

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

**ORIGINAL APPLICATION (A) No.109 of 2020**

Tuesday this the 24<sup>th</sup> day of November, 2021

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

Abhimanyu Singh No. 14499670-L Ex Gnr S/o Late Hari Nath Singh R/o Village -Pahsa, Post -Pahsa, District-Mau (UP).

..... Applicant

Ld. Counsel for the : **Shri R. Chandra**, Advocate.  
Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence, Government of India, New Delhi -110011.
2. The Chief of the Army Staff, Integrated Headquarters, New Delhi-110011.
3. Officer-In-Charge, Artillery Records, Pin-908802, C/o 56 APO.
4. Commanding Officer, 170 Field Regiment, C/o 56 APO.

.....Respondents

Ld. Counsel for the : **Shri Rajiv Pandey**,  
Respondents 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:-

(i) Hon'ble Tribunal be pleased to summon the SCM Proceedings dated 23/02/1999 from custody of the respondents and be set aside.

(ii) To direct the respondents to re-instate the applicant in the service notionally w.e.f. 24.02.1999 till completion of pensionable service without back wages and service pension be granted.

(iii) Any other appropriate order or direction which the Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case.

2. Brief facts of the case are that the applicant was enrolled in the Army (Artillery Regiment) as Sepoy on 10.11.1984. During the course of his service while serving with 170 Fd Regt the applicant was awarded 05 punishments related to red ink/black ink entries on account of overstaying leave. Later, while on 04 days casual leave for the period 20.04.1998 to 23.04.1998 when applicant failed to report for duty after expiry of leave, an apprehension roll dated 06.07.1998 was issued and thereafter in terms of Section 106 of Army Act, 1950 a Court of Inquiry was held on 15.07.1998 and he was declared a deserter from Field Area w.e.f. 24.04.1998. On 09.01.1999 applicant surrendered himself at Artillery Centre, Nasik Road Camp. He

was tried by Summary Court Martial (SCM) and was dismissed from service under Section 39 (b) of the Army Act, 1950 on 23.02.1999. At the time of dismissal he had rendered 14 years, 03 months and 13 days of service including 489 days of non qualifying service. Against his dismissal from service two Original Applications were filed in this Tribunal in the years 2014 and 2015 but the same were dismissed as withdrawn with liberty to file afresh. In 2016 applicant submitted a petition to the respondents for grant of service pension but it was denied vide letter dated 08.06.2016 (Annexure No A-5 to O.A.). This O.A. has been filed for quashing of SCM proceedings dated 23.02.1999 and his re-instatement in service.

3. Submission of learned counsel for the applicant is that applicant had overstayed leave on account of his family problems as his wife was suffering from psychological disorder. His further submission is that after surrendering at Artillery Centre, Nasik Road Camp he was forced to sign some papers without giving an opportunity of hearing in utter violation of principles of natural justice and fair trial. Applicant's learned counsel further submitted that since during Court Martial Proceedings respondent No. 4 did not follow procedure laid down in Army Rule 22 and 23, therefore entire Summary Court Martial Proceedings are liable to be set aside. His other submission is that on account of his own mental disorder he overstayed leave granted to him on 20.04.1998. He further

submitted that the respondents should have awarded minor punishments on overstayal of leave rather than dismissing him from service keeping in view that he was about to complete pensionable service.

4. On the other hand submission of learned counsel for the respondents is that earlier on 05 occasions applicant had also overstayed leave which granted to him. His further submission is that on 20.04.1998 he was granted four days leave but he did not rejoin duty after expiry of leave and unit had to issue apprehension roll followed by a Court of Inquiry which declared him deserter from Field Area. He further submitted that applicant is a habitual offender who unauthorisedly absented himself from duty being over staying leave, which is a serious offence in the Army. The applicant by committing the aforesaid offence had shown utter disregard to military discipline and has set an extremely bad example to other disciplined soldiers in the unit. His other submission is that certain norms and standard of behaviour and a high degree of discipline is expected from military persons but the applicant never cared for his future prospects and demonstrated bad example in front of disciplined soldiers in the unit and not shown any improvement despite counselling in this regard on various occasions. The learned counsel submitted that applicant was punished summarily by following due procedure in terms of

Rules on the subject and no prejudice was done to him. He pleaded for dismissal of O.A.

5. We have heard learned counsel of both the sides and perused the material placed on record.

6. Ex Gnr Abhimanyu Singh of 170 Fd Regt was granted 04 days leave for the period 20.04.1998 to 23.04.1998 and he was to report back for duty which he failed to report on 24.04.1998. In consequence thereof apprehension roll dated 06.07.1998 was issued and after continuous absence of 30 days, a Court of Inquiry was held on 15.07.1998 in terms of Section 106 of the Army Act, 1950 which declared him a deserter from Operational Area (Field Area) w.e.f. 24.04.1998. The applicant surrendered himself at Artillery Centre, Nasik Road Camp on 09.01.1999 and after reporting, disciplinary proceedings were initiated against him.

