

(2004) 05 J&K CK 0019

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 916 of 1996

Dev Raj

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-05-2004

Acts Referred:

Army Act, 1950 — Section 30(3), 71
Constitution of India, 1950 — Article 226

Citation : (2004) 2 JKJ 484

Hon'ble Judges : S.K. Gupta, J

Bench : Single Bench

Advocate : D.C. Raina and S.S. Jamwal, for the Appellant; Neeru Goswami, Addl. CGSC, for the Respondent

Judgement

S.K. Gupta, J.—The petitioner has approached the Court seeking direction to the respondents for release of his pension for having retired

from the Army after putting in pensionable service of 15 years with the Union of India, in invoking the writ jurisdiction of the Court under Article

226 of the Constitution of India read with Section 103 of the Constitution of Jammu & Kashmir State.

2. According to the averments in the petition, the petitioner was enrolled as Sepoy (Nursing Orderly) in AMC, Lucknow on 15th December, 1943

and was transferred to reserve establishment w.e.f. 2nd December, 1955 after completing 12 years colour service. The petitioner further claims to

have completed 15 years, detailed as 12 years regular and 3 years reservist, was informed by the Record Officer-in-Charge, Lucknow vide his

No. 22340-RES dated 8-9-1958 and asked the Secretary DSS&A Board, Jammu, with a copy to the petitioner to complete pension papers and

forward the same to him, as according to Army Instructions, AI No. 2/S/54 as amended by AI 209/56, reservists on completion of combined

colour and reserve service, are eligible for pension/gratuity. It is further stated that the Record Officer, AMC, Lucknow, vide his communication

No. 22340-RES dated 2-2-1960 addressed to the petitioner with a copy to the Secretary, DSS&A Board, Jammu, instructed him to complete

the pension papers and forward the same within a week. The Secretary, DSS&A Board, Jammu vide his office No. 12/JSB/22 dated 5-3-1960

dispatched all the pension papers duly completed in all respect to OIC, Records, AMC, Lucknow in compliance to his office No. 22340-RES

dated 8th September, 1958 for further necessary action. The petitioner was asked by the OIC, Records AMC, Lucknow to undergo 8 weeks

training at Jalandhar Cantt., Military Hospital and Railway Order No. 145551 was also sent to him. The petitioner approached the Secretary,

DSS&A Board, Jammu with an application and Railway Order intimating that since he has completed terms of his service, has retired and he is

pursuing the pension after completing the pension papers with the Record Office, Lucknow, there is no question of training as such.

The petitioner stated that his application and Railway Order were forwarded by the Secretary, DSS&A Board, Jammu to the OIC, Records

Office, Lucknow, and enquired that when the petitioner had already retired from his service, was he still required for further reservist training? The

petitioner was neither informed thereafter nor his pension case was settled. Further case of the petitioner is that, for the first time, he came to know

from a communication addressed by AMC, Records Officer, Lucknow, to the Zila Sainik Board, Jammu, intimating that the petitioner has been

declared as deserter and dismissed from service from 11-11-1964 for having not reported for reservist training during 1961.

3. The petitioner further submitted that he had never received any communication/orders for further training during 1961. When he had retired from service after completing 15 years of service and his pension papers were forwarded to Records Office in response to their letter, the question of

further reservist training in 1961 did not arise. The petitioner further claimed that he would have joined and completed the said training, had the

AMC Records, Lucknow in response to the Secretary, DSS&A Board, Jammu's letter dated 21st July, 1960 informed/intimated him that he had

any liability to undergo reservist training. Moreover, AMC, Records Officer, Lucknow, in his letter dated 18-04-1990 has accepted the liability of

12 years colour service and three years reserve, but again reiterated that the petitioner was declared deserter and dismissed from service u/s 30(3)

of the Army Act w.e.f. 11th November, 1964, after three years from the date of desertion, when called for and failed to report for reservist

training, and declined the entitlement for any pension/gratuity and other benefits as per existing rules. In the absence of any such

orders/communication received from the competent authority, declaring the petitioner as deserter and dismissed from service without giving an

opportunity of hearing, which was because of the negligence of the OIC, AMC, Records, Lucknow and depriving him of his legitimate service

pension, is violative of principles of natural justice under Articles 14 and 16 of the Constitution of India. The stand of the respondents in their

