

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH LUCKNOW****Original Application No. 463 of 2021****Thursday, this the 1st day of June, 2023****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Atul Kumar Jain, Member (A)No. 15355652K Ex L/Nk (TS) Ram Nath Singh
S/o Shri Ram Chander Singh
R/o Village – Chandkur, Post - Karimuddinpur,
District – Ghazipur (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-110011.
2. The Chief of the Army Staff, Integrated Headquarters New Delhi-110011.
3. The Officer-in-Charge, ASC Records (South), Bangalore-560007.
4. Commanding Officer, HQ Wing (Depot Coy (MT) ASC Centre (South) Bangalore-560007.

... RespondentsLd. Counsel for the Respondents: **Shri Amit Jaiswal**,
Central Govt. Counsel**ORDER****"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 for the following reliefs:-

- “(i) Hon’ble Tribunal be pleased set aside the Sentence given by SCM on 25/02/2010 and Charge Sheet dated 25/02/2010 (Annexure No A-1 and Annexure No A-2).*
- “(ii) Hon’ble Tribunal be pleased to set aside the rejection order dated 07/05/2014 (Annexure No A-3).*
- “(iii) To direct the respondents to re-instate the applicant in the service with all consequential benefits.*
- “(iv) 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 applicant was enrolled in the Army on 30.08.1986. The applicant was ordered to proceed on attachment with 406 Company Army Service Corps (Petroleum) at Delhi but he absented himself from there and voluntarily surrendered at Depot Company, Administrative Battalion of ASC Centre (South) on 04.05.1999 after 134 days Over Staying Leave (OSL) from 22.12.1998 to 04.05.1999. For this unauthorised absence from duty, the applicant was tried by SCM on 09.09.1999 under Army Act Section 38 (1) and was awarded punishment “To suffer three months Rigorous Imprisonment and forfeiture of pay and allowances for 90 days”. Despite being tried by SCM, the applicant did not change his attitude of being a perpetual defaulter. The applicant again absented himself by not joining duty on permanent posting at his new unit, 517 ASC Battalion on 14.10.2001 as per posting order issued by the Records and became OSL till 09.12.2008, having absented himself for 2603 days. The applicant was given adequate time to justify his

long absence but he did not produce any documents and also declined to give any statement. Accordingly, the applicant was tried by Summary Court Martial (SCM) for committing an offence under Army Act Section 38 (1) and he 'pleaded Guilty' to the charge based on evidence and was awarded punishment of "To be dismissed from service". On 25.07.2013, the applicant filed a petition to the Complaint Advisory Board, COAS Secretariat, New Delhi against the order of dismissal from service. After considering the case in its entirety, the petition was rejected by the Chief of the Army Staff vide order dated 07.05.2014 being devoid of merits. Being aggrieved, the instant Original Application has been filed by the applicant for quashing of order of dismissal and to reinstate him into service with all consequential benefits.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 30.08.1986. The applicant was sent on attachment to 406 Coy ASC (PET) at Delhi and reported there on 16.06.1998 but on 25.04.1999, he was sent back to his unit because applicant was shown AWL and applicant reported in Adm Bn of ASC Centre, Bangalore as his unit was located in field area. At ASC Centre, Bangalore, applicant was awarded punishment of 89 days RI and 3 months pay fine. The applicant was granted leave from 14.10.2001 to 24.10.2001 but he failed to report back in unit after expiry of leave and voluntarily surrendered at Adm Bn, ASC Centre, Bangalore on 09.12.2008. The applicant pleaded guilty to the charge and he was dismissed from service on 25.02.2010 after holding SCM.

During SCM proceedings, applicant was granted part of pay but that amount was later on recovered from applicant's provident fund. Two sentences were given to the applicant, (i) Dismissal from service and (ii) 89 days RI.

