

RESERVED**COURT NO.1****ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****TRANSFERRED APPLICATION No. 09 of 2015**Thursday, this the 23rd day of November, 2017**"Hon'ble Mr. Justice D.P. Singh, Member (J)
Hon'ble Air Marshal BBP, Sinha, Member (A)"**Shamshul Waris S/o Shri Israr Husain, R/o Mohalla Peerganj, Qasba/Post Allahganj, P.S. Allahganj, Tehsil - Jalalabad, Distt- Shahjahanpur. **Petitioner**Ld. Counsel for the : **Shri Ashok Kumar, Advocate**
Petitioner (Counsel for the petitioner)

Versus

1. Union of India through its Defence Secretary, New Delhi.
2. Additional Dte. Gen. Pers Services Adjutant Generals Branch Army, H.G. Sena Bhawan New Delhi-110011.
3. Additional General, Rtg. 5 OR (C) AG's Branch Army H.G. West Block III, R.K. Puram New Delhi-110066.
4. Dte Gen. RV (RV-1) QMG's Branch Integrated HQ of MoD (Army) West Block III RK Puram, New Delhi-110066.
5. Major General Commandant RVC Center College Meerut Cantt. Meerut- 900468 C/o 56 APO.
6. H.Q. Central Command (JAG) lucknow (U.P.).
7. Legal Cell, HQ Madhya Pradesh, Chattisgarh and Allahabad, Sub Area (U.P.).
8. HQ Recruiting Zone, 236, Mahatma Gandhi Road, Lucknow Cantt- 226002.
9. Army Recruiting Office Bareilly (U.P.).
10. RVC Records, Meerut Cantt.**Respondents**

Ld. Counsel for the: **Shri R.K.S. Chauhan, Advocate,**
Respondents. Central Govt Standing Counsel.

Assisted by : **Maj Salen Xaxa,** OIC Legal Cell.

ORDER

“Per Hon’ble Air Marshal BBP Sinha, Member (A)”

1. The present T.A has been preferred under section 34 of the Armed Forces Tribunal Act, 2007 for the relief of quashing the impugned order dated 07.05.2008 where the services of the petitioner as recruit were terminated attended with the relief of directing the respondents to reinstate the petitioner in service. Initially, the petitioner had filed a writ petition in the High Court of judicature at Allahabad which was subsequently transferred to this Tribunal and was renumbered as T.A.No 09 of 2015.

2. The facts of the case draped in brevity are that pursuant to written examination the petitioner was selected and appointment letter on this count was issued on 01.10.2004 from the office of A.R.O Bareilly with a direction to report to Branch Recruiting office Bareilly on 18.12.2004 alongwith documents in original for enrolment formalities and subsequent dispatch to training centre. In the meantime an undated pseudonymous complaint was received by ARO Bareilly alleging that the petitioner was endeavouring to get recruited in the Army by producing fake documents. In the light of the above complaint, his

dispatch formality was held up for verification of his domicile and education certificates from the concerned issuing civil authorities. On receipt of verification, the petitioner was dispatched to RVC Centre and College, Meerut Cantt on 07.01.2005. The petitioner reported to RVC Centre and college on 08.01.2005 and was admitted for training. Thereafter, the petitioner escaped from training on 11.01.2005 without any intimation and immediately on the same day, he was declared deserter under the provisions of section 106 of the Army Act read with Army Rule 183. On 12.01.2005, a telegram was sent addressed to father of the petitioner intimating about the absence of the petitioner attended with intimation that he be sent within 30 days failing which the petitioner was liable to be discharged from Army Service. Since petitioner did not report within 30 days, action was initiated for dismissal from service as deserter. The intimation to that effect was communicated to the father of the petitioner vide communication dated 02.05.2008. Thereafter petitioner filed a writ petition being Writ Petition No 6158 of 2006. The said writ petition was disposed of with the direction to the Director Recruiting Bareilly dispose of the representation to be preferred by the petitioner vide order dated 01.02.2006. Since power to dispose of representation vested with the RVC Centre and College, the same was disposed of vide order dated 18.05.2006. The contempt petition filed by the petitioner

