

**IN THE ARMED FORCES TRIBUNAL  
REGIONAL BENCH, GUWAHATI**

**OA - 73/2016**

**PRESENT**

**HON`BLE MR. JUSTICE B.P.KATAKEY, MEMBER(J)  
HON`BLE VICE ADMIRAL MP MURALIDHARAN, MEMBER (A)**

Smt Runu Gogoi,  
Wife of No.4357882H,  
Ex Nk Tarun Chandra Gogoi,  
12 Assam Regiment,  
Vill. Tamuli Gaon,  
P.O.Morijhanji,  
PS Bhogamukh, Dist.Jorhat,  
Assam, Pin – 785682.

.... **Applicant.**

**By legal practitioners for  
Applicant.**

**Mr. U.Sarma,  
Mr. ANI Hussain.  
Mrs U.Zeeham,  
Mr. H.Bezbaruah,**

1. Union of India,  
Represented by the Secretary,  
Govt. of India, Ministry of Defence ( MoD),  
South Block, New Delhi – 110011.
2. Addl. Directorate General Personnel Services,  
Adjutant General's Branch,  
Integrated Headquarter of MoD (Army)  
DHQ, New Delhi – 11.
3. Officer-in-charge Records,  
The Assam Regiment, Happy Valley,  
Shillong – 793 007.
4. Chief/Principal Controller of Defence Accounts ( Pension)  
Draudadhi Ghat, Allahabad - 211014

..... **Respondents**

**By Legal Practitioner for the  
Respondents  
Brig N.Deka (Retd.), CGSC**

**Date of Hearing** : **08.06.2017**  
**Date of Order** : **27.06.2017**

**ORDER**

(By Vice Admiral MP Muralidharan)

1. The Original Application has been filed by Smt.Runu Gogoi, widow of late Naik Tarun Chandra Gogoi, No.4357882H, of the Assam Regiment, essentially seeking grant of service pension to her husband and family pension to herself on his demise.

2. The applicant's husband Ex Naik Tarun Chandra Gogoi was enrolled in the Army (Assam Regiment) on 23 April 1984. On 17 April 2001 the applicant's husband (the late soldier), had sought discharge from service on extreme compassionate grounds which was duly approved with effect from 01 December 2001. The late soldier however left his unit on 31 October 2001 without any leave/authority. He was eventually declared a deserter and was dismissed from service with effect from 31 October 2011. Since he was dismissed from service under the provisions of the Army Act, he was not granted any service pension. Since the late soldier was not in receipt of service pension, the applicant has not been granted family pension.

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3. Shri U.Sarma, the learned counsel for the applicant, submitted that the applicant's husband, who was medically fit at the time of his enrolment, had served in the Indian Army for over 17 years with utmost dedication and devotion. The learned counsel further submitted that in the month of January 2001, the applicant's husband had come to his house at Jorhat. As he was unwell, he was treated at Teok FRU and later left to join his unit for duties in Jammu & Kashmir. The family had no contact with him thereafter. In November 2001, the applicant learnt that her husband had been declared as Absent Without Leave (AWOL), (Annexure 2). Since there were no further inputs on him, the applicant met the Record Officer of the Assam Regiment at Shillong in March 2002 seeking whereabouts of her husband. The Record Officer then informed the applicant that her husband had been declared a deserter. He also wrote to the late soldier's unit asking them to initiate necessary follow up action (Annexure 3).

4. The learned counsel further submitted that in May 2002, the applicant's husband turned up at their house, but could not recall as to where he was during the previous years. The applicant took her husband for medical treatment at Teok FRU, where he was assessed to be suffering from Neuropathy. She also had to take him for further follow up treatment to Medical College Hospitals at Dibrugarh and Jorhat (Annexure 4). In view of his deteriorating health and having to

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look after two young children, the applicant at that time could not take any further follow up action with respondents.

5. The learned counsel further submitted that later the applicant learnt that a Court of Inquiry (COI) had declared the applicant's husband to be a deserter. The COI, had not adhered to the Army Rules and the late soldier had been declared a deserter in a mechanical manner (Annexure 5). The learned counsel further submitted that while the applicant was informed in 2003 that her husband was entitled to arrears from the AFPP Fund, nothing further materialised at that stage and nearly 09 years later she was asked for bank details to release the Fund and AGIF benefits (Annexures 6 to 8). In April 2012, the applicant was informed that her husband who had been declared a deserter in October 2001 had been dismissed from service with effect from 31 October 2011 (Annexure 9). The learned counsel contended that the applicant's husband had been dismissed without providing him an opportunity to present his case which was against the principles of natural justice. The learned counsel also contended that the applicant's husband, due to his mental illness, remained untraced for prolonged periods and subsequently went missing and a police complaint was raised. The late soldier's body was found on the banks of river Mitong on 03 October 2016 (Annexure 14).

