

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 737 of 2020**Tuesday, this the 1st day of February, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)No. 14837312-L Rect/MT Vishal Kumar Singh
S/o Sri Jay Shree Singh
R/o C/o Md Shakil Khan BH No.-2, BHU No A-12A, A 13 Kh, No 90,
Him City Part-1, Chinhat, Lucknow-226001 (UP)**.... Applicant**Ld. Counsel for the Applicant : **Shri R. Chandra**, Advocate.

Versus

1. Union of India, through the Secretary, Ministry of Defence Government of India, New Delhi.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), DHQ PO, New Delhi.
3. The Officer-in-charge, Army Service Corps (South), Bangalore – 560007.
4. Commanding Officer, No. 4 Trg Bn (MT), ASC Centre & College, Bangalore-560007.

... RespondentsLd. Counsel for the Respondents : **Shri Shyam Singh**,
Central Govt Counsel**ORDER (Oral)**

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

“(I) The Hon'ble Tribunal may be pleased to set aside the order dated 16/12/2004 (Annexure No A-1) and order dated 20/12/2005 (Annexure No A-2) issued by respondents.

- (II) To direct the respondents to treat the applicant in service till completion of prescribed colour service in the rank of Sepoy and pay him all retiral dues including arrears of salary, pension, gratuity and other retiral dues with interest at the rate of 24 percent per annum.
- (III) Any other appropriate order or direction which the Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case."

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 01.10.2002 at ASC Centre (South), Bangalore. After completion of 10 weeks basic military training in the Centre, applicant was sent on 10 days casual leave to appear before the Court at Motihari, East Champaran in a civil case pending against him, however, the applicant did not attend the Court during his leave period and instead applicant requested for extension of 10 days leave. He overstayed his leave and thus became absent for 30 days. Thereafter, applicant was again sent on 20 days casual leave from 01.01.2004 to 20.06.2004 to appear before the Court and this time also, he overstayed leave without sufficient cause and remained absent from 21.06.2004. An Apprehension Roll was issued by ASC Centre to apprehend the applicant. A Court of Inquiry was held at No. 4 Training Battalion, ASC Centre, Bangalore on 20.08.2004 and applicant was declared as a deserter w.e.f 21.06.2004. Later on, applicant rejoined on 24.10.2004 after an absence of 126 days. In terms of Para 4 of IHQ of MoD (Army) letter dated 28.02.1986 and letter dated 22.04.1998, *when a recruit absents himself without leave for 30 consecutive days during his basic military training period, he*

has to be discharged from service after initiating necessary discipline action. Accordingly, applicant was tried under Army Act, Section 39(b) and was awarded 28 days RI on 13.11.2004. The applicant absented himself without leave during the training period which was more than 30 consecutive days, hence, the applicant was discharged from service on the ground '**Unlikely to become an efficient soldier**' under the provisions of Army Rule 13 (3), Item (iv) to be read in conjunction with Army Headquarters letter dated 22.04.1998. Being aggrieved with procedure of discharge, applicant has filed this Original Application to treat him in service till completion of tenure of service in the rank of Sepoy.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 02.10.2002 in medically and physically fit condition. A Case No. 27/02 bearing Tr. No. 1450/03 was pending before the Judicial Magistrate, Sikarahana at Motihari, East Champaran. On 10.07.2003, Judicial Magistrate, 1st Class, Sikarahana at Motihari sent a letter to Commandant, ASC Centre, Bangalore for appearance of the applicant before Court. On 20.07.2003, applicant was sent on 10 days Casual Leave for appearing before Court at Motihari. As per Court's direction, applicant was required to submit a written application before Superintendent of Police (SP) stating that he was not present at the time of incident and his name was entered falsely in the case. Again on 01.06.2004, applicant was sent on 14 days Casual leave for appearing before Court at Motihari and 06 days leave was extended on the request of applicant. The applicant

appeared before the court. Again applicant was directed by the Court to submit a written applicant to Superintendent of Police. The matter was investigated by Dy. Superintendent of Police and it was found that applicant was not present at place of incident and he was present at Bangalore.

