:-*

*(a) (i) Division of family pension between eligible family members.*

*(ii) Initial cases for award of Special Family Pension and ex gratia for officers with concurrence from PCDA (Pensions) Allahabad or the concerned CDA.*

*(iii) Recovery from pensionary benefits first charge being Public Fund dues thereafter Non-Public Fund dues from the residual benefits.*

*(iv) Payment of dues to NOK of Deserters.*

*(v) Condonation of shortfall in Qualifying Service for grant of pension in respect of PBOR beyond six months and upto 12 months.*

(vi) *Time bar sanction for filing appeals for Ordinary Family Pension, Special Family Pension, Disability Pension etc in respect of officers and PBOR beyond 12 months.*

(vii) *Grant of Ex-gratia award to cadets on death/disability within the Government approved terms and conditions.*

(viii) *Pensionary award to officers dismissed from Service otherwise than with disgrace/cashiered.*

(ix) *Pensionary award to officers who are discharged, called upon to resign or are retired.*

(x) *Grant of Pension to PBOR dismissed from Service.*

(xi) *Grant of Disability Pension to officers.*

(xii) *First appeal against rejection of Ordinary Family Pension, Special Family Pension, Disability Pension/Ex Gratia award etc to officers and PBOR.*

(xiii) *First claim for pension and gratuity submitted after 12 months from due date where Pension Sanctioning Authority is not satisfied with reasons for delay.*

(xiv) *Implementation of Judgments delivered by various Courts/CATs including those with financial implications where further appeal is not contemplated.*

(b) *Approving Authority in the Service HQrs in respect of the above subjects will be AG/COP/AOP/AOA as the case may be. Any further re-delegation of these powers will require prior approval of Ministry of Defence.*

(c) *Authenticative Authorities for authenticating of orders/documents will be the authorities as specified in Ministry of Home Affairs SO No 2297 dated 3.11.1958. Further, the plaints/ written statements in suits in any Court of civil jurisdiction or in writ proceedings by/or against the Central Government shall be signed by the authorities indicated in the Ministry of Law's Notifications dated 14.2.1990. Any further devolution of powers in this regard will require approval of MHA and Ministry of Law respectively. Proposed for this purpose, if need be, may be initiated by the Service HQrs and be referred to these Ministries for issue of necessary corrigendum through D(O&M) Section of this Ministry.*

(d) *Concurrence of Integrated Finance shall continue to be obtained wherever required as hithertofore without involving this Ministry.*

2. *The relevant Regulation (s) of Pension Regulation for Army/Navy/Air Force shall stand amended accordingly. Formal amendments to Pension Regulation will, however be issued in due course of time.*

3. *In case Pensions Regulations and any other Govt orders/instructions are required to be amended, necessary proposals in this regard will be initiated by the Service HQrs.*

4. *Cases for RM's Approval will be submitted, wherever required, by the Services HQrs after approval of AG/COP/AOP/AOA. Wherever required such cases should be routed through the Pension Branch of this Ministry.*

5. *As regards to composition of First Appellate Committee (FAC) the Chairperson of the Committee shall be the AG/COP/AOP in the respective Service HQrs in place of Director/Dy Secretary in charge of Pension Division in the Ministry of Defence. The other members of the Committee shall continue to be the same. The composition of the Second Appellate Committee headed by RM/RRM will remain unchanged. However, the cases shall be submitted for recommendations of the Members of the Committee and approval of RM/RRM direct by the Service HQrs.*

6. *These orders will take effect from the date of issue.*

7. *This issue with the concurrence of Defence (Finance) vide their U.O No 1539/Addl. FA (b) dated 13<sup>th</sup> August, 2001.*

*Sd/-*  
*(SUDHAKAR SHUKLA)*  
*DIRECTOR (PENSIONS)*

16. However, reading this letter in isolation does not give a correct picture. We need to read the said order along with other orders which have been issued on this subject at various occasions in the past and have been enclosed by the respondents as Annexure R-1 and R-2 to the counter affidavit. Annexure R-1 and R-2 read as under:

(S)

ANNEXURE 2-1

No. 12(6)/95/D(Pen/Ser's)  
Government of India  
Ministry of Defence  
New Delhi,  
the 9th June, 1999.

To

The Chief of the Army Staff.

Subject : Amendment to Regulation 16 & 113 of Pension Regulations for the Army, 1961.

