

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 125 of 2020**Thursday, this the 16<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)**No. 3197977L Ex Sep Amit Kumar  
S/o Shri Madan Singh through his wife Smt. Pinki Devi  
R/o Village – Suhagpur, PO – Chandpur,  
Tehsil - Math, Distt – Mathura (UP) – 281208.... **Applicant**Ld. Counsel for the Applicant : **Shri Bachchan Singh**, Advocate.

Versus

1. Union of India, through Secretary, Government of India, Ministry of Defence, New Delhi-110011.
2. Officer in Charge Records, The JAT Regiment PIN – 900496, C/o 56 APO.
3. Commanding Officer 21 JAT, PIN 911221, C/o 56 APO.
4. PAO (OR) The Jat Regimental Centre Bareilly.
5. C.D.A. (Army) Meerut Cantt, Meerut (UP).

... **Respondents**Ld. Counsel for the Respondents : **Shri Arun Kumar Sahu**,  
Central Govt Counsel.**ORDER**

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

“8.1 This Hon'ble Tribunal may kindly be gracious enough to quash and reject the order dated 07.08.2019 of respondent No. 2 which was made irrespective of

publication of part II order No. 0/0326/2018 dated 09 May 2018 by the respondent No. 2 itself.

- 8.2 The respondent Nos. 2 (Records) and 4 (PAO) (OR) The Jat may kindly be directed to sanction and release full pension and gratuity to the applicant w.e.f. 01 Mar. 2019 with arrears and interest @ 10% p.a. thereat, as recommended by the respondent No 3 (CO 21 JAT).
- 8.3 This Hon'ble Tribunal is very respectfully prayed that respondent No. 4 (PAO) (OR) and respondent No. 2 (Records) ordered and directed that rests of the installments of 50% pay and allowances of the applicant is released and paid to him in lumpsum accrued till the date of his discharge from service i.e. 28 Feb. 2019 forthwith.
- 8.4 Costs of this application to the tune of Rs. 50,000/- may kindly be awarded to the applicant and against the respondents.
- 8.5 Any other beneficial order which this Hon'ble Tribunal deems fit, just and proper may graciously also be made in favour of the applicant.”

2. Brief facts of the case are that the applicant was enrolled in the Indian army on 13.02.2002. While posted with 21 JAT, the applicant committed offences under Section 39 (b) of Army Act, 1950 and earned 67 days non qualifying service. The Office of Senior Superintendent of Police, Mathura vide letter dated 31.07.2014 communicated that a criminal case under Section 147, 148, 307, 302, 504, 506 and 34 has been registered against the applicant vide Case Crime No. 224/2014 wherein Chief Judicial Magistrate, Mathura issued an arrest warrant and directed the appearance of the applicant before the Court. In order to comply with the order of CJM, Mathura, applicant was granted 10 days leave from 24.09.2014 to 03.10.2014

but he did not report back on duty after expiry of leave. Since the applicant neither rejoined duty nor apprehended by civil police, he was declared deserter w.e.f. 04.10.2014 after holding a Court of Inquiry under Section 106 of the Army Act, 1950. Consequent to declaring him deserter, his pay and allowances were stopped by PAO (OR) Jat Regiment. During the desertion period, applicant was taken in custody by Civil Police on 11.07.2015 and kept in Mathura Jail. As such, applicant further earned 280 days non qualifying service for the period from 04.10.2015 to 10.07.2015. In accordance with Section 93 of the Army Act, 1950, the applicant being in custody of police, 50% of his pay and allowances were withheld and adjusted in response to applicant's letter dated 25.01.2019 vide Jat Records letter dated 09.03.2019. While the applicant was undergoing trial in Mathura Jail, he became due for discharge from service w.e.f. 28.02.2019 on completion of terms of engagement, hence, his discharge from service was approved by OIC Records giving date of discharge 28.02.2019 under Rule 13 (3) III (i) of the Army Rules, 1954 vide Jat Records letter dated 10.10.2018. Thus, the applicant was discharged from service w.e.f. 28.02.2019 under Rule 13 (3) III (i) of Army Rules, 1954 on fulfilling the condition of enrolment/service limit. Since, the applicant was not acquitted/released on bail, his civil custody in Jail for 1328 days w.e.f. 11.07.2015 to 28.02.2019 (date of notional discharge) has been taken as non qualifying service, thus the applicant has total 1675 days of non qualifying service in his entire service and therefore, his total qualifying service remains 12 years, 05 months and 11 days. Consequent to discharge from service, final

