

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION No. 578 of 2019**Tuesday, this the 26th day of October, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

L/Nk Clk Shiv Pratap Singh (No. 15628256H), S/o Shri Brij Raj Singh, residence of village-Nawasi, Post-Nahili, Tehsil-Jalaun, District-Jalaun (U.P.), Pin-285125.

..... Applicant

Ld. Counsel for the : **Col BP Singh (Retd)**, Advocate.
Applicant

Versus

1. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence, South Block, New Delhi-110011.
2. Director General Mech Force, Integrated Headquarter of the Ministry of Defence (Army), Sena Bhawan, New Delhi-110011.
3. Commandant/Officer Incharge Records, Brigade of the Guards Records, PIN-900476, C/O 56 APO.
4. Col Commanding Officer, 19 Guards, PIN-910919, C/O 56 APO.

.....Respondents

Ld. Counsel for the
Respondents.**Dr. Shailendra Sharma Atal,**
Central Govt. Standing Counsel

ORDER

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

(i) Issue/pass an order or direction to the respondents to rejoin the applicant in service w.e.f. 23.07.2019 i.e. date of completion of his extended leave (Annexure No A-1) with all service and monetary consequences.

(ii) Issue/pass an order or direction to the respondents to change his unit to any other unit of the Guards Group i.e. except 19 Guards and not to initiate any adverse action against the applicant.

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

(iv) Allow this application with costs.

2. Brief facts of the case are that the applicant was enrolled in the Army on 15.02.2016. While posted at 19 Guards he was granted 20 days part of annual leave for the period 22.05.2019 to 10.06.2019. Earlier, on 27.04.2019 at about 2300 hrs the applicant was caught with a smart phone in contravention to the laid down instructions on the subject. He was charge sheeted and marched up on 30.04.2019 before Commandant 19 Guards who persuaded applicant not to use this type of phone due to security hazards. Later, on intervention of a senior officer of the rank of Colonel serving in other formation/unit, as also this being his first mistake, the matter

was dropped. He was to report for duty on 11.06.2019 but he failed to do so. In consequence thereof an apprehension roll was issued on 03.07.2019 (Annexure IX). Thereafter, a Court of Inquiry under Section 106 of Army Act, 1950 was held on 11.07.2019 which declared him deserter w.e.f. 11.06.2019 and applicant was struck of strength of the unit by keeping him in supernumerary strength of the Regiment. This O.A. has been filed to allow applicant to rejoin his unit w.e.f. 23.07.2019 with all consequential benefits.

3. Learned counsel for the applicant pleaded that applicant was granted 20 days part of annual leave for the year 2019 which was extended up to 22.06.2019. His further submission is that applicant's father's condition was not well and he requested further extension of leave till 22.07.2019 but it was not confirmed. After expiry of leave, he made attempt to rejoin duty on 23.07.2019 at 19 Guards but was not allowed, instead he was abused by the Subedar Major stating that his documents have been closed and sent to Guards Centre Kamptee. Thereafter, he attempted to join duty at the Centre at Kamptee also, but was denied. His further submission is that applicant wrote several letters to the Commanding Officer 19 Guards, Commandant Guards Regimental Centre, Kamptee and Chief of the Army staff but when nothing was heard, he filed this O.A. to rejoin duty at Guards Regimental Centre with a request to change his unit.

4. On the other hand submission of learned counsel for the respondents is that applicant was granted 20 days leave for the year 2019 and he was required to report back for duty on 11.06.2019, which he failed to do and in consequence thereof apprehension roll was issued on 03.07.2019 followed by a Court of Inquiry dated 11.07.2019. The Court of Inquiry opined that applicant be declared deserter. He concluded that since applicant did not join his unit, he was rightly declared a deserter by following due process. He pleaded for dismissal of O.A.

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. 11.06.2019 and did not report to unit thereafter. An apprehension roll was issued and after clear 30 days of absence, a Court of Inquiry was held under Section 106 of the Army Act, 1950 and he was declared a deserter. The applicant in his O.A. (para 4.5) has stated that his leave was extended till 22.07.2019 and that is why he tried to rejoin duty w.e.f. 23.07.2019. On this issue we observe that on receipt of apprehension roll, District Magistrate, Jalaun got the matter enquired and submitted his report dated 06.09.2019 (Annexure X) that applicant had left his abode on 21.06.2019 to rejoin his duty. Therefore, submission of applicant that his leave was up to 22.07.2019 and he tried to rejoin duty on

23.07.2019 seems to be untrue as it is not clear what prompted applicant to leave his place on 21.06.2019 to rejoin unit when his leave was supposedly extended up to 22.07.2019.

