

Court No.3

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 378 of 2019

Thursday, this the 22nd day of December, 2022

Hon'ble Mr. Justice Anil Kumar, Member (J)

Hon'ble Maj Gen Sanjay Singh, Member (A)

1. Smt Dewanti Devi W/o Sri Parshupati Nath Pandey, R/o Village – Pandeypur, Post – Bariswan, District- Bhojpur (Ara) Bihar.
2. No. 4293096A Sep Sanjeev Kumar Pandey, S/o Sri Parshupati Nath Pandey, R/o Village – Pandeypur, Post – Bariswan, District- Bhojpur (Ara) Bihar.

.....Applicant

Ld. Counsel for : **Shri Prabhat Kumar Tripathi**, Advocate
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi 110011.
2. The Chief of the Army Staff, South Block, New Delhi.
3. The Commandant, Bihar Regiment Centre, Pin 900441 C/O 56 APO.
4. Officer-in-Charge, Records Bihar Regiment Centre, PIN 908765, C/O 56 APO.
5. Commanding Officer, 24 RR Bn, PIN 934524, C/O 56 APO.
6. Officer In-charge, 7 Bihar Regiment Bn. C/O 99 APO.

.....Respondents

Ld. Counsel for the : **Shri Jai Narayan Mishra**,
Respondents Central Govt Counsel

ORDER (ORAL)

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has claimed the following reliefs:-

(a) Issue an order or direction and command to the respondents to release salary to the applicant No. 2 forthwith along with arrears of pay and allowances with interest @ 12% per annum from the date 25th of July 2016 of its due till the date of actual payment.

(b) Issue an order, direction and command to the respondents to consider and decide the pending representation of the applicant No. 2 contained in Annexure No. 11, in accordance with law by passing a reasoned and speaking order within a time frame to be fixed by this Hon'ble Tribunal.

(c) Issue such other order/direction which may be deemed just and proper in the circumstances of the case.

(d) Allow the Original Application with cost against the respondents in view of the facts and circumstances, legal provisions and Grounds raised in the Application.

2. Brief facts of the case are that No. 4293096A Sep Sanjeev Kumar Pandey (applicant No. 2) was enrolled in the Army on 02.03.2013. After completion of basic military training he was posted to 7 Bihar w.e.f. 08.01.2014. During

the course of his service he was granted 10 days part of annual leave for the year 2014 w.e.f. 08.07.2014 to 17.07.2014. On expiry of leave he was to report back for duty which he failed. Consequently, he was declared a deserter w.e.f. 18.07.2014. After an absence of 141 days he surrendered voluntarily to his unit on 05.12.2014 where on rejoining he was awarded 14 days rigorous imprisonment and 14 days pay fine on 06.01.2015. Thereafter, in the year 2016, while proceeding on permanent posting to 24 Rashtriya Rifles (Bihar) he was granted 33 days part of annual leave and six days preparatory leave w.e.f. 08.05.2016. On termination of leave he was to report to his new unit on 17.06.2016 but he overstayed leave and later rejoined voluntarily on 08.07.2016. Again, he was granted 09 days casual leave from 16.07.2016 to 24.07.2016 and did not report back on expiry of leave. Accordingly, apprehension roll dated 20.08.2016 was issued and after expiry of 30 days, a Court of Inquiry (C of I) dated 05.09.2016 was held under Section 106 of Army Act, 1950

which declared him as a deserter w.e.f. 25.07.2016. After being declared a deserter, he submitted a representation dated 20.12.2017 to Chief of the Army Staff (COAS) with a request to re-instate him in service. An appeal dated 14.04.2018 was also submitted to COAS with copy endorsed to Records, the Bihar Regiment. In response to his appeal he was advised to report to the Bihar Regimental Training Centre. Thereafter, he surrendered to the Centre after an absence of 744 days on 07.08.2018 and on rejoining he was awarded 28 days rigorous imprisonment and 10 days pay fine on 21.08.2018. He is presently serving in his parent unit. This O.A. has been filed for grant of pay and allowances for the period for which he was not in service being declared a deserter.

3. Learned counsel for the applicant submitted that during the course of his service he has been an excellent firer and he was commended by Lt Gen AK Bakshi. He further submitted that 7 Bihar Regiment had issued a movement order for proceeding to 24 Rashtriya Rifles (Bihar) alongwith

33 days part of annual leave. As per applicant he reported to 213 Transit Camp four days late due to sickness of her mother but he was not allowed to report and was declared a deserter. Further submission of learned counsel for the applicant is that after great efforts he rejoined at the Regimental Centre where he was punished and taken on strength and thereafter, was despatched for further service.

4. Learned counsel for the applicant further submitted that applicant is in possession of AD slip which clearly shows that the applicant had reported to 213 Transit Camp and stayed there for four days but he could not be despatched further due to disturbances in J&K valley at that time. He further submitted that while he was at 213 Transit Camp he received a phone call from his home that his mother was undergoing treatment in Civil Hospital due to acute pain in her abdomen. Therefore, he returned home and looked after his mother and requested for 10 days leave which was sanctioned. It was further submitted that after treatment of his mother when he tried to rejoin, he was not allowed to enter the gate.

Thereafter, he preferred various representations and ultimately he reported to the Bihar Regimental Training Centre where he was taken on strength, punished and despatched for further service. He pleaded for grant of pay and allowances for the period of his absence from duty on the ground that he was trying to join the unit for duty but was not allowed to rejoin.