Sir,

I am directed to state that under the provision of Regulation 113(a) of Pension Regulations for the Army, (Part-I), 1961, as amended vide CS No. 80/IV/67 a PBOB who is dismissed under the provisions of the Army Act is ineligible for pension and gratuity in respect of all previous service though in exceptional cases, President may at his discretion, grant service pension or gratuity or both at a rate not exceeding that for which he would have otherwise qualified had he been discharged on the same date. Similar provisions in respect of commissioned officers do not exist vide Regulation 16 of PRA (Part-I), 1961. The disparity in the provisions has been engaging attention of the Government for some time past.

2. It has now been decided that all Indian Army personnel including commissioned officers who are cashiered/dismissed under the provisions of Army Act, 1950 or removed under AR 14 i.e. as a measure of penalty, will be ineligible for pension or gratuity in respect of all previous service. In exceptional cases, however, the competent authority on submission of an appeal to that effect may at his discretion sanction pension/gratuity or both at a rate not exceeding that which would be otherwise admissible had the individual so cashiered/dismissed/removed been retired/discharged on the same date in the normal manner.

3. An individual who is compulsorily retired or removed on grounds other than misconduct or discharged under the provisions of Army Act, 1950, and the rules made thereunder, remains eligible for pension and/or gratuity as admissible on the date of discharge. This will sub-note apply to cases of dismissal/removal converted into discharge subsequently.

4. All appeals to the Competent Authority in this regard will be preferred within two years of the date of cashiering/dismissal/removal.

0100002/

(6)

-2-

- 5. Competent Authority for the above provisions will be President in case of Commissioned Officers and GOC-in-C of command in whose jurisdiction the individual's record office in respect of JCOs/ORs. Competent Authority for the purpose of Regn 3 of PRA (Pt-1) as mentioned in Regn 22 (Table VI) of PRA (Pt.11) will also be the GOC-in-C.
- 6. Pension Regulations for the Army will be amended in respect of the above provisions in due course.
- 7. The provisions of this letter shall come into effect w.e.f. 1.1.1996. However, the cases decided between 1.1.96 till date of issue of this letter will not be re-opened.

Yours faithfully,

*(Signature)*

(Ankit Lal)

Under Secretary to the Govt. of India,

Copy to :-

- 1. CAS
- 2. All Command HQrs
- 3. CGDA(P)
- 4. CGDA
- 5. CDA(Air Force)
- 6. CDA(Navy)
- 7. CDA(PD)
- 8. CDA(O)
- 9. AG/PS-4
- 10. JAG Deptt.
- 11. NS(PN)
- 12. NS(Legal)
- 13. All Pers. Dcos of Army HQrs
- 14. All Record Offices
- 15. Min. of Defence, D(Pen/Sors)
- 16. Defence(Fin/Pen)
- 17. DPE&N, Air HQrs
- 18. DPA, Naval HQrs
- 19. DPA, Army HQrs
- 20. DPA, Navy HQrs

With the request that immediate steps may be taken for making similar amendments in Air Force/Navy Pension Regulations.

ANNEXURE R-2

No. 12(6)/95/D(Pen/Sers)  
Government of India  
Ministry of Defence  
New Delhi, the 10th August, 2000.

CORRIGENDUM

Subject : Amendment to Regulation 16 and 113 of Pension Regulations for the Army, 1961.

The following amendments are made to this Ministry's letter No. 12(6)/95/D(Pen/Sers), dated 9th June, 1991 on the above subject :-

(a) Para 5

Delete all entries of para 5 and insert the following:-

"Competent authority both for commissioned officers and PWORs for Regulations 16 and 113 of Pension Regulations for the Army, 1961 will be the President."

(b) Para 7

Delete all entries of para 7 and insert the following:-

"Provision of this letter shall come into effect with effect from the date of issue of this Ministry's letter No. 12(6)/95/D(Pen/Sers) dated 9th June, 1999. However, past cases will be decided as hitherto-fore."

2. This is issued with the concurrence of Min. of Defence (Fin/Pen) vide their UO No. 2747/Pen/2000, dated 28.7.2000.

*Amul Lal*  
(Amul Lal)

Dy. Secretary to the Govt. of India

To  
The Chief of the Army Staff

Copy to :-

1. CAS
2. All Command HQs
3. CCDA(P)
4. CDA(Air Force)
5. CDA(PD)

6. CNS
7. CGDA
8. CDA(Army)
9. CDA(C)
10. IAO Deptt.

P.T.O.

