

ARMED FORCES TRIBUNAL REGIONAL BENCH, LUCKNOW

Transfer Application No. 679 of 2010

Friday, the 1st April, 2016

**(Reserved)
Court No. 1**

**“Hon’ble Mr. Justice Abdul Mateen, Member (J)
Hon’ble Lt. Gen. A.M. Verma, Member (A)”**

Dinesh Kumar Tiwari, son of Sri Ram Surat Tiwari, resident of village
Bhusaula, Post Lalganj, District Ballia.

..... Petitioner/Applicant

By Shri Yashpal Singh, learned counsel for the applicant.

Versus

1. Union of India through Secretary Defence, Ministry of Defence,
Government of India, Central Secretariat, New Delhi.
2. Chief of Army Staff (Indian Army), Army Headquarters, New
Delhi.
3. Central Commandant, 4 Bridge of Gourds Comptee.
4. Controller of Defence Accounts (P), Allahabad.
5. Senior Record Officer, Bridge of the Gourds, C/o 56 A.P.O, Pin-
900746.

.....Respondents.

By Dr. Shailendra Sharma Atal, Counsel for the Respondents alongwith
Maj Soma John, Departmental Representative.

ORDER

1. Civil Misc. Writ Petition No. 7612 of 2009 was received by this Tribunal from Hon'ble High Court of Judicature at Allahabad on 31.5.2010 and was renumbered as above.
2. The petitioner seeks the reliefs of setting aside the order of his dismissal from service and to reinstate him in service.
3. Facts of the case are that the petitioner was enrolled in the Army on 26.6.1996 and was posted to 4 GUARDS. On 14.4.1999, he was granted 9 days' casual leave from 15.4.1999 to 23.4.1999. After termination of the leave, he did not report back to the Unit and remained absent for more than three years. Consequently, in accordance with the extant orders, he was dismissed from service with effect from 30.9.2004 under the provisions of Army Act Section 20 (3) read with Army Rule 17.
4. The petitioner was represented by Shri Yashpal Singh, his learned counsel. The petitioner states that in December, 2001 he had some mental problem, for which he sought assistance from the respondents which was not granted and under these peculiar circumstances, he remained absent from leave. The petitioner claims that he had made several representations to the respondents, but received no reply. He learnt later that the Guards Regimental Centre had published a D.O. Part

II Order on 6.10.2004, according to which he had been dismissed from service under the orders of Centre Commandant under the provisions of Army Act Section 20(3) read with Army Rule 17. Learned counsel for the petitioner states that Army Rule 17 requires a show cause notice to be served to the petitioner, which was not done and, therefore, the order of dismissal is not valid.

5. The respondents were represented by Dr. Shailendra Sharma Atal, learned Standing Counsel, duly assisted by Maj Soma John, Departmental Representative. The respondents state that the petitioner was posted to 4 GUARDS in September, 1997. He was sent on 9 days' casual leave from 15.4.1999 to 23.4.1999 but did not report back to the Unit on termination of leave. On 8.5.1999, the petitioner's father wrote a letter to the Company Commander of the petitioner that his son i.e. the petitioner would not join the Unit as he had gone to Delhi for doing some other job. As per procedure laid down in Army Act Section 106, a Court of Inquiry was held and the petitioner was declared a deserter with effect from 24.4.1999. As per the orders, after three years of desertion, the petitioner was dismissed from service by the Commandant, Guards Regimental Centre. The petitioner had only 2 years and 301 days of service on the day he was declared a deserter. The petitioner requested for a copy of the Discharge Book in April 2008, which was sent to him vide Records Brigade of The Guards under a letter dated 5.5.2008, which is annexed as Annexure CA-8 to the counter affidavit. The final

settlement of Account was also done and all dues were paid to the petitioner.

6. Heard both sides and examined the documents.

7. The respondents have annexed with the counter affidavit a letter written in Hindi by one Ram Surat Tiwari, who informed the Company Commander that his son (petitioner) had gone to Delhi and would not join the force. A Court of Inquiry was conducted as provided in Army Act Section 106 and the petitioner was declared a deserter with effect from 24.4.1999 and the deficiency of kit was ordered to be made up from the petitioner's IRLA. We have seen the original file wherein there is a certificate signed by the Commandant of the rank of Brigadier, which states that it was not practicable to comply with the provisions of Army Rule 17. Army Rule 17 provides as follows:

“17. Dismissal or removal by Chief of the Army Staff and by other officers.- Save in the case where a person is dismissed or removed from service on the ground of conduct which has led to his conviction by a criminal court or a court-martial, a person shall be dismissed or removed under sub-section (1) or sub-section (3) of section 20; unless he has been informed of the particulars of the cause of action against him and allowed reasonable time to state in writing any reasons he may have to urge against his dismissal or removal from the service.

Provided that if in the opinion of the officer competent to order the dismissal or removal, it is not expedient or reasonable practicable to comply with the provisions of this rule, he may after certifying to that effect, order the dismissal or removal without complying with the procedure set out in this rule. All cases of dismissal or removal under this rule where the prescribed procedure has not been complied with shall be reported to the Central Government.”

8. The certificate rendered by the Commandant, Guards Regimental Centre is considered adequate for the purposes of Army Rule 17.. Thereafter, the Commandant dismissed the petitioner from service, for which requisite Noting exists in the original file.

9. There is a letter dated 25.8.2002, photo-copy of which has been attached by the petitioner. This letter is purported to have been signed by Anita Devi, who claims to be the wife of the petitioner. This letter in Hindi addressed to Senior Officer, states that her husband has gone mad and that whatever pension is due to him be granted. There is another letter also in Hindi purported to have been signed by Anita Devi dated 23.5.2003 addressed to Senior Officer, in which she has again stated that her husband has gone mad and requested that suitable action be taken. There is no evidence on record to suggest that these letters were sent, and if sent, to which Senior Officer were they sent. We are inclined to disregard these two letters.

10. The respondents have taken action as provided by law to dismiss the petitioner from service after he had been declared a deserter for more than three years. We find no infirmity in this procedure. Accordingly, this T.A is dismissed lacking in merit. No order as to costs.

(Lt. Gen A.M. Verma)
Member (A)

(Justice Abdul Mateen)
Member (J)

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