

**Court No. 1**  
**RESERVED**

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

**Transferred Application No 24 of 2012**

**Thursday, this the 4<sup>th</sup> day of August, 2022**

**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

Yogendra Singh, No. 14480239-X Gnr  
S/o Shri Ram Das  
R/o Village – Sukhlalpur, PO – Sikandarabad,  
District – Bulandshar (UP)

..... Petitioner

Ld. Counsel for the Petitioner : **Shri Pushendra Kumar Dhaka,**  
Advocate

Versus

1. Union of India, through Secretary to Government, Ministry of Defence, North Block, Central Secretariat, New Delhi.
2. The Director General of Artillery (Arty-3-B), General Staff Branch, Army Headquarters, DHQ PO, New Delhi – 110011.
3. The Commanding Officer, Topkhana Abhilekh, Artillery Records Nasik Road Camp, C/o 56 APO.
4. The Commanding Officer, Headquarters Artillery Centre, Hyderabad – 31 (A.P.)

..... Respondents

Ld. Counsel for the Respondents : **Shri Namit Sharma,**  
Central Govt Counsel

**ORDER**

1. The petitioner preferred O.A. No. 184 of 2011 before Armed Forces Tribunal (Principal Bench), New Delhi which has been transferred to this Tribunal and has been registered as T.A. No. 24 of 2012. By means of this T.A., petitioner has prayed for the following reliefs:-

- “(a) Issue order or direction directing the respondents to grant pension and pensionary benefits to the petitioner.
- (a-1) Quash the impugned order dated 20.04.2009 passed by the opposite party no. 3 after summoning the same from its originals.
- (a-2) Quash the impugned order dated 01.02.2010 passed by the opposite party no. 3 contained in Annexure No. 1 to the instant T.A.
- (b) Pass such an order or orders as this Hon’ble Tribunal deemed fit and proper in the circumstances of the case.”

2. The petitioner was enrolled in the Indian Army on 30.08.1982. The petitioner while serving with 307 Medium Regiment was granted balance of annual leave for 34 days ending on 20.10.1998. The petitioner could not join the unit after expiry of leave due to severe illness of his wife and became absent without leave/over staying of leave. Thereafter, the petitioner reported for duty on 11.03.1999 at Chandigarh Transit Camp as his Battery 3071/307 Medium Regiment was located at Kargil. After reporting at Kargil, 3071/307 Medium Regiment issued a Movement Order dated 07.04.1999 directing the petitioner to report at Unit Headquarters located at Srinagar. On reporting there, the petitioner was ordered to go to Record Office at Nasik Road Camp. On reporting at Record Office, the petitioner was told to further report to Commanding Officer of your unit which is located at Ferozpur. When the petitioner reported at his unit in Ferozpur, he was again directed to report to Record Office. When petitioner reported at Record Office, he was further told to report to your unit located at Ferozpur stating that any action against you to

be taken by your unit only. Thus, the petitioner kept moving hither and thither but he was not taken by any of the Army units. In this regards, petitioner wrote many letters to the respondents/authorities requesting them to take him in strength of the unit but no action was taken by the respondents for taking him in the strength of Army. The petitioner was discharged from service w.e.f. 29.08.1999 on expiry of his service tenure as per terms and engagement of service as informed by the respondent No. 3 vide letter dated 27.01.2007. Thereafter, petitioner was dismissed from service w.e.f. 20.04.2009 vide Artillery Records letter dated 01.02.2010. Being aggrieved, the petitioner has filed the present Original Application to grant him pension and pensionary benefits.

3. The submission of the learned counsel for the petitioner is that petitioner was enrolled in the Indian Army on 30.08.1982. The petitioner while serving with 307 Medium Regiment was granted balance of annual leave for 34 days ending on 20.10.1998. The petitioner could not join the unit after expiry of leave due to severe illness of his wife and became absent without leave. Thereafter, the petitioner reported for duty on 11.03.1999 at Chandigarh Transit Camp as his Battery 3071/307 Medium Regiment was located at Kargil. After reporting at Kargil, 3071/307 Medium Regiment issued a Movement Order dated 07.04.1999 directing the petitioner to report at Unit Headquarters located at Srinagar, where the petitioner was ordered to go to Record Office at Nasik Road Camp. On reporting at Record Office, the petitioner was told to further report to Commanding Officer of your unit which is located at Ferozpur.

When the petitioner reported at his unit in Ferozepur, he was again directed to report to Record Office. When petitioner reported at Record Office, he was further told to report to your unit located at Ferozepur stating that any action against you to be taken by your unit only. Thus, the petitioner kept moving hither and thither but he was not taken by any of the Army units.

