

RESERVED
Court No.2

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

Transferred Application No. 802 of 2010

Tuesday, this the 25th day of October, 2016

Hon'ble Mr. Justice D.P. Singh, Member (J)
Hon'ble Air Marshal Anil Chopra, Member (A)

Smt Asma Sultana W/O late Ex Grenadier Mirza Salim Beg Resident of Mohalla Nawab, Tehsil and P.O. Kasanganj, District Etah.

.....Petitioner

Ld. Counsel for: **Col (Retd) Ashok Kumar, Advocate**
the petitioner

Versus

1. Union of India through The Secretary Ministry of Defence, New Delhi-110011.
2. Chief of the Army Staff, New Delhi-110011.
3. General Officer Commanding in Chief, Central Command, Lucknow-226001.
4. General Officer Commanding U.P. Area, Bareilly (U.P.).
5. Commandant and Senior Records Officer Grenadiers Regimental Centre, Jabalpur (M.P.).
6. Commanding Officer, 4th Battalion The Grenadiers Regiment (then located at Dehradun, C/O 56 APO.
7. Major M.P. Sinha, C/O Respondent No. 6.
8. Supdt Central Jail, Jabalpur.

...Respondents

Ld. Counsel for the **Shri Amit Sharma, Advocate.**
Respondents

ORDER**Per Air Marshal Anil Chopra, Member 'A'**

1. This Civil Misc Writ Petition No 3267 of 1994 has been received by this Tribunal by way of transfer from High Court of Judicature at Allahabad and renumbered as Transfer Application No 802 of 2010.

2. Heard Ld. Counsels for the parties and perused the record.

3. Brief facts of the case are that the husband of petitioner was enrolled in 4th Battalion the Grenadiers Regiment on 01.12.1982 and served for about three years. The husband of the petitioner went on leave in Feb 1985 and could not return back in time due to serious illness of his mother as there was no other male member in his family to look after the ailing mother. Petitioner's husband reportedly requested for extension of leave but did not receive any reply either granting or refusing the same. On joining the duty he was confined to military custody for 42 days out of which 28 days was rigorous imprisonment and 14 days were detention in military custody. In October 1985 the petitioner's husband raised some observations on military rations. The erstwhile petitioner was reportedly assaulted by Maj M.P. Sinha. He was illegally kept in military quarter guard for 42 days. During October 1986 petitioner's husband was granted leave on health grounds and went to his village where he fell ill and was admitted in a hospital. He sought extension of leave of which he received no response. He brought medical certificates, but he was charged for the overstayal and

punished with 28 days rigorous imprisonment and 14 days detention.

4. In July 1990 petitioner's husband was sick in quarter. He was reportedly brought to the office by Maj M.P. Sinha and two others and assaulted. He was taken to M.I. Room and when his condition deteriorated, he was moved to Army Base Hospital Lucknow on 17.08.1990. From the hospital the petitioner's husband was granted leave from 21.09.1990 to 01.10.1990. While in his village he had another bout of unconsciousness and was taken to civil hospital Karhal in Mainpuri District. He was apprehended there and taken back to unit and once again given 28 days rigorous imprisonment and 14 days detention in military custody.

5. On 11.02.1992 the petitioner's husband reportedly pointed out some irregularities of his seniors, for which he was punished with 14 days rigorous imprisonment.

6. On 14.02.1992 the Commanding Officer served a show cause notice with directions to furnish reply within five days. The show cause notice was again issued by Commander 42 Infantry Brigade on 19.02.1992 with directions to reply within two days. The petitioner was discharged from service on 08.10.1993.

7. Ld. Counsel for the petitioner averred that the petitioner was discharged from service in gross violation of Sections 50, 102 and 143 of the Army Act, 1950, Rules 27, 33 and 34 of the Army Rules and para 392 of the Defence Service Regulations for the Army 1987.

8. On the other hand, Ld. Counsel for the respondents contended that the petitioner is a perpetual offender who has been awarded six red ink entries on the ground of absents himself on many occasions and since the petitioner has proved himself undesirable in spite of having been given sufficient time to show improvement, his retention in service was considered inadvisable.

