

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Transferred Application No. 378 of 2010

Thursday, this the 7th day of July, 2022

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

Mukesh Kumar
S/o Samundar Singh
R/o Village and Post Office – Bamroli Aheer,
PS – Malpura, Tehsil – Sadar, District – Agra

.... Petitioner

Ld. Counsel for the Petitioner : **Shri Arun Kumar**, Advocate
(Not present)

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi.
2. Commandant 56 A.P.O. Kamptee.

... Respondents

Ld. Counsel for the Respondents : **Dr. Shailendra Sharma Atal**,
Central Govt Counsel

ORDER (Oral)

1. The petitioner, preferred Writ Petition No. 39295 of 2004 before the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench, Lucknow which has been transferred to this Tribunal and has been registered as T.A. No. 378 of 2010. By means of this T.A. petitioner has prayed for the following :-

- “i. Issue a writ, order or direction in the nature of mandamus directing the respondents to permit the petitioner to join his service and to pay his salary and balance amount.

- ii. Issue any other suitable writ, order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case.
- iii. To award costs of the petition to the petitioner."

2. Brief facts of the case are that the petitioner was enrolled in the Army (Army Postal Service Corps) on 21.10.1997. The petitioner was admitted to 153 General Hospital on 30.07.2000 and was treated at Command Hospital, Udhampur and thereafter at Army Hospital (R&R), New Delhi for his cardiac problem. The petitioner became Absent Without Leave (AWL) w.e.f. 22.10.2000 and thereafter on many occasions and was declared deserter w.e.f. 04.09.2002 being absent without leave. The petitioner remained deserter and did not join duty neither in APS Centre nor in any unit. Since the petitioner continued to be deserter his case for final settlement of accounts was taken up and for terminal credit balance of Rs. 20,603/-, NOK, Smt. Kamala Devi, Mother of the petitioner was intimated to send required documents for arranging payment in her favour but required documents have not been sent to the respondents so far. Now, the petitioner has filed the present application for direction from this Tribunal to rejoin him duty.

3. Learned counsel for the petitioner submitted that he was appointed Sepoy in the Indian Army in the year 1998. After three years of service when the petitioner was posted in a hilly area of Western Border he fell ill and suffered from the Cardiac problem and was sent for medical examination in the Army Hospital, Delhi on 06.02.2001. The petitioner after discharge from hospital was sent to

joint at 1 Corps Postal Unit but before his posting to Kamptee, the petitioner was presented before medical board and was attached to APS Records. The petitioner went on leave in Sept. 2002 and met with an accident in his village and was seriously injured in a collision of tractor with train and was on death bed. The petitioner was treated for different problems at Jeevan Clinic at Agra from 01.10.2002 to 01.07.2003. Thereafter, petitioner approached the respondents including the unit authorities regarding his accident and treatment but no reply received from the respondents and petitioner was not in position to reach them physically. The petitioner also approached the authorities at APS Centre, Kamptee for joining but he was not permitted to join. The petitioner approached the authorities from pillar to post for his joining but failed and ultimately approached before the Hon'ble Court.

4. Learned counsel for the petitioner further submitted that there is not fault on his part and it is the malafide on the part of respondents who did not permit him to join. The respondents have also not issued any notice of suspension or termination and without any opportunity not permitting him to join. In view of above mentioned facts and circumstances, it is humbly prayed that petitioner be permitted to join his service with salary and payment due to him.

5. On the other hand, Ld. Counsel for the respondents submitted that petitioner was enrolled in the Army (Army Postal Service Corps) on 21.10.1997. While posted with 7 Divisional Postal Unit, petitioner was admitted to 153 General Hospital on 30.07.2000 and was

transferred to Command Hospital, Udhampur and from there, he was further transferred to Army Hospital (R&R), New Delhi for treatment of his cardiac problem but petitioner became Absent Without Leave (AWL) w.e.f. 22.10.2000 and rejoined on 12.12.2000 and he was admitted to Military Hospital, Kamptee for treatment of his disease. The petitioner was granted sick leave of 29 days from 09.01.2001 to 06.02.2001. On expiry of said leave, petitioner was admitted to Army Hospital (R&R) on 06.02.2001 from where he was transferred to MH, Kamptee on 30.03.2001. The petitioner again became AWL from 30.03.2001 and rejoined on 05.06.2001. The petitioner was again admitted to MH Kamptee and was discharged on 11.06.2001 from the hospital. The petitioner was posted to 1 Corps Postal Unit but he became AWL enroute w.e.f. 12.12.2001. The petitioner was declared deserter and rejoined at APS Centre during desertion period on 02.06.2002. From there, while moving to join 1 Corps Postal Unit, he again became AWL from 04.09.2002 and was declared deserter w.e.f. 04.09.2002. Thereafter, petitioner remained deserter and did not join at any place.

6. Learned counsel for the respondents further submitted that since the petitioner continued to be deserter his case for final settlement of accounts was taken up with Director of Accounts (Postal), Nagpur and for terminal credit balance of Rs. 20,603/-, NOK, Smt. Kamala Devi, Mother of the petitioner was intimated to sent required documents for arranging payment in her favour vide letter

dated 21.02.2004 but mother of the petitioner has not submitted required documents so far.

7. During the course of final arguments, learned counsel for the respondents submitted that petitioner has been dismissed from service w.e.f. 29.10.2005 after completion of desertion period of three years being a case of peace area, however, petitioner has not challenged his dismissal order and thus, petitioner cannot be allowed to join duty unless dismissal order is set aside and his prayer with regard to rejoin duty to be rejected. He also submitted that it is a cardinal principle enunciated in the Constitution of India that unless the demand is made from the authority concerned and same is refused, no mandamus under Article 226 could be granted, therefore, Transferred Application is not at all maintainable and is liable to be dismissed.

8. We have heard learned counsel for the respondents and perused the material placed on record.

9. We find that petitioner was indisciplined soldier having irresponsible attitude and nature towards his duty and absented without leave on several occasions. He was AWL for which a Court of Inquiry was also held and thereafter, as per rules, petitioner was declared deserter from service. The petitioner has been dismissed from service w.e.f. 29.10.2005 after completion of desertion period of three years being a case of peace area. The petitioner has also not challenged his dismissal order and thus, he cannot be allowed to join duty at this stage unless his dismissal order is set aside. Hence, his

prayer with regard to rejoin duty is against the rules and is therefore rejected.

10. In the result, we do not find any illegality or illogicality in declaring the petitioner deserter from service being absent without leave and thereafter, dismissal from service after completion of desertion period of three years. There is also no violation of any Article of the Constitution of India. The dismissal of the petitioner has been made as per rules and policy on the subject. The O.A. lacks merit, deserves to be dismissed. It is accordingly **dismissed**.

11. No order as to costs.

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

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

Member (A)

Member (J)

Dated: July, 2022

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