

RESERVED
(Court No 2)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 254 of 2021

Thursday, this the 11th day of January, 2024

Hon'ble Mr. Justice Anil Kumar, Member (J)
Hon'ble Maj Gen Sanjay Singh, Member (A)

No. 15740876A Sigmn (TTC) Yogesh Kumar son of Sri Pooran Singh, resident of Mohalla Sarary, Ward No-07, Post Baldeo, Tehsil-Mahavan, District-Mathura (UP)-281301.

Learned counsel for the: **Shri Ajit Verma**, Advocate
Applicant **Shri Shubham Gupta**, Advocate

Versus

1. Union of India through its Secretary, Ministry of Defence, Government of India, New Delhi.
2. Chief of Army Staff, India, New Delhi.
3. Commanding Officer, Depot Regt (Corps of Signals), Jabalpur, M.P.
4. Lieutenant Colonel, Second-in-Command, Depot Regiment (Corps of Signals), PIN-901124.

.....Respondents

Learned counsel for the : **Shri RC Shukla**, Advocate
Respondents. Central Govt. Counsel

ORDER

1. By means of this Original Application which is filed under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has made the following prayers:-

(i) Quash the impugned order dated 14.10.2020 passed by opposite party No 4 by which the petitioner has been dismissed from his service on the post of Signalmán (Technician of Tele Communication), a copy of which is contained as Annexure No A-1 to the original application.

(ii) Direct the respondents to permit the applicant to join the service/reinstate the applicant on the post of Signalmán (Technician of Tele Communication) and pay salary alongwith all the consequential benefits.

(iii) Such other order as may be deemed just and proper in the circumstances of the case may also be passed in the interest of justice.

(iv) Award the cost of the present case in favour of the applicant.

2. In brief, the facts of the case may be summarized as under:

The applicant was enrolled in the Indian Army on 23.09.2014. In the year 2019, while being posted out to UNIT 463 he was granted 20 days part of annual leave for the period 04.04.2019 to 23.04.2019 and 06 days joining time excluding Sunday from 24.04.2019 to 30.04.2019. He failed to report for duty after expiry of leave and remained absent until surrendered voluntarily to Depot Regiment on 29.07.2020 at 1350 hrs after deserting the service for 01 year and 90 days from 01.05.2019 to 29.07.2020.

On reporting, Court of Inquiry (C of I) was conducted and thereafter, Summary of Evidence (S of E) was recorded. He was

tried by Summary Court Martial (SCM) under Section 38 (1) of the Army Act, 1950 on 14.10.2020 and sentenced to be dismissed from service. This O.A. has been filed to quash order dated 14.10.2020 and re-instate him into service with all consequential benefits.

3. Learned counsel for the applicant submitted that on posting out to 463 Unit, applicant was granted 20 days leave excluding joining period and he was to report to his new unit on 01.05.2019, but during the leave period he came to know that he was being married to a minor girl which he opposed. Learned counsel for the applicant further submitted that on opposing he was detained in house and that was the reason of his non reporting to new unit in time.

4. Learned counsel for the applicant further submitted that applicant came out of his house and reported to respondent No 3 on 29.07.2020 where he was demanded affidavit regarding his absence for the period 01.05.2019 to 29.07.2020 which he submitted in the month of September, 2020. It was further submitted that even after submitting the said affidavit, he was dismissed from service arbitrarily without affording an opportunity of hearing and without considering the facts and circumstances of the case, which is bad in the eyes of law. It was also submitted that no show cause notice was given to the applicant prior to commencement of legal proceedings, therefore, on account of not following prescribed procedure, the whole

proceedings are illegal and applicant is liable to be re-instated into service.