detailed objections in controverting the claim of the petition is that the petitioner was enrolled on 15-12-1943 as Sepoy (Nursing Orderly), but was

declared as deserter on 20-9-1961 and dismissed from service on 11-11-1964 by the competent authority and was not, thus, entitled to retirement

benefits of pension under the Army Act, Rules and Regulations. Further submission of the respondents is that petitioner has approached the Court

after a lapse of 36 years and petition deserves outright dismissal on account of inordinate delay and laches. Further submission of the respondents

is that the petitioner initially accepted terms of engagement of 15 years combined colour and reserve service, but subsequently exercised option

accepting for 12 years colour service and 8 years reserve liability in terms of Army Instructions No. 317/52, in the year 1952. The petitioner was,

therefore, neither eligible nor entitled of getting pension and gratuity on the completion of 15 years service. For undergoing reserve training during

the years 1957 and 1959, the petitioner failed to report at Jalandhar, which was being regularized by Records Office, AMC, Lucknow. The

petitioner is also stated to have remained absent and did not report at MH Jalandhar to undergo reservist training on 28th August, 1961 and was

unheard despite issuance of apprehension role to Civil Police, on the basis of which he was declared deserter and subsequently dismissed from

service. It is also pleaded by the respondents that while processing the pension case of the petitioner, as elected by him, it was revealed on the

scrutiny of the documents that petitioner had accepted the revised terms of engagement of 12 years colour and 8 years reserve liability and the

matter was immediately brought to the notice to the Secretary, DSS&A Board, Jammu, and the petitioner informed accordingly with instructions to

report MH, Jalandhar on 4th October, 1960 for undergoing reserve training, by AMC, Records, Lucknow, on 16-8-1960.

The respondents, however, admitted that the initial terms of engagement in terms of AI No. 317/52 were 10 years colour and 5 years reserve

liability and not 12 years colour and 3 years reserve service. When the petitioner was retained in colour service for 12 years, i.e., 2 years more

than his accepted engagement of 10 years colour service, his non-representation against this is sufficient to justify that the petitioner accepted the

revised terms of engagement in terms of Army Instruction No. 317/52, viz., 12 years colour service and 8 years reservist, total 20 years service,

for entitlement to pension/gratuity. It is further stated by the respondents that the petitioner was duly informed in reply to his petition dated 19th

July, 1960 that he would be transferred to pension establishment only w.e.f. 15th December, 1963, as he had accepted the revised terms of

engagement announced through Army Instructions No. 317/52 vide AMC Records' letter No. 22340-RES dated 16th August, 1960 and

accepted by the petitioner vide receipt dated 9th September, 1960 (Annexure P-8). That the petitioner having not reported physically on 20th

August, 1961 for undergoing reservist training, he was declared deserter on account of remaining absent unauthorizedly, led to a Court of Inquiry

convened in following all procedural requirements at MH, Jalandhar. It was also pleaded that the petitioner cannot take advantage of the

typographical error indicating the terms of engagement to be 12 years and 3 years, which was neither in accord with the record of AMC nor

correct as per Army Instructions No. 317/52. This is so, when the petitioner was informed much earlier of having accepted the revised terms of

engagement vide letter dated 16th August, 1960 and its receipt acknowledged, since the petitioner did not continue on the reserve service w.e.f.

20th August, 1961 and failed to complete total reservist service of 8 years, he was neither eligible nor entitled for the grant of pension.

4. The petitioner in his rejoinder to the objections filed by the respondents submitted that the revised period of service in accordance with AI

(1)199/48 and RAI 207 (10 years colour and remaining reserve service to complete a total of 15 years) vide M.H. Calcutta Part-II Order No. II

of 18-4-1949 was accepted. To this effect, agreement dated 5-5-1949 was entered into between the parties. The petitioner also denied to have

exercised any option in the year 1952, whereby the revised terms of engagement as 12 years colour service and 8 years reserve service was

accepted and further stands belied by the communication by the respondents 8th September, 1958 requiring him to complete the papers for the

grant of pension. The petitioner never accepted 20 years of revised service. A clear admission on the part of the respondents about the acceptance

of 12 years colour service and 3 years reserve service by the petitioner, entitles the petitioner for the grant of pension. The order declaring the

petitioner deserter and dismissing him from service u/s 20(3) of the Army Act, has been made without giving him any hearing and is, therefore,

unsustainable in law being violative of principles of natural justice, when the petitioner being denied legally accepted pensionary benefits after

completion of terms of engagement in Army service without any rhyme and reason on one pretext or the other.