7. We have noted that applicant, besides overstaying leave w.e.f. 24.04.1998 for which he was declared deserter and voluntarily surrendered at Artillery Centre, Nasik Road Camp on 09.01.1999 after overstaying 264 days of leave granted to him, had also overstayed leave previously and punished for the same. For convenience sake, details of his earlier overstayal of leave are as under:-

S No	Offences	Period of absence	Date of award	Punishment awarded
(a)	Army Act Section 39 (b) without	<u>07.10.1986</u> 02.12.1986 (57 days)	17.12.1986	28 days Rigorous Imprisonment

	sufficient cause overstaying leave granted to him			and 14 days detention in military custody
(b)	-do-	<u>12.09.1989</u> <u>15.12.1989</u> (94 days)	20.12.1989 9	28 days Rigorous Imprisonment & 14 days detention in military custody
(c)	-do-	<u>10.10.1992</u> <u>25.10.1992</u> (16 days)	04.12.1992 2	28 days Rigorous Imprisonment
(d)	-do-	<u>09.05.1993</u> <u>02.07.1993</u> (55 days)	12.08.1993 3	28 days Rigorous Imprisonment
(e)	-do-	<u>01.06.1997</u> <u>02.06.1997</u> (02 days)	16.06.1997 7	07 days Extra Guard Duties

8. From perusal of the aforesaid record of overstayal of leave and punishment awarded to applicant between the period 1986 to 1997, it appears that applicant has been a habitual offender who has disregard to the organization to which he was serving.

9. Thus, respondents' version that applicant was a habitual offender seems to be justified on the ground that he overstayed leave on a number of earlier occasions also. The applicant by committing the aforesaid offences had shown utter disregard to military discipline and has set an extremely bad example to other disciplined soldiers in the unit. Certain norms and standard of behaviour and a high degree of discipline is expected from military persons but the applicant never cared for his future prospects and demonstrated bad example in front of disciplined soldiers in the unit and not

shown any improvement in this regard. Therefore, considering the long period of absence due to overstaying leave, his poor disciplinary record and his conduct/character, the applicant was tried by SCM and dismissed from service under Section 39 (b) of Army Act, 1950 w.e.f. 23.02.1999.

10. The only defence of the applicant is that during the period of overstaying leave his wife was mentally ill. It is nowhere the case of the applicant that his wife was given treatment in any Army Hospital or in Civil Hospital. It is unbelievable that a person whose wife has been a case of psychological disorder was not provided any treatment in any Military/Civil Hospital. In absence of any documents on the ground of absence i.e. mental illness of his wife, the said defence of the applicant cannot be relied upon. In absence of any reliable explanation for absence, the only conclusion would be that the applicant overstayed leave intentionally and voluntarily surrendered at Artillery Centre, Nasik Road on 09.01.1999 after 264 days.

11. Applicant had submitted a petition to the respondents for grant of service pension which was rejected vide order dated 08.06.2016 informing him that since he was dismissed from service, he is not entitled to service pension in terms of para 113 (a) of Pension Regulations for the Army, 1961 (Part-I). We have perused the aforesaid Regulations and we find that a dismissed army person is not entitled to service pension. We

also find that applicant was advised to approach Kendriya Sainik Board, New Delhi to claim penury grant.

12. It is apparent from the record that applicant has claimed for reinstatement in service after quashing the dismissal order. We find that a dismissed soldier can only be reinstated into service if the dismissal proceedings are not conducted in accordance with Rules and Regulations and dismissal order is quashed.

13. During the course of hearing, the respondents made it clear that the SCM Proceedings were weeded out in the year 2010 in terms of para 592 of the Regulations for the Army, 1987 (Revised Edition) after expiry of mandatory retention period.

14. We are also of the view that desertion of a soldier while posted at Field Area should be viewed seriously as it tantamounts to desertion from the nation, especially when an individual is posted in Operational Area where manpower is of paramount importance.

15. We are further of the view that the Army is a well disciplined organization, and the role of Indian Army is to defend our country from external aggressions and internal threats, whenever called for such duties. Being a disciplined organization, Army expects utmost discipline from each and every soldier to maintain operational readiness of Army which

is only possible when soldiers report for duty in time after expiry of leave so that unit may not suffer manpower crisis.

16. In view of the above, we are of the view that applicant overstayed leave/deserted from Army for the period 24.04.1998 to 08.01.1999 (264 days). The SCM was held in accordance with rules on the subject and no prejudice seems to have been done to applicant while dismissing him from service.

17. In view of the above, the O.A. being devoid of merit is hereby **dismissed**.

18. No order as to costs.

19. Pending miscellaneous applications, if any, shall stand disposed off.

**(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)**  
**Member (A) Member (J)**

Dated: 24<sup>th</sup> November, 2021

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