5. Per contra, learned counsel for the respondents submitted that applicant was enrolled in the Army on 23.09.2014. While proceeding on permanent posting from 79 Mountain Brigade Signal Company to join Unit 463, he was granted 20 days part of annual leave from 04.04.2019 to 23.04.2019 and 06 days joining time excluding Sunday from 24.04.2019 to 30.04.2019. After expiry of leave, applicant failed to report his unit on expiry of leave and deserted the service until surrendered voluntarily to Depot Regiment (Corps of Signals) on 29.07.2020 at 1350 hrs after absence period of 01 year and 90 days from 01.05.2019 to 29.07.2020.

6. Learned counsel for the respondents further submitted that applicant on reaching home learnt that his parents had selected a girl for him and his marriage was fixed. On enquiry, it came to his knowledge that the girl was a minor, aged around 16 or 17 years. He brought this to the notice of his parents and also the fact that it was against the law, but they did not listen to him and insisted on continuing with his marriage. The tussle continued for many days which took its toll on his mind and to avoid every day bickering he moved to Sri Haridwar Munjvan Gaushala, Khaderaghat, an Ashram located a few kilometers from his village without informing anybody at his home. He continued to stay there till his parents learnt about. They then approached him and

advised him that they have dropped the marriage proposal, so he surrendered voluntarily at Depot Regiment (Corps of Signals) on 29.07.2020 at 1350 hours.

7. It was further submitted that since the applicant failed to produce any valid evidence in support of his absence from leave, he was tried through SCM under Section 38 (1) of the Army Act, 1950 on 14.10.2020 which sentenced him to be dismissed from service. He pleaded for dismissal of O.A. stating that SCM was held in accordance with rules on the subject wherein applicant was given full opportunity of hearing to defend himself but he declined.

8. Heard learned counsel for the parties and perused the records.

9. No. 15740876A Signalman (Technician of Tele Communication) Yogesh Kumar was enrolled in the Army on 23.09.2014. In the year 2019, while proceeding on leave-cum-posting he overstayed leave for 01 year and 90 days for the period 01.05.2019 to 29.07.2020 and thereafter, he surrendered voluntarily to Depot Regiment (Corps of Signals) on 29.07.2020 at 1350 hours.

10. Apprehension roll dated 15.05.2019 was issued. Tentative charge sheet was made and applicant received charge sheet and S of E on 09.10.2020. In the proceedings applicant declined to

make any statement. Thereafter, SCM was held and he was dismissed from service.

11. The Commanding Officer heard him on 11.09.2020 under Army Rule 22 and thereafter, S of E was reduced in writing complying provisions of Army Rules 23 (1), (2), (3) and (4) wherein independent witness Naib Subedar SS Bohra of Depot Regiment was took part. Applicant was given full opportunity to cross examine the witness and was asked to produce his defence witness which he declined. During the trial, the court intended to change plea of 'guilty' to 'not guilty' and provided an opportunity to proceed with the trial on pleas 'not guilty'. The applicant failed to justify his deliberate desertion of 01 year 90 days and submitted that his plea of 'guilty' being made voluntarily be considered and proceedings should be held with plea of 'guilty'.

12. While filing supplementary counter affidavit, the respondents have brought out that applicant had given his statement during recording of S of E, which reads as under:-

"I was enrolled into Corps of Signal on 23 September, 2014. I served in 79 Mountain Brigade Signal Company from 01 Feb, 2017 to 03 April, 2019. I was posted to Unit 463 so I was struck of strength from 79 Mountain Brigade Signal Company on 04 April, 2019 with 20 days part of annual leave from 04 April, 2019 to 23 April, 2019 and 06 days joining time excluding Sunday from 24 April, 2019 to 30 April, 2019. I proceeded to my village-Mohalla Sarry Ward No 07, Post-Baldeo, District-Mathura (Uttar Pradesh). On reaching home I learnt that my parents had selected a girl for me and my marriage was fixed. On enquiry it came to light that the girl was minor, aged about 16 or 17 years of age. I brought this to the notice of my parents and also the fact that it was against the law. But they would not listen and insisted on my marriage, the tussle continued for many days, which took its toll on my mind. To avoid everyday bickering and get some solace, I moved into Sri Haridwar Munjvan Gaushala, Khaderaghat an ashram located a few

kilometres from my village without informing anybody at my home. I continued to stay there till my parents learnt about it. They then approached me and advised me to report back for duty in the unit. They also informed me that they have dropped the marriage proposal. So I reported at Depot Regiment (Corps of Signals) on 29 July, 2020 at 1350 hours."

