

**Court No. 1**

**Reserved Judgment**

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

**Original Application No. 472 of 2017**

Monday this the 13<sup>th</sup> day of September, 2021

**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**

**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

Dilip Kumar Singh, No. 6492035M, Sepoy, Son of Shri Akhand Pratap Singh, R/o Vill & PO- Mansapur, Distt- Ambedkar Nagar (U.P.)

**..... Applicant**

Ld. Counsel for the Applicant : **Shri VK Pandey, Advocate.**

**Versus**

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi- 110011.
2. Dte Gen of Sup & Tpt (ST-12), QMG's Branch, Integrated Headquarters of Ministry of Defence (Army), DHQ Post Office, New Delhi-11.
3. OIC, Records, ASC Records (AT), PIN- 900493, C/o 56 APO.
4. Commanding Officer, No. 1 ASC Training Centre, C/o ASC Centre & College, PIN-900493.

**..... Respondents**

Ld. Counsel for the Respondents : **Shri Amit Jaiswal,  
Central Govt Counsel.**

## ORDER

**“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

1. This Original Application(appeal) has been filed under Section 15 of the Armed Forces Tribunal Act, 2007 with the following prayers:

*“(i) That this Hon’ble Tribunal may kindly be pleased to direct the opposite parties to allow the applicant to report/join/surrender his army duties within a stipulated period as fixed by this Hon’ble Court.*

*(ii) That this Hon’ble Tribunal may kindly be pleased to pass ny other order or direction which this Hon’ble Tribunal may deem just and proper be passed in favour of the applicant.*

*(iii) This Hon’ble Tribunal may be please to award the cost of this Original Application in favour of applicant and allow the same.”*

2. In brief, the facts of the case are that the applicant was enrolled in the Army on 25.04.1996 as Sep in Animal and Store Handler category. Applicant was granted Casual Leave for 15 days from 27.05.2011 to 10.06.2011 but could not join his duty within time and was declared deserter. He preferred appeal before the respondents with the prayer to grant pensionary benefits or to re-instate him in service which was replied by the respondents informing that he is not entitled to pensionary benefits. Then the applicant filed application before Tribunal for direction to decide his representation which was allowed by the Tribunal and representation of the applicant was decided by the respondents and his prayer was rejected. Then the

applicant filed present O.A. in Tribunal for join/surrender his army duties. An interim order dated 30.10.2017 was passed directing respondents to allow applicant to join the duty with liberty to proceed against him for alleged absence. Applicant was, however, not permitted to join duty on the premises that term of his engagement was over w.e.f. 30.04.2013. Being aggrieved applicant has filed instant Original Application to allow him to rejoin duty.

3. Learned counsel for the applicant submitted that applicant was granted 15 days casual leave but could not join duty due to illness. Applicant made several efforts to join the duty but was not permitted. On 16.09.2012, applicant went to rejoin his duty at ASC Centre and College, Bangalore but he was not permitted to resume his duty by the respondents contrarily he was informed to complete the formalities. He filed petition before this Tribunal which was decided on 03.11.2015 with direction to decide his representation. Applicant filed representation and the same was rejected by the respondents vide order dated 04.02.2016. Even after the order of this Tribunal dated 30.10.2017 to join duty, army authorities did not allow him to join duty.

4. Learned counsel for the applicant further submitted that under the Regulation 376 for the army, deserter from the Regular Army who is declared absent under the Army Act does not cease to belong to the corps in which he is enrolled, though he is no longer shown on

its returns, and can, if subsequently arrested, be tried by court martial for desertion, but in the instant case in spite of several efforts respondents have not permitted the applicant to resume his duties but are waiting for prescribed period for termination/dismissal of the applicant. Article 311 (2) (b) of the Constitution of India provides that consideration of fair play and justice requiring a hearing to be given to a Govt servant but in the instant case respondents are not granting the same. He further submitted that apprehension roll was not issued against the applicant till date. He submitted that alleged over staying leave was not deliberate/ intentional. Learned counsel for the applicant further submitted that applicant fell ill while on leave hence he could not report to unit on 11.06.2011 but later on he contacted respondents for rejoining his duty but he was not permitted. In support of his contention, learned counsel for the applicant has placed reliance on judgment of AFT, Kolkata Bench, passed in **O.A. NO 43 of 2012, Smt Sharda Devi Vs Union of India**, decided on 15.09.2014, in which mother of soldier who was declared deserter and later on died was granted family pension. Learned counsel for the applicant submitted that applicant is ready and willing to surrender and face trial for the offence allegedly committed by him provided a fair trial is given. Relationship of employee and employer still exists between him (applicant) and the Army as he has not been dismissed from service. The applicant has not been awarded punishment as it

is done if the offence is proved after trial. Applicant may be permitted to surrender for trial in view of Section 123 of the Army Act. Learned counsel for the applicant prayed that directions be issued to the respondents to allow the applicant to join//surrender his duty within a stipulated period fixed by this Hon'ble Tribunal and to assure that if permitted to surrender, applicant will be given a fair trial.

