

FROM NO. 21

(SEE RULE 102(1))

ARMED FORCES TRIBUNAL, KOLKATA BENCH

APPLICATION NO : TA NO. 63 OF 2011

ON THIS 12th DAY OF APRIL 2013

CORAM

HON'BLE JUSTICE RAGHUNATH RAY, MEMBER (JUDICIAL)

HON'BLE LT GEN KPD SAMANTA, MEMBER (ADMINISTRATIVE)

Smt. Renuka Devi, wife of <sup>Late</sup> Naik Ajit Kumar,  
Resident of Village and Post – Manisarpur, P.S.Bidupur,  
Dist. Vaishali (Bihar).

.....Appellant

-VS-

1. Union of India through  
Ministry of Defence,  
New Delhi.
2. The Defence Secretary,  
Government of India,  
New Delhi - 110 011.
3. The Director General of Signals {Signal – 4(b)},  
General Staff Branch,  
Army Head Quarter D.H.Q P.O.  
New Delhi – 110 011.

4. The Commandant H.Q. 1S.T.C.Jabalpur,  
Madhya Pradesh.

5. The Chief Officer P.C.D.A., (P)  
G-4 Section,  
Allahabad (Uttar Pradesh).

6. The Record Officer,  
Signals Records,  
P.B.No. 5,  
Jabalpur, Madhya Pradesh.

7. The Commanding Officer, Depot Regiment,  
(Corps of Signals)  
Jabalpur,  
Madhya Pradesh.

..... Respondents

For the petitioner : Mr. Suman Basu , Advocate

For the respondents: Mr. Anup Kumar Biswas

**ORDER**

**Per HON'BLE LT GEN KPD SAMANTA, MEMBER (ADMINISTRATIVE)**

The applicant is wife of an Army personnel (No. 14267516) Naik Ajit Kumar of the Corps of Signals who, according to the applicant, is missing since September 2000. This matter was initially filed in the Hon'ble Patna High Court through Writ Petition No. CWJC 13197 of 2008 which was later transferred to this Tribunal and renumbered as T.A.No. 63/2011. The matter was taken up for hearing today. The applicant, through this application, has prayed for grant of family pension and other pensionery dues since her husband Naik Ajit Kumar of Depot Regiment, Signal Centre, Jabalpur, M.P has been missing since September, 2000.

2. The brief facts of the case are that Naik Ajit Kumar was enrolled in the Army on 22.08.1985. While he was posted in the Depot Regiment of Signal Centre at Jabalpur, he was granted 60 days annual leave from 07.09.2000 to 05.11.2000. The husband of the applicant Naik Ajit Kumar did not reach home at Vaishali (Bihar) although he left Jabalpur on 07.09.2000. Before coming on leave, the husband of the applicant had informed her that he would be coming home for which they were waiting anxiously. When he did not arrive home, the father of the jawan, Paltu Thakur, had travelled to Jabalpur on 20.09.2000 {the respondents, however, in their counter affidavit (Para 9 page 10) submit that it was on 30.09.2000 and not 20.09.2000} to apprise the authorities in his Unit i.e. Depot Regiment that Ajit Kumar had not yet reached home.

3. Subsequently, Paltu Thakur, father of the missing soldier, lodged a missing person's diary at Budipur police station (Vaishali) (annex. 1) on 24.10.2000. As submitted by the learned counsel of the applicant, the ibid fact was also communicated to the Unit of the applicant's husband i.e. the Depot Regiment. Despite many repeated communications by the applicant with the Signal Records praying for family pension by considering the applicant's husband as a 'missing soldier', no action was taken by the authorities.
4. The applicant, however, received a letter dated 05.06.2003 from the Signal Records (Annex. 4) instructing the applicant to submit certain documents so as to consider her for grant of family pension. The applicant complied with these instructions and submitted all relevant documents which were subsequently sent to the PCDA (P) (Respondent No 6). The request for grant of family pension to the applicant was however turned down by the PCDA(P), Allahabad vide their letter No. G4/1/04/1088/IV/37 dated 23.04.2004 (Annexure R-III of the counter-affidavit).
5. Despite all efforts by the applicant to convince the authorities that her husband was missing while travelling from Jabalpur to his home town at Vaishali in Bihar on leave granted to him from 07.09.2000 to 05.11.2000, the authorities did not take any cognizance of this fact and also took no notice of the missing person's diary that was filed in Budipur (Vaishali) Police Station on 24.10.2000. Since they did not take any cognizance of the ibid facts, they took no further measures to grant any family pension or gratuity to the applicant. She has thus prayed through the ibid writ petition/TA for grant of family pension and all pension related dues as would be applicable to a dead soldier's widow along with 12% penal interest on arrears. During