5. I have heard the learned counsel appearing for the respective parties and considered their rival contentions in context with the material place on

record. It appears that the petitioner in support of his plea to have completed 15 years of service (12 years colour and three years reservist) and

retired from service of the Union of India, has relied upon a letter dated 8th September, 1958 addressed by the OIC, Records, AMC, Lucknow,

to the Secretary, DSS&A Board, Jammu. This letter depicts that, according to AI No. 2/S/54, as amended by AI No. 209/56, reservists on

completion of combined colour and reserve service, are eligible for pension and gratuity, as shown below:

According to AI 2/S/54 as amended by AI 209/56 reservists on completion of combined colour and reserve service, are eligible for pension or

gratuity as shown below. It may please be made clear to the individual that the election once made will be final and cannot be changed.

Sl. No. Terms of Pension Rs. P.M. Gratuity in lieu Rs.

engagement

1 7 yrs colour and 8 10 750

yrs reserve

2 6 " " " " " " " " 9 " " " " " " " " 10 750

3 5 " " " " " " " " " " 10 " " " " " " " " 10 750

4 12 " " " " " " " " " " 4 " " " " " " " " 10 750

5 12 " " " " " " " " " " 3 " " " " " " " " 10 750

6 10 " " " " " " " " " " 5 " " " " " " " " 10/8 800

7 9 " " " " " " " " " " 6 " " " " " " " " 10/8 800

8 6 " " " " " " " " " " 15 " " " " " " " " 10/8 800

9 10 " " " " " " " " " " 10 " " " " " " " " 11 900

10 12 " " " " " " " " " " 8 " " " " " " " " 12 1000

6. According to the petitioner, his case falls at Serial No. 5 for having rendered 12 years colour and 3 years reservist service. This communication

further reveals that the case of the petitioner was being processed for grant of pension and the petitioner was required to complete his case in all

respects and return the same along with requisite documents indicated therein to the OIC, Records, AMC, Lucknow for further necessary action.

This fact has also not been disputed by the respondents in para No. 2 of their reply that initially the petitioner accepted the terms of engagement of

15 years colour and reserve, combined services.

7. Petitioner had also produced original record in his possession, which had been retained and taken on file for perusal, a photocopy of which will

form part of the record file.

8. The stand of the respondents, on the other hand, is that subsequently the petitioner exercised an option and accepted the revised terms of

engagement of 12 years colour service and 8 years reserve liability in the year 1952 in terms of Army Instructions No. 317/52 and placed reliance

on Annexure P-1. Admittedly, the aforesaid order was issued during the period when the petitioner was in service. According to the respondents,

the revised terms of engagement of 12 years colour and 8 years reserve service was accepted by the petitioner in exercise of his option in the year

1952. It is further pleaded by the respondents that for grant of pension, it was mandatory to complete the service of 20 years (12 years colour

service and 8 years reservist) under the revised terms of engagement. No

document has been placed on record to show that the petitioner had ever exercised his option in accepting the revised terms of engagement of 20 years service in terms of Annexure P-1 to their objections. Clause 3 of the aforesaid order (Annexure P-1) indicates in unequivocal terms that "serving personnel will have the option to accept the revised terms by 30 June, 1953". Mrs. Neeru Goswami, learned Advocate appearing for the respondents, was repeatedly asked to provide the record or place the requisite documents on the file to show that the petitioner had exercised the option of accepting the revised terms of engagement within the stipulated period or even thereafter, as provided in Annexure P-1, but all the times, she replied that service documents of the petitioner have since been destroyed. It is not understandable that when some of the documents including the communications addressed to one Secretary, DSS&A Board, Jammu, by the OIC, Records, AMC, Lucknow, pertaining to the grant of pension, have been preserved and their photocopies are placed on record, how the other documents with regard to the exercise of option regarding the acceptance of revised terms of engagement on the basis of which the subsequent communication drafted and addressed is based by the respondents, have been destroyed.

