

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 82 of 2017**Thursday, this the 25th day of March, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)No. 15515529M Ex Rect Mohd Arshad
S/o Sri Mohd Samim
R/o Vill & Post : Kiryara,
Distt Lakhimpur Kheri (UP)**.... Applicant**Ld. Counsel for the Applicant : **Shri K.K. Misra**, Advocate.

Versus

1. Union of India, through its Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Army HQ, New Delhi.
3. Commandant, Armoured Corps Centre and School, Ahmednagar.
4. Armoured Corps Records, Ahmednagar.

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

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

- “(i) To quash Basic Training Regiment, AC centre & School Ahmednagar, letter No 1710/7/A/2016 dt 28 Jan 16, and letter No 2026/SK/XIII/BTR dt 14 May 16, as contained in Annexure A-1 and Annexure A3 of the OA.

- (ii) To direct the respondents to permit the applicant to join his training with immediate effect.
- (ii) Any other relief which Hon'ble Court may think just and proper may be granted in favour of the applicant.
- (iv) Cost of the case may be allowed.

2. Brief facts of the case are that the applicant was enrolled in the Indian army on 16.12.2015. Thereafter, he reported to Basic Training Regiment (BTR) Armoured Corps Centre & School, Ahmednagar for basic military training. The applicant deserted himself from unit line on 21.01.2016. He stayed only 01 month and 06 days in Basic Training Regiment. On 21.01.2016 applicant absented himself without leave from unit lines at about 1500 hours. A detailed search for recruit Mohd Arshad (Applicant) was carried out in the complete area of BTR but he was not found. Accordingly, apprehension roll was issued to police/Army authorities with intimation to his mother (Next of Kin) advising her to send her son to BTR, Ahmednagar vide letter dated 28.01.2016. Thereafter, the applicant voluntary reported back at RP gate of BTR on 08.02.2016 at around 0630 hours. He was escorted by Sepoy Amninder Singh from RP gate to recruit lines and he was told that he will be interviewed by Officer Commanding XIII Wing. The applicant was instructed to wait till he comes back after getting himself ready for the interview and when Sepoy Amninder Singh returned to recruit lines after 15 minutes, the applicant was not found and it was learnt that applicant had gone to bathroom but did not return. A detailed search was carried out in the complete area of BTR but he was not found and it was assumed that he had run away

again from the unit line without informing anybody. Thus, the applicant became Absent Without Leave (AWL) before necessary official proceedings and document could be completed. After expiry of 30 days of his AWL, a Court of Inquiry was held under the provisions of Army Act 106 and Army Rule 183 on 08.03.2016 at BTR which declared him deserter w.e.f. 21.01.2016. The applicant was neither apprehended by the police nor did he rejoin the unit, therefore, the applicant was declared deserter from service w.e.f. 21.01.2016. Later, the applicant approached to Armoured Corps Regiment and Centre, Ahmednagar but he was denied entry. Being aggrieved, applicant has filed this Original Application.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army in medically and physically fit condition. During the course of training on 20.12.2015, during a telephonic conversation with his father the applicant learnt that his mother was seriously ill and there were remote chances of her survival. The applicant approached the CHM of the Company to seek his advice as to how he could proceed on leave for a short duration to meet his mother. The CHM did not say anything. Under those circumstances, the applicant did not know what to do and eventually in the confused state of mind, he left the Training Centre to his home town without leave on 21.01.2016. After a week or so the condition of his mother improved and the applicant decided to go back to the centre for joining his further training. In the mean time on 3rd or 4th Feb. 2016, the applicant received a letter dated 28.01.2016 from BTR stating that the applicant

has been declared as deserter. Immediately, the applicant went to the Centre and reported there on 08.02.2016. Initially the applicant was not allowed entry in the Centre but after a day he was allowed to meet the CHM and then to Company Officer Commanding. He was told to go back as he has already been declared as deserter. The applicant made all possible request and efforts to join the centre but he was not allowed. Having no other option, the applicant returned to his home town and wrote a letter dated 10.05.2016 to Commanding Officer, BTR to allow him to join training but he was denied. Learned counsel for the applicant further submitted that there is no such provision in the Army Act and the Rule to not to allow a person to join his duty if he is an offender and pleaded that applicant be permitted to join his training with immediate effect.

4. On the other hand, Ld. Counsel for the respondents submitted that applicant was enrolled in the Indian Army on 16.12.2015 and thereafter, he reported to Basic Training Regiment (BTR) Armoured Corps Centre & School, Ahmednagar for basic military training. During training within a month, the applicant absented/deserted himself from unit line on 21.01.2016 at about 1500 hours. A detailed search for recruit Mohd Arshad (Applicant) was carried out in the complete area of BTR but he was not found. Accordingly, apprehension roll was issued to police/Army authorities with intimation to his mother (Next of Kin) advising him to send her son to BTR vide letter dated 28.01.2016. Thereafter, the applicant voluntary reported back at RP gate of BTR on 08.02.2016 at around 0630

hours. He was escorted by Sepoy Amninder Singh from RP gate to recruit lines and he was told that he will be interviewed by Officer Commanding XIII Wing. The applicant was instructed to wait till he comes back after getting himself ready for the interview and when Sepoy Amninder Singh returned to recruit lines after 15 minutes, the applicant was not found there and it was learnt that applicant had gone to bathroom but did not return. Thereafter, a detailed search was carried out in the complete area of BTR but he was not found and it was assumed that he had run away again from the unit line without informing anybody. Thus, the applicant became Absent Without Leave (AWL) before necessary official proceedings and document could be completed. After expiry of 30 days of his AWL, a Court of Inquiry was held under the provisions of Army Act 106 and Army Rule 183 on 08.03.2016 at BTR which declared him deserter w.e.f. 21.01.2016. The applicant was neither apprehended by the police nor did he rejoin the unit, therefore, the applicant was declared deserter from service w.e.f. 21.01.2016.

5. Learned counsel for the respondents further submitted that according to IHQ of MoD (Army) letter No A/20314/MT-3 dated 28.02.1986, ***“A recruit who has been absent without leave for a period of 30 consecutive days during basic military training period, will not be allowed to rejoin his training again, such recruits will be discharged after necessary disciplinary action. The absentees for less than 30 consecutive days may be considered for relegation if otherwise found suitable for***

retention". In the instant case, the applicant has absented himself from training w.e.f. 21.01.2016 i.e. more than 30 days, therefore, the applicant is not eligible for reinstatement into service as per existing rules and regulations. He pleaded that O.A. may be dismissed.

6. We have heard learned counsel for both sides and perused the material placed on record.

7. We find that applicant is a habitual deserter. He was AWL for more than 30 consecutive days and he was declared deserter as per rules and policy on the subject after holding a Court of Inquiry, hence the applicant is not entitled for reinstatement in to service.

8. In view of the above, the O.A. is devoid of merits and deserves to be dismissed. It is accordingly **dismissed**.

9. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)
Dated: March, 2021
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