the oral submission, Mr. Suman Basu, learned counsel for the applicant, highlighted the facts as mentioned in his application and has emphasized on the issue that the respondents have stonewalled the applicant's request for pension on the ground that the applicant's husband was a deserter who had since been dismissed from the Army. Mr. Basu is of the view that such an adverse official line by the respondents is not at all in accordance with law. He drew our attention to Sections 107 and 108 of the Indian Evidence Act with regards to the presumption of a missing person to be dead after a lapse of seven years. In the present case, as insisted by him, the matter is nearly 13 years since the applicant's husband has been missing while serving in the Army.

6. The respondents on their behalf, have agreed to the fact that the soldier (Naik Ajit Kumar of Corps of Signals), the husband of the applicant, had actually proceeded on annual leave with effect from 07.09.2000 from Jabalpur. He proceeded on leave from Jabalpur to his home town in Vaishali on 07.09.2000 but did not return on expiry of his leave which was till 05.11.2000. In accordance with the rules under subject, apprehension order was issued to the Civil Police on 06.11.2000 (Annexure 2/A to the application). He however was neither apprehended nor rejoined voluntarily. At that point of time he was serving in the Depot Regiment of the Signal Centre at Jabalpur. The respondents in their counter affidavit have submitted that having not joined duty on expiry of leave, he was declared a deserter after 30 days of absence under provisions of Section 106 of the Army Act, 1950. Ultimately he was dismissed from service after three years of continued absence on 23.04.2004, which was within the rules. The dismissal was under provisions of Section 20(3) of the Army Act 1950. Therefore, as submitted by the respondents, the entire procedure of declaring him a deserter after 30 days

of absence and later dismissing him after waiting for three years was carried out within the confines of rules and regulations on the subject as explained in Para 5 of the Additional Counter Affidavit filed by the respondents with details of such rules given at Annexure 7 to the ibid affidavit.

7. The respondents have further submitted in their counter affidavit that having been a deserter who was ultimately dismissed under Section 20(3) of the Army Act, the husband of the applicant Naik Ajit Kumar could not become eligible for any pension thereby making his wife, the applicant, also ineligible for any family pension or related benefits. To this extent our attention was drawn to Rule 212 of the Pension Regulations 1961.

8. All other dues as applicable to the applicant was paid to her {Para 5 (iv) of the counter affidavit}. The respondents have further submitted that the applicant's husband Naik Ajit Kumar who had 15 years and 17 days of service was a habitual offender with regard to military discipline. To substantiate, the respondents, in Para 8 of their counter affidavit have enumerated four occasions when punishments on account of breach of discipline was awarded to him including the present instance of desertion. It is evident from the above that he had been punished before for overstaying leave granted to him in the year 1990. According to the respondents there was not enough proof provided by the applicant to consider her husband to be a missing person. Therefore they have continued to maintain the stand that the applicant's husband was a deserter, thus dismissed him within the rules; and wife of a soldier who was dismissed on account of desertion, according to the respondents, was not entitled to any family pension.

9. We have gone through all the documents that have been annexed along with the writ application and other affidavits that have been filed by both the parties. We have also gone through the original records filed by the Signal Records containing all correspondences with regard to the husband of the applicant who is a deserter as per the respondents and a missing person as per the applicant. We have also gone through the following Army Orders and Government instructions, as submitted by the respondents on 8<sup>th</sup> April 2013, with regards to the grant of family pension to the NOK of missing personnel.

(a) Section 3 of Army Order No. 1/2003/MP of February 2003;

(b) Government of India, Ministry of Defence letter No. 12(16)/86/D(Pen/Sers) dated 03.06.1988 along with the clarifications issued vide letter of even No. dated 23.03.1992 and 15.02.2011.