4. Learned counsel for the applicant further submitted that in the month of Jan 2011, the applicant made an appeal before Army Headquarters for re-instatement into service but the same was rejected vide order dated 23.03.2011. The applicant was not supplied copy of SCM proceedings which was carried out illegally because there was sufficient cause to overstaying leave but the court did not consider reasons and ground shown for overstaying leave. The applicant was supplied copy of SCM proceedings and charge sheet on 29.10.2014 in reply to applicant's RTI application dated 26.09.2014 which revealed that charge sheet was prepared on 25.02.2010 and SCM proceeding completed on the same day and passed sentence of dismissal from service without giving time/opportunity to the applicant to put his defence. Thus, Army Rule 22 and 23 were not followed and applicant was not given opportunity to put his defence and facts/reasons of OSL were not enquired by the authorities.

5. Learned counsel for the applicant further submitted that charge sheet dated 25.02.2010 divulges that applicant is shown absent for the period from 19.10.1998 to 21.12.1998 whereas during this period, applicant was attached with FOL Depot, Delhi for looking after officer's family. The applicant served with Adm Bn, ASC Centre,

Bangalore from 09.12.2008 to 09.02.2010 but part of salary paid to him has been recovered illegally by the army authorities. The mandatory provisions of Army Rule 22 and 23 have not been followed during SCM, therefore, entire proceedings and punishment of dismissal passed by the SCM including rejection order dated 07.05.2014 are liable to be set aside and applicant to be reinstated into service with all consequential benefits.

6. On the other hand, learned counsel for the respondents submitted that applicant was enrolled in the Army on 30.08.1986. The applicant was sent on attachment with 406 Company Army Service Corps (Petroleum) at Delhi but he absented himself from there and voluntarily surrendered at Depot Company, Administrative Battalion of ASC Centre (South) on 04.05.1999 after 134 days Over Staying Leave (OSL) from 22.12.1998 to 04.05.1999. For this unauthorised absence from duty, the applicant was tried by SCM on 09.09.1999 under Army Act Section 38 (1) and was awarded punishment "To suffer three months Rigorous Imprisonment and forfeiture of pay and allowances for 90 days". Despite being tried by SCM, the applicant did not change his attitude of being a perpetual defaulter. He became defaulter and took law into his own hands by not joining duty to his new unit, 517 ASC Battalion on 14.10.2001 as per posting order issued by the Records and became OSL till 09.12.2008 having absented himself for 2603 days. This clearly shows that his attitude towards military service is contemptuous and he lacks interest in continuing further service.

7. Learned counsel for the respondents further submitted that applicant was given full liberty and adequate time to justify his long absence but he did not produce any documents and also declined to give any statement. Accordingly, the applicant was tried by Summary Court Martial (SCM) for committing an offence under Army Act Section 38 (1) and he 'pleaded Guilty' to the charge based on evidence and was awarded punishment, "To be dismissed from service". During the disciplinary proceedings applicant was paid Subsistence Allowance of Rs. 31,000/- but later on it was recovered from the applicant being not entitled to him, after taking a consent certificate from the applicant. On 25.07.2013, the applicant filed a petition to the Complaint Advisory Board, COAS Secretariat, New Delhi against the order of illegal recovery of Rs. 31,000/-, Subsistence Allowance from AFPP Fund and order of dismissal from service. After considering the case in its entirety, the petition was rejected by the Chief of the Army Staff vide order dated 07.05.2014 being devoid of merits. At the trial, the applicant pleaded 'Guilty' to the charge after having understood the provisions of Army Rule 115 (2). The charge sheet in the case was prepared on 20.02.2010 and Summary of Evidence was recorded in terms of Army Rule 23 (1),(2),(3) & (4) and a copy of charge sheet and Summary of Evidence was handed over to the applicant on 20.02.2010. The SCM was carried out by the Commanding Officer, Administrative Battalion, ASC Centre (South) as per rules. During trial, the applicant was given adequate opportunities to put his defence. The applicant was a habitual offender and he was

given a number of opportunities to rectify himself and to become a good soldier but he failed to do so. During the entire service, the applicant has committed under mentioned offences and was awarded punishments :-