4. Learned counsel for the applicant further submitted that in the month of November 2003, applicant became 126 days over Staying Leave (OSL). After investigation of his case, it was found that applicant was not accused in the pending case. On 27.07.2004, applicant was granted bail and on 15.10.2004, he was released and an order to make a charge was passed. The applicant obtained the certified copy of charge and reported back to his unit for joining his duties on 18.10.2004. The applicant was awarded 28 days RI and 14 days detention by Commanding Officer (CO). On 16.12.2004, applicant was discharged from service on the ground of OSL for more than 30 days during training as per Army Headquarters letter dated 28.02.1986 and under the provisions of Army Rule 13 (3), table IV being '**Unlikely to become an efficient soldier**'. In the instant case, CO had issued the Show Cause Notice only because policy letter dated 28.02.1986 mandated the same. The CO has not applied his mind and the order has been issued due to mandate of the policy letter dated 28.02.1986. The applicant had already been punished for his misconduct of OSL, therefore, discharging him on the same ground is double jeopardy and violative of Article 20(3) of the Constitution. He pleaded that applicant deserves to receive all retiral

dues including pension gratuity by treating him in service till completion of tenure of service in the rank of Sepoy.

5. On the other hand, Ld. Counsel for the respondents submitted that applicant was enrolled in the Indian Army on 01.10.2002 at ASC Centre (South), Bangalore. After completion of 10 weeks basic military training in the Centre, a petition regarding criminal case filed by Mr. Uma Shankar Singh, Advocate Criminal Court, Motihari (Bihar) against the applicant was received. In this connection an arrest warrant was also received from Judicial Magistrate, Sikarahana at Motihari, East Champaran on 18.07.2003. Accordingly, applicant was sent on 10 days casual leave from 20.07.2003 to 29.07.2003, however, the applicant did not attend the Court during his leave period and instead applicant requested for extension of 10 days leave. He overstayed his leave and thus became absent for 30 days. Thereafter, another letter dated 16.09.2003 received from Judicial Magistrate, Sikarahana at Motihari, East Champaran for appearance of the applicant before the Court. The applicant was again sent on 20 days casual leave from 01.01.2004 to 20.06.2004 to appear before the Court and this time also, he overstayed leave without sufficient cause and remained absent from 21.06.2004. An Apprehension Roll was issued by ASC Centre to apprehend the applicant. A Court of Inquiry was held at No. 4 Training Battalion, ASC Centre, Bangalore on 20.08.2004 and applicant was declared as a deserter w.e.f 21.06.2004. Later on, applicant rejoined on 24.10.2004 after an absence of 126 days. In terms of Para 4 of IHQ of MoD (Army) letter

dated 28.02.1986 and letter dated 22.04.1998, *when a recruit absents himself without leave for 30 consecutive days during his basic military training period, he has to be discharged from service after initiating necessary discipline action.* Accordingly, applicant was tried under Army Act, Section 39(b) and was awarded 28 days RI on 13.11.2004.

6. Learned counsel for the respondents further submitted that offence of OSL by the applicant on two occasions during his basic military training period clearly shows the lackadaisical attitude of the applicant towards his military training which affects morale of other trainees. The applicant absented himself without leave during the training period which was more than 30 consecutive days, hence, the applicant was discharged from service on the ground '**Unlikely to become an efficient soldier**' under the provisions of Army Rule 13 (3), Item (iv) to be read in conjunction with Army Headquarters letter dated 22.04.1998. Since, the applicant has absented himself from training for more than 30 consecutive days, therefore, the applicant is not eligible for reinstatement into service as per existing rules and regulations. 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. We find that applicant was indisciplined soldier having irresponsible attitude and nature towards his duty. He was OSL for more than 30 consecutive days during basic military training and therefore, he was discharged from service as per rules and policy on the subject after holding a Court of Inquiry under the provisions of

IHQ of MoD (Army) letters dated 28.02.1986 and dated 22.04.1998. Hence, the applicant is not entitled for the relief prayed to quash his discharge order and to treat him in service till completion of prescribed colour service in the rank of Sepoy.

9. In the result, we do not find any illegality or illogicality in discharging the applicant from service. There is also no violation of Article 20(3) of the Constitution of India. The discharge of the applicant has been made as per rules and policy on the subject. The O.A. lacks merit, deserves to be dismissed. It is accordingly **dismissed**.

10. No order as to costs.

11. Pending Misc. Applications, if any, stand disposed off.

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

Dated: February, 2022

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