settlement of account of the applicant was carried out and closed with debit balance of Rs. 74,119/-. On rendering consent, Rs. 74,119/- were deducted from his AFPP balance of Rs. 1,05,872/- and balance amount of Rs. 31,573/- was paid to the applicant after regularisation of his debit balance. Since, the applicant has rendered only 12 years, 05 months and 11 days of qualifying service upto the date of discharge, he is not entitled for service pension. The applicant submitted a petition dated 10.07.2019 for grant of service pension which was replied by Jat Records vide letter dated 07.08.2019 denying grant of service pension as per rules. Being aggrieved, applicant has filed this Original Application.

3. Learned counsel for the applicant submitted that after serving with 21 JAT for about 17 years to the utmost satisfaction of his seniors, applicant was discharged from service on fulfilling the terms and conditions of service on 28.02.2019 under Army Rule 13 (3) III (i) of the Army Rules, 1954. An FIR was lodged against the applicant involving him under various offences including Section 302 of IPC on 13.07.2014 and accordingly, he was granted 10 days leave to appear before CJM, Mathura but due to fear he failed to surrender or rejoin his duty so he was declared OSL but later applicant surrendered before the CJM, Mathura on 11.06.2015. Since then he is in District Jail, Mathura. Thereafter, applicant was not paid his salary and was illegally withheld. In reply to applicant's petition, 21 JAT informed him on 10.07.2018 that first instalment of his 50% salary has already been paid to him and second instalment is not in his jurisdiction. Thus, the

respondents have withheld his 50% salary with same excuse. Learned counsel for the applicant further submitted that withholding his salary is arbitrary, illegal, irregular and without any rules.

4. Learned counsel for the applicant further submitted that it is a settled principle of law that pension is not a bounty and the same is earned by an employee due to his long, continuous faithful and unblemished service. Hence, pension is a right and the payment of it does not depend upon the discretion of any authority but is governed by the rules. Therefore, applicant is entitled for 50% of his pay during trial of the criminal case as a gesture of monetary help by the respondents. He also submitted that period from 04.10.2014 to 10.07.2015 for REJOSL has been published vide Part II Order No. 0/0326/2018 dated 09.05.2018, hence, total period of non qualifying service is wrongly mentioned by the respondents. the applicant has served to the extent of more than his qualifying service for pension. There is also a provision for condonation of interruption in service vide Regulation 23 of Pension Regulations for the Army, 2008 (Part-1), hence applicant is fully entitled for service pension.

5. On the other hand, Ld. Counsel for the respondents submitted that applicant while posted with 21 JAT, committed offences under Section 39 (b) of Army Act, 1950 and earned 67 days non qualifying service. The Office of SSP, Mathura vide letter dated 31.07.2014 communicated that a criminal case under Section 147, 148, 307, 302, 504, 506 and 34 has been registered against the applicant vide Case Crime No. 224/2014 wherein Chief Judicial Magistrate, Mathura

issued an arrest warrant and directed the appearance of the applicant before the Court. In order to comply with the order of CJM, Mathura, applicant was granted 10 days leave from 24.09.2014 to 03.10.2014 but he did not report back on duty after expiry of leave. He was declared deserter w.e.f. 04.10.2014 after holding a Court of Inquiry under Section 106 of the Army Act, 1950. Consequent to declaring him deserter, his pay and allowances were stopped by PAO (OR) Jat Regiment. During the desertion period, applicant was taken in custody by Civil Police on 11.07.2015 and kept in Mathura Jail. As such, applicant further earned 280 days non qualifying service for the period from 04.10.2015 to 10.07.2015. In accordance with Section 93 of the Army Act, 1950, the applicant being in custody of police, 50% of his pay and allowances were withheld and adjusted in response to applicant's letter dated 25.01.2019 vide Jat Records letter dated 09.03.2019. His final settlement of account was carried out and closed with debit balance of Rs. 74,119/-. On rendering consent, Rs. 74,119/- were deducted from his AFPP balance of Rs. 1,05,872/- and balance amount of Rs. 31,573/- was paid to the applicant after regularisation of his debit balance. While the applicant was undergoing trial in Mathura Jail, he became due for discharge from service w.e.f. 28.02.2019 on completion of terms of engagement, hence, his discharge from service was approved by OIC Records giving date of discharge 28.02.2019 vide Jat Records letter dated 10.10.2018. Thus, the applicant was discharged from service w.e.f. 28.02.2019 under Rule 13 (3) III (i) of Army Rules, 1954 on fulfilling the condition of enrolment/service limit. Since the applicant was not