13. The above submission of the respondents has not been denied by the applicant while filing reply to supplementary counter affidavit. Applicant's averments that after denial of marriage he moved to Munjvan Gaushala without notice to his parents to seek solace seems to be incorrect as he could have easily moved to his receiving unit and reported for duty or he could have contacted his unit authorities explaining his domestic problems for suitable assistance and guidance.

14. On perusal of record we find that in the year 2017, applicant while serving in active field and operational area during 'Operation Meghdoot' had overstayed 16 days leave and he was awarded minor punishment of 07 days pay fine leniently since it was his first mistake.

15. Applicant has submitted that he forwarded letter dated 29.07.2020 to the respondents at the time of surrender but respondents' averment is that no such letter has been received by them. This version of the respondents has not been opposed by the applicant, therefore, a presumption is drawn that no such letter was received by the respondents.

16. Applicant's contention is that proceedings of SCM were done in hasty manner. In regard to this, we find that SCM proceedings

were done in usual way as complete ten days time was given to the applicant to defend his case. Further, applicant has produced copy of affidavit 16.09.2020. In O.A., it has been pleaded that it was asked by the respondents in regard to his absence from 01.05.2019 to 29.07.2020. In regard to this, respondents contention is that applicant had surrendered on 29.07.2020 and at the time of surrender no such affidavit was asked. We feel that applicant has submitted the affidavit keeping in mind that this may be helpful to him.

17. Thus, from the aforesaid, it may be stated that applicant's contention, that due to his detention by his family members and thereafter, his stay at Gaushala, seems to be an afterthought story and cannot be relied upon when there are so many ways to contact his unit authorities or if in distress to police authorities. The fact is that the applicant deserted the service voluntarily and he surrendered at Depot Regiment keeping in mind that he would be retained in service after awarding some punishment as was earlier done when he overstayed leave in the year 2017.

18. In our considered opinion, the applicant's services have rightly been terminated when he deserted the Army for a period of more than one year. In the Army each and every individual subject to Army Act is expected to be conforming to the tenets of military discipline. In the instant case applicant having 06 years of Army service was expected to be aware of the consequences of military discipline.

19. In view of the above discussions, we do not find any procedural illegality in conducting the SCM. The findings were recorded on the basis of the evidence in accordance with the rules. In view of the discussions made hereinabove, we do not find any merit in the present O.A.

20. Thus, this O.A. lacks merit, deserves to be dismissed and is hereby **dismissed**. No order as to costs.

21. Pending application (s), if any, stands disposed of.

(Maj Gen Sanjay Singh)
Member (A)

Dated: 11.01.2024
rathore

(Justice Anil Kumar)
Member (J)

RESERVED

(Court No 2)

Form No. 4

{See rule 11(1)}
ORDER SHEET

ARMED FORCES TRIBUNAL, REGIONAL BENCH,

LUCKNOW

ORIGINAL APPLICATION NO 254 OF 2021

Yogesh Kumar

Applicant

By Legal Practitioner for the Applicant

Versus

Union of India & Ors

Respondents

By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>11.01.2024</u> <u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u> <u>Hon'ble Maj Gen Sanjay Singh, Member (A)</u></p> <p>Judgment pronounced. O. A. No. 254 of 2021 is dismissed. For orders, see our judgment and order passed on separate sheets.</p> <p>(Maj Gen Sanjay Singh) Member (A) <i>rathore</i></p> <p>(Justice Anil Kumar) Member (J)</p>