5. Per contra, learned counsel for the respondents submitted that applicant is a habitual offender. Earlier, he was punished thrice under Army Act 1950 for committing offence like Overstaying Leave and intoxication. Applicant is lying saying that he fell ill and therefore could not join duty. On failing to join his duty on 11.06.2011, a Court of Inquiry was held as per provisions under Army Act Section 106 and Army Rule 183 and the applicant was declared deserter. An apprehension roll was issued on his address to Superintendent of Police, District Ambedkar Nagar (UP) with instructions to apprehend the individual and hand him over to any nearby unit with a copy to his father. His NOK (wife of the individual) too was informed about desertion of her husband from the army vide telegram No 218/A/ST-12 dated 12 July 2011. The individual was neither apprehended by the police authorities nor did he surrender voluntarily. After declaring deserter, PAO (OR) ASC (AT) was approached for closing the individual's Running Ledger Account (IRLA). His IRLA was closed with a debit balance of Rs 59,451/- and the said amount was to be

recovered from the individual and a sum of Rs. 1,93,776/- balance in AFPP Fund to be paid to the NOK. Accordingly, NOK was informed vide letter dated 15.12.2011 that after deduction of debit balance from AFPP Fund, balance amount of Rs. 1,34,315/- will be paid to her on completion of ten years from the date of desertion in terms of Para 22 (c) of AO 43/2001/DV. The individual filed representation addressed to Secretary, Min of Def with copy to ASC Centre (AT) South Bangalore for grant of post retiral dues as applicable to him. He was replied that he has failed to surrender inspite of issuance of apprehension roll, even after intimation to his NOK, hence he was not entitled to pensionary benefits but after deducting his debit balance, Rs. 1,34,325/- as AFPP fund balance will be paid to him. The representation dated 03.12.2015 submitted by the applicant was decided by the competent authority stating that 'you were declared deserter with effect from 11.06.2011 as you failed to rejoin duty, therefore your representation is rejected. However you are once again advised to report to No 1 Training Centre, Bangalore to dispose off your desertion case.' Now the applicant has filed instant O.A. with the prayer to allow him to join/ surrender.

6. Learned counsel for the respondents further submitted that the applicant reported to ASC Records on 29.11.2017 alongwith a copy of Hon'ble Tribunal order dated 30.10.2017 passed in the subject O.A. It was submitted that due to policy constraint, the order of Hon'ble

Tribunal to allow the individual to rejoin his duty could not be implemented since, the individual's terms of engagement had already been expired with effect from 30.04.2013. As per initial terms of engagement, his colour service was 17 years only as applicable to a soldier in the rank of Sep, hence applicant was not allowed to resume duty after expiry of his date of discharge. Learned counsel for the respondents submitted that in view of subject case being against existing Govt policy, O.A. does not have any substance and merit in the principles of natural justice, hence the same deserves to be dismissed in the interest of justice.

7. We have heard learned counsel for the parties and perused the documents available on record.

8. On perusal of record, it transpires that applicant is lying. Had applicant fallen ill during leave he should have reported his illness to unit or he would have gone to nearest Base/Military Hospital for treatment but neither the applicant reported to unit nor any Military Hospital. Had he reported, he being a declared deserter and apprehension roll issued against him, he would have been taken into custody and tried for the offence he had committed. There is no evidence to suggest that applicant made several efforts to join the duty but he was denied. The plea taken in this regard is not acceptable. Regarding order dated 30.10.2017 of the Tribunal, the terms of engagement being over in the year 2013, it seems logical to

not allow applicant to be taken on strength of unit. A soldier can be taken on strength of unit if his terms of service are remaining and not when it is over, rather keeping in view Section 123 of the Indian Army Act, only a direction can be issued to army authorities to take surrender of the applicant for taking necessary action as per rule.

9. Permission is granted to applicant to surrender before army authorities within one month from today and it is directed that if applicant surrenders within one month from today, respondents while taking surrender shall give an expeditious fair trial as per rule.

10. Original Application is **disposed of** accordingly.

11. A copy of this order be provided to learned counsel for both the parties for compliance.

12. No order as to costs.

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

Dated: 13 September, 2021

Ukt/-