

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

ORIGINAL APPLICATION No. 14 of 2021

Monday, this the 11th day of October, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No. 15422358Y Havildar Rajeev Singh, Resident of Village-Gaura Kala, Post-Tezi Bazar, Tehsil-Sadar, District-Jaunpur (U.P.).

..... Applicant

Ld. Counsel for the : **Shri Vishal Bhatnagar**, Advocate.
Applicant

Versus

1. Union of India, through Secretary Ministry of Defence (Army), DHQ, PO-New Delhi-11.
2. The Chief of the Army Staff, Army Headquarters, Sena Bhawan, New Delhi.
3. The Officer-in-Charge, Records, AMC Centre & College, Lucknow Cantt-226002.

.....Respondents

Ld. Counsel for the
Respondents.

Dr. Gyan Singh, Advocate
Central Govt. Standing Counsel

ORDER (Oral)

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

(a) Issue/pass an order in favour of applicant whereby applicant can report his nearest unit/regimental centre i.e. AMC College and Centre, Lucknow.

(b) Issue/pass an order or direction of appropriate nature to the respondents to take the applicant on authorized strength of the unit.

(c) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

(d) Allow this application with costs.

2. Applicant, Rajeev Singh was enrolled in Army Medical Corps (AMC) on 04.03.2005. While serving with 323 Field Hospital he was granted 06 days casual leave for the period 26.03.2018 to 31.03.2018 with permission to prefix on 25.03.2018 and suffix 01.04.2018 which was further converted in 54 days balance of annual leave from 26.03.2018 to 18.05.2018 with permission to prefix 25.03.2018 on request made by applicant. However, on termination of aforesaid leave he did not rejoin for duty on 18.05.2018 (AN) and overstayed leave. An apprehension roll dated 21.05.2018 was issued in terms of Army Order 43/2001 and para 1352 of Army Medical Corps Records Office Instructions No 53/2014. Thereafter, a Court of Inquiry dated 20.06.2018 was

conducted by 323 Field Hospital after the stipulated period of 30 days and applicant was declared deserter w.e.f. 19.05.2018 and casualty to this effect was notified vide Part II Order No. 0/0142/2018 dated 03.10.2018. Since applicant neither rejoined his unit nor reported anywhere including his Training Centre, he was dismissed from service after completion of 03 years from the date of desertion, being a peace area deserter, under the provisions of Army Act Section 20 (3) read with Rule 17 of Army Rules, 1954. Earlier, a letter dated 29.05.2018 was received from Smt Padmaja Singh wife of applicant stating that applicant intends to be discharged from service on compassionate grounds. This O.A. has been filed for allowing applicant to rejoin in Administrative Battalion of AMC Centre and College, Lucknow.

3. Learned counsel for the applicant pleaded that while applicant was on leave, there happened some major domestic problems in his family and on this reason he requested Maj Shashank Sharma, Adjutant 323 Field Hospital for extension of his leave which was denied. His further contention is that in this regard, applicant's wife Smt Padmaja Singh wrote a letter dated 29.05.2018 addressed to various agencies narrating the circumstances which prevented applicant to join his duties as also sought permission to rejoin his duties. He further submitted that applicant tried to rejoin duties on

15.09.2018, 31.10.2018 and 05.01.2019 but he was denied to enter in unit premises.

4. On the other hand submission of learned counsel for the respondents is that applicant was granted 06 days casual for the period from 26.03.2018 to 31.03.2018 which was converted to 54 days of balance of annual leave for the period from 26.03.2018 to 18.05.2018 with permission to prefix 25.03.2018 on applicant's request. However, on termination of aforesaid leave applicant did not rejoin duty on 18.05.2018 (AN) and remained overstaying the leave granted to him. In consequence thereof apprehension roll was issued on 21.05.2018 followed by a Court of Inquiry dated 20.06.2018. The Court of Inquiry opined that applicant be declared deserter. Thereafter, after completion of three years of desertion, he was dismissed from service under Section 20 (3) of Army Act, 1950 read with Army Rule 17. He concluded that since dismissal of applicant was done by following due process, this O.A. deserves dismissal on merit.

5. We have heard learned counsel for the parties and perused the material placed on record.

6. Admittedly, the applicant overstayed leave w.e.f. 18.05.2018 and never returned from leave granted to him on 26.03.2018. An apprehension roll was issued and after clear 30 days of absence, a Court of Inquiry was held and he was declared a deserter. After expiry of three years, his services

were dispensed with. In absence of any reliable explanation for absence, the only conclusion was that applicant deserted the service voluntarily and intentionally.

7. In this regard para 22 of Army Order 43/2001/DV is relevant which for convenience sake is reproduced as under:-

"22. A person subject to the Army Act or a reservist subject to Indian Reserve Forces Act, who does not surrender or is not apprehended, will be dismissed from the service under Army Act Section 19 read with Army Rule 14 or Army Act Section 20 read with Army Rule 17, as the case may be, in accordance with instructions given below :-

(a) After 10 years of absence/desertion in the following cases :-

(i) Those who desert while on active service, in the forward areas specified in Extra Ordinary Gazette SRO 172 dated 05 Sep 77 (reproduced on page 751 of MML Part III) or while serving with a force engaged in operations, or in order to avoid such service.

(ii) Those who desert with arms or lethal weapons.

(iii) Those who desert due to subversive/espionage activities.

(iv) Those who commit any other serious offence in addition to desertion.

(v) Officers and JCOs/WOs (including Reservist officers and JCOs, who fail to report when required).

(vi) Those who have proceeded abroad after desertion.

