

Govt. of India letter of 03.06.1988 (Annexure A2) provides for dealing with cases of personnel who are missing and entitlement of service benefits and family pension to the next of kin. Then, Govt. of India letter of 23.03.1992 provides for reckoning the date of disappearance of missing personnel from the date the FIR is lodged (Annexure A3). Then, vide Govt. of India letter of 26.08.1992, the family pension is to be paid after six months of lodging of FIR (Annexure A4). Then, a number of judgments of Hon'ble the Supreme Court, Rajasthan High Court and Chennai and this Bench of AFT have been relied upon by the petitioner.

With the above alleged facts, directions are sought for quashing of the Records 14 Gorkha Rifles letter dated 07.12.2012 rejecting the claim of the petitioner for family pension and gratuity.

Written statement has been filed by the respondents and it is stated that the husband of the petitioner while serving with 5/4 Gorkha Rifles was granted 68 days' annual leave from 03.09.2005 to 09.11.2005. He overstayed leave w.e.f. 10.11.2005 and did not report back for duty. Accordingly, Court of Inquiry (CoI) was held to investigate the circumstances under which Havaldar Yub Raj Gurung had overstayed leave w.e.f. 10.11.2005 (Annexure R1). The petitioner being the next of kin was informed vide telegram dated 11.11.2005 that her husband was absent without leave (Annexure R2) and to intimate his whereabouts which was replied by her vide letter dated 08.12.2005 (Annexure R3). The Records 14 Gorkha Rifles vide letter dated 14.05.2006 (Annexure R4) intimated the Indian Embassy, Kathmandu that Havaldar Yub Raj Gurung had been declared deserter w.e.f. 10.11.2005. The Record Office thereafter forwarded the documents for payment of dues to next of kin (Annexure R5). It was further stated that as revealed in the Court of Inquiry, the husband of the petitioner was at GRD Kunraghat, Gorakhpur (Uttar Pradesh) where he met Rifleman Uttam Thapa of 5/4 Gorkha Rifles, who had gone to GRD Kunraghat, Gorakhpur for treatment of his mother on 24.09.2005. When Rifleman Uttam Thapa was leaving for Calcutta, Havaldar Yub Raj Gurung also joined him. Both the individuals boarded the same train at around 0800 hours. The train reached Chhapra Station at 1700 hours where Havaldar Yub Raj Gurung got down to fetch water (as stated by Rifleman Uttam Thapa in the CoI) but did not return thereafter. He was declared a deserter w.e.f. 10.11.2005. 5/4 Gorkha Rifles vide letter No 5346019/DESC/L dated 14.06.2006 (Annexure R7) issued desertion / apprehension roll (Not FIR). Copy was also sent to his wife, the petitioner. He was struck off the rolls w.e.f. 10.11.2008, as laid down in Army Act, Section 20 (3). There is no documentary evidence regarding registration of FIR with the Railway Police at Chhapra available in the service record of the

husband of the petitioner. The husband of the petitioner was declared deserter based on facts brought out in the Court of Inquiry and in accordance with Army Order 1/2003/MP (Annexure R8).

As the husband of the petitioner had been dismissed from service as a deserter, he forfeited all former service for pensionary and other benefits. He was accordingly not entitled to any pension in accordance with Regulation 123 of the Pension Regulations for the Army, 1961. Consequently she was not entitled to family pension.

Heard the learned counsel for the parties and perused the record.

The husband of the petitioner, Havaldar Youb Raj Gurung, was granted 68 days Annual Leave from 03.09.2005 to 09.11.2005. There is nothing to show that he was granted any sick leave or that he had been hospitalised prior to proceeding on leave. Perusal of the Court of Inquiry (Annexure R1) and from the statement of Rifleman Uttam Thapa of the same unit it appears that Havaldar Youb Raj Gurung was already staying at GRD Kunraghat, Gorakhpur, when Rifleman Uttam Thapa went there on 23.09.2005. Havaldar Youb Raj Gurung decided to proceed to Kolkota along with Rifleman Uttam Thapa who was returning to his unit on expiry of his leave. They both boarded the train on 24.09.2005 and reached Chhapra at about 1700 when Havaldar Youb Raj Gurung got down allegedly to fetch drinking water. He did not return. Rifleman Uttam Thapa waited till the next two stations and reported the matter to the Station Master at Sonpur Station who advised him to lodge a report with the MCO (Movement Control Organisation of the Army). As there was no MCO at Sonpur he boarded the train and proceeded to Kolkota and reported the matter to his unit authorities.

The husband of the petitioner was on leave till 09.11.2005. While on leave he was staying at GRD Kunraghat, Gorakhpur. On meeting Rifleman Uttam Thapa he decided to travel with him to Kolkota. He had neither been recalled from leave nor admitted in any hospital from where he was allegedly transferred to Command Hospital, Kolkota. He had not rejoined his unit on expiry of his leave. He was accordingly treated as having overstayed leave and consequently declared a deserter. He was subsequently struck off from the rolls on expiry of three years on 10.11.2008 as per rules.

On receipt of telegram dated 11.11.2005 (Annexure R2) from the unit intimating overstaying of leave, the petitioner vide letter dated 08.12.2005 (Annexure R3) had intimated that on receipt of the telegram she had left her home and had intimated the change of

address; however, nothing has been indicated about the whereabouts of her husband.

The petitioner made a number of representations for grant of family pension (Annexure A9 Collectively), however, he having been struck off the rolls (dismissed) as a deserter, the same was denied. The husband of the petitioner had neither been apprehended to date nor are his whereabouts known. We find that vide Pg 60 of Annexure A9 Collectively, the district police has issued a certificate dated 26.07.2008 stating that Indian Army soldier No 5346018 Havaldar of 5/4 Gurkha Rifles was intimated to be missing by Smt Khushi Maya Gurung from 10.11.2005 and his whereabouts are not known to date. This may be treated as an FIR of missing personnel for the purposes of entitlement to family pension.

Consequent to the individual having gone missing on 24.09.2005 nothing has been shown to indicate his whereabouts, apprehension or death. The individual remains missing to date. Under the circumstances we set aside the declaration of Havaldar Youb Raj Gurung as a deserter vide 5/4 Gorkha Rifles letter No 5346019/DESN/C dated 14.06.2006 (Annexure A1). The individual to be accordingly treated as 'missing' and FIR to that effect having been lodged on 26.07.2008.

In view of the foregoing, Records 14 Gorkha Rifles letter No 5346019/SR/LIB/NE4 dated 07.12.2012 (Annexure A10) is set aside and we hold the petitioner entitled to all benefits accruing to next of kin of missing personnel in accordance with policy and rules on the subject.

The respondents are directed to carry out necessary calculations and make payment of the dues to the petitioner within four months from the date of receipt of certified copy of this order.

[Justice Vinod Kumar Ahuja]

[Lt Gen (Retd) N.S.Brar]

11.11.2013

RS

Whether the judgment for reference
is to be put on internet?

Yes/No