

Court No. 2

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

TRANSFERRED APPLICATION No. 37 of 2013

Friday, this the 5th day of Aug 2016

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

No. 13892406 Dvr (OG), Triloki Nath S/O Shri Ganga Ram
resident of house No 62/86J, Mahila Gram Inter College,
Subedarganj, Allahabad.

...Petitioner

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

Versus

1. Union of India through Ministry of Defence, Central Secretariat, New Delhi.
2. Major Coy, Cdr, 'B' Coy 5121 ASC Bn (MT), C/O 56 APO.

.....Respondents

Ld. Counsel for the : **Shri D.K. Pandey,**
Respondents **Central Govt Counsel, assisted by**
Col Kamal Singh, OIC Legal Cell.

ORDER (ORAL)

1. Applicant being aggrieved with the impugned order of dismissal from service on being declared deserter had preferred Writ Petition No. 2062 of 2003 in the High Court of Judicature at Allahabad. After constitution of the Armed Forces Tribunal, the petition has been transferred to this Tribunal under Section 34 of the Armed Forces Tribunal Act, 2007 and re-numbered as T.A. No 37 of 2013.

2. We have heard Ld. Counsel for the parties and perused the records.

3. The admitted facts on record are that the petitioner was recruited in the Indian Army as Cleaner on 21.06.1983 in 749 (I) Transport Platoon, Army Service Corps (Civil GT) and later on was promoted on the post of Driver (Ordinary Grade) with effect from 15.11.1986 and was posted in 5682 ASC Battalion (MT) with effect from 07.10.1986. While serving as Driver (OG) the petitioner was granted earned leave/half pay leave from 03.07.2000 to 27.07.2000. The leave was further extended for 26 days from 28.07.2000 to 22.08.2000. Since the petitioner did not join on 23.08.2000 hence apprehension roll was issued and forwarded to the concerned police authorities vide letter dated 18.12.2000. It appears that the petitioner could not be traced out and since the petitioner had not joined duties in spite of

issuance of apprehension roll even after lapse of three years, in accordance with the policy of the Army, a Court of Inquiry was convened on 23.02.2001 in absentia to investigate the circumstances under which the petitioner was over staying leave with effect from 23.08.2000. Ultimately the Court of Inquiry was finalized and the petitioner was declared deserter with effect from 23.08.2000 and on completion of three years he was dismissed from service with effect from 23.08.2003. From the averments made in para 6 and 7 of the counter affidavit, which have not been denied by the petitioner, it is borne out that the petitioner was habitual of absenting without sanctioned leave/overstaying leave for which he was punished on various occasions. Para 6 and 7 of the counter affidavit for convenience sake are reproduced as under :-

“6. That, the petitioner was time and again advised to rejoin duty but he did not do so. On 23 Feb. 2001, a court of inquiry was ordered at unit level to investigate the circumstances under which he was overstaying leave w.e.f. 23 Aug 2000. Court of inquiry was finalized and the petitioner was declared deserter w.e.f. 23 August 2000. The petitioner is being shown on supernumerary strength of the unit w.e.f. 23 August 2000 and under existing ruling he will be dismissed from service w.e.f. 23 August 2003 i.e. after completion of 3 years period of his desertion.

7. That, the petitioner was habitual of absenting without leave/overstaying leave for which he was

punished at various times. The discipline records of the petitioner is as under:-

(a) Awarded 14 days pay fine under Army Act Sec 39 (b), for absenting himself without leave.

(b) Awarded 28 days rigorous imprisonment in military custody under Section 39 (b) of the Army Act for overstaying leave without any sufficient cause.

(c) Awarded 5 days pay fine under Section 63 of the Army Act for an act prejudicial to good order and military discipline.

(d) Awarded 3 days pay fine under Section 63 of the Army Act for violation of good order and military discipline.

(e) Awarded 10 days rigorous imprisonment in military custody under Section 39 (b) of the Army Act for absconding himself without leave.

(f) Awarded 14 days rigorous imprisonment in military custody under Section 63 of the Army Act for an act prejudicial to good order and military discipline.

(g) Awarded 7 days rigorous imprisonment in military custody under Section 39 (b) of the Army Act for absenting himself without leave”.

4. Being aggrieved with the impugned order the petitioner approached the High Court and later on the matter has been transferred to this Tribunal.

