

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 39 of 2022**Friday, this the 14th day of July, 2023

“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”
“Hon’ble Maj Gen Sanjay Singh, Member (A)”

No. 15324356X Spr Basav Raj Lamani S/o Manappa Lamani
6A/ 586 Sector - 6, Vrindavan Colony, Lucknow (U.P.) - 226029

-----Applicant

Ld. Counsel for the Applicant: **Col RC Dixit (Retd), Advocate**

Versus

1. Union of India, Through Secretary of Defence, Ministry of Defence, 227-B Wing, Sena Bhawan, New Delhi - 110011.
2. The Chief of Army Staff, Integrated Headquarters of MoD (Army), Sena Bhawan, DHQ PO New Delhi - 110011.
3. Chief Records Officer, Madras Engineer Group & Centre, Ulasur, Bangalore, Karnataka - 560007.
4. Commandant, Madras Engineer Group & Centre, PIN Code: 900493, C/o 56 APO

..... Respondents

Ld. Counsel for the Respondents : **Ms. Appoli Srivastava,**
Central Govt Counsel.

ORDER (ORAL)

“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, 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 for the following reliefs:-

- “(a) Notionally Reinstate applicant in service from the day of illegal discharge since all the legal procedures have been flagrantly violated by Respondents in dismissing him, Keeping in view flagrant violation of applicant’s rights he may be granted life time pension.*
- (b) Get his release medical Board done up for grant of disability pension along with pension.*
- (c) Pass any order, as the Hon’ble Tribunal deems fit and proper in this case.”*

2. Briefly stated facts of the case are that the applicant was enrolled in the Indian Army on 07.04.2001. He was punished twice for overstaying leave. He was granted 15 days casual leave wef 18.04.2011 to 02.05.2011 but he failed to join duty in time. An apprehension roll was issued but neither he reported back himself nor was he apprehended by civil police. He was declared deserter after 30 days. Court of enquiry was ordered and after three years he was dismissed from service with effect from 03.05.2011. He was placed in low medical category S-3 for the

disability '**Schizo Affective Disorder**'. He prayed for re-instatement in service or to grant of disability pension which was denied. Being aggrieved, applicant has filed instant O.A for quashing the punishment of dismissal and to reinstate him in service or grant him disability pension.

3. Learned counsel for the applicant submitted that applicant was enrolled in Army on 07.04.2001. In December 2007 he developed '**Schizo Affective Disorder**'. He was down graded to low medical category S-3 and declared unfit to perform duty. After his marriage in December 2010, he brought his wife to duty station Nasirabad. He requested for family accommodation but he was told by unit Sub Maj to go back to leave his family at home town. He was granted 15 days casual leave from 18.04.2011 to 02.05.2011 to leave his family. Due to family problem, he could not join duty in time. Applicant has categorically stated that after settling his family at native place, he came to unit to rejoin his duty but he was not allowed to enter in unit line. In night he stayed at railway station. For one week he used to come from Railway platform where he used to sleep and early morning till sunset he used to remain outside unit gates. On 11.05.2011 he fell down unconscious in front of unit gate. Matter was informed to Commanding Officer. He was then taken inside unit area and he was provided meals inside langer and he was permitted to take rest. On the next day he was sent back home with two jawans. The applicant was made a victim for no offence by his unit. After three years, he was declared as struck of strength wef 03.05.2011 and accordingly dismissed from service vide Army Act Section 20 (3) with

Army Rule 17. Learned counsel for the applicant pleaded that order of dismissal passed by the respondents be quashed and applicant be reinstated in service with all consequential benefits and disability pension be granted to him.