5. Per contra, learned counsel for the respondents submitted that the applicant was enrolled in the Army on 02.03.2013. He further submitted that while serving with 7 Bihar he was granted 10 days part of annual leave which was to expire on 17.07.2014. After termination of leave when he did not report, he was declared a deserter w.e.f. 18.07.2014. The applicant surrendered on 05.12.2014, taken on strength and punished for 14 days rigorous imprisonment and 14 days pay fine on 06.01.2015.

6. Learned counsel for the respondents further submitted that in the year 2016 he was granted 33 days part of annual leave while proceeding to 24 Rashtriya Rifles (Bihar). On

termination of leave he was to report to his unit on 17.06.2016 but he overstayed leave and voluntarily rejoined duty on 08.07.2016 after an absence of 21 days. On 16.07.2016 he was again granted 09 days casual leave which was to expire on 24.07.2016 but when he failed to rejoin on 25.07.2016 he was declared a deserter by a duly constituted C of I. It was further submitted that subsequent to numerous representations/ appeals he surrendered at Bihar Regimental Training Centre on 07.08.2018 after a gap of 744 days where he was taken on strength and punished under Section 80 of the Army Act, 1950. His further submission is that from the date he reported for duty he has received pay and allowances due to him except for the period of desertion which he is not entitled under Section 91 of the Army Act, 1950. He pleaded for dismissal of O.A.

7. Heard Shri Prabhat Kumar Tripathi, learned counsel for the applicant and Shri Jai Narayan Mishra, learned counsel for the respondents and perused the record.

8. No. 4293096A Sep Sanjeev Kumar Pandey was enrolled in the Army on 02.03.2013 and after due training he was posted to 7 Bihar w.e.f. 08.01.2014. While serving in the unit, on two occasions when he was granted leave, he absented without leave (141 days and 22 days) and was accordingly punished. He was granted 09 days casual leave from 16.07.2016 to 24.07.2016 but he overstayed leave. Accordingly, apprehension roll dated 20.08.2016 was issued and after 30 days of absence a C of I was conducted on 05.09.2016 which declared him as a deserter w.e.f. 25.07.2016.

9. Applicant's contention, that he reported to 213 Transit Camp on expiry of leave where he was issued with an AD slip but even then he was not allowed to report, is not sustainable on the ground that nothing is on record to show that he reported to 213 Camp after expiry of leave i.e. on or after 25.07.2016. The fact is that he surrendered at Bihar Regimental Training Centre on 07.08.2018 after prolonged desertion w.e.f. 25.07.2016. He was punished and

despatched to 24 Rashtriya Rifles. The movement order placed on record was issued by 24 Rashtriya Rifles on 29.10.2018 and the AD slip was issued while moving from 24 Rashtriya Rifles to 7 Bihar where he is presently serving.

10. Perusal of record clearly reveals that besides the last desertion from 25.07.2016 to 06.08.2018, he deserted from the unit on two occasions earlier and was punished accordingly which implies that he was a habitual offender who used to desert from the Army.

11. As far as payment of wages for the period of desertion is concerned, Section 91 (a) of the Army Act, 1950 clearly specifies that an individual is not entitled to pay and allowances for the desertion period. For convenience sake, the aforesaid Para is reproduced as under:-

"91. Deductions from pay and allowances of persons other than officers.

Subject to the provisions of section 94 the following penal deductions may be made from the pay and allowances of a person subject to this Act other than an officer, that is to say,-

(a) all pay and allowances for every day of absence either on desertion or without leave, or as a prisoner of war, and for every day of

transportation or imprisonment awarded by a criminal court, a court- martial or an officer exercising authority under section 80."

12. Applicant's contention, that owing to sickness of his mother he had to overstay leave as she was under treatment of Dr. Sadhu Sharan Pandey, Veer Kunwar Singh Vishwavidyalaya, Ara, is not tenable as the Doctor has certified that her mother was under treatment from 22.07.2016 to 04.08.2016 (14 days) but the applicant had overstayed leave/deserted for a period of 744 days. Further, the applicant belongs to District Ara and Danapur Military Station is less than 50 kms from his place of residence. If her mother was not well the applicant could have easily got her treated in a Military Hospital, Danapur which she is very much entitled being dependent of a serving soldier. We do not know whether her mother was ill or not but the story

seems to be concocted and after thought to cover the long desertion from the Army.

13. Applicant's contention, that he tried to join his duties several times, seems to be afterthought as no document is on record to show that after desertion he ever reported to Army authorities prior to 07.08.2018 and he was not allowed to join his duty.

14. Additionally, we find no infirmity in the stand of the respondents that applicant is not entitled to pay and allowances for the period he was not in service as per the Hon'ble Apex Court in ***HVPN Limited and Others vs Bal Govind***, (2017) 2 SCC 382 which upheld 'dies non juridicum' on the entitlement of back wages.

15. In view of the above, we are of the view that the respondents have taken a lenient view in allowing him to rejoin his duty after a prolonged desertion and wages have rightly been disallowed.

16. Thus, keeping in view of the aforesaid discussion, O.A. is **dismissed**.

17. No order as to costs.

18. Miscellaneous applications, pending if any, stand disposed off.

(Maj Gen Sanjay Singh)
Member (A)

Dated : 22.12.2022

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(Justice Anil Kumar)
Member (J)