5. Ld. Counsel for the petitioner submits that the petitioner has been dismissed in absentia without serving show cause

notice or affording opportunity of hearing. On the other hand Ld. Counsel for the respondents submitted that since the petitioner did not resume duties even after lapse of three years on account of overstaying leave he was rightly dismissed. For convenience sake relevant portion of Army Order 43/2001/DV-Desertion is quoted as under:-

“Dismissal Procedure

22. A person subject to the Army Act, or a reservist subject to Indian Reserve Forces Act, who does not surrender or is not apprehended, will be dismissed from the service under Army Act Section 19 read with Army Rule 14 of Army Act Section 20 read with Army Rule 17, as the case may be, in accordance with instructions given below :-

(a) After 10 years of absence/desertion in the following cases:-

(i) Those who desert while on active service, in the forward areas specified in Extra Ordinary Gazette SRO 172 dated 05 Sep 77 (reproduced on page 751 of MML Part III) or while serving with a force engaged in operations, or in order to avoid such service.

(ii) Those who desert with arms or lethal weapons.

(iii) Those who desert due to subversive/espionage activities.

(iv) Those who commit any other serious offence in addition to desertion.

(v) Officers and JCOs/WOs (including Reservist officers and JCOs, who fail to report when required).

(vi) Those who have proceeded abroad after desertion.

(b) After 3 years of absence/desertion in other cases.

(c) The period of 10 years mentioned at sub-para (a) above may be reduced with specific approval of the COAS in special cases”.

6. Dismissal from Army service on account of overstaying leave as deserter, that too after long period of three years or more seems to be inevitable on account of commission and omission of the Army personnel. Once a person is not present and overstayed leave for more than three years and Army Order (supra) provides to dismiss such an employee, then we feel that formal procedure will not come in the way. In case the petitioner would have reported to resume duty, then while taking steps for dismissal from service on account of declaring him a deserter, principles of natural justice would have to be necessarily complied with. Once the petitioner himself did not present him to join duties even after lapse of three years, there was no occasion for the Army authorities to issue notice. It may be noticed that even after passing of the impugned dismissal order, family of the petitioner was continuously communicated that he has been dismissed from service by the competent authority.

7. A lame submission has been made by Ld. Counsel for the petitioner that the petitioner had tried to resume the duties but the authorities did not permit him to do so. No material has been brought on record indicating the circumstances under which the petitioner had approached for resumption of duties. It appears that a case has been cooked up as defence for filing writ petition in the High Court that the petitioner tried to resume duties but was not permitted to join duties. An adverse inference may be safely drawn from the petitioner's own conduct that even after a period of three years he did not respond to the letters sent by the respondents directing him to resume duties. Argument raised by Ld. Counsel for the petitioner does not inspire confidence.

8. We have already recommended in our previous pronouncements that period of three years' absence in today's high tech era should be reduced to a lesser period so that relaxation granted may not be abused by Army personnel. Desertion from the Army means such a deserter has deserted the country to serve as a member of the elite armed force. A person deserting the Army should not expect any indulgence or leniency from the Court. There may be situation in which Army personnel may overstay leave but absence of three years is too much and that is why we have recommended in our earlier pronouncements that period for declaring army personnel a

deserter should be reduced. In view of section 39 (b) of the Army Act in the matter of overstaying leave, a lenient view may be taken by Court/Tribunal in case of an Army personnel overstaying leave on account of certain compelling circumstances but once '*Lakshman Rekha*' of three years is crossed no rule or regulation governing Army services would come to his rescue. Three years period is too much without indicating that he or she intends to join the Army. Accordingly we do not find that there is any merit in the present petition.

9. While parting with the case we express one serious problem with which the Army is facing. Apprehension rolls sent by the Army to the concerned police authorities remain unattended by the police for an indefinite period. An Army deserter keeps on living in his house, attending functions and visiting relatives, but the apprehension roll issued by the Army authorities is not served on unfounded grounds by the concerned police authorities. It is highly inappropriate on the part of the police authorities not to give response to the apprehension rolls sent by the Army. We have come across such situation in a number of cases where apprehension rolls are thrown in dustbin by the police authorities concerned without taking care to attend it. It shall be appropriate for the Principal Secretary (Home) State of U.P. and Director General of Police U.P. to look into such matters and direct the police

authority concerned to pay attention on apprehension rolls issued by the Army to find out a person who has deserted the Army.

10. Subject to the above we do not find any merit in the T.A.; hence **dismissed**.

Let a copy of this order be sent to the Principal Secretary (Home) State of U.P. and Director General of Police U.P. who shall look into the matter and ensure that apprehension rolls issued by the Army authorities against deserters are taken due care so that the country may not suffer for any commission or omission on the part of State police.

No orders as to costs.

(Air Marshal Anil Chopra)
Member (A)

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