

Court No. 1 (E Court)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 246 of 2017

Tuesday, this the 07th day of September, 2021

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

Smt. Anuradha Tewari, Wife No No 129292Z LEMA Anjani Kumar Tewari (Navy), Resident of H. No. 07/10/201B, Saraswati Puram, In front of NH House, Devkali, Faizabad – 224001.

..... Applicant

Counsel for the Applicant : **Shri Virat Anand Singh, Advocate**

Versus

1. Union of India and others through The Secretary, Ministry of Defence, South Block, New Delhi- 110011.
2. Chief of Navy Staff, Integrated HQ of JMoD (Navy), DHQ PO, New Delhi- 110011
3. Officer-in-Charge, Commodore Bureau of Sailors, Mumbai.
4. Commanding Officer, INS Hansa, C/o INAS 552.

.....Respondents

Counsel for the Respondents : **Dr. SN Pandey,
Central Govt. Counsel**

ORDER

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

1. The instant Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 with the following prayers:

- “(i) To direct the respondents to recall their WARRANT OF ARREST dated 15 Jan 2008 issued by INS Hansa against applicants husband.*
- “(ii) To issue/ pass an order to the respondents to consider applicants husbands service entitlements and dues including pensionary benefits including disability element/pension.*
- “(iii) To direct respondents to pay all consequential benefits till date.*
- “(iv) To pass orders which their lordships may deem fit and proper in the existing facts and circumstances of the case.*
- “(v) Allow this application with costs.*

2. Facts giving rise to Original Application in brief are that husband of applicant LEMA Anjani Kumar Tewari was enrolled in the Indian Navy in Feb 2001. In the year 2005, mother of LEMA Anjani Kumar Tewari died being ill for long time. After death of mother of LEMA Anjani Kumar Tewari, his father was admitted in Hospital for Neuro problem. In the year 2006 LEMA Anjani Kumar Tewari was posted to INAS 552 in HANSA, GOA and he applied for premature discharge from service citing various family problems. LEMA Anjani Kumar Tewari was informed from authority concerned about recovery of training charges applicable to premature release sailors. In the year 2007 LEMA Anjani Kumar Tewari proceeded to his home on Annual Leave and could not join his duty due to family problem. On 15 Jan 2008, warrant of arrest against him was issued.

LEMA Anjani Kumar Tewari suffered from Psychiatric problem and is under treatment at KGMU Lucknow. Applicant requested the respondents for cancelling Arrest Warrant of her husband and for grant of service benefits but the same was rejected. Being aggrieved, the applicant has filed this Original Application for cancelling arrest warrant and for grant of service benefits.

3. Learned counsel for the applicant submitted that husband of the applicant Sailor Anjani Kumar Tewari while posted at Goa in the year 2007 faced serious family problem in which mother of the sailor died after long illness, his father became seriously ill and sailor himself became psychiatric patient. He applied for premature discharge from service which was under consideration. He was granted 10 days balance of annual leave for the year 2007 with effect from 24.12.07 TO 03.01.2008. Due to family problem he could not join his duty. He was of the impression that his discharge will be sanctioned but instead of sanctioning discharge, he was declared 'Run' and his arrest warrant was issued. Learned counsel for the applicant prayed that arrest warrant issued against husband of the applicant be cancelled, discharge of the applicant be sanctioned and retiral dues be paid to her husband.

4. Per Contra, learned counsel for the respondents submitted that husband of the applicant while posted to INAS 552 was granted 10 days balance of annual leave w.e.f. 24.12.2007, the sailor was marked 'Run' w.e.f. 04.01.2008. The sailor has neither reported

back nor has been apprehended till date. Learned counsel for the respondents submitted that sailor was granted 14 days balance of annual leave for the year 2005 during his mother's illness w.e.f. 01.12.2005. The sailor asked for leave extension for 07 days and was granted 07 days advance of annual leave of year 2006. The sailor was granted 10 days advance of annual leave on demise of his mother. Since he was to report to INS Garuda for LEMAR Q Course, his reporting date for the course was also amended from 30.12.2005 to 07.01.2006 to cater for his requirements. Request of the sailor for premature release from service was not supported by any substantial proof. The sailor was marked 'Run' on 04.01.2008 after 07 days when the sailor did not report back on duty, letter and warrant for arrest was issued to apprehend the sailor. Husband of the applicant had put up a request for premature release from service on 20.06.2007. His request was brought before the Squadron Commanding Officer but he did not find any substantial documentary evidence in justification for premature release hence his request was denied in terms of Navy Part II Art 280 and the sailor was counseled accordingly. The sailor persisted his request for premature discharge in spite of counseling by various officers, but he was not being able to produce any documentary evidence in support of his request for premature discharge. In the interim, sailor was given a decision to transfer him close to his home station on compassionate grounds. He was not ready to consider a transfer and persisted with authority concerned for premature discharge. The

sailor has not been apprehended till date and there has been no telephonic contact with either the sailor or any of his next of kin. On 11.04.2008, a copy of Writ Petition No (M/B) of 2008 was received by the sailor's unit, wherein Shri Bhagawat Prasad Tewari, father of the deserted sailor approached the Lucknow Bench of the Hon'ble Court of Allahabad with a Writ Petition praying for quashing of the Arrest Warrant issued under Navy Act 1957 by the Commanding Officer, INS Hansa. The petition was heard and rejected with liberty to approach higher authority. Learned counsel for the respondents submitted that husband of the applicant is a deserter and no provision exists to recall the arrest warrant issued for apprehension of a naval deserter hence no action on request of the applicant can be taken until sailor reports back to the Navy.

5. We have heard learned counsel for the parties and have also perused the record.

6. After having heard the submissions of learned counsel of both sides and perusal of record, we find that husband of the applicant has been declared deserter and arrest warrant has been issued against him. Husband of the applicant had applied for premature discharge from service in the meantime, he failed to join duty in time. From perusal of record, it transpires that husband of the applicant was granted leave from time to time to resolve his domestic problems. Even he was advised for posting near his home but he was not agree. For sanctioning discharge, there is some documentary requirement which

husband of the applicant has not submitted till date. Navy is a combat force and discipline is essential for maintaining organizational effectiveness. Husband of the applicant once reports before the naval authorities, arrest warrant shall automatically be cancelled. It is clarified that until and unless husband of the applicant surrenders before the Naval authority, neither discharge of her husband can be sanctioned nor any amount due to him can be granted.

7. We, therefore do not find any merit in the application submitted by the applicant. However, if the husband of the applicant surrenders before the Navy authorities, they will take action as per rule and policy. Consequently, the application being devoid of merit is liable to be **dismissed**.

8. Accordingly, Original Application is **dismissed**.

9. No order as to cost.

10. Pending applications, if any, are disposed off.

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

Dated: 07 September, 2021
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