

Court No.1
Reserved Judgment

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

Original Application No. 606 of 2017

Friday this the 27th day of July, 2018

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

Pankaj Kumar Sahu
S/o Sri Manju Lal Sahu
Resident of Village – Baogo
Post – Tewaripur
Tehsil – Kunda
District – Pratapgarh (U.P.)

.....Applicant

Ld. Counsel for : **Shri Shiv Shankar Singh, Advocate**
the Applicant

Versus

1. Union of India through its secretary, Ministry of Defence, New Delhi.
2. The secretary, Ministry of Law North Block, New Delhi.
3. Chief of Army Staff, Army Headquarter-New Delhi.
4. E.M.E. Records Secunderabad.
5. Commandant Military Training Centre battalion-3, E.M.E. Centre Bairagarh, Bhopal

.....Respondents

Ld. Counsel for the : **Shri Virendra Singh**
Respondents **Ld. Counsel for Central Govt.**

ORDER

“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)”

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has claimed following reliefs :-

“(i) Quash set aside impugned order dated 29.07.2015 passed by opposite party no. 5 contained in Annexure no. 1 to this Original application.

“(ii) Pass order or direction directed to opposite parties take the applicant in Military Training Battalion 3 EME Centre Bairagarh Bhopal for completing his training.

“(iii) Pass any other order or direction which this Hon’ble Tribunal may deem fit and proper under the circumstances of the case.

“(iv) Allow present Original application and award the cost of application to the applicant.”

2. The order which has been challenged is the order dated 29th July 2015, which is virtually an Apprehension Roll, which was issued in exercise of power under Section 106 of the Army Act because of the unauthorised absence of the applicant.

3. In brief the facts, as averred in the O.A., are that the applicant was enrolled as Sainik on 18.03.2015 in the Army. He was sent for training at 3rd EME Centre Bairagarh, Bhopal. As per the averments of Para 4.1 of the O.A, the applicant after completing three months’ training, due to illness, came back to his native place at Pratapgarh. However, in Para 4.8 he has pleaded that he has completed five months’ training, but due to illness on 29.07.2015, he came back to his house at Pratapgarh, where he started his treatment. When in the month of August 2016, he recovered from illness, then he approached to the authorities and requested them to kindly permit him to undergo his training. It is submitted that during illness, the applicant was treated at CHC, Pratapgarh, thereafter in Medical College, Allahabad. He moved several applications to the respondents to permit him to join his

training, however, he was not permitted to join his training and he was discharged from service.

4. In the counter affidavit, it has been pleaded on behalf of the respondents that the applicant was enrolled on 18th March 2015 in the Army. He was to undergo 19 weeks basic military training scheduled w.e.f. 30th March 2015 to 18th August 2015. During the said military training on 21st July 2015, the applicant was found absent without leave. Apprehension Roll was issued to the Superintendent of Police, Pratapgarh and information was also sent to the father of the applicant to instruct his son to join his duty forthwith. In reply to the said information, the applicant sent a letter on 05th August 2015 stating that he was undergoing treatment for his ill health and requested for granting leave for treatment. In reply to the said letter, the applicant was informed that free medical facility is available at various level in the Army and accordingly he was advised to rejoin duty forthwith. On 16th August 2015 at about 2000 hrs, he voluntarily reported on duty, but on the very next day on 17th August 2015 at 1500 hrs, he was found absent without leave. Thereafter again the Apprehension Roll was issued to the police authorities and letter was also sent to his father. A court of inquiry was conducted. The applicant was declared a deserter. Part II order was published. After taking such steps, the documents in respect of Recruit Pankaj Kumar Sahu were forwarded to the EME Centre vide letter dated 26.09.2015 for final settlement of his account. The applicant again wrote letters to the Commanding Officer on 14th September 2015 and on 30th March 2016 to seek permission to rejoin the duty. In reply thereto, he was informed that he cannot rejoin the duty as per Integrated Headquarters MoD Army Letter No. A/20314/MT-3 dated 28th February 1986.

5. The earlier Apprehension Roll issued on 29th July 2015 was cancelled. It has been pleaded that since the applicant was found absent during training period and as per Policy, if a recruit is absent for

continuous period of 30 days, then he is liable to be discharged from service.

6. The submission of the learned counsel for the applicant is that the applicant had written several letters to the authorities, but no action was taken. However, learned counsel for the applicant could not bring to our notice as to why the applicant left the training centre without informing any authority. When he was not well, why he did not report in the Military Hospital.

7. On behalf of the respondents, it has been argued that the applicant remained continuously absent and, therefore, after holding a court of inquiry, he was discharged from service. It is also submitted on behalf of the respondents that the applicant has preferred this O.A. on wrong facts and he is not entitled to any relief claimed.

8. Learned counsel for the applicant has placed reliance on the pronouncement of a Coordinate Bench of this Tribunal in the case of **Ex Sapper Santosh Kumar Singh vs. Union of India & Ors.** (T.A.No.1273 of 2010) decided on 25th May of 2017. Learned counsel for the applicant has also argued that on 16th August 2015 when he rejoined his duty, on the very next day he was compelled to go back on the assurance that necessary letter shall be issued to him to rejoin his duty.