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6. The learned counsel submitted that the applicant's husband had not left his Unit due to any negligence or misconduct, but had possibly wandered away due to his mental illness, which was not there at the time of his enrolment. Therefore, in keeping with the principles enunciated by the Hon'ble Apex Court in a number of cases, his disease should be held as attributable to service. This aspect was not taken into consideration by the respondents while passing dismissal order of the applicant's husband. This in turn resulted in denial of entitled service pension to the late soldier and family pension to the applicant. The learned counsel therefore prayed that the order of the respondents declaring the applicant's husband a deserter be set aside and he be granted service pension and the applicant be granted family pension upon his death.

7. The respondents in their counter affidavit have submitted that the applicant's husband, late Naik Tarun Chandra Gogoi, had sought discharge from service on extreme compassionate grounds on 17 April 2001 which was duly approved with effect from 01 December 2001. Discharge formalities were completed and PPO was issued. The Release Medical Board had placed him in medical category SHAPE I (Annexure R1). On 31 October 2001 the individual left the Unit without any leave/authority and all concerned were informed of the same (Annexure R2). The applicant's husband had a history of being absent without leave on earlier occasions also. The applicant was informed by the Unit of her husband's absence and was also advised

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to direct her husband to return to his Unit in case he came home (Annexure R3). In March 2002, the applicant along with her children had visited the Regimental Record Office at Shillong, seeking her husband's whereabouts and at that time she had not indicated that she was aware of the whereabouts of her husband or that her husband was at home. However in September 2007, she requested for grant of service pension on compassionate grounds wherein she had stated that her husband had reached home in November 2001 with an unstable mind (Annexure R5). She had then been informed that she should advise her husband to report to the Assam Regimental Centre or his parent unit (Annexure R6). The respondents further submitted that in April 2012 the applicant's husband sustained a head injury and was treated at the Jorhat Medical College (Annexure 4). He was subsequently treated at Assam Medical College, Dibrugarh wherein he was advised to attend treatment at the Psychiatry OPD.

8. The respondents further submitted that as the applicant's husband had been absent without leave with effect from 31 October 2001, in accordance with Army Act Section 106 and Army Rule 183, a Court of Inquiry was convened on 10 January 2002. Based on findings of the Court, the applicant's husband was declared a deserter (Annexure R11). On completion of 10 years, the applicant's husband along with some others who had been declared deserters, were dismissed from service on 20 April 2012 under Army Act Section 20(3), (Annexure R10). His dismissal was to be with effect from 31 October 2011. The

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facts of the dismissal were communicated to the applicant in March 2012 and by September 2012, all financial dues were also paid to the applicant. In June 2014 a legal notice was received from an advocate based in Jaipur seeking documents relating to the dismissal of the late soldier. When his request was denied, the applicant sought for the documents, which were provided to her (Annexures R7, R8). The late soldier's body was found on 03 October 2016 on the banks of Mitong River. The respondents further submitted that the applicant's husband had deserted from active service and despite being given adequate number of opportunities to return to his unit, he failed to do so.

9. The respondents reiterated that the applicant's husband had been assessed as fully fit prior to his planned date of discharge on 01 December 2001. There was no evidence of mental or any other illness observed by the Release Medical Board. Despite the applicant being aware of the whereabouts of her husband and being well aware that he was a deserter, she did not hand him over to the authorities. Ince the applicant's husband had been declared a deserter and dismissed from service he was not granted service pension as he was not eligible for the same. Since her husband had not been in receipt of any kind of pension, the applicant was not eligible for grant of family pension.

10. Heard rival submissions and perused records.

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11. It is not disputed that the applicant's husband who had enrolled in the Army on 23 April 1984 had applied for premature discharge which had been approved with effect from 01 December 2001. Since the late soldier had over 17 years of service, in normal course he was eligible for grant of pension and as submitted by the respondents discharge formalities were completed and PPO had also been received from PCDA (P). It is also not disputed that the applicant's husband was AWOL from his place of duty with effect from 31 October 2001 and in due course was declared a deserter and dismissed from service. The applicant's husband was found dead on 03 October 2016. At the time of his death he was not in receipt of any pension.