10. The entire matter in nutshell lies on our analysis that as to why the authorities did not declare the applicant's husband as a missing soldier and then proceed in the manner as would be applicable for the NOK (applicant) of a missing soldier; but instead treated him as a deserter and proceeded as per rules on the subject accordingly till he was dismissed after three years of such desertion from the Army. We find it amply evident that the Signals Records and the Unit of the applicant's husband (Naik Ajit Kumar) were fully apprised of the development of the soldier being missing while he was travelling on leave from Jabalpur to Vaishali on 07.09.2000. It is evident from all the records that have been annexed and also after we have perused the original file as submitted by the respondents. It is clear from a letter No. 0046/01/Signs/57 dated 09.10.2000 written by Depot Regiment (Corps of Signals) Jabalpur that was the unit of

the applicant's husband when he proceeded on leave, that the Unit was fully aware that the soldier was missing. The ibid letter was addressed to the Supdt. Of Police, Vaishali and Jabalpur requesting them to find out the whereabouts of Naik Ajit Kumar, husband of the applicant. Therefore, it is evident that the authorities have taken note of the complaint registered by the father of the soldier, Shri Paltu Thakur. The relevant portion of the said letter dated 09.10.2000 is quoted herein below:-

*".... I am directed to inform you that under mentioned individual proceeded on Annual Leave from 07 September, 2000 to 05 November, 2000. His father Paltu Thakur has informed through an application (Photostat copy attached) that the individual has not yet reached at his home. Therefore, it is requested to trace out the individual's whereabouts and intimate to this office at the earliest. ...."*

11. Despite making enquiries about the soldier (husband of the applicant) as early as on 9<sup>th</sup> October, 2000, how could he be declared as one who had over stayed leave (OSL) on 06.11.2000 and subsequently a deserter on 08.02.2001 and ultimately dismissed on 23.04.2004? We also find it amply evident that a missing person's diary was lodged in the Police Station of Budipur (Vaishali) on 24.10.2000 (Annexure A-1) which was forwarded to the Records. Despite all these evidences that were produced before the OIC Records (respondent No. 6) and respondent No. 4 and a personal visit made by the father of the soldier to intimate that his son Naik Ajit Kumar was missing, the respondents took no action to consider him as a 'missing person' and instead continued to proceed with all efforts to declare him a deserter and



subsequently dismissed him in a very mechanical manner under the cover of rules and regulations that govern disposal of a deserter.

12. In this regard we would like to draw attention to Para 58 of Section 3 of Army Order 1/2003/MP quoted below:-

*“58. Army personnel may be found missing when there are no operations/hostilities. Great care must be exercised in dealing with such cases. They would be reported as deserter only after conclusive evidence is obtained. A few examples are cited below:-*

*(a) A person may have drowned in a river and his dead body may not have been recovered or seen by a reliable witness.*

*(b) A person may have been abducted.*

*(c) A person may have been on board an aircraft or a ship, which is missing and consequently no trace has been found of it.*

*(d) A person involved in a skirmish whilst in aid of civil authorities to maintain internal security and fighting against armed hostilities may have been killed but his dead body may not have been recovered or seen by a reliable witness.*

*(e) A person having gone on Annual Leave or in transit through a disturbed area does not report back from Annual Leave or goes missing while in transit. Such a person may have been killed/rendered incapable of reporting in time and as such should be reported missing till conclusive evidence of desertion is found. “*

13. The highlighted portion of the ibid quote clearly brings forth the fact that a soldier would be reported as deserter only after obtaining conclusive evidences. In the instant case however the evidences were to the contrary indicating that the soldier was missing while travelling to his home station on leave. Therefore action was required to be taken by the authorities for the missing personnel as per the ibid Army Order.

14. The Officer I/C Signals Record and Commandant Signals Regimental Center, Jabalpur, Brigadier Mahesh Moolri and Col. B R Chharang (Respondent No 4) had made a personal appearance during the hearing on 08.04.2013 in accordance with directions from this Tribunal. He explained that the Depot Regiment (Respondent No 7), where the husband of the applicant Nk Ajit Kumar was posted, and the Record Office (Respondent No 6) are both co-located in Jabalpur and he is the overall commander of both units. He made a very frank submission that there appeared to be some lack of coordination between these two units that resulted in a situation where the unit of the soldier (Depot Regiment) continued to treat the soldier as a deserter while the Record Office of the Signals attempted efforts for documentation so as to process the applicant's claim for family pension in the status of a missing soldier's wife, an initiative that should have actually originated from the unit of the soldier. The Brigadier, having fully understood the matter, assured in the open court that would take corrective measures to rectify the necessary documentation in an appropriate manner so as to enable that the truth with regard to the status of the soldier whether a deserter or one who is missing, would prevail. He further submitted that the order of this Tribunal shall be complied with expeditiously with utmost urgency. Besides enabling the applicant to receive her dues, the Brigadier also submitted that he would appropriately compensate the applicant for her legal expenses from

within his regimental resources to the extent possible. We appreciate the Brigadier's frank submissions as also his compassion and concern to provide justice and welfare to his soldiers.