9. In such circumstances, what is indisputably gatherable from the record is that the petitioner continued to be governed by his initial terms of engagement, on the basis of which he claims to be entitled to pension after completion of 12 years colour and 3 years reserve service. In support of his contention, the petitioner projected to have completed 12 years colour and 3 years reserve service in placing reliance at Serial No. 5 in the graph shown in Annexure P-2 to the writ petition for eligibility for grant of pension/gratuity. The petitioner is deemed to have completed 15 years service in the year 1958 borne out from the record and would, thus, to be eligible for the grant of pension. A candid reference to column No. 4 in which graph at Serial No. 6 (Annexure P-2 to the writ petition) further shows that even 10 years of colour and 5 years of reservist service would make the petitioner eligible for pension. It is, thus, seen that on both the counts whether combined service of 12 years colour and 3 years reserve or 10 years colour and 5 years reserve, the petitioner would be eligible for pension. In view of the communication and the graph reflected therein,

the petitioner has to satisfy twin conditions; first, that he is a member of the Army Force at the time of retirement and, second, he should have by

then completed 15 years of pensionable service and should have put forward his request in writing for grant/availing the benefit of pension. If that

be the position, the petitioner, admittedly, has completed 15 years of service (12 years colour and 3 years reservist service) as Sepoy/NA in Army

Medical Corps, in the year 1958 in terms of Annexure P-2 to the writ petition. He would be eligible for grant of pension. Whereas, on the other

hand, the contention of the respondents that the petitioner has exercised option of accepting the revised terms of engagement of 20 years service

(12 years colour and 8 years reservist) in the year 1952, having not been proved either by documents or from the record and for want of any

document produced or record made available despite repeated directions, is devoid of legal force and, thus, cannot be accepted.

In such circumstances, the petitioner, in my view, would be entitled to the pension in terms of the Army Instructions existed at the time of his initial

terms of engagement and accepted by him. This factual position is also not disputed by the respondents and is clearly discernible from the

communication dated 18th April, 1990, (Annexure P-13), addressed by Major P.K. Singh, SRO for Officer-in-Charge to the petitioner and, for

facility of reference, is reproduced as under:

Tele Mil. 2757 Sena chikitsa Corps Abhilekh

Army Medical Corps Records

Lucknow-226 002

500707/Wel/NE/AHQ18 Apr 90

Ex No. 22340 Res/Sep

Dev Raj C/O Shri Krishan Lal Sharma

House No - 43 - Subash Nagar,

Rehari Colony, Jammu Tawi (J&K State)

PETITION/REPRESENTATION

1. Refer to your petition dated 26 Feb 90 received through Army HQ vide their HQ letter No. B/74308/PM/DGMH 3D dated 02 Mar 90.

2. As per service records held in this office you were enrolled in AMC on 15 Dec 43 and was transferred to reserve establishment wef 02 Dec

55. You have accepted 12 years colour service and 3 years reserve liability vide AI 317/52. You were failed to report for reservist training during

1961 when called for. As such you were declared deserter and dismissed from service under Army Act Sec 30(3) wef 11 Nov 64 i.e. after 3

years from the date of desertion.

3. In view of the above, you are not entitled for any pension/gratuity and other benefits as per existing rules. This fact had been intimated to you

vide this office letter No. 22340/DD/SR/Res/ 29/7 dated 07 Apr 79 and Sr/22340/Wel/NE/ AHQ dated 02 Feb 89.

(P.K. Singh)

Maj

SRO

For Officer-in-charge

10. It was next contended by Mrs. Neeru Goswami that the petitioner having been declared deserter for having not reported at MH, Jalandhar, to

undergo reserve training on 20th August, 1961 and remained absent despite issuance of apprehension rolls to the Civil Police and later on

dismissed from service w.e.f. 11th November, 1964 and he is, thus, not entitled to the grant of pensionary benefits under the Army Act, Rules and

Regulations.

11. Before advertng to the respondents' contention, it is pertinent to refer to certain documents annexed by the petitioner and which remained

unrebutted and uncontroverted by the respondents either by filing any document or from their record. The petitioner in his rejoinder has

unambiguously stated to have not exercised any option after 1949 and particularly in the year 1952, as specifically pointed out by the respondents.

In support of his plea relied upon document, Annexure P-1 and is reproduced as under:

PERIOD OF COLOUR AND RESERVE SERVICE I.A.

