

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION No. 431 of 2019**

Thursday, this the 20th day of January, 2022

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

1. Jeet Singh, S/o Sri Ram Singh, R/o 54 Village-Lodhipur Shobhann Post-Nonpur, Tehsil & Police Station-Garh Mukteshwar, District-Hapur.

2. No 15738834P Sigmn Vipin Kumar, S/o Sri Jeet Singh, R/o 54 Village-Lodhipur Shobhann Post-Nonpur, Tehsil & Police Station-Garh Mukteshwar, District-Hapur.

..... Applicants

Learned counsel : **Shri Prabhat Kumar Tripathi**, Advocate
for the Applicants (Not present)

Versus

1. Union of India through Secretary, Ministry of Defence, Government of India, New Delhi.

2. Chief of the Army Staff (Army), South Block, New Delhi.

3. The Commanding Officer, 41 Artillery Divisional Signal Regiment, PIN-917841, C/o 56 APO.

4. The Records Signals, PIN-908770, C/o 56 APO.

5. Commanding Officer, 572 Sub Group (ASCON), C/o 56 APO.

.....Respondents

Learned counsel for the Respondents : **Shri RC Shukla**, Advocate
Central Govt Counsel

ORDER (Oral)

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- (a) *Issue an order, direction and command to the respondents to release/issue the necessary order for premature discharge from service of applicant No 2 with all consequential benefits.*
- (b) *Issue an order, direction and command to the respondents to consider and decide the pending representation of the applicant No 2, dated 15.07.2019, contained in Annexure No 10, in accordance with law by passing a reasoned and speaking order within a time frame to be fixed by this Hon'ble Tribunal.*
- (c) *Issue such other order/direction which may be deemed just and proper in the circumstances of the case.*
- (d) *Allow the Original Application with cost against the respondents in view of the facts and circumstances, legal provisions and grounds raised in the application.*

2. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Indian Army on 26.12.2013. While serving with 572 ASCON Sub Gp he sought permission to appear in entrance examination of Sub Inspector in U.P. Police vide application dated 16.08.2016 (Annexure A-1) and permission was accorded on 18.08.2016 (Annexure A-3). He appeared in the examination and qualified for the said post. He was to join w.e.f. 01.07.2019 as per Headquarters U.P. Police letter dated nil June 2019 (Annexure A-8). Earlier, having been qualified, he applied for premature discharge from Army service through his application dated 30.04.2019. His premature discharge documents were processed to competent authority through proper channel in the month of June, 2019. While the premature discharge documents were being processed he was posted out to 41 Artillery Division Signal Regiment (ADSR) on 27.06.2019. On 15.07.2019 he submitted a representation stating therein that his premature discharge be

sanctioned earliest keeping in view of his selection for Sub Inspector post in U.P. police. On 16.07.2019 Adjutant 41 ADSR approached Headquarters DGP office requesting them to extend his date of joining for a further period of 03 months on the ground of delay in sanction of premature discharge. Meanwhile, applicant was granted 05 days casual leave for the period 16.07.2019 to 20.07.2019 and while on leave he joined the Police Training Centre, Sitapur on 19.07.2019 (Annexure III to CA). On 22.07.2019 the applicant submitted an application to the Incharge Training Centre for getting him released from the Army. Earlier, after termination of leave applicant was required to report to his unit on 21.07.2019 but since he was undergoing training at Sitapur, he was declared overstaying leave (OSL) w.e.f. 21.07.2019. On 22.07.2019 a letter was issued to his next of kin (NOK) to join the unit. Thereafter, on 24.07.2019 apprehension roll was issued. On receipt of apprehension roll, Shri Jeet Singh, father of the applicant requested the unit authorities on 27.07.2019 that since his son has already joined the police training on 19.07.2019, his premature discharge be sanctioned at the earliest. This O.A. has been filed for his premature discharge from service and decide representation submitted by him on 15.07.2019.

3. Learned counsel for the applicant pleaded that the applicant appeared in entrance examination of U.P. Police with prior permission of his Commanding Officer and after his selection for the post of Sub Inspector he should have been permitted to join the police force rather than declaring him as a deserter. He further pleaded that the applicant had submitted premature discharge application to the competent authority in the month of April, 2019 which was delayed on the ground of

certain formalities thereby causing embarrassment at the time when he was to join the Police Training Centre at Sitapur in the first week of July, 2019 which was also delayed due to his posting from one unit to other unit. His further submission is that the applicant joined the police force at Sitapur on 19.07.2019 when he was still on leave pretending that his premature discharge would be sanctioned soon. His other submission is that the applicant had submitted a representation dated 15.07.2019 for his early release from service but surprisingly the respondents have neither decided the representation nor any discharge order has been sanctioned till date. He pleaded for early release of the applicant.

