

**RESERVED**  
**Court No. 1**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW**

**T.A. No. 11 of 2012**

Thursday, this the 11<sup>th</sup> day of October, 2018

**Hon'ble Mr. Justice SVS Rathore, Member (J)**  
**Hon'ble Air Marshal BBP Sinha, Member (A)**

Krishna Lal **No. 4191679P** Ex Rect S/o Shri Sher Ram R/o  
Village-Khanat & P.O. Gartir, Berinag, Distt- Pithoragarh  
Uttarakhand.

.... Petitioner

Ld. Counsel for the: **Shri Shailendra Kumar Singh**, Advocate.  
Petitioner

Versus

1. Union of India through Secretary, Ministry of Defence,  
Govt. of India, New Delhi
2. The Senior Record Officer for Officer In-Charge, Record  
office, Kumaon Regimental Centre, Ranikhet, Almora.
3. The Commanding Officer, Kumaon Regimental Centre,  
Ranikhet, Almora.
3. Naik Mohan Singh C/o OIC Records Office, Kumaon  
Regimental Centre, Ranikhet (Almora) Uttarakhand
5. Lance Naik Hira Singh C/o OIC Records Office, Kumaon  
Regimental Centre Ranikhet (Almora), Uttarakhand.

....Respondents

Ld. Counsel for the: **Shri Ashish Saxena**, Advocate.  
Respondents.

**ORDER****“(Per Hon’ble Mr Justice SVS Rathore, Member (J))”**

1. Initially writ petition was filed before the Hon’ble High Court of Uttaranchal, Nainital and it was registered as Civil Misc. Writ Petition No. 1548 (SS) of 2005. Vide order dated 28.12.2011 the record of this case was transferred to this Tribunal in accordance with Section 34 of the Armed Forces Tribunal Act, 2007 and it was re-numbered as T.A. No. 11 of 2012.

2. In brief the facts of the case are that the petitioner was selected as Recruit and commenced his training at Kumaon Regiment Centre on 15.11.1997. On 05.06.1998 the petitioner received a letter through one Shri Gopal Ram, whereby his father informed him that his sister’s marriage was fixed for 12.06.1998. On 11.06.1998 the petitioner submitted his leave application. In the aforesaid letter his father asked him to take leave from his Platoon Havilder and to reach home. In accordance with the wishes of his father, the petitioner approached the Platoon Hav Naik Mohan Singh and submitted his leave application requesting for two days leave i.e. from 12.06.1998 to 13.06.1998 with suffix on 14.06.1998 (Sunday). It is pleaded in the writ petition that Platoon Hav Naik Mohan Singh asked the petitioner to report back in the Training Centre by the evening of 14.06.1998. The case of the petitioner is that he came back in the evening of 14.06.1998 and reported to the aforesaid Platoon Hav Naik Mohan Singh, who immediately asked the petitioner to go back to his home as

the report against him has been submitted to the higher authorities that he is absent without leave. Aforesaid Naik Mohan Singh told the petitioner to go back to his home and when documents will be completed, the authorities of the Kumaon Regimental Centre shall call him in the service very soon. He instructed Lance Naik Hira Singh to take petitioner to the bus stand and board him for his return destination. The case of the petitioner is that he thereafter continuously tried and requested for being taken on strength. Several representations were sent by him. On 16.11.1998 a letter was received by the father of the petitioner, wherein it was stated that the petitioner has become a deserter from 12.06.1998 without assigning any reason and it was further stated that the D.M. and Superintendent of Police, Pithoragarh have been asked to apprehend the petitioner. The father of the petitioner kept on sending the representations to the Ministry and the Kumaon Regimental Centre, highlighting their desperations and also bringing to their notice other difficulties his son was facing. It is alleged that petitioner voluntarily surrendered on 16.06.2000 and he was summarily tried on 17.06.2000 for offence under Section 39(a) of the Army Act for his absence of 736 days. He was sentenced with 28 day of imprisonment. On 28.07.2000 he was discharged from service. The father of the petitioner sent several representations dated 25.05.2000, 18.10.2000, 05.11.2000 and 29.07.2003 and also made personal representations dated 08.07.2000 and 02.07.2003. The petitioner also approached Shri Bachchi Singh Rawat, Member of

Parliament of that area for the same relief. Thereafter the petitioner in the year 2004 sent a legal notice to the respondents in reply whereof it was informed that the petitioner was discharged under Rule 13(3)(IV) and no Court Martial proceeding was held. As per the averments of the O.A. it was for the first time that the petitioner came to know that the Court of Inquiry was held against him. The claim of the petitioner is that he has been discharged from service without affording any opportunity of hearing. He was not taken on strength in spite of his best efforts. Alongwith the writ petition several correspondence and letters to the Member of Parliament and other representations have also been filed.