acquitted/released on bail, his civil custody in jail for 1328 days w.e.f. 11.07.2015 to 28.02.2019 (date of notional discharge) has been taken as non qualifying service, thus the applicant has total 1675 days of non qualifying service in his entire service and therefore, his total qualifying service became 12 years, 05 months and 11 days.

6. Ld. Counsel for the respondents further submitted that para 47 of the Pension Regulations for the Army 2008 (Part-1) says that minimum qualifying colour service for earning service pension is 15 years and Para 21 (vi) of the Pension Regulations for the Army 2008 (Part-1) specifies that any period of detention in civil custody before being sentenced to imprisonment or fine, that period shall not count for pension and gratuity. Since the applicant has rendered only 12 years, 05 months and 11 days of qualifying service upto the date of discharge, he is not entitled for service pension. As per para 44 of Pension Regulations for the Army 2008 (Part-1), deficiency in service upto 12 months to earn service pension may be condoned but in this case, deficiency is much more than one year, i.e. 1675 days, the same cannot be condoned beyond the rules. He pleaded that O.A. may be dismissed.

7. We have heard learned counsel for both sides and perused the material placed on record.

8. From perusal of records, we observe that Jat Records in para 2 of their letter dated 22.09.2021, addressed to AFT Cell, HQ Madhya Up Sub area i.e. Legal Cell, has clarified that :-

“2. (a) No. 3197977L Ex Sep Amit Kumar was in custody at Mathura Jail (UP) wef 11 Jul 2015. Therefore, under the provision of Section 93 of the Army Act, 1950 read with Rule 194 of Army Rule 1954, 50% of pay & allowances in respect of the petitioner were granted to the individual by the competent authority (copy attached).

(b) The petitioner had rendered 17 years and 16 days in which 1675 days is Non Qualifying Service and has rendered 12 years, 05 months and 11 days of qualifying service. As per para 54 of Pension Regulations for the Army (Part-1) 2008, the petitioner is eligible for service gratuity, which has not been paid to the petitioner during his final Settlement of Account. However, necessary action is being initiated by Records, The JAT Regiment with appropriate authority to grant service gratuity to the individual”.

9. We also find that applicant is entitled for 50% of pay and allowances w.e.f. 11.07.2015 as per provisions of Army Act Section 91 (b) and Rule 51 of pay and allowances Regulations JCO/OR 1979 as sanctioned vide Commanding Officer 21 Jat ‘Sanction’ dated 27.01.2018 (copy received through Legal Cell on 23.09.2021 and placed in file).

10. In view of aforesaid discussion, it is also made clear that applicant is not entitled for service pension as per para 47 of the Pension Regulations for the Army 2008 (Part-1) being his total qualifying service less than 15 years which is a mandatory requirement for grant of service pension.

11. In view of above, Original Application is **partly allowed**. The impugned orders passed by the respondents are set aside. The respondents are directed to release 50% of his pay and allowances for the period from 11.07.2015 (date of surrender) to 28.02.2019 (notional date of discharge) and also pay amount of service gratuity



as per rules after adjusting any amount, if already paid to the applicant. The respondents are directed to give effect to this order within a period of four months from the date of receipt of certified copy of the order. Default will invite interest @ 8% per annum till actual payment.

12. No order as to costs.

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

Member (A)

Member (J)

Dated: Sept., 2021

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