15. Having discussed the above aspects it is amply clear that the husband of the applicant should have been treated as a missing person. Therefore the casualties with regard to he being a deserter needs to be cancelled and consequentially his dismissal on account of being a deserter would have to be set aside. He should now be considered as a missing person and the authorities should proceed in accordance with instructions on the subject as laid down in above mentioned Army Order and Govt. policy letters. The authorities also shall take note of the fact that the applicant has been claiming that her husband, Nk Ajit Kumar, has been missing since approximately 13 years.

16. As regards the prayer of the applicant with relation to family pension and related dues, Government of India, Ministry of Defence letter No. 12(16)/86/D(Pens/Sers) dated 03.06.1988 as amended by letters of even Nos. dated 23.03.1992 and 15.02.2011 should be abided by immediately. It is clear from the ibid letters of the Government of India that the wife of the missing soldier after a period of six months from the date of a registration of a FIR will be eligible to receive family pension and retirement gratuity as would have been entitled to the soldier. These would be paid after obtaining relevant undertakings which in this case have already been submitted by the applicant through an indemnity bond.

17. Subsequently on completion of seven years from the dates when missing the soldier should be presumed to be dead in terms of Government of India Ministry of Defence letter No.

A/01831/Org 3(RR & C)(K)/11420/D(AG-I) dated 14.09.1964 which has been attached as Appendix 'N' to the Army Order 1/2003/MP.

18. Having discussed the matter as above, we find that the authorities have committed a grave error in turning a blind eye to all the evidences put forward to them by the applicant and her father in law (father of the soldier Naik Ajit Kumar) to suggest that the husband of the applicant was indeed missing in order to conclusively hold that status. The concerned respondent authorities should have constituted a proper court of inquiry and ascertained all the facts which they have failed at an appropriate time. Instead they went ahead with an easier option of declaring him a deserter and dismiss him under the relevant section of the Army Act showing utter disregard for their own employee who is a soldier in the Indian Army. Such mechanical attitude without application of mind is not proper. The higher authorities must take note of these aspects and see to it that their own orders (Section 3 Army Order 1/2003/MP) are followed meticulously by their subordinate authorities. Under such circumstances the petition is allowed on contest with following directions:-

(a) The dismissal order with respect to the husband of the applicant (Naik Ajit Kumar) of Depot Regiment Corps of Signals is quashed and he should be immediately taken off the list of a deserter based on this order.

(b) He shall be declared as a 'missing person', after following the due enquiry process in terms of Army Order 1/2003/MP, and proceeded thereafter as per rules as specified for missing person to be presumed dead after a certain gap of time.

(c) The applicant shall be paid retirement gratuity, entitled family pension and other pension related dues as entitled with effect from 24.10.2000 i.e. the day when the missing diary was lodged in the concerned Police Station. PCDA (P) shall pay the arrears as worked out and release the pension within sixty days from the date of receipt of this order. The arrear shall carry an interest of 12% from 23.04.2004 which is the date when the family pension claim was rejected by the PCDA (P).

(d) The Director General of Signals {Signal – 4(b)} (Respondent No. 3) shall hold a departmental inquiry to investigate into the circumstances as to how such an administrative lapse could take place within the jurisdiction of Commandant Signal Training Centre, Jabalpur and shall take appropriate administrative action against the defaulting officials.

(e) All actions as ordered in (b), (c) and (d) ibid shall be completed within sixty days from the receipt of this order.

19. The original documents submitted by the respondents be returned to them on proper receipt.

20. Let a plain copy of this order, countersigned by the Tribunal Officer, be given to the learned Advocates for both the sides.

(LT GEN KPD SAMANTA)  
MEMBER (ADMINISTRATIVE)

(JUSTICE RAGHUNATH RAY)  
MEMBER (JUDICIAL)