9. On behalf of the respondents, reliance has been placed on the pronouncement of Hon'ble Supreme Court in the case of **Union of India and others vs. Manoj Deswal and others** (2016 (15) SCC 511).

10. The only issue involved in this case is whether the applicant, who admittedly absented himself without prior permission of any authority for continuous period of more than 30 days, is entitled to the relief claimed.?

11. Admittedly, the applicant had not completed even his basic training of 19 weeks, therefore, he was not even attested. Thus, the

status of the applicant was only of a probationer. Law is settled on the point that a probationer can be discharged from service at any point of time by his employer. Hon'ble Supreme Court in a recent judgment in the case of **Manoj Deswal and others** (supra) had an occasion to consider this point. The applicant is not entitled to the benefit of the case law of **Ex Sapper Santosh Kumar Singh** (supra), because in that case the applicant was a duly attested person and, therefore, he could have been removed only after holding an enquiry. In that case the dismissal order was set aside on the ground that the applicant alongwith 40 other soldiers was dismissed from service by a common order which was held against the provisions of the Army Act and no written order of dismissal/discharge from service was passed in compliance of Section 23 of the Army Act. Hon'ble Apex Court in the case of **Manoj Deswal and others** (supra) has considered the issue involved in this case and has held in Para 15 as under :

“15. It is an admitted fact that Respondent 1 had not been attested. Certain formalities are required to be done for being attested as per the provisions of Section 17 of the Act and admittedly the said formalities had not been done. The status of Respondent 1 was just like a probationer, whose service could be terminated without holding any enquiry. In spite of the fact that service of Respondent 1 could have been terminated without holding any enquiry, an enquiry had been held on 29-7-2005 and it was found that Respondent 1 had remained absent for 108 days without any sanctioned leave. The said act is an act of gross indiscipline. Absence of Respondent 1, being a finding of fact, we would not like to interfere with the same especially when after holding the said enquiry Respondent 1 had also been declared deserter.”

12. At this juncture, we would like to quote policy No. A/20314/MT-3 dated 28th February 1986 which deals with the relegation of recruit and has been annexed as Annexure to the counter affidavit. The relevant part of the said policy reads as under :

“Relegation for Absence without Leave

4. A rect who has been absent without leave for a period of 30 consecutive days during basic mil trg period, will not be allowed to rejoin his trg again. The absentees for less than 30 consecutive days may be considered for relegation if otherwise found suitable for retention. However, once the tech trg of a rect has commenced, the discretion to

discharge a rect for such absence will be left to the Commandant of the Centre, who may retain or discharge him considering the case on its merits."

Admittedly in the facts of the case in hand, the applicant has not even completed his basic training.

13. In this case, a court of inquiry was held and the opinion of the court of inquiry was approved by the competent authority on 16th September 2015. The said letter reads as under :

**"DIRECTION OF TRAINING WING COMMANDER, 1
MILITARY TRAINING BATTALION, 3 EME CENTRE, BHOPAL
ON ACCOUNT OF COURT OF INQUIRY IN RESPECT OF NO
17032300N RECT PANKAJ KUMAR SAHU**

1. *I agree with finding and opinion of the court.*
2. *No 17032300N Rect Pankaj Kumar Sahu of Course No 2078 'A' Coy, 1 Mil Trg Bn, 3 EME Centre, Bhopal absented himself without leave (AWL) from unit line wef 17 Aug 2015 at about 0500 hrs during morning PT fallin without sufficient cause and is still absent.*
3. *No 17032300N Rect Pankaj Kumar Sahu is therefore declared "DESERTER" without Arms and Amn wef 17 Aug 2015 at about 0500 hrs during morning PT fallin from peace.*

Station : C/O 56 APO
Dated : 16 Sep 2015

Sd/- x x x x x x x"

14. Thus, it is clear that even after joining on 16th August 2015, the applicant again absented himself and prior to that, he was absent on 21st July 2015 to 16th August 2015. The applicant in his O.A. has nowhere stated that he resumed his duty on 16th August 2015 and he was asked to go back on the assurance to rejoin duty only after receiving a letter for the said purpose. Thus, admittedly the applicant remained absent from 21st July 2015 to 16th August 2015 and thereafter again he absented himself from 17th August 2015.

15. The facts of the case in hand are absolutely identical with the case before the Hon'ble Supreme Court in the case of **Manoj Deswal and others** (supra), therefore, the O.A. has no merit. He has not completed his basic training and absented himself without prior sanction of leave. Therefore, in compliance of the Policy covering the field, he was discharged from service after the stipulated period of 30 days. Thus, we find no illegality, irregularity or impropriety in the order passed by the respondents.

16. O.A.No. 606 of 2017 has no merits, deserves to be dismissed and is hereby **dismissed**.

(Air Marshal B.B.P. Sinha)
Member (A)

(Justice S.V.S.Rathore)
Member (J)

Dated: July , 2018.
PKG