3. On behalf of the respondents it is submitted that during the training the petitioner absented himself without leave on 12.06.1998 at 05.00 hours and an apprehension roll was issued on 16.06.1998 to the civil authorities to apprehend the petitioner. Subsequently, a Court of Inquiry was held under the provisions of Army Act in July, 1998, which found that the individual absented himself without leave and declared him as deserter w.e.f. 12.06.1998. Applicant rejoined voluntarily on 16.06.2000 after 736 days' absence. That on rejoining voluntarily from desertion, he was tried summarily under Section 39(a) of Army Act, 1950 and was awarded punishment of 28 days rigorous imprisonment in military custody on 17.06.2000. Since the petitioner has deserted from basic military training for a period of 2 years and 4 days, he indulged himself in an act of gross indiscipline and hence he was

found unlikely to become an efficient soldier and was discharged from service under Rule 13(3) item IV of Army Rules, 1954. It has also been argued by the learned counsel for the respondents that under the policy of Directorate General Military Training General Staff Branch Army Headquarters DHQ, New Delhi-110011 A/20314/MT-3 dated 28.02.1986 a person who absents during training period for 30 consecutive days shall not be permitted to join.

4. The main thrust of entire argument of the learned counsel for the petitioner is that the petitioner from the evening of 14.06.1998 tried to rejoin his duty but he was not permitted to join and therefore the absence of 736 days cannot be treated to be a wilful absence but this absence was because the applicant was not permitted to join so he cannot be held responsible for the same. On behalf of the respondents it has been argued that the applicant in the O.A. has stated that he was permitted to go on leave by Naik Mohan Singh and Lance Naik Hira Singh went to see him off upto the bus stand. Initially these two army personnel were not made party in this case but during the pendency of this petition, they were also impleaded as respondents no.4 and 5. They have also filed their affidavits. Respondent no.5 Ex Hav Hira Singh has stated that the petitioner never met the deponent on 14.06.1998. Krishna Lal petitioner was found missing from his bed at about 05.00 hrs on 12.06.1998. The entire story as narrated by the petitioner is totally false. Likewise the respondent

no.4 Ex Subedar Mohan Singh has also filed his affidavit, wherein he has also stated that the petitioner never met the deponent either on 11.06.1998 or on 14.06.1998 and he was found missing from his bed at about 05.00 hrs on 12.06.1998. Thus, this part of the pleadings stands falsified by the affidavits of these two persons. From the perusal of the numerous documents filed alongwith the writ petition, it is clear that several representations were made by the petitioner but it appears from the affidavits filed on behalf of the respondents no.4 and 5 that a false story was concocted by the petitioner to justify his absence during training. We would like to quote relevant part of Policy of Directorate General Military Training General Staff Branch Army Headquarters DHQ, New Delhi-110011 A/20314/MT-3 dated 28.02.1986 dealing with the absence of recruits, which reads as under :-

“4. 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 absence for less than 30 consecutive days may be considered for relegation, if otherwise found suitable for retention. However, once the technical training of a recruit has commenced, the discretion to discharge a recruit for such absence will be left to the Commandant of the Centre, who may retain or discharge him considering the case in its merits.”

5. Learned counsel for the petitioner has also argued that the petitioner was sentenced for 28 days rigorous imprisonment in military custody for his long absence and he was discharged from service. The discharge has been challenged only on the ground that he was not permitted to rejoin service. On behalf of the

respondents the learned counsel has placed reliance upon the pronouncement of Hon'ble Apex Court in Civil Appeal No. 5015 of 2008 decided on 28.10.2015 **Union of India and others vs. Manoj Deswal and others**. Para- 17 of the aforementioned judgment, relevant for the instant controversy is reproduced as under:-

“17. We have perused the judgments referred to by the learned counsel for the Appellants and we are in respectful agreement with the view expressed by this Court to the effect that no special notice is required to be given before discharge of a person who is not attested, especially in view of the fact that a court of enquiry had already been held on 29<sup>th</sup> July, 2005 and Respondent No.1 had been declared deserter by an order dated 30<sup>th</sup> July, 2005.”

Admittedly in the facts of the present case the petitioner was a Recruit, who was undergoing the training and was not attested.

6. In view of the discussions made above, we do not find any substance in this O.A. The conclusion of the respondents that the petitioner was unlikely to become an efficient soldier cannot be said to be incorrect, illegal or illogical. A person who absented himself for a long period during training cannot become an efficient soldier.

7. In view of discussions made herein above, we do not find any merit in this petition and the same is hereby **dismissed**.

No order as to costs.

**(Air Marshal BBP Sinha)**  
**Member (A)**

Dated: October 11, 2018

JPT

**(Justice SVS Rathore)**  
**Member (J)**