12. The case of the applicant is that her husband, late Naik Tarun Chandra Gogoi, had become mentally unstable and it was his mental illness that made him to be absent without leave from his place of duty. This aspect was not considered by the respondents while declaring him a deserter or while dismissing him from service. Her further contention is that since her husband had put in pensionable service, he may be granted pension, keeping in view his mental illness. As a consequence, family pension be granted to her. The stand of the respondents, on the other hand, is that the applicant's husband was declared medically fully fit by the Release Medical Board and his discharge from service had also been approved. However he became AWOL from the Unit one month prior to his date of discharge. The respondents have also contended that the applicant despite being

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in the knowledge that he had been declared a deserter, sheltered him and did not hand him over to the nearest Army authorities. The respondents have further contended that even though the applicant has claimed that her husband was under treatment, the documents submitted by her pertain to the period after 2012. The respondents have further contended that since the applicant's husband had been declared a deserter in accordance with the provisions of the Army Act and had been dismissed from service, he was not eligible for grant of pension and hence the applicant was also not entitled for grant of family pension.

13. While it is not disputed that the applicant's husband was absent from his place of duty, without any leave or authority with effect from 31 October 2001, the reason for him to do so has not clearly emerged. While the applicant has claimed that her husband was not of sound mind, no medical document in support of such a claim has been placed before us. The Release Medical Board of the applicant's husband at Annexure R1, conducted in June 2001 indicates him to be fit for release in medical category SHAPE I. The medical documents submitted by the applicant on the treatment of her husband, are of April 2010 and in the absence of any other records around the time of his discharge, we are unable to appreciate if he was having any psychological problems at that juncture. It is however observed that based on the personal statement in Part I of the Release Medical Board examination report, wherein the person being examined himself

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had indicated that he was not suffering from any disability nor was he claiming any disability from service, the Release Medical Board has been carried out in a routine manner with no specialist opinion, other than that of a Dental Officer. The RMO of the Unit, appears to have carried out the medical examination which was approved by the officiating Commanding Officer of the Regiment (Annexure R1). It is however for consideration that a person who had put in over 17 years of service in the Army and was holding the rank of Naik, should have been well aware of implications of being absent without leave. Since his premature discharge from the Army had been approved with effect from 01 December 2001, ie within a month from the date he went AWOL, it is not logical for a person of sound mind to commit such a grave offence.

14. It is also observed that the COI convened on 10 January 2002, to investigate the circumstances under which the late Naik Tarun Chandra Gogoi absented himself without leave with effect from 31 October 2001, was carried out in a routine manner wherein the three witnesses examined have essentially brought out that the applicant's husband left the Unit on 31 October 2001 and no one was aware of his whereabouts or having any communication with him since then and that he had not reported any family problems. It is surprising that as the applicant's husband (the late soldier), was absent without leave from a sensitive field area like J & K, the COI did not look into the aspect of whether the individual could have been abducted by anti-

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national elements. No witnesses from the State Police to whom request for apprehension had been forwarded as early as 01 November 2001 (Annexures 2/R2), i.e. one day after the absence of the applicant's husband, were questioned. Therefore it is not clear as to how the COI came to the recommendation of declaring him a deserter. Further, as observed from Annexure R5, the applicant had informed the unit that the late soldier had reached home with an unstable mind and that in spite of her request he had refused to go to his Regiment and had also sought advice on whether he is to be taken to his Unit. No efforts were apparently made to apprehend the late soldier by the respondents. As evident from Annexure R-6, the applicant had only been directed to advise her husband to report to the Assam Regimental Centre or his parent Unit for further action. In our view therefore, despite knowing the whereabouts of the applicant's husband, making no effort to apprehend him indicates certain arbitrariness. Dismissal from service was also done in a routine manner (Annexure R10), more so, as the order for dismissal was issued in April 2012, when the respondents were aware of the whereabouts of the applicant's husband in September 2007. At this juncture, it is pertinent to observe that the Hon'ble Apex Court in **Sheel KR Roy vs. Secretary, MoD & ors., (2007) 12 SCC 462**, had examined the case of punishment awarded to the appellant therein, post a Court Martial for absence from place of duty, when the appellant had remained in one or the other hospital for treatment.

