

**(2000) 03 PAT CK 0119**  
**In the Patna High Court**  
**Case No : C.W.J.C. No. 3797 of 1999**

Ajay Kumar Panchauri

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 23-03-2000

**Acts Referred:**

Army Act, 1950 — Section 20(3)

**Citation :** (2001) 3 PLJR 269

**Hon'ble Judges :** Nagendra Rai, J

**Bench :** Single Bench

**Advocate :** Prakash Chandra Gupta, for the Appellant; S.N. Pathak, for Union of India, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Nagendra Rai, J.—The present application has been filed by the Petitioner for quashing the order dated 9th November, 1998 passed by the Commandant and OIC Records (Respondent No. 3) by which the representation filed by the Petitioner for grant of pension to him has been rejected. A copy of the said order has been annexed as. Annexure 6 to the writ application.

2. The facts necessary for disposal of the present application are that the Petitioner, employed as a Sepoy in the Army, was posted at the relevant time at Military Hospital, Namkum in the District of Ranchi. He was granted 15 days casual leave from 10th August, 1991 to 24th August, 1991. He did not join his duty after expiry of the said period. The Apprehension Roll was issued by the Army to the Superintendent of Police, West Champaran vide letter dated 13th September, 1991. The Petitioner neither reported to the duty nor apprehended after 30 days of over-stay of leave. He was declared deserter by the duly constituted Court of Enquiry held at Namkum and the same was notified in Daily Part-II, Order No. 78/2, 8/91. Thereafter the Petitioner was dismissed from service in terms of the provisions contained in Section 20(3) of the Army Act and the same was also notified.

3. It is asserted on behalf of the Petitioner that the Petitioner was ready to join the duty after expiry of leave as a matter of fact but he was not allowed to join his duty and he was wrongly dismissed from service. He served in Army for more than 17 years 254 days and as such, he is entitled to reinstatement as well as pensionary benefits.

4. In terms of paragraphs 113(a) of the Pension Regulations for the Army, 1961 (Part-I) the pension is not payable to a deserter who has been dismissed from service. The Petitioner earlier came to this Court with the same relief in C.W.J.C. No. 6039/97 and the said writ application was disposed of by the order dated 2.7.1998 and the responded authorities were directed to consider the" pending representation of the Petitioner and thereafter the said representation has been considered and rejected by the impugned order as contained in Annexure 3.

5. The learned Counsel for the Petitioner submitted that though the Petitioner over-stayed but the procedure prescribed for declaring a person as deserter under the Army Act has not been followed in this case. From the averments made in the counter affidavit, it appears that after the expiry of the leave period he failed to join his duty. The steps were taken to inform him through the local police but he neither joined his duty nor reported for his absence. It further appears that as per service record earlier also he was declared deserter three times and thereafter the authorities having no option but to dismiss him from service after three years of desertion with effect from 20th October, 1994 in terms of the provisions contained in Section 20(3) of the Army Act. According to the aforesaid Pension Rules in a case of dismissal on the ground of desertion, pensionary benefits are not payable to the army employee. The fact that the Petitioner over stayed is not in dispute. The only assertion made on benefit of the Petitioner is that subsequently he was ready to join his duty but he was not allowed to join. The said assertion has been categorically denied in the counter affidavit.

6. This Court does not sit as an appellate forum, ever the decision of the disciplinary authority. No procedural fault in deciding the proceeding has been pointed out. The order of dismissal was passed after following the procedure commensurate with natural justice.

In my view, there is no merit in this application, which is/accordingly, dismissed.