17. From the reading of para (b) of Annexure R-2 dated 18<sup>th</sup> August, 2000 in conjunction with Annexure R-1, dated 9<sup>th</sup> June, 1999, it is evident that the Competent Authority to consider and take decision on an appeal preferred by a JCO/Ors. who was dismissed in 1988 is GOC-in-C of the command. Hence the mercy petition has been rightly dealt with by GoC-in-C on 19<sup>th</sup> March 2018. Therefore the argument of the deceased that the Mercy Petition was decided by an authority not competent to deal with the Mercy Petition cannot be accepted and the question of its reconsideration, in the present circumstances, does not arise. We, therefore, hold that the Mercy Petition of the deceased was decided by the correct competent authority.

18. Even assuming some procedural irregularity in the processing or consideration of the mercy petition has taken place, the same does not *ipso facto* confer a right to pension or mandate automatic reconsideration unless prejudice of a substantive nature is demonstrated. A mercy petition is not a statutory remedy but a discretionary one.

19. Now coming to the second issue that even in cases of dismissal pension can be granted, reliance has been placed by

learned counsel for the applicant on several judgments, viz., *Swr Manoj Singh Bhadauriya*, *Sep Pravin Kumar Mohan Lal*, *Ex Sep Mohd. Allaudin Ansari*, *Brig GS Kahion* and *Ex Hav Parshuram Keru Mathane* is misconceived. On analyzing these judgments, we find that all these cases are clearly distinguishable and the offences committed by the personnel involved in these cases were not as grave as the one in case of the applicant. In some cases there were irrefutable procedural irregularities. In the case of *Swr Manoj Singh Bhadauriya* the applicant was a habitual drinker and no show cause notice was issued to him; in *Sep Pravin Kumar Mohan Lal* the applicant was dismissed from service for violation of good order for losing identity card and for intoxication and such a decision was taken even before issuance of show cause notice; in *Ex Sep Mohd. Allaudin Ansari* the relief was granted on the premise that Sr. Record Officer had no authority to decide the applicant's mercy appeal filed under Regulation 113 (a) of the Pension Regulations; in *Brig GS Kahion* the charges were of financial irregularities and laxity of supervision and in *Ex Hav Parshuram Keru Mathane* the applicant had overstayed the

leave period whereas in the case before us the applicant was tried by a duly constituted Summary Court Martial for an offence of very serious nature. On 11<sup>th</sup> September, 1988 he absented himself at a critical time when the Battalion was deployed in a field area and he was especially detailed and advised to report to a forward company in an operational area. This is an extremely serious offence for a soldier who is detailed for an operational duty in forward area along with his battalion. More over at this belated stage his dismissal order has attained finality since it was never challenged.

20. The learned counsel for the respondents have relied upon Subedar Ram Narayan (supra), wherein the Hon'ble Supreme Court rejected the claim of the applicant for pension holding that unless the order of dismissal itself is set aside, the individual is not entitled to invoke the pension regulations. In Shish Ram, Ex-Sepoy Madan Prasad and Shamsher Singh (supra), relied upon by learned counsel for the respondents similar principles have been reiterated. The applicant in the present case having neither challenged nor succeeded in setting aside the Summary Court Martial proceedings or the dismissal order hence cannot seek pensionary benefits by

invoking mercy jurisdiction or liberalised policies. The deceased was dismissed as a measure of punishment for serious misconduct involving unauthorised absence at a critical time when the Battalion was deployed in a Field Area. Despite being specially detailed and ordered to report to a Forward Company, he absented himself. Therefore, the dismissal having attained finality, the deceased is not entitled to service pension under the Pension Regulations for the Army, 1961.

21. Regulation 113(a) of the Pension Regulations for the Army 1961 clearly 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. The only exception under the said Regulation is through mercy appeal which in this case has been rejected in 2016 by GOC –in - C.

22. From the above discussion it is evident that the dismissal order has remained final since 1988. The misconduct involved serious absence during operational deployment in a Field Area. There were earlier punishments showing habitual indiscipline. Mercy appeal has been rejected in 2016 by the

Competent Authority. The judgments relied upon by learned counsel for the applicant do not support the deceased's claim, as the present case stands on entirely different facts and is governed by binding Supreme Court law.

23. In view of the foregoing discussion and findings on each of the issues raised, we hold that the deceased has failed to establish any legal or equitable right to seek reconsideration of the mercy petition or grant of service pension. The Original Application is thus devoid of merit and is accordingly dismissed. There shall be no order as to costs.

Pronounced in open Court on this 19<sup>th</sup> day of March 2026.

  


[RASIKA CHAUBE]  
MEMBER (A)



[JUSTICE NANDITA DUBEY]  
MEMBER (J)

/ vks/Alex/