4. Learned counsel for the petitioner further submitted that petitioner being annoyed with not taking him in strength of the unit, he wrote a letter dated 20.10.1999 to the respondents requesting them that where he should go and what to do having served more than 16 years of unblemished service. The petitioner also wrote a letter to the President of India vide letter dated 16.08.2001. The petitioner received a letter dated 27.09.2001 from the respondents directing him to surrender to his unit (307 Med. Regt.). Petitioner also received a letter dated 28.09.2001 from Artillery records. The contents of the letter are as under :-

*“This is to inform you that you had overstayed leave with effect from 25 Nov 1998 and declared deserter from the same date by a Court of Inquiry held on 20 Feb 1999 at 307 med Regt. A deserter is not entitled to any type of pensionary benefits/financial assistance. However, you are advised to surrender yourself to Arty Centre, Hyderabad at the earliest.”*

5. Learned counsel for the petitioner further submitted that the petitioner received a letter dated 20.10.2001 from Artillery Centre which was addressed to Artillery Records mentioning therein *“to instruct the unit to accept the deserter (petitioner) and take necessary action for regularization as the unit is located in peace area”*. The petitioner also received a letter dated 17.02.2004 from Artillery Records to surrender himself to his parent unit. In reply, the petitioner

wrote letter dated 05.10.2004 to Commanding Officer 307 Med Regt requesting that *"I am willing to rejoin the unit voluntarily but I do not know the location of the unit. I, therefore, request to kindly intimate me the location and N.R. so that I may report there"*. Thereafter, petitioner wrote many letters dated 24.12.2004, 18.10.2005, 26.12.2005 and 21.01.2007 to the respondents/ authorities but no action was taken by any of the authorities with regard to his taking in strength of the unit.

6. Thereafter, petitioner received a copy of letter dated 27.01.2007 (Annexed with Original Application as Annexure A/14) which was issued by Artillery Records and addressed to Zila Sainik Welfare Officer, Distt – Bulandshar (UP) with a copy to SP, Bulandshahr and to the petitioner. The letter dated 27.01.2007 reads as under :-

Topkhana Abhilekh  
Artillery Records  
PIN – 900482  
C/o 56 APO

14480239X/Dish/111/NE-7

27 Jan 2007

Zila Sainik Welfare Officer,  
Distt – Bulandshar (UP)

DISCHARGED FROM SERVICE ; DESERTER NO. 14480239X  
RANK GNR (DESERTER) YOGENDRA SINGH

1. No. 14480239X Rank GNR Name Yogendra Singh belonging to Regiment of Artillery has been discharged from service with effect from 29 Aug 1999 on expiry of his service tenure (as per terms of engagement) during his desertion period as per instructions of Army Headquarters letter No. A/10016/Policy/Arty-7(B) dt. 18 Nov. 06."
2. If the above individual is traceable he may please be advised to apply for the following:
  - (a) AFPP Fund balance – Rs. 34,368/-.
  - (b) Discharge Certificate.
  - (c) AGI Saving benefits – Rs. 19,135/-.
3. If the individual is not traceable, then his next of kin, Smt. Gita Devi (Wife) may please be advised to apply for the same.

Sd/- x x x x x  
Captain  
Record Officer

Copy to :-  
The Superintendent of Police  
Distt – Bulandshahr (UP)

1. Refer to Apprehension Roll No. P/307801/34/A dated 05 Dec 1998.
2. Since, the above individual has been discharged from service, he is not required to be apprehended.

7. Learned counsel for the petitioner further submitted that when petitioner was on the strength of Battery/unit since April 1999, how he was declared a deserter without any conviction. If the petitioner was discharged from service w.e.f. 29.10.1999 then how without any jurisdiction and without serving any Show Cause Notice or complying the rules, petitioner was dismissed from service after 10 years w.e.f. 20.04.2009 allegedly under Section 20(3) of Army Act, 1950 which he came to know through respondents letter dated 01.02.2010 and therefore, dismissal order dated 20.04.2009 being illegal and arbitrary is liable to be set aside. Since the petitioner was discharged from service w.e.f. 29.08.1999 on expiry of his service tenure as per terms and engagement of service as informed by the respondent No. 3 vide letter dated 27.01.2007 as such, petitioner is entitled to pension and its consequential benefits having served more than of pensionable service.

8. Learned counsel for the respondents submitted that petitioner was enrolled in the Indian Army on 30.08.1982. The petitioner while serving with 307 Medium Regiment was granted balance of annual leave for 34 days from 22.10.1998 to 24.11.1998 but the petitioner could not join the unit after expiry of said leave. As per procedure, an apprehension roll was issued by the unit on being over staying of

leave. The petitioner was neither apprehended by the police nor did he report to any Army unit physically. As per policy and in terms of Army Act, Section 106, petitioner was declared deserter w.e.f. 25.11.1998.