No. 22340 Rank. N/O Name Dev Raj has accepted the revised period of service in accordance with AI(I) 199/48 & RAI 207. (12/10 years

colour and remaining reserve service to complete a total period of 15 years vide M.H. Calcutta Part-II order No. ""11"" of 18/4/49.

CALCUTTA Capt. IAMC

Dt/ 5-5-49 Company officer

(D.N. Ganguly)

12. The argument put across by the respondents may now be examined. Admittedly, there is no evidence, documentary or otherwise, placed on

the file by the respondents to support their plea that the petitioner exercised any option in 1952 in terms of AI No. 317/52 and accepted the

revised terms of engagement of 20 years service (12 years colour service and 8 years reservist). In such event, could the petitioner legally be

compelled to report to MH Jalandhar for undergoing reserve training on 20th August, 1961? In other words, so the petitioner was not under an

obligation to go for reserve training in terms of the aforesaid communication of the respondents, particularly when his retirement was accepted after

completing 15 years of service and his case for grant of pension was being processed and the petitioner asked to complete the requisite formalities

vide Annexure P-2 to the writ petition. This fact further stands strengthened vide communication addressed by the Secretary, DSS&A Board,

Jammu to OIC, Records, AMC, Lucknow (Annexure P-3) dated 2nd July, 1960 while returning the Railway Order No. 145551 and impressing

upon the competent authority that the pension/gratuity case duly completed was dispatched vide No. 2/JSB/22 dated 5-3-1960 in compliance to

their office No. 22340-Res dated 8-9-1958. It is not understandable why the petitioner is called for further training. Even prior to that, OIC,

Records, AMC, Lucknow, had addressed a communication dated 2nd February, 1960 to the petitioner (Annexure P-4), vide which the petitioner

was instructed to contact the Secretary, DDS&A Board, Jammu in completing all the pension papers within a week's time from the receipt of the

letter failing which the petitioner may be struck off from the reserve establishment and he may forfeit pension/ gratuity. Authenticity, correctness and genuineness of this document have not been disputed by the respondents.

13. On consideration of entire material on record placed by the parties including correspondence, it is clearly emanated that the respondents have

not succeeded to prove and establish that the petitioner exercised any option and accepted revised terms of engagement of service of 20 years (12

years colour and 8 years reservist) after the year 1949, more particularly in the year 1952. He is, thus, governed by the old terms of engagements.

In such event, the petitioner was not under an obligation to report to the MH, Jalandhar for further undergoing reservist training in pursuance of the

order of the respondents dated 8th August, 1961. There was no other requirement to be fulfilled by the petitioner for the grant of pension/gratuity.

Assuming that the petitioner had not reported for further reservist training, the question arises whether he should be declared deserter without

affording him an opportunity of being heard?

14. When a pension has to be declined, a specific order has to be passed u/s 71(h) of the Army Act contained in Chapter VII, which provides

punishments awardable by courts-martial. This provision further provides the forfeiture of service for the purpose of increased pay, pension or any

other prescribed purpose. Since the denial of pension is to operate as a punishment, a specific order is requirement to be passed. It is further

significant to point out that the right to pension arises when there is termination of service. This happens when a person retires or resigns or on his

death.

15. The respondents in para 9 of their reply have categorically stated that the petitioner having not reported physically on 20th August, 1961 to

undergo the Reserve training and remaining absent illegally was declared deserter by a Court of Inquiry convened at MH Jalandhar after meeting

all procedural requirements. There is nothing placed on record to show that in that enquiry whether the petitioner was given an opportunity of being

heard and made the charges against him and whether any specific order was passed with regard to forfeiture of the pensionary benefits, as required

u/s 71 of the Army Act? The reply further does not disclose as to whether summary court martial, after considering the facts, found the petitioner

guilty and awarded the punishment of dismissal from service and order of dismissal passed in accordance with the provisions of the Army Act, and

the petitioner was held not entitled to grant of pension/gratuity? That apart, Rule 17 of the Army Rules, 1954 provides that in case of dismissal or

removal from service under Sub-sections (1) and (3) of Section 20, information has to be given to the petitioner about the particulars of the cause

of action against him and allowing reasonable time to state in writing any reasons he may have to urge against his dismissal or removal from the

service. The material and the documents placed on record do not disclose that

the procedural requirement of Rule 17 of the Army Rules was ever complied with by the respondents before the dismissal of the petitioner from service after declaring him deserter. This itself would entitle the

petitioner to pension and gratuity. Regulation 155 of the Army Pension Regulations deals with Reservist Pension and is reproduced below:

155. An OR reservist who is not in receipt of a service pension may be granted, on completion of the prescribed combined colour and reserve

qualifying service, of not less than 15 years, a reservist pension equal to 2/3rd of the lowest pension admissible to a sepoy, but in no case less than

Rs. 375/- p.m. on his transfer to pension establishment either on completion of his term of engagement or prematurely, irrespective of the period of

colour service.

