

## ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

**Reserved.**  
(Court No. 2)

**Transferred Application No. 128 of 2009**

**Friday the 6<sup>th</sup> day of November, 2015**

“Hon’ble Mr. Justice Abdul Mateen, Member (J)  
Hon’ble Lt. Gen. A.M. Verma, Member (A)”

Raj Kumar Singh, son of Gajadhar Singh, resident of Village Pipari, Post Pipari, Tehsil Musafirkhana, District Sultanpur.

..... Applicant/Petitioner

By Shri Yashpal Singh, counsel for the applicant/petitioner.

Versus

1. Union of India through its Secretary, Defence, New Delhi.
2. The Chief of the Army Staff, South Block, New Delhi.
3. Capt. Record Officer, Armoured Corps Records, Post Bag No. 55, Ahmad Nagar-414 002.

..... Respondents

By Shri D.S. Tiwari along with Col. J.G. Manhas & Capt. Soma John, Departmental Representatives.

**ORDER**

1. By means of this petition, filed before the Lucknow Bench of the Hon’ble Allahabad High Court being Civil Misc. Writ Petition No. 4764 (S/S) of 1999 and subsequently transferred to this Tribunal on 4.12.1999

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and renumbered as T.A. No. 128 of 2009, the petitioner has prayed for quashing of the impugned order dated 26.4.1999, vide which he has been dismissed from service, to set aside the order dated 18.6.1999 and to reinstate the petitioner with arrears and all salary.

2. The facts of the case, in brief, are that the petitioner was enrolled in the Indian Army on 20.12.1995 and thereafter he reported to the Basic Training Regiment of Armoured Corps Centre, Ahmednagar, on 21.12.1995. He gave an application for discharge from service on 18.1.1996. He, thereafter, absented himself from the Training Centre without leave on 20.1.1996 and has remained so. After three years of his absence, the petitioner was dismissed from service under the provisions of Army Act 20(3) read with Army Rule 17.

3. The petitioner was represented by Shri Yashpal Singh, learned counsel. According to the petitioner, he was harassed, during training, by an Instructor for not fulfilling private work as a private servant. He was also beaten up. On 20.1.1996 the same Instructor told the petitioner that the Petitioner is poor in race and asked him to go home. The petitioner says that the Instructor told him that a call letter would be sent to him. Accordingly, he went home. The petitioner states that on 9.9.1996 his wife, Smt. Rita Singh, received a letter from the District Soldier Welfare Officer, Sultanpur, informing her that a sum of Rs. 579/- was due towards her husband's salary. The petitioner says that he did not get any call letter and, therefore, he represented to the COAS on 26.3.1999 and since he received

no reply, he sent a reminder on 8.6.1999. The reply to his petition was not sent to him, though he got to see it with the counter reply of the respondents. He was informed, vide letter dated 13.7.1999, that he had been dismissed from service with effect from 26.4.1999. The petitioner says that no intimation prior to this letter dated 13.7.1999 was sent to him and he was not aware that he was being dismissed from service. The petitioner further says that all communication by the authorities were addressed to his wife, Smt. Rita Singh, whereas the petitioner had given his address to the authority. The petitioner also claims that he was made to sign a discharge application against his own will. He claims that he never asked for discharge from service.

4. The respondents, represented by Shri D.S. Tiwari along with Col. J.G.Manhas and Capt. Soma John, state that after 2-3 weeks of training the petitioner was found to be physically weak and was unable to cope up with the training. He was finding it impossible to continue with the training and accordingly asked for discharge from service, vide his application dated 18.1.1996. The petitioner, thereafter, absented himself without leave on 20.1.1996 from the Unit. An Apprehension Roll was sent on 23.1.1996 followed by cancellation of his Discharge Application, which was being processed at that time. The petitioner was neither apprehended nor did he rejoin the Unit. Therefore, in accordance with law, he was dismissed from service with effect from 26.4.1999 under the provisions of Army Act 20(3) read with Army Rule 17. His appeal dated 26.3.1999 was forwarded to the

Army HQ DGMF on 4.5.1999 and subsequently this petition was suitably replied, vide letter dated 18.6.1999.

5. Heard both the sides and examined the documents.

6. There is some mismatch in the dates and facts of the documents produced by both the sides. The petitioner says that all correspondences were addressed to his wife, Smt. Rita Singh, whereas the letter dated 18.6.1999, attached as Annexure 'R-4' to the supplementary counter affidavit, and vide which the reply to the petition addressed to the COAS has been given is addressed to the petitioner. On record there is only one letter dated 13.7.1999 addressed to Smt. Rita Singh informing her of the factum of her husband having been dismissed from service with effect from 26.4.1999.