was also dismissed by the High Court. Again a writ petition being writ petition No 23926 of 2007 was filed which was heard on 21.05.2006 and was dismissed as withdrawn with the direction to avail of remedy by filing statutory complaint under section 26 of Army Act. Thereafter, the petitioner submitted two applications dated 15.09.2007 and 15.10.2007 seeking reinstatement into service under Section 26 of the Army Act. Again a writ petition was filed in the High Court on 08.02.2008 which was disposed of with the direction to the respondent no 2 to decide the appeal dated 15.09.2007. On a modification application filed in the said writ petition, the order passed in the aforesaid writ petition was altered to the extent that the appeal of the petitioner would be decided by respondent no 3 instead of respondent no 2. Vide order dated 22.04.2008. Subsequently a court of inquiry was held to investigate the circumstances under which the petitioner was absent without leave and was declared as deserter with effect from 11.01.2005. The said inquiry was held on 05.03.2005 and on subsequent days and on the recommendations made in the court of inquiry, the petitioner was dismissed from service on 12.01.2008 under section 20 (3) of the Army Act read with Army Rule 17.

3. We have heard learned counsel for the petitioner and also learned counsel for the respondents. We have also gone through the materials on record.

4. Learned counsel for the petitioner submits that pursuant to appointment letter the petitioner reported for training but formalities to be completed before training were withheld and his dispatch to training Centre was delayed. The petitioner, it is further alleged, was dispatched to Training centre at Meerut on 07.01.2005 but he was ill-treated and manhandled at the Centre inquiring from him whether his educational testimonials were forged and fake and whether he had got entry into the service by offering donation. Due to unabated maltreatment, the petitioner returned from Training Centre Meerut on 10.01.2005. Thereafter a telegram dated 12.1.2005 was received intimating that the petitioner had escaped from training centre and that in case he did not report within 30 days he would automatically stand discharged. Thereafter it is alleged, the father of the petitioner had gone to Training centre at Meerut where he met the authorities concerned who told him that the petitioner had been disallowed from training and that requisite certificates will be received after three months. It is claimed that the petitioner had reported for being inducted in training within 30 days from the date of telegram but was shooed away by the authorities.

5. It is averred in para 5 that as per call letter the petitioner was called at ARO, Bareilly on 18.12.2004, for further dispatch to Training Centre. However in the meantime, an undated pseudonymous complaint was

received by ARO Bareilly from Mr Ajit Kumar, Bareilly Cantonment alleging that the petitioner was endeavouring to get recruited in the Army by producing fake documents. In view of the complaint, the formalities with regard to petitioner's dispatch were held up for verification of his domicile and education certificates from the concerned issuing civil authorities. It is further averred that on receipt of verification in Dec 2004, the petitioner was dispatched to RVC Centre and college, Meerut Cantt on 07.01.2005. It is further averred that the petitioner reported to RVC Centre and College on 08.01.2005 and was admitted for training. It has been denied that no ill-treatment/manhandling was meted out to the petitioner during the training as reported by RVC Centre & College Meerut Cantt vide letter dated 02.05.2008 (Annexure SCA IV). To cap it all, no such complaint was made or was received from the petitioner by RVC Centre and College. It is further alleged that the petitioner escaped without intimation from the RVC Centre & College on 11.01.2005 and subsequently after completing all legal formalities, he was declared deserter under the provisions of Section 106 of the Army Act read with Rule 183 of the Army Rules. On 12.01.2005, the father of the petitioner was intimated by telegram about the absence of the petitioner with the advice to send the petitioner for training within 30 days failing which the petitioner would be discharged from service. Copy of the Telegram is annexed

as Annexure SCA V). It is also averred that it could not be confirmed whether father of the petitioner or petitioner at all visited the RVC Centre and College on 05.02.2005 or on 09.02.2005 as the gate register for the year 2005 is already destroyed by burning on 25.05.2015 in accordance with para 592 to 596. Of the Regulations for the Army 1987. It is denied that any representation or letter was received from the end of the petitioner or his father as confirmed by RVC Centre and College in the speaking order dated 02.05.2008 (Annexure SCA VI). It is also averred that since petitioner did not report within 30 days w.e.f 11.01.2005 nor any communication was received from their end in pursuance of telegram dated 12.01.2005 or Apprehension Roll dated 17.01.2005, the petitioner was dismissed being deserter and communication to that effect was sent vide letter dated 02.05.2008. (copy of letter dated 02.05.2008 is annexed as Annexure SCA VI).