9. Learned counsel for the respondents further submitted that in terms of IHQ of MoD (Army) letter dated 17.11.2006, a person who has completed his term of engagement before his desertion will be struck of strength from the Army and thereafter, he will be dismissed in accordance with para 22 of Army Order 43/2001/DV as per peace/field area desertion period of 3/10 years respectively. In the instant case, the petitioner being field deserter was required to be dismissed from Army after 10 years of desertion. However, the terms of engagement of the petitioner was 17 years terminating on 29.08.1999, accordingly, petitioner was discharged from the Army w.e.f. 29.08.1999, i.e. prior to the completion of tenures of 10 years of desertion. Thereafter, after completion of tenure of original desertion, the petitioner was dismissed from the Army w.e.f. 20.04.2009. Therefore, in terms of para 113(a) of Pension Regulations for the Army, 1961 (Part-1), the petitioner was dismissed under the provisions of Army Act and he is ineligible for any type of pension and gratuity in respect of his all previous service.

10. By way of a supplementary counter affidavit, learned counsel for the respondents submitted that veracity of Movement Order dated 07.04.1999 cannot be ascertained at this belated stage. The Movement Order produced by the petitioner reveals the contradiction in his statement. If he was given Movement Order dated 07.04.1999

then he should have reported at Srinagar by 09.04.1999 whereas the Transit Camp stamp on the Movement Order shows him having reported at Transit Camp on 10.11.1999, i.e. after a lapse of 8 months.

11. We have heard learned counsel for the parties and perused the material on record.

12. A reliance is placed in the judgment of the Hon'ble Apex court in the case of **S. Muthu Kumaran vs. Union of India & others** [Civil Appeal No.352 of 2017] decided on 17.01.2017 in which the Hon'ble Supreme Court has observed in para 11 as under :

*“11. No doubt, the dismissal order passed against the Applicant was within the powers of the concerned authorities. However, as far as the dismissal from service is concerned, it is an extreme punishment imposed against the applicant. The applicant has to thrive in civil life by doing an appropriate job suitable to his qualification. In the facts and circumstances of the present case, we are inclined to modify the punishment of dismissal from service into discharge from service. The modification of the sentence of dismissal from service into that of discharge will not change the position of the applicant, so as to claim any re-instatement into service. Even if he was discharged from service, in lieu of dismissal from service, the applicant cannot seek for any employment or re-employment into the Army Therefore, there would not be any grievance for the respondents in the event of punishment of dismissal being modified into that of discharge. At the same time, interest of justice would be served as the applicant would get the benefits like gratuity and other attendant benefits for the service rendered by him and the applicant would also get an opportunity to lead honourable life in the society.”*

13. In the instant case, petitioner has served for more than 16 years of pensionable service before being discharged from service by the respondents w.e.f. 29.08.1999. If his total service is taken into consideration from the date of enrolment (30.08.1982) to date of ending of his balance of annual leave (24.11.1998), then total period of service comes to 16 years, 02 months & 24 days leaving apart period of over staying of leave/desertion, which is a pensionable

service and if we go by the counter affidavit filed by the respondents then total period from the date of enrolment (30.08.1982) to date of discharge from service (29.08.1999) comes to 17 years, which is also a pensionable service as per para 47 of Pension Regulations for the Army, 2008 (Part-1).

14. Since the petitioner was discharged from service w.e.f. 29.08.1999 on expiry of his service tenure as per terms and engagement of service of 17 years vide Artillery Records letter dated 27.01.2007 as such, petitioner is entitled to service pension and its consequential benefits having been completed pensionable service as per para 47 of Pension Regulations for the Army, 2008 (Part-1). Though, later on petitioner has also been dismissed from service w.e.f. 20.04.2009 by the respondents vide their letter dated 01.02.2010 but once the petitioner has been discharged from service w.e.f. 29.08.1999 then after a period of 10 years from the date of discharge from service his dismissal seems technically invalid.

15. The petitioner has completed his pensionable service before being discharged from service, therefore, we hold that petitioner was discharged from service w.e.f. 29.08.1999 on completion of his terms of service/engagement and hence, his dismissal order dated 01.02.2010 dismissing the petitioner from service w.e.f. 20.04.2009 is hereby set aside and the petitioner is held entitled to service pension and consequential benefits from the next date of discharge from service, i.e. w.e.f. 30.08.1999.

16. Resultantly, the Original Application deserves to be allowed and is hereby allowed. The order of dismissal passed by the respondents is set aside. The respondents are directed to treat the petitioner as discharged from service w.e.f. 29.08.1999. The respondents are directed to grant service pension and consequential benefits to the petitioner from the next date of discharge from service, i.e. w.e.f. 30.08.1999 in the rank/post which he was holding at the time of discharge from service. However, due to law of limitations settled by the Hon'ble Supreme Court in the case of ***Shiv Dass v. Union of India and others*** (2007 (3) SLR 445), the arrears of service pension will be restricted to three years preceding the date of filing of the instant O.A. The date of filing of this O.A before AFT (PB), New Delhi is 03.05.2011. The respondents are further directed to implement this order within a period of four months from the date of receipt of certified copy of this order. Delay shall invite interest @ 8% per annum from the date of this order till actual payment.

17. No order as to costs.

18. Pending Misc. Application(s), if any, shall stand disposed off.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)

**Member (A)**

**Member (J)**

Dated: August, 2022  
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