

E-Court No. 1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

Original Application No. 668 of 2020

Monday, this the 26th day of July, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Rfn Laxman Singh (Army No 4089186A), Son of Shri Kanwar Singh, 16 Garhwal Rifles (last Unit), C/o 56 APO, Resident of Village – Sileth, Post – Seriyakhal (Pokhra), Tehsil – Chaubattakhal, District – Pouri Garhwal (Uttara Khand)- 246169.

.... **Applicant**

Ld. Counsel for the: **Wg Cdr SN Dwivedi (Retd), Advocate**
Applicant

Versus

1. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi – 110001.
2. Commandant, Garhwal Rifles Regimental Centre, PIN – 900400.
3. Officer-In-Charge Records, Garhwal Rifles Records, PIN- 900400, C/o 56 APO.
4. Commanding Officer, 16 Garhwal Rifles, PIN – 910716, C/o 56 APO.

... **Respondents**

Ld. Counsel for the: **Mrs. Deepti Prasad Bajpai,**
Respondents. **Central Govt Counsel**

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

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

“(a) Issue/ pass an order or direction to the respondents to allow the applicant to rejoin his duties immediately which has been arbitrarily and illegally denied to him so far and his application dated 22.07.2020 has also not been responded as yet.

(b) Issue/pass an order or direction to the respondents to regularise the period of absence as per the extant provisions, since over stayal of leave was caused due to his mental illness and which was beyond his control.

(c) Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.

(d) Allow this application with costs.

2. The undisputed factual matrix on record is that applicant was enrolled in the Army on 29.03.2004. While serving with 16 Garhwal Rifles, he was granted 40 days Part of Annual Leave w.e.f. 20.10.2015. His leave was to start from 257/260 Transit Camp but the applicant absented himself without leave with effect from 20.10.2015. Apprehension Roll was issued but neither he was apprehended nor surrendered till 19 January 2016. A court of inquiry was held and applicant was declared deserter and his service documents were forwarded to Records The Garhwal Rifles. The applicant submitted many representations for his re-instatement into service but he was not re-instated in service.

Feeling aggrieved the applicant filed this Original Application with the prayer to allow him to rejoin his duty, regularize the period of absence and re-instate him in service.

3. Learned counsel for the applicant submitted that the during the service, applicant performed his assigned duties with full devotion and dedication. The applicant left Transit Camp without making necessary entry by a civil conveyance rather than the military transport which was being provided for movement of such personnel due to mental illness which had already developed prior to his proceeding on the said leave. After prolonged treatment, his condition was better and stable, he sent applications for rejoining him on duty. He was informed by record office, Garhwal Rifles that he was declared deserter w.e.f. 20.10.2017 with direction to report to his unit. The applicant reported to his unit for rejoining but he was not allowed to enter inside the gate. The applicant last visited The Regimental Centre at Lansdowne, Pauri Garhwal on 20.07.2020 but he was returned back without hearing. Learned counsel for the applicant pleaded that applicant be allowed to rejoin his duty and re-instatement him in service.

4. Per contra, learned counsel for the respondents submitted that applicant is a habitual offender and has incurred four red ink entries under Section 39 of the Army Act-1950 during his 11 years, 06 months and 22 days of service out of which he had 81 days non qualifying service. He further submitted that applicant

absented himself without leave with effect from 20.10.2015 from 260 Transit Camp. Accordingly, apprehension roll was issued vide letter dated 30.12.2015. However, neither the applicant was apprehended nor surrendered till 19.01.2016. The applicant is mature and literate person. While left 260 Transit Camp he was in full sense and his medical category was SHAPE-1. He is a perpetual offender and he intentionally deserted from service. Although, the applicant's activity of absenting from duty was vitiating the environment of the unit as well as is also detrimental to the discipline of other soldiers, but he was allowed to complete 15 years of pensionable service but he himself deserted. He does not want to serve the nation but desires to get all welfares including pension without fulfilling the eligibility criteria. A Court of Inquiry was order to investigate into the circumstances under which applicant was absented without leave. Applicant was declared deserter and his service documents were forwarded to Records The Garhwal Rifles vide letter dated 02.02.2016. Thereafter, the applicant submitted many representations for re-instatement into service for which he was advised to report to Depot Company, Garhwal Rifles Regimental Centre or his parent unit for further action. However, the applicant never reported to Depot, Company, Garhwal Rifles Regimental Centre or his unit. Now the applicant has filed instant Original Application to regularize his absent period and re-instate him in service. Learned

counsel for the respondents submitted that this Original Application is misconceived and devoid of merit and is liable to be dismissed with cost.