6. It would appear from the record that the petitioner filed writ petition No.6158 of 2006 in the High Court at Allahabad which was disposed of on 01.02.2006 to decide the representation of the petitioner within two weeks by a speaking order. However, the said representation came to be decided by RVC Centre and College by a speaking order dated 18.05.2006 whereby the representation was rejected as having no force. Thereafter contempt petition was filed which was dismissed. Thereafter, the petitioner filed Writ

Petition no 23926 of 2007 which was dismissed as withdrawn on 21.05.2007 with liberty to the petitioner to file statutory complaint under section 26 of Army Act. As per averments made in para 10 of the SCA, it is mentioned that a court of inquiry was held to investigate the circumstances under the petitioner had absented without leave and how he was declared deserter with effect from 11.01.2005 on 05.03.2005 and subsequent days and the same was finalized with the recommendation that the petitioner be declared as deserter.

7. It has not been denied that after completion of verifications the petitioner was dispatched for training and he reported on 07.01.2005 at RVC Centre and College at Meerut. It is on record that the petitioner had undergone training from 08.01.2005 to 10.1.2005 and thereafter, on 11.01.2005 he escaped from the Training Centre without any intimation about his leaving.

8. The Court of inquiry held was conducted in which two witnesses were examined. The first witness is D/R (Dsr) A.K.Singh, Senior NCO Trg Regt and Barrack NCO (Barrack No 29) RVC Centre and College. He stated that the petitioner reported for training 07.01.2005. The petitioner was placed in collection batch alongwith other recruits awaiting training. On 11.01.2005 in morning PT Fall-in the petitioner reported stomach ache and was directed to report to MI Room RVC C & C for treatment. As Senior NCO when

the witness reached MI Room after the PT period, to inquire about the petitioner he found that the petitioner did not report to MI room that morning. The petitioner was searched in and around Barrack no 29 or Mess and canteen area but he was nowhere traced. He reported the matter to Training JCO of the day Suraj Bhan who in turn reported it to Training officer. On orders of Training officer teams were sent to Sohrab Gate Bus Stand, to Delhi Bus Stand, City Rly Station and Cantt Rly Station to locate him but it yielded no result. The petitioner could not be traced either in Unit Area or at Railway Station/Bus Stands despite best efforts. During enquiry, on question put to the witness whether the petitioner reported any personal problem to the witness or to any of the training staff, the witness replied that during three days stay in Centre and College, the petitioner did not report any problem whatsoever. On a further question put to him, as to why the petitioner absented himself and is now missing, the witness replied that he did not find any valid reason for his absence. He was only in second day of BMT. On a third question put to him, that once the petitioner reported sick in morning PT what action did he take, the witness replied that the petitioner was asked to report to MI Room as he knew the general location of MI Room and after PT period the witness went to see him in MI Room. On a further question put to him whether anybody saw him where he actually went after he left training

ground to go to MI Room, the witness replied that he was last seen entering from the gate towards MI room. On next question put to him as to whether the witness asked anybody to accompany the petitioner to MI Room, the witness replied that the petitioner was very prompt in refusing any help and said that the pain was of only minor nature and he would go on his own as he knew location of MI Room. The witness was also asked whether he noticed any abnormal behaviour of petitioner, the witness replied the petitioner was very well behaved and obedient during his staying RVC Centre and College. The witness was further asked whether the petitioner tried to contact through letter or phone to which the witness replied in negative. On being further asked whether the petitioner physically reported back to RVC Centre and College, the witness replied that the whereabouts of the petitioner were not known from the day he was found missing and he has not reported back till date.

9. The next witness examined was NB Ris Suraj Bhan of Training Regt RVC Centre and College. The witness stated that when he was having breakfast in Mess DFR (DSR) A.K.Singh came to him and informed that the petitioner was not traceable in Unit are and that he did not even report to MI Room for the stomach ache. The witness further stated that thereafter, he reported the matter to training officer and thereafter made efforts to locate the petitioner. On a

question put to him as to when the matter was reported to him about missing of petitioner, the witness stated that at about 0730 hrs DFR/DSR A.K.Singh came to him and reported that he went to MI room to inquire about the health of petitioner and found that he did not go to MI Room and was also not traceable in Barrack, Mess and Wet Canteen area. On a further question, the witness replied that a team was sent to search for the petitioner at Sohrab Gate bus Stand Delhi Bus Stand, City Rly Station and Cantt Rly Station and at all places he was extensively searched. On a further question as to why did he think the petitioner had absented himself and was now missing, the witness replied that he does not find reasonable explanation or reason for his absence. On being again queried whether the petitioner reported any problem to him or any other training staff, he replied in negative. On being asked about the behaviour, the witness replied that the petitioner was well behaved and docile during his brief stay at this Centre and College.