7. As regards District Soldier Welfare Officer, Sultanpur, letter dated 9.9.1996 is concerned, the petitioner has provided a photo-copy of this letter in which the upper part of the original letter seems to have been blocked intentionally while photocopying it and only lower part stand photocopied in which the date is 9.9.1996. A close scrutiny of this letter indicates that the original date may have been 09 ... 1999. The date seems to have been tampered with by blocking out of 1999 and amending '9' as '1' and adding '6'. Also, the month is clearly written as September in Hindi, but it lacks clarity. Therefore, we are inclined to believe that the date of this letter has been tampered with. However, the fact remains that a sum of Rs. 579/- was due towards the petitioner and paid to the wife of the petitioner. The same

has been admitted by the petitioner in his petition to the COAS dated 26.3.1999.

8. The major issue is about the dismissal itself of the petitioner. There is a Discharge Application dated 18.1.1996 on record. This application has been signed by the petitioner which reads as follows :

*“Respected Sir,*

1. *I the undersigned humbly requested to beg the following few lines for your kind consideration and favourable action please.*
2. *I was enrolled in the Army on 20 Dec 95 from BRO Amethi (UP). On reaching here I realized that I am not suited for the Army at all.*
3. *I have no desire of undergoing any further training and staying in the Army.*
4. *I request your honour that I may please be discharged from service.*

*Thanking you,”*

9. The petitioner claims that he never asked for any discharge and that his signature on that letter was obtained against his will. There is nothing on record to suggest that this indeed was the case and we are inclined to believe that the petitioner gave this Discharge Application within less than one month of training since he was unable to cope up with the training.

10. The petitioner claims that he was asked by a certain Instructor to go home and wait for call letter, but he has not named that Instructor. It is against all prevalent practices and norms that an Instructor would ask a recruit to go home and wait for call letter. Such a practice does not exist in the Army and we are inclined to reject such claim of the petitioner. We hold

that the petitioner willfully absented himself without leave with effect from 20.1.1996 and, thereafter, he did not contact the AC Centre from where he had deserted himself until he sent a petition through his Lawyer dated 26.3.1999 to the COAS. The language of this petition suggests that the petitioner wrote this letter on receipt of Rs. 579/-, which lends us to believe that this sum was paid to him in 1999. Also the language tends to smack of sounding a threat or warning to the authorities that if he were not to get a reply to the representation within 15 days of receipt of the representation *“he will be bound to go before the court of justice and the responsibility of above grievances will be upon the authorities concern.(SIC)”* We do not appreciate such language in a petition addressed to the COAS.

11. For over three years the petitioner did not contact his Unit, neither did he physically try to rejoin his Unit. Thereafter he was dismissed from service with effect from 26.4.1999 under the provisions of Army Act 20(3) read with Army Rule 17. Army Rule 17 reads thus :-

*“17. Dismissal or removal by Chief of the Army Staff and by other officers. – Save in the case where a person is dismissed or removed from service on the ground of conduct which has led to his conviction by a Criminal Court or a Court-Martial, no person shall be dismissed or removed under sub-section (1) or sub-section (3) of section 20; unless he has been informed of the particulars of the cause of action against him and allowed reasonable time to state in writing any reasons he may have to urge against his dismissal or removal from the service:*

*Provided that if in the opinion of the officer competent to order the dismissal or removal, it is not expedient or reasonably practicable to comply with the provisions of this rule, he may after certifying to that effect, order the dismissal or removal without comply with the procedure set out in this rule. All cases of dismissal or removal under this rule where the prescribed procedure has not been complied with shall be reported to the Central Government.”*

12. The provisions of Army Rule 17 are that the person being dismissed has to be informed of the particulars of the cause of action, which means that he should have been served with a show-cause notice. However, there is a provision that *“if in the opinion of the officer competent to order the dismissal”* if is not expedient to comply with the provision of this Rule he may give a certificate to that effect. In the instant case the competent authority, i.e. the Commandant of the AC Centre, has given a certificate to the effect that it is not expedient or practicable to serve a show-cause notice and thereafter the petitioner has been dismissed from service. Further, the respondents have cited a judgment and order of the Hon’ble Supreme Court passed in Civil Appeal No. 5015 of 2008 (Union of India & Ors. V. Manoj Deswal & Ors.) wherein it has been held that in the case of non-attested personnel, serving a show-cause notice is not a mandatory requirement. We note, however, that this order of the Hon’ble Supreme Court is with respect to a person who was dismissed from service under the provisions of Army Rule 13(3) whereas the instant case relates to Army Act 20(3) read with Army Rule 17 and, therefore, this judgment is not attracted in the instant case.

13. The respondents have not served a show-cause notice to the petitioner in the instant case and have instead given a certificate that it is not expedient or practicable to serve a show-cause notice and to that extent the provisions of Army Rule 17 have been complied with. The Discharge Application given by the petitioner himself before he ran away from the Unit and the fact that for three years he made no attempt to rejoin the Unit goes against him. The Petitioner had served in the Army for less than one month and unable to cope up with the training had given a Discharge Application. Without waiting for his Discharge Application to be processed, he ran away just after two days of giving this application. The dismissal in our view is in order.

14. In view of above, the petition lacks merit and is dismissed. No order as to costs.

(Lt. Gen. A.M. Verma)  
Member (A)

(Justice Abdul Mateen)  
Member(J)

PG.