4. On the other hand, Id. Counsel for the respondents submitted that the applicant was enrolled in Indian Army on 07.04.2001. He was posted to 419 Assault Engineer Squadron on 05.01.2007. On 24.08.2007, he was punished for overstaying leave of 14 days from 05.08.2007 to 18.08.2007. On 27.11.2010 he was again punished for overstaying leave of 20 days from 16.08.2010 to 05.09.2010. He was granted 15 days casual leave from 18.04.2011 to 02.05.011. He again overstayed leave from 03.05.2011. Apprehension roll was issued and his mother was also informed about overstay of leave of her son. He was not apprehended, hence Court of Inquiry was held and the applicant was declared deserter and was kept in supernumerary strength. After three years he was dismissed from service from the date of desertion wef 03.05.2011 in terms of Army Act section 19 read with Army Rule and Section 20. No provision exists to reinstate the applicant in service notionally as he has been dismissed from service for offence of desertion from service. As per provisions contained in Rule 113 (a) of Pension Regulations of Army Part 1 (1961) an individual who is dismissed under the provisions of Army Act is ineligible for pension or gratuity in respect of all previous service. He was placed in low medical category S3 wef 10.03.2008 for '**Schizo Affective Disorder**'. He was given treatment in Military Hospital,

Nasirabad. Army personnel cannot bring wife to unit station without prior permission of Commanding Officer/ allotment of Govt married accommodation. As per service record, he was not married till his dismissal from service being deserter. He is taking shelter of his mental instability to cover his fault. Applicant is habitual offender and his retention will send wrong message among the disciplined soldiers. At the time of his dismissal, he had rendered about 10 years of service. During service he was punished twice for overstaying leave. Learned counsel for the respondents pleaded that instant O.A has no merit and is liable to be dismissed.

5. Heard learned counsel for the parties and perused the documents available on record.

6. The moot question before us to decide is 'whether the applicant is entitled for reinstatement in service as well as for grant of disability pension?.

7. As far as reinstatement of the applicant is concerned, he was punished twice for overstaying leave. He was granted 15 days casual leave w.e.f. 18.04.2011 to 02.05.2011 but he failed to report duty on time. Apprehension Roll was issued to all concerned agencies and after 30 days a Court of Inquiry (COI) was conducted as per Army Act, 1950 which declared him deserter. The applicant was declared deserter and was kept in supernumerary strength. After three years he was dismissed from service with effect from 03.05.2011. The applicant was declared

deserter but there is a vast difference between desertion and absence without leave. Desertion is a serious offence, absent without leave is more mild in its nature. Applicant was dismissed from service without issuing show cause notice and charge sheet. There is gross violation of Principal of natural justice. In the army there should not be lack of trust between soldiers and the officers. The officers of the army must deal with subordinates in a just and fair manner to strengthen their trust into them so that during time of war, the officers may be their hero to fight with enemies. It is significant to state that the applicant had rendered more than 10 years of service before dismissal from service. Since date of dismissal he has written various letters to respondents to reinstate him in service. Thus, it does not appear to be a case where the applicant never intended to rejoin the Army. It is also seen that during his more than 10 years of service, he was not deserter but only he over stayed leave for few days. On perusal of documents placed before the court, it reveals that court of inquiry was conducted in casual way. Witness No 1, JC-309724X Nb Sub Marasiddappa Jayi was asked question by the court **“How long Spr Basawaraj Lamani has been working in the Sqn? Ans. - He was posted to the Sqn on”** Further, it is surprise to note that **Record Office Madras Engineer Group in his letter dated 05.10.2015 addressed to Integrated Headquarters of Min of Def (Army) has informed that from 01.10.2014 to 30.09.2015 total 79 Other Ranks (ORs) have been dismissed from service without following prescribed procedure as required under Army Rule 17.**

Therefore, in our view, the punishment of dismissal from service is excessive and would make him ineligible to earn a pension. Punishment of dismissal is also excessive keeping in view the decisions of the other Benches of the Tribunal and the principles enunciated by the Apex Court. The case requires a sympathetic considered.

8. Second contention of the applicant is that he was placed in low medical category S-3. In counter affidavit respondents have conceded that applicant was a patient of '**Schizo Affective Disorder**' and he was placed in low medical category S-3. He had rendered more than 10 years of service till the date of discharge. He should have been invalided out from service on medical ground instead of dismissal from service.

9. In view of the discussions made above, the Original Application is partly **allowed**. Applicant was dismissed from service long back in the year 2011. In medical board, the applicant was placed in low medical category S-3 but he was not granted any disability percentage. At this stage, respondents are directed to refer the applicant's case for conduct of fresh re-survey medical board to assess present medical condition of the applicant for entitlement of disability pension. The respondents are further directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order.

10. No order as to costs.

(Maj Gen Sanjay Singh)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated: 14 July, 2023
UKT/-