4. On the other hand, submission of learned counsel for the respondents is that on 15.07.2019 applicant on reporting to new unit submitted an application for premature discharge from service stating that he was selected for training as Sub Inspector in U.P. Police. On being asked to produce original joining letter, he failed to produce the same. His further submission is that applicant's premature discharge application though submitted through his previous unit got delayed on account of certain formalities and also due to physical presence of the applicant. His further submission is that on 20.07.2019 the applicant spoke the unit Commanding Officer intimating that he had joined the police force. In turn the Commanding Officer persuaded him to first join the unit for discharge formalities alongwith necessary documents required for premature discharge but the applicant cut the phone call adamantly. He submitted that since the applicant did not join the unit after expiry of leave, apprehension roll was issued and he was declared a deserter and casualty to this effect was notified vide Part II Order dated

27.10.2019. Respondents' counsel submitted that since applicant has not joined the unit after completion of leave, he is a deserter and his discharge proceedings could only be completed on his joining the unit. He pleaded for issuing directions in this regard.

5. Heard Shri RC Shukla, learned counsel for the respondents and perused the material placed on record.

6. Signalman (Sigmn) Vipin Kumar while serving with 572 ASCON Sub Gp submitted an application dated 16.08.2016 to appear in examination for Sub Inspector post in U.P. police. The said application was conceded and permission was accorded on 18.08.2016. Thereafter, he appeared in the said examination and qualified the test. He was intimated to join for police training at Sitapur commencing from 01.07.2019. Earlier, on 30.04.2019 he submitted an application for premature discharge from the Army and his application got delayed due to certain formalities and his posting from one place to the other.

7. The applicant could not join the police training centre in time and while on leave between 16.07.2019 to 20.07.2019 he joined the Police Training Centre, Sitapur to undergo police training. In the unit when he did not join after completion of leave he was declared overstaying leave and after due Court of Inquiry he was declared a deserter. A number of correspondence on this subject were exchanged between Army authority/Records/police authorities but so far applicant is still a deserter from Army side and may be dismissed from service after completion of three years from the date he was declared a deserter.

8. The following are undisputed facts:-

(i) Applicant submitted an application for permission to appear in examination and he was permitted to appear. Applicant got selected for the post of Sub Inspector in U.P. Police.

(ii) In the month of April, 2019 applicant submitted application for premature discharge from the Army.

(iii) He was to report to Police Training Centre, Sitapur on 01.07.2019 but in the last week of June, 2019 he was posted out to his new unit.

(iv) Applicant submitted representation dated 15.07.2019 to competent authority for his early discharge from service.

(v) Applicant's father approached Army authorities on receipt of apprehension roll.

(vi) Applicant joined Police Training Centre, Sitapur on 19.07.2019 while on 05 days casual leave which was up to 20.07.2019.

(vii) Respondents vide letter dated 16.07.2019 requested the police authorities for extension of joining period to the post of Sub Inspector.

9. In this regard we observe that applicant submitted premature discharge application well in time considering that by the time call letter for police training is received, his premature discharge application would be sanctioned. We are of the view that applicant did not run away from the Army and he is not a deserter like one who leaves the Army without reason. He was duly selected for the post of Sub Inspector which he joined on 19.07.2019 being on leave. The respondents could have processed his premature discharge application expeditiously so that he could join other higher post in time. In fact there was enough time to process and sanction his discharge application within that period when he was physically present in the unit (April 2019 to July 2019) and due to

non adherence of certain formalities with respect to premature discharge application applicant's career cannot be thwarted.

10. The applicant has been declared a deserter from the Army as he did not rejoin the unit after expiry of leave, but the fact is that the applicant had submitted a premature discharge application in April, 2019 which has still not been sanctioned. The respondents were well aware that he would join in Uttar Pradesh Police as he passed the test conducted for selection of Sub Inspector which is a higher post than the post which he was holding.

11. Be that as it may, we are of the considered opinion that applicant should not be blamed for joining the post in U.P. police without getting discharge from the Army. In view of the above, apprehension roll dated 18.08.2019 and Part II Order No 0/0520/2019 dated 27.10.2019 with regard to overstaying leave and desertion, are hereby quashed. The respondents are directed to sanction his premature discharge application forthwith. Applicant is also directed to assist the respondents for completing discharge proceedings, if any.

12. With the aforesaid direction, the O.A. is disposed off.

13. No order as to costs.

14. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 20th January, 2022

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