16. The contention of the learned respondents' counsel, Mrs. Neeru Goswami, is, therefore, neither factually nor legally tenable.

In D.S. Nakara and Others Vs. Union of India (UOI), , the Supreme Court held as under:

Pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer, nor an ex gratia payment. It is a payment for the

past service rendered. It is a social welfare measure rendering socio-economic justice to those who in the hey-day of their life ceaselessly toiled for

the employer on an assurance that in their old age they would not be left in lurch. Pension as a retirement benefit is in consonance with and

furtherance of the goals of the Constitution. The most practical *raison d'être* for pension is the inability to provide for oneself due to old age. It

creates a vested right and is governed by the statutory rules such as the Central Civil Services (Pension) Rules which are enacted in exercise of

power conferred by Articles 309 and 148(5) of the Constitution.

17. Thus, it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader

significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of the life when physical and mental

pro prowess is ebbing corresponding to aging process and, therefore, one is required to fall back on savings. One such saving in kind is when you give

your best in the hey-day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has

been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments to one retired

from service. Thus the pension payable to a government employee is earned by rendering long and efficient service and therefore can be said to be

a deferred portion of the compensation or for service rendered. In one sentence, one can say that the more practical *raison d'être* for pension is the

inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back

upon. What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some

public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental

questions so as to render just justice between parties to this petition.

18. Therefore, by grant of pension, the socio-economic goal and security is required to be secured, at least when it is mostly needed and least

available, namely, in the fall of life. The petitioner, as is submitted by Mr. B.C. Raina, learner senior counsel appearing for him, has reached the age

of 78 years and has not been provided retirement benefits of pension, mostly needed security in future, till date and even if he now gets, how much

time is left only God knows. As regards the plea of delay and laches taken by the respondents, it is pertinent to point out that in pension matters,

the delay in approaching the Court is irrelevant, as has been handed down by the Division Bench of this Court in case entitled *Union of India v.*

Rattan Lal in LPA (SW) No. 405 of 1997, reported in 2999 (2) SCT 39.

19. In view of the Rules and Regulations under the Army Act referred above, the petitioner has been found eligible for pension/gratuity in respect

of all previous service and is entitled to receive it. When an official has to his credit the minimum period of qualifying service required to earn

pension, his pensionary benefits cannot be forfeited merely on the ground that he was declared deserter and dismissed from service without any

material or documentary evidence placed on the record, and especially when the documents placed by the petitioner on record clearly envisage

that the claim of the petitioner stood recognized and acknowledged by the respondents after he had completed the colour and reservist service

totalling 15 years, his case was processed for pension and he was asked by the

respondents to furnish the requisite documents. When all these positive steps were taken by the respondents towards the grant of pensionary benefits to the petitioner, it is not understandable as to how all of a sudden, the attitudinal approach got changed without any substance, justification and fairness, and declined the pension in stating that he has been dismissed after being declared as deserter without affirmation from record, which despite repeated direction has not been produced.

20. In the above view of the matter, the petition is allowed and the respondents are directed to settle the pension case of the petitioner and release the pension to him within a period of three months from the date a copy of the order is provided to the respondents and the counsel appearing for the respondents by the petitioner. The pension would be released for the period three years earlier to the filing of the writ petition. This petition was filed in October, 1996 and the pension, accordingly, would be calculated and released w.e.f. October, 1993. The petitioner is also held entitled to the interest at the rate of 9%. In case the pension is not released and payment made to the petitioner within the period indicated above, the rate of interest would be 12% and the enhanced component of interest shall be payable by the person on account of whose remissness, the delay has occasioned. It is further directed that the respondents shall also consider the claim Of the petitioner for grant of gratuity.

21. Registry shall return the original record produced by the petition during the course of arguments, to him against proper receipt.