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The Apex Court had held that there was arbitrariness on the part of the respondents in the punishment awarded to the appellant therein. In the instant case despite becoming aware that the applicant's husband was at his home and possibly suffering from ailments, no effort was made by the respondents to apprehend him before dismissing him from service.

15. This Tribunal in **O.A.No.04/2016 Smt.Yashimenla Longchar vs. Union of India & Ors.**, had held the view that the widow of a deserter was eligible for family pension provided the soldier had died prior to his dismissal from service. In the instant case however the late soldier had died on 03 October 2016 (Annexure 14) after his dismissal from service in April 2012 with effect from 31 October 2011. However as observed by us earlier, no efforts had been made by the respondents to apprehend the late soldier even when they were aware of his whereabouts. Further, there is also some ambiguity on the mental fitness of the late soldier who had chosen to absent himself from duty without due authorization despite knowing that his discharge from service had been approved and only a month remained for him to be discharged from service. Reg 113(a) of the Pension Regulations for the Army 1961, applicable at the time the applicant's husband was declared a deserter and the revised Regulations 41(a) of the Pension Regulations for the Army 2008, pertains to grant of

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pension to those dismissed from service under the provisions of the Army Act and being relevant is reproduced below:

"41(a) An individual who is dismissed under the provisions of Army Act, 1950 or removed under the Rules made thereunder as a measure of penalty, will be ineligible for pension or gratuity in respect of all previous service. In exceptional case, however, the competent authority on submission of an appeal to that effect may at its discretion sanction pension/gratuity or both at a rate not exceeding that which would be otherwise admissible had he been retired/discharged on the same date in the normal manner."

16. It, therefore, clearly emerges that while in normal case an individual dismissed under the Army Act will be ineligible for pension, in exceptional cases the competent authority may sanction pension at a rate not exceeding that which would have otherwise been admissible, if the person had retired/discharged in a normal manner. On the aspect of pensions, the Hon'ble Apex Court while examining the case of **DS Nakara vs. Union of India, (1983) 1 SCC 305**, had held that pension is a right and not a bounty or gratuitous payment depending upon the sweet will and grace of the employer. It was also held that such payment is governed by rules within which a claim for pension can be made. It was further held that in the course of transformation of society from a feudal to a welfare one, there is an obligation on the part of the State to provide security in old age.

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17. In the instant case, the applicant's husband had put in more than 17 years of service and a PPO had been issued to him based on his request for premature discharge when he was declared a deserter with effect from 31 October 2001, having been found absent without leave. As already observed, even those dismissed under the provisions of the Army Act may be sanctioned pension based on subsequent appeal. We have also observed that there was some arbitrariness in examining the case of the applicant's husband while declaring him a deserter and in his dismissal from service. In our view therefore, the instant case would fall under the exceptional cases wherein pension could be sanctioned based on an appeal. Therefore, in keeping with the principles enunciated by the Hon'ble Apex Court in **DS Nakara** (supra), we are of the view that the applicant's husband could have been granted pension in case he had preferred an appeal in his lifetime; in turn making the applicant eligible for grant of family pension on his death. Granting the applicant family pension apart from being in consonance with the principles enunciated by the Hon'ble Apex Court in **DS Nakara** (supra), would also be in keeping with Reg 9 of Pension Regulations for the Army 2008 reconstructed Reg 5 of Pension Regulations for the Army 1961), which provides for payment of part or whole of the

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pension which had been withheld from an individual, to his wife or other dependants. It would ensure that the wife and children of a soldier who had put in more than 17 years of service would not suffer due to some indiscretion on his part just prior to his approved discharge from the Army.

18. In view of the foregoing, the Original Application is partly allowed and the applicant is held eligible for grant of family pension from one day after the death of her husband, i.e with effect from 04 October 2016. The respondents are directed to pay family pension along with arrears, with interest @ 9% per annum from the aforesaid date to the date of payment, to the applicant within a period of four months from the date of receipt of a copy of this order.

19. As regards the prayer for grant of pay/pension arrears to her husband from the date of his absence from his unit till the date of his death, since he was absent without leave, following the principle of "no work no pay" enunciated by the Hon'ble Apex Court in **Union of India vs. BM Jha, (2007) 11 SCC 632**, we are of the view that he would not be eligible for any pay or allowances from the date of his absence from the Unit without leave till his death.

20. There will be no order as to costs.

21. Issue free copy to the parties.

**MEMBER (A)**

**MEMBER (J)**