5. We have heard learned counsel of the parties and perused the record. The question before us for consideration is whether applicant's absence period can be regularized and applicant can be reinstated in service?

6. Before proceeding further, we would like to reproduce the Para 22 of Army Order "AO/43/2001/DV- DESERTION" which reads as under :-

"22. A person subject to the Army Act or a reservist subject to Indian Reserve Forces Act, who does not surrender or is not apprehended, will be dismissed from the service under Army Act Section 19 read with Army Rule 14 or Army Act Section 20 read with Army Rule 17, as the case may be, in accordance with instructions given below :-

(a) After 10 years of absence/desertion in the following cases :-

(i) Those who desert while on active service, in the forward areas specified in Extra Ordinary Gazette SRO 172 dated 05 Sep 77 (reproduced on page 751 of MML Part III) or while serving with a force engaged in operations, or in order to avoid such service.

(ii) Those who desert with arms or lethal weapons.

(iii) Those who desert due to subversive/espionage activities.

(iv) Those who commit any other serious offence in addition to desertion.

(v) Officers and JCOs/WOs (including Reservist officers and JCOs, who fail to report when required).

(vi) Those who have proceeded abroad after desertion.

(b) After 3 years of absence/desertion in other cases.

(c) The period of 10 years mentioned at sub-para (a) above may be reduced with specific approval of the COAS in special cases.”

7. Thus aforementioned Army Order provides for three years period for dismissal from service in case of a deserter from peace area.

8. The Ld. Counsel for the applicant could not bring any Policy/Rules/Regulations in the notice of the Tribunal which confers a right on the applicant to reinstate him in service. There may be temporary loss of consciousness but there is absolutely no document or medical certificate issued by the competent medical authority describing the applicant that indicates any mental illness. The applicant could not furnish any satisfactory prima facie evidence to justify his absence from duty. In view of absence of any such Policy in favour of the applicant, applicant has no actionable claim. While the respondents have policy which shows that in case a soldier become absent again and again and awarded four red ink entries, his services can be terminated as undesirable soldier.

9. In a case of desertion or even overstayal of leave intention of the accused behind such misconduct has to be gathered from the proved facts of the case. We have already found that the circumstance canvassed by the applicant for absenting himself from duty are devoid of any merit. Evidently the applicant wanted to avoid serving in the army and deserted from service. So far as

the mental illness is concerned, which was canvassed by the applicant to absent himself from duty, that too, from 20.10.2015 for a period of about five years, no material was produced before the respondents. Over and above the incriminating circumstances presented by the materials establishing that his intention was to desert from service, we also find that even on earlier occasions the overstayal of leave/absence covered by the charges in the case, on four occasions he committed the offence of overstayal and suffered punishment of rigorous imprisonment. In the Army, a disciplined Force, one violating the rules has no place. Condoning serious lapse of overstayal/absence of a service personnel of the Army will have a disastrous consequence, as it will set in indiscipline and also demoralise the Force as a whole. The desertion in the army has very serious consequences and no leniency can be shown in the matter of desertion from the service as it would adversely affect the strict discipline and administration of the army. We are of the considered opinion that the applicant cannot be reinstated in service.

10. In view of above observation, the Original Application is devoid of any merit and it is **dismissed**.

11. There will be no order as to costs.

12. Since the applicant has not been dismissed from service, he can report to his unit or Centre and respondents shall take action as per rule.

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

Dated: 26 July, 2021
ukt/-