(b) After 3 years of absence/desertion in other cases.

(c) The period of 10 years mentioned at sub-para (a) above may be reduced with specific approval of the COAS in special cases."

8. Thus, the aforesaid Army Order clearly provides that an individual, who deserts from service when serving in peace area, can be dismissed from service after three years of desertion.

9. In the case reported in (1986) 2 SCC 217, **Capt Virender Singh vs. Chief of the Army Staff**, the Hon'ble Apex Court has held as under:-

"Sections 38 and 39, and Sections 104 and 105 make a clear distinction between 'desertion' and 'absence without leave', and Section 106 prescribes the procedure to be followed when a person absent without leave is to be deemed to be deserter. Clearly every absence without leave is not treated as desertion but absence without leave may be deemed to be desertion if the procedure prescribed by Section 106 is followed. Since every desertion necessarily implies absence without leave the distinction between desertion and absence without leave must necessarily depend on the animus. If there is animus deserendi the absence is straightaway desertion.

13. As we mentioned earlier neither the expression 'deserter' nor the expression 'desertion' is defined in the Army Act. However we find paragraph 418 of the Artillery Records Instructions, 1981 refers to the distinction between desertion and absence without leave. It says:

418. A person is guilty of the offence of absence without leave when he is voluntarily absent without authority from the place where he knows, or ought to know, that his duty requires him to be. If, when he so absented himself, he intended either to quit the service altogether or to avoid some particular duty for which he would be required, he is guilty of desertion. Therefore, the distinction between desertion and absence without leave consists in the intention. (AO 159/72). When a soldier absents himself without due authority or deserts the service, it is imperative that prompt and correct action is taken to avoid complications at a later stage.

We also find the following notes appended to the Section 38 of the Army Act in the Manual of the Armed Forces:

2. Sub Section (1)-Desertion is distinguished from absence without leave under AA. Section 39, in that desertion or attempt to desert the service implies an intention on the part of the accused either (a) never to return to the service or (b) to avoid some important military duty (commonly known as constructive desertion) e.g., service in a forward area, embarkation for foreign service or service in aid of the civil power and not merely some routine duty or duty only applicable to the accused like a fire piquet duty. A charge under this section cannot lie unless it appears from the evidence that one or other such intention existed; further, it is sufficient if the intention in (a) above was formed at the time during the period of absence and not necessarily at the time when the accused first absented himself from unit/duty station.

3. *A person may be a deserter although here-enrolls himself, or although in the first instance his absence was legal (e.g. authorised by leave), the criterion being the same, viz., whether the intention required for desertion can properly be inferred from the evidence available (the surrounding facts and the circumstances of the case).*

4. *Intention to desert may be inferred from a long absence, wearing of disguise, distance from the duty station and the manner of termination of absence e.g., apprehension but such facts though relevant are only prima facie, and not conclusive, evidence of such intention. Similarly the fact that an accused has been declared an absentee under AA. Section 106 is not by itself a deciding factor if other evidence suggests the contrary.*

In Black's Law Dictionary the meaning of the expression 'desertion' in Military Law is stated as follows:

Any member of the armed forces who-(1) without authority goes or remains absent from his unit, organization, or place of duty with intent to remain away therefrom permanently; (2) quits his unit, organization, or place of duty with intent to avoid hazardous duty or to shirk important service; or (3) without being regularly separated from one of the armed forces enlists or accepts an appointment in the same or another one of the armed forces without fully disclosing the fact that he has not been regularly separated, or enters any foreign armed service except when authorized by the United States; is guilty of desertion. Code of Military Justice, 10 U.S.C.A. 885".

10. In another case of ***Shish Ram vs. Union of India & Ors***, (2012) 1 SCC, page 290, the appellant in that case was declared deserter with effect from 19.06.1978 and was dismissed from service with effect from 20.10.1981 that is after expiry of three years. The appellant challenged his dismissal order, however, no infirmity in the said order was found by the Hon'ble Apex Court and dismissal order was confirmed.

11. Keeping in view the aforesaid legal position when we examine the facts and circumstances of the instant case, it is clear that the defence of the applicant, that there were some compelling circumstances which prevented him to rejoin his duty, is absolutely without substance. The applicant was granted 06 days leave which was converted into 54 days of leave on his request and even after extension of his leave, he did not join his duty either to his unit or to nearby military unit. This shows his disinterest for his military service. Applicant's wife Smt Padmaja Singh wrote letter dated 29.05.2018 to Army authorities on receipt of desertion roll dated 21.05.2018 and which smells that applicant wanted to proceed on discharge on compassionate grounds. The letter was replied vide letter dated 21.06.2018 stating that 'your letter also indicates that Hav (DORA) Rajeev Singh is not willing to join his present unit and wish to take discharge on compassionate grounds. It was further stated that applicant

may join to Administrative Battalion, AMC Centre and College, Lucknow for decision. It was further stated therein that applicant may apply for premature discharge on compassionate grounds on rejoining the unit.

12. The applicant was a deserter and did not report to any authority after 18.05.2018. This itself shows that the applicant had no intention to return to his unit. Admittedly, after unauthorised absence of the applicant, a Court of Inquiry was held and he was declared a deserter from the date of his absence i.e. 19.05.2018. Three years from the date of his desertion, he was dismissed from service by following due process. In the Army discipline cannot be overlooked in such matters. In these circumstances the respondents did not allow him to rejoin duty. Therefore, we do not find any substance in the present O.A. which deserves to be dismissed. It is, accordingly dismissed.

13. No order as to costs.

14. Pending misc applications, if any, shall stand disposed off.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 11.10.2021
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