Ser No	Army Act Section	Period of Absence	Punishment	Date of Award
(a)	39 (b)	30 days	07 days pay fine	14.11.1991
(b)	39 (b)	16 days	14 days pay fine	05.04.1994
(c)	39 (b)	56 days	28 days Rigorous Imprisonment and 14 days pay fine	23.11.1994
(d)	38 (1)	90 days	Three months RI and forfeiture of pay and allowances for 90 days	09.09.1999
(e)	38 (1)	2603 days	To be dismissed from service	25.02.2010

8. Learned counsel for the respondents further submitted that as per Para 41 (a) of Pension Regulation for the Army 2008 (Part-1), “An individual who is dismissed under the provisions of Army Act, 1950 or removed under the Rules made there under as a measure of penalty, will be ineligible for pension or gratuity in respect of all previous service”. Thus, the punishment ‘To be dismissed from service’, awarded to the applicant was considered as just and appropriate in proportion to the offence committed which was reviewed by Deputy Judge Advocate General of Headquarters Southern Command, Pune as legally correct vide letter dated 29.03.2010. Therefore, no injustice has been done to the applicant and hence, applicant is not entitled to any relief prayed in the O.A. and the Original Application is liable to be dismissed.

9. Heard learned counsel for the parties and perused the material placed on record.

10. In the present case, we find that applicant while attached with 406 Company Army Service Corps (Petroleum) at Delhi absented himself from there and voluntarily surrendered at Depot Company of ASC Centre (South), Bangalore on 04.05.1999 after 134 days Over Staying Leave from 22.12.1998 to 04.05.1999. Being absent from duty for 134 days, the applicant was tried by SCM on 09.09.1999 under Army Act Section 38 (1) and he was awarded three months Rigorous Imprisonment and forfeiture of pay and allowances for 90 days.

11. In the second instance of OSL, the applicant, without joining duty at his new unit, i.e. 517 ASC Battalion, absented himself from 14.10.2001 to 09.12.2008 and surrendered himself at ASC Centre, Bangalore after a long period of 2603 days absence from duty. The applicant was given full liberty and adequate time to justify his long absence but he did not produce any documents and also declined to give any statement. At the trial, the applicant pleaded 'Guilty' to the charge after having understood the provisions of Army Rule 115 (2). The charge sheet in the case was prepared on 20.02.2010 and Summary of Evidence was recorded in terms of Army Rule 23 (1),(2),(3) & (4) and a copy of Charge Sheet and Summary of Evidence was handed over to the applicant on 20.02.2010. The applicant was tried by Summary Court Martial (SCM) for committing an offence under Army Act Section 38 (1) and 'pleaded Guilty' to the charge based on evidence and was awarded punishment, "To be dismissed from service".

12. We also find that as per Para 41 (a) of Pension Regulations for the Army 2008 (Part-1), *“An individual who is dismissed under the provisions of Army Act, 1950 or removed under the Rules made there under as a measure of penalty, will be ineligible for pension or gratuity in respect of all previous service”*. The punishment of dismissal from service awarded to the applicant is just and appropriate in proportion to the offence committed by him which was reviewed by the JAG Department as legally correct and therefore, applicant is not eligible for any kind of benefit/relief being a case of dismissal.

13. Resultantly, there seems no illegality, illogicality, arbitrariness in holding SCM or violation of provisions of Army Act/Army Rules or any articles of the Constitution of India in SCM proceedings and awarding of punishment of dismissal from service. The punishment awarded to the applicant is commensurate to the offences committed by him and hence, the applicant is not entitled to the reliefs prayed in Original Application.

14. The Original Application is devoid of merit and is liable to be dismissed. It is accordingly **dismissed**.

15. No order as to costs.

16. Pending Misc. Application(s), if any, shall stand disposed off.

(Vice Admiral Atul Kumar Jain) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 1st June, 2023
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