

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****TRANSFERRED APPLICATION NO 65 of 2012**

Friday, this the 20th day of November 2015

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

Ganga Ram Chaubey, son of Sri Ram Kripal Chaubey, r/o
Village Vishnu Gopalpur, Post Bhatauta Tulsipatti, Tehsil
Kadipur, District - Sultanpur, Army No. 14342567M, Artillery
Centre, Nasik.

.....Petitioner

Ld. Counsel for the: **Shri V.K. Pandey, Advocate**
Petitioner

Versus

1. Commanding Officer, 107 A.D. Regiment C/o 99 A.P.O.
2. Artillery Centre, Nasik Road (Training Centre and Air
Defence Artillery Record Office) Nasik.
3. Union of India, through Secretary Ministry of Defence,
South Block, R.K. Puram, New Delhi.

...Respondents

Ld. Counsel for the : **Shri D.K. Pandey, Central**
Respondents. **Govt Counsel assisted by**
Lt Col Subodh Verma,
OIC, Legal Cell.

ORDER (ORAL)

1. The petitioner preferred Writ Petition No. 1045 of 1998 in the High Court of Judicature at Allahabad, which has been received by this Tribunal by way of transfer under section 34 of the Armed Forces Tribunal Act 2007 and renumbered as T.A. No. 65 of 2012. The petitioner has made prayer for following reliefs:-

“(a) to issue a writ, order or direction in the nature of certiorary, quashing the impugned order (copy of which has not been supplied to the petitioner) by which the rank of the petitioner has been reduced to ‘Naik’;

(b) to issue a writ, order or direction in the nature of mandamus, directing the Respondents not to implement the impugned order and not to reduce the rank of the petitioner from RHB TIFC;

(c) to issue any other writ, order or direction in the circumstances of the case for giving adequate relief to the petitioner;

(d) to allow the writ petition with costs.”

2. The solitary prayer made by the petitioner is for his reinstatement on the post of L/Havildar. However Ld. Counsel for the respondents submitted that the applicant is a Naik and he was never promoted to the rank of Havildar and only for a certain period he was required to discharge duties of L/Havildar.

3. Counter affidavit filed by respondents shows that the petitioner is missing since 20.03.1997. Even prior to 20.03.1997 serious allegations were raised against the petitioner indicating

that he was punished several times and also facing trial under Section 302 Indian Penal Code.

4. Keeping in view the material on record, it appears that the petitioner is absconding since 20.03.1997 and he did not returned to the Unit till the date of filing of counter affidavit before the High Court. Ld. Counsel for the petitioner also failed to inform the Court with regard to whereabouts of the petitioner. The respondents have also not intimated the Court what action has been taken against the petitioner for absconding since 20.03.1997. It is for the army authorities to proceed in accordance with Rules and declare the petitioner deserter with follow up action. It is not for this Tribunal to interfere with the matter with regard to disciplinary proceedings or permit action for misconduct against the petitioner.

5. Attention has not been drawn by Ld. Counsel for the petitioner to any pleading on record whereby pleadings in the counter affidavit have been denied by the petitioner. Since the petitioner is absconding, we are not inclined to interfere with the matter. However, we direct the petitioner to appear before his Unit within one month and prefer a representation ventilating his cause.

6. In case the petitioner appears before his Unit and submits a representation, it shall be decided by the competent authority by a speaking and reasoned order, expeditiously, say within six months from the date of receipt of representation along with a

certified copy of this order with due communication to the petitioner.

5. Needless to mention that unless the petitioner appears and moves representation and the representation finds favour with the competent authority, there appears no reason for this Tribunal to interfere with the matter, more so, when the competent authority has not applied its mind to the controversy which involves disputed question of fact and law. With regard to refund of his gun, competent authority shall take decision in accordance to law.

6. Subject to liberty aforesaid, the petition is disposed of finally.

No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

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

ukt