10. The findings of the Court of Inquiry are quoted below for ready reference.

1. No. 7243285W Rect(DSR) Samshul Varis reported to RVC Centre and College on 07 Jan 2005 and TORS wef 08 Jan 2005 for his BMT. The indl was placed in Collection patch alongwith other new recruits awaiting trg.

2. *On 11 Jan 2005 the indl reported mild stomach ache at at fall-in morning PT period.*
3. *Indl was asked to go to MI Room for treatment.*
4. *Indl declined any help to take him to MI Room on the pretext that the pain was mild in nature and he knew general area of MI Room.*
5. *Indl was last seen in unit him entering gate leading to MI Room.*
6. *Indl did not report to MI Room and was found missing from unit lines (0730h).*
7. *Indl behaved in normal way during his stay at RVC Centre and College.*
8. *Indl did not report any problem at any stage from the day he reported to RVC Centre & College Hill he was found missing.*
9. *Rect/Dsr Samshul Varis has absented himself without leave wef 11 Jan 2005 (FN)*
10. *All efforts was made to trace the indl in and around unit area RVC C&C. Teams were sent to trace him at Sohrab gate Bus stand, Delhi bus stand, City rly stn and Cantt rly stn.*
11. *Indl has not reported to est till date.*
12. *The list of items recovered from kit bag of Rect/Dsr Samshul Varis is att as per appx to this Court of Inquiry proceedings:*

Presiding Officer:

V-493M Major Y Sangwan

1. *JC-797132F Ris Laxmi Sai*
2. *Shiv Rati*

OPINION OF THE COURT

The Court is of the opinion that

- (a) No. 7243285W Rect/Dsr Samshul Varis absented himself without leave from unit lines wef 11 Jan 2005.
- (b) Rect/Dsr Samshul varies to be declared deserter wef 11 Jan 2005.

11. It would thus transpire that the petitioner was reported to be very docile and well behaved. He was also said to have not informed about any personal problem. The petitioner underwent training for 3 days and on 4th day he complained about stomach ache and he was asked to go to MI Room for treatment. Thereafter, he was nowhere traceable. The entire kit recovered from the barrack was found in order.

12. One of the allegations made was that the petitioner was manhandled and was ill-treated. None of the witnesses testified about any problem or ill-treatment. The petitioner has not named any particular person who had manhandled or ill-treated him. During arguments, it was suggested that the petitioner escaped from training due to home-sickness. It was also suggested that he could not withstand the

rigours of training. From the perusal of the records, it does not appear that the petitioner was at all ill-treated. The allegation of ill treatment has been negated in the court of inquiry. The petitioner has not brought before us any documentary or oral evidence which may attest to his allegations of ill-treatment or manhandling. In the circumstances, there appears to be no substance in the allegation that any prejudice was shown to him or he was ill-treated. There is nothing on record that the petitioner was adjudged unfit for training at any stage. The bald allegations made in the petition by the petitioner do not commend to us for acceptance. Further, there is nothing on record to show that the petitioner reported for training within 30 days from the date of telegram dated 12.01.2005. Again there is nothing on record to show that the petitioner or for matter of that, his father visited the RVC Centre at Meerut on the stated dates nor any representation in response to telegram appears to have been sent or received at RVC Centre and College Meerut Cantt.

13. The petitioner was a new recruit and he escaped from training without any intimation on 11.01.2005. He did not report for training within 30 days from the date of telegram dated 12.01.2005. In the circumstances, we have no alternative but to converge to the opinion that the petitioner absented himself from training without intimation and he did not report for training within 30 days from the

date of telegram. In the circumstances, he was rightly declared as deserter after court of inquiry and was rightly dismissed on 02.05.2008.

14. As a result of foregoing discussion, the T.A fails and is dismissed accordingly.

(Air Marshal BBP Sinha)
Member (A)

(Justice D.P. Singh)
Member (J)

Dated: November, 2017

MH/-