

**Court No. 2**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**ORIGINAL APPLICATION No. 91 of 2011**

Wednesday, this the 17<sup>th</sup> day of Aug 2016

**Hon'ble Mr. Justice D.P. Singh, Member (J)**  
**Hon'ble Air Marshal Anil Chopra, Member (A)**

Ex-Gunner (Sepoy) Santosh Kumar (Army No. 14449153-X) of 159 Field Regiment (last Unit), C/o 56 APO, son of Late Naik Arun Kant Tiwari, resident of village-Ramdattahi, Post-Parsaunda, P.S.-Shahpur, District-Bhojpur (Bihar)-802112.

...Applicant

Ld. Counsel for the: **Shri P.N. Chaturvedi, Advocate**  
Applicant

Versus

1. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi 110001.
2. Officer-in-Charge Records, Air Defence Artillery, Nasik Road Camp.
3. Commanding Officer, 159 Field Regiment, C/o 56 APO.

.....Respondents

Ld. Counsel for the : **Dr. Shailendra Sharma Atal,**  
Respondents **Central Govt Counsel, assisted by**  
**Maj Soma John, OIC Legal Cell.**

**ORDER (ORAL)**

1. This is an application filed under Section 14 of the Armed Forces Tribunal Act, 2007 being aggrieved with the impugned order of dismissal dated 19.02.2011.

2. Heard Shri P.N. Chaturvedi, Ld. Counsel for the applicant and Dr. Shailendra Sharma Atal, Ld. Counsel for the respondents assisted by OIC Legal Cell and perused the record.

3. The applicant was enrolled in the Corps of Artillery on 03.09.2003. While serving in the Corps of Artillery, the applicant applied for Casual Leave for five days from 07.07.2007 to 10.07.2007. The applicant did not turn up after 11.07.2007. Vide order dated 02.02.2009, i.e. after lapse of thirty days, the applicant was declared deserter with effect from 11.07.2007 in terms of Army Order 43 of 2001. Apprehension Roll dated 11.08.2007 was also issued, but the police of the local area could not apprehend and produce the applicant before the appropriate authority.

4. While filing the present O. A., the applicant has admitted that letter dated 02.02.2008 addressed to his mother Smt Geeta Devi was received by his family but it was not addressed to him. Since the applicant had not turned up for three years he was dismissed from service under Army Rule 17 of Army Rules 1954. For convenience sake Rule 17 of the Army Rules, 1954 is reproduced below:-

***“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 court or a court-martial, no 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 service:*

*Provided that if in the opinion of the officer competent to order the dismissal or removal, it is not expedient or reasonably 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".*

*(Emphasis supplied)*

5. It is submitted by Ld. Counsel for the applicant that without serving any show cause notice and without complying the principle of natural justice, dismissal from service of Army personnel is bad in law and hit by Article 14 of the Constitution of India.

6. On the other hand Ld. Counsel for the respondents submitted that since whereabouts of the applicant were not known, there was no other option but to dismiss from service in absentia. We have been informed by OIC Legal Cell that the matter has been communicated to the Govt of India. This fact

has been averred in para 'C' of the counter affidavit which is reproduced as under:-

*“C. That the applicant was dismissed from service with effect from 8.11.2010 being a peace deserter for more than three years under the provisions contained in Army Act Section 20 (3) read in conjunction with Army Order 43/2001/DV, after obtaining the sanction of competent authority and casualty of the same has been published vide Part II Order no. 01/Rec./0399/55/NE-1/2010 dated 27<sup>th</sup> November, 2011. As per the procedure the intimation regarding dismissal of the applicant has been sent vide Arty Records vide letter no. 14449153X/Dism-Oct 10/31/NE-1 dated 19.2.2011 to Zila Sainik Kalyan Karyalaya Kutchehri, Arrah (Bihar) under intimation to the applicant with an advice to apply for the following terminal benefits:-*

- |   |                      |
|---|----------------------|
| <i>(a) Armed Forces Provident<br/>Fund Balance</i>  | <i>-Rs 29,747.00</i> |
| <i>(b) Army Group Insurance<br/>Saving benefits</i> | <i>-Rs 34,250.00</i> |
| <i>(c) Discharge Certificate”</i>                   |                      |

7. A plain reading of para 'C' of the counter affidavit shows that while passing the impugned order of dismissal, the funds for which the applicant was entitled, a decision was taken i.e. Armed Forces Provident Fund, Army Group Insurance. Needless to say that unless the order of dismissal was communicated to the Ministry of Defence, payment of aforesaid dues would not have been possible.

8. A perusal of certificate issued under Army Rule 17 also shows that the respondents had recorded that it is not practicable to comply with the provisions of Army Rule 17 since the applicant's whereabouts were not known. It may be noted that once apprehension roll is issued to the police authorities concerned the arrest and production of the deserter and the police failed to do, then a reasonable presumption may be drawn that whereabouts of the Army personnel who is a deserter of the Army are not known.

9. It is vehemently submitted by Ld. Counsel for the applicant that Govt of India has not been informed, but from the pleadings, it does not appear that any material has been brought on record to indicate that Govt of India has not been informed. In such a situation there is no option to accept the submission of OIC Legal Cell and averments made in the counter affidavit.

10. We have repeatedly held that a deserter is not entitled for any sympathy from any quarter of administration of justice. We are not inclined to grant any equitable relief to the applicant. A person who joins Army must understand that he has taken oath to serve the country and desertion of Army without sanctioned leave or overstaying leave for inordinate period are such instances where the country may be deprived from services of

such persons in the event of any eventuality when the nation requires their services to fulfill immediate need.

11. While parting with the case, at the cost of repetition, we again observe that almost in every case apprehension roll issued by Army is not taken due care by police authorities. Once apprehension roll issued then it shall be obligatory on the part of the police authorities to discharge their statutory duty and arrest the absconding Army personnel and produce him before the appropriate authority or the court. Commission and omission on the part of police authorities, while dealing with apprehension rolls, affects discipline of the Army and ultimately the Nation suffers. It shall be appropriate for the Principal Secretary (Home) State of U.P. and Director General of Police, U.P. to look into the matter and ensure that apprehension rolls issued by the Army are duly taken into account and implemented with all vigour so that a person absconding/deserting from the Army may be prosecuted in accordance with law.

12. One another limb of argument advanced by Ld. Counsel for the applicant is that in 2010 the applicant had gone to the unit and met the Commanding Officer. Even assuming that the applicant had gone to the unit, that too seems to be almost after a period of three years. This falsifies the arguments of Ld. Counsel for the applicant that he was very much available and

intending rejoin the Army. It may be noted that the applicant himself in para 4.3 of the O.A. has admitted that copy of the apprehension roll was received by his mother. Once he was duly communicated in the year 2008 itself to join duty, it was incumbent upon him to meet or contact the authorities concerned and get himself admitted in the Military Hospital. It appears that the applicant has cooked up a false case while approaching the Tribunal.

13. Subject to above, the O.A. lacks merit; hence **dismissed**.

Registry shall forward copy of the order to the Principal Secretary (Home) State of U.P. and Director General of Police, U.P. forthwith who shall look into the matter and issue appropriate directions to all parties concerned.

No orders as to costs.

**(Air Marshal Anil Chopra)**  
**Member (A)**

anb

**(Justice D.P. Singh)**  
**Member (J)**