

Court No. 2
Reserved Judgment

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

ORIGINAL APPLICATION No. 67 of 2018

Friday, this the 03rd day of February, 2023

“Hon’ble Mr Justice Ravindra Nath Kakkar, Member (J)”
“Hon’ble Maj Gen Sanjay Singh, Member (A)”

Sep Arun Kumar Misra, (No. 3009223F) S/o Manoj Kumar Misra
Resident of Village & Post Gauhani, District Kaushambi (U.P.)
presently at Lucknow.

..... **Applicant**

Ld. Counsel for the Applicant : **Maj RD Singh (Retd).**

Versus

1. Union of India, through its Secretary, Ministry of Defence, DHQ PO. New Delhi - 11.
2. Chief of The Army Staff, IHQ of MoD (Army), DHQ PO, New Delhi - 11.
3. Commandant & OIC Records, Rajput Regimental Centre, Fatehgarh (U.P.).
4. Commanding Officer, 16 Rajput Regiment, C/o 56 APO
5. Commanding Officer, 44 RR, C/o 56 APO

.....**Respondents**

Ld. Counsel for the Respondents. : **Ms. Appoli Srivastava,**
Central Govt Counsel

ORDER**“Per Hon’ble Mr Justice Ravindra Nath Kakkar, Member (J)”**

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

- 8.1. *To direct the Respondents to treat the petitioner in continuous service at his own seniority with full back salary and other related consequential service benefits as if the applicant has been continuous in service.*
- 8.2. *To direct the respondent to take the applicant on the strength of the unit with retrospective date of expiry of his leave and pay appropriate damage/compensation to the applicant for causing grave miscarriage of justice in not allowing the applicant to join his duties on 07 Nov 2013, and onwards.*
- 8.3. *To grant such other relief in favour of the applicant as deemed just and expedient in the light of the fact and circumstances of the instant case.*
- 8.4. *To award the exemplary cost in favour of the applicant.*
- 8.5. *Be pleased to quash and set aside Annexure No.5, with all consequential relief.*

2. In brief, the facts necessary for the purpose of adjudication in instant Original Application are that the applicant was enrolled in the

Army on 30.09.2006. During the service period, he served in the Army at different places and in different capacities. He absented himself without leave on number of occasions. A Court of Inquiry was held and he was declared deserter. Applicant submitted representation to allow him to join duty which was denied. Being aggrieved, applicant has filed instant O.A.

3. It is pleaded by the learned counsel for the applicant that on 26.09.2013 the applicant was granted Annual Leave for one month. When the said leave was about to expire, mother of the applicant fell seriously ill. Applicant being the sole care taker was constrained to over stay the said leave by about 10 days. At that time, he was posted in 44 Rashtriya Rifles located in J&K. He reported for duty on 07.11.2013 at Jammu Transit Camp but he was not allowed to joint duty at Transit Camp. He requested his unit officers for joining of duty. He was informed by Adjutant to report Rajput Regimental Centre at Fatehgarh but nothing in writing was given. Applicant reported to Rajput Regimental Centre but he was not allowed to join duty. Neither respondent No 3 and 4 have made any attempt to find out the difficulties of the applicant nor had ever sent any communication to know where about of the applicant. Section 39 (b) of Army Act carves out a provision in that over stayal of leave is permissible when there is

sufficient cause. Learned counsel for the applicant pleaded that directions be issued to respondents to allow the applicant to join duty with all consequential benefits as if he was continuous in service.

4. On the contrary, it is pleaded by the learned counsel for the respondents in their counter affidavit that the applicant was enrolled in the Army on 30.09.2006. During basic military training he absented himself without leave from line on 03.11.2006 and reported back voluntarily on 10.11.2006 for which he was awarded 10 days Rigorous Imprisonment (RI). Further he was granted 15 days casual leave from 12.02.2011 to 22.02.2011 and his leave was extended into 45 days and converted in Part of annual leave upto 28.03.2011, On expiry of said leave, the applicant did not report back to unit. After absence of 30 days, A court of inquiry was conducted by 16 Rajput and the applicant was declared deserter. Thereafter, he joined voluntarily on 17.06.2011 and he was awarded 14 days pay fine. Further he was granted 30 days casual leave from 27.09.2013 to 26.10.2013 but he did not rejoined duty in time. During absence period neither he made any correspondence nor tried to contact anyone in the unit for extension of his leave. An apprehension roll was issued, endorsing a copy to Smt Kirti Mishra, wife of the applicant. A court of inquiry was conducted and applicant was

declared deserter and struck of strength to supernumerary strength of Rajput Regiment Centre with effect from 27.10.2013. He is a habitual offender with regards to military discipline as he earned one red ink entry and one black ink entry during his entire service. He was given ample opportunity to improve himself but he set a bad example and failed to improve himself. As per Integrated Headquarters of Min of Def letter dated 11.03.1980 and even No. dated 24.02.1987, deserters from Field and Peace areas required to be administratively dismissed from service after 10 and 03 years from the date of desertion respectively. Since 10 years period of desertion has not been completed, hence applicant has not been dismissed from service. On completion of ten years period from the date of desertion, applicant shall be dismissed from and service. He submitted that instant O.A. has no substance and is liable to be dismissed.

5. We have heard learned counsel of both the parties and perused the documents available on record.

6. The question before us to decide is 'whether the applicant who is deserter from field area since 2013 can be reinstated in service or not'.

7. Before proceeding further, we would like to reproduce the Para 22 of Army Order "AO/43/2001/DV- DESERTION" which reads as

under :-

“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 or 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.”*

8. Thus, aforementioned Army Order provides for ten years period for dismissal from service in case of a desertion from field area. There is no doubt to the fact that the applicant is a habitual offender and he was declared deserter. It is admitted fact that till date the applicant has not been dismissed from service. In counter affidavit respondents have stated that on completion of period of 10 years from the date of desertion, he shall be dismissed from service. The grievance of the applicant is that despite the fact that he presented himself before respondents, he was not allowed to join duty. Learned counsel for the respondents has also not been able to point out as to whether or not any action regarding discharge has been taken against the applicant.

9. In view of the fact that the applicant has not been discharged from service and he having presented himself before respondents, he ought to have allowed him to join duty. We have perused the railway ticket which is enclosed with the O.A. which is sufficient to believe that applicant presented himself before respondents for joining duty. He also submitted certificate stating that during period of overstaying leave he was not involved in any case.

10. In view of aforesaid, we direct the applicant to present himself before Rajput Regimental Centre at Fatehgarh within a period of 15 days from today along with copy of this order. In case the applicant

complied the aforesaid direction, Rajput Regimental Centre at Fatehgarh shall allow him to join duty and take disciplinary action as per rule.

11. With the aforesaid directions the O.A. is finally **disposed of**.

(Maj Gen Sanjay Singh)
Member (A)

Dated : 03 February, 2023
Ukt/-

(Justice Ravindra Nath Kakkar)
Member (J)