9. The details of offences and punishments incurred by the petitioner are reproduced below:-

<i>"Ser No</i>	<i>Offence</i>	<i>Period of absence</i>	<i>Punishment awarded</i>
(a)	<i>Without sufficient cause overstaying of leave under Army Act Section 39 (b)</i>	<i>18 Feb 85 to 08 Apr 85</i>	<i>28 days rigorous imprisonment and 14 days detention</i>
(b)	<i>Absent without leave under Army Act Section 39 (a)</i>	<i>15 Aug 85 to 21 Oct 85</i>	<i>-do-</i>
(c)	<i>Without sufficient cause overstaying of leave under Army Act Section 39 (b)</i>	<i>14 Jul 89 to 06 Aug 89</i>	<i>28 days rigorous imprisonment</i>
(d)	<i>Absent without leave under Army Act Section 39 (a)</i>	<i>02 Oct 90 to 07 Nov 91</i>	<i>28 days rigorous imprisonment and 14 days detention</i>
(e)	<i>An Act Prejudicial to good order and Mil Discipline under Army Act Section 63</i>	<i>-</i>	<i>Awarded 14 days rigorous imprisonment out of 9 days unexpired portion of sentence was</i>

			<i>remitted on 19th Feb 92.</i>
<i>(f)</i>	<i>Absent without leave under AA Section 39 (a)</i>	<i>15 Mar 92 to 22 Sep 93</i>	<i>Awarded 6 months R.I in civil jail and dismissed from service by Summary Court Martial held on 08 Oct 93”.</i>

10. Respondents contended that the petitioner’s husband had an indifferent career record. He repeatedly committed offences of overstaying of leave and absence without leave. He had been tried by different Commanding Officers over the period of time. In view of his service record and many red ink entries he was recommended to be discharged under Army Rule 13 (3) item iii (v) read in conjunction with Army Headquarters letter dated 28.12.1988. The petitioner’s husband was served with a show cause notice by Commander, 42 Infantry Brigade on 19.02.1992. On receipt of reply, his discharge was sanctioned by competent authority under Army Rule 13 (3) item iii (v) “Service no longer Required”. He was sent to Grenadiers Regimental Centre for completing discharge papers. On his return from the Centre, the petitioner’s husband did not reach the unit. He was declared absent without leave from 15.03.1992. Later a Court of Inquiry was held and he was declared deserter. The petitioner’s husband surrendered himself at Grenadiers Regimental Centre on 22.09.1993, after nearly one year six months of absence.

11. The competent authority ordered recording of summary of evidence as stipulated in para 381 of Regulations for the Army 1987 (Revised). The petitioner's husband was tried by a Summary Court Martial on 08.10.1993 and found guilty. He was dismissed from service and awarded six months rigorous imprisonment in civil jail. The petitioner's husband also signed a certificate dated 08.10.1993 that he did not wish to appeal against the sentence awarded by Summary Court Martial on 08.10.1993. He also stated that he does not wish to have a copy of the proceedings of the Summary Court Martial **(Annexure CA-5)**.

12. Respondents contention is that the petitioner's husband was already a habitual offender and later became a deserter and reported back only after over 01 year and 6 months' absence. He had been given ample opportunities to show improvement but he did not. Due course of law was followed. He was found guilty. There was no illegality or malafide.

13. Ld. Counsel for the petitioner questioned the sequence of events and dates leading to the Summary Court Martial. We have gone through the records. The petitioner's husband had surrendered at Jabalpur on 23.09.1993. The charge was tried on 28.09.1993 and on conclusion of charge trial, Presiding Officer had ordered recording of summary of evidence. Summary of evidence was recorded on 30.09.1993. The Summary Court Martial was held on 08.10.1993. As such no illegality has been committed by the respondents. Further the petitioner's husband had pleaded guilty.

14. Desertion from the Army is a serious offence. It means such a deserter has deserted the country to serve as a member of the elite Armed Force. In this case the petitioner's husband had overstayed leave and absented without leave on many occasions. It shows his frame of mind and level of discipline. A person deserting the Army should not expect any indulgence or leniency from the Court or Tribunal.

15. There is no illegality in the action of the respondents. The petitioner has not been able to make out a case. The T.A. lacks merit. Hence **dismissed**.

No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

gsr

(Justice D. P. Singh)
Member (J)