Tentative Charge Sheet

7. A tentative charge sheet dated 30.04.2019 was made against applicant under Sections 63, 42(e) and 41(2) of the Army Act, 1950 on account of an act prejudicial to good order and military discipline, disobeying Regimental Orders and disobeying a lawful command given by his superior officers. The aforesaid charge sheet was dismissed on the same date on intervention of a senior officer serving in another unit/formation on the premise that applicant had only four to five months of service and this being his first mistake.

Court of Inquiry

8. A Court of Inquiry was conducted to investigate the circumstances under which applicant overstayed leave w.e.f. 11.06.2019. In the aforesaid inquiry, total three witness were produced and their statements were recorded, which are reproduced as under:-

Witness No 1.

"2. I, No 15615450Y Hav/Clk Yashpal Singh Dahiya am performing the duty of PI Hav of Clk PI, HQ Coy. No 15628256H LNK (Clk) Shivpratap Singh was interviewed by the Sr JCO and Coy Cdr on 21 May 2019, while proceeding on 20 days PAL for the year 2019 to 10 Jun 2019 (Lve

Certificate att as exhibit-I). Indl during interview mentioned about the accident of his father and requested leave for the same.

3. No 15628256H LNk(Clk) Shivpratap Singh on 09 Jun 2019 telephonically requested for the extn of 10 days PAL on compassionate grounds. However, Coy Cdr on the orders of the Comdt denied to extend the leave and suggested him to rejoin the duty. He also confirmed that the indl will be sent on leave immediately after his arrival in the unit through Comdt interview.

4. After expiry of his lve, No 15628256H LNk (Clk) Shivpratap Singh did not rejoin the duty. I tried to contact the indl at his resident but no one attended my call. Thereafter, I informed the CHM, 15616171A Hav Sudipto Banerjee regarding the indl who did not rejoin duty on expiry of his leave period. Later on, indl was declared OSL and his apprehension roll was issued to all concerned."

9. During the Court of Inquiry various questions were asked and they were replied by witness No. 1. Question No. 7 and 8 and their answers being relevant are reproduced as under:-

Witness No. 1

"Q. 7. Has he spoken to you on phone?

Ans. Yes. On 11 Jun 2019 I called him up and he has conveyed that he didn't want to continue in service because of his family problems and ongoing treatment of father who needs to be taken care of.

Q. 8. What else did he convey to you?

Ans. I tried to convince him to join the duty and plan for discharge through proper procedure. He straightway denied and told me that it is a lengthy procedure and his father need spl attention at present

on medical ground. He even cited to send his I. Card back in the unit."

Witness No 2

Witness No 3 narrated that a telegram was sent to applicant when he did not join duty in time.

Witness No. 3

"2. I, JC-405011K Sub Devanand Singh am performing the duties of Sr JCO, HQ Coy since 10 May 2018. On 10 Jun 2019 CHM Sudipto Banerjee informed me that No 15628256H LNK (Clk) Shivpratap Singh has not yet reported to unit loc and is OLS wef 11 Jun 2019. I reported the matter to the Coy Cdr on the same day. On the direction of Coy Cdr a tgm was sent to his father that he is OLS and to send him back to the unit forthwith to rejoin the duty (E post is att Exhibit-II). Similarly, apprehension roll was fwd to the civ adm agencies and policy authority (Apprehension roll att as Exhibit-III)."

10. During the Court of Inquiry various questions were asked and they were replied by witness No. 3. Question No. 6 and 7 and their answers being relevant are reproduced as under:-

"Q. 6. What were the reasons he told you not to rejoin the duty?"

Ans. He told me that his father had met with an accident and also cited family problems and he is the only son of his parents. He needs to look after them. He also mentioned that the procedure of discharge is lengthy and takes time. He will not ask for any benefit from the Army. He even cited to send his I. Card back in the unit."

Q.7. *Did you inform the Coy Cdr?*

Ans. *Yes. I informed him imdtly."*

11. Thus, from the aforesaid an inference may be drawn that applicant intended not to join duty, rather he wished to return the Identity Card issued by the Army to leave the service as he felt the discharge drill was a lengthy procedure. Therefore, in absence of any reliable explanation for absence, the only conclusion is that applicant deserted the service voluntarily and intentionally.

12. A legal notice dated 05.08.2019 (Annexure XVIII) was sent to Chief of the Army Staff making request to allow him to join the unit. In the legal notice some allegations were labelled against the Commanding Officer claiming that he was regularly harassed by the Commanding Officer to oust him from service.

13. We have perused the aforesaid legal notice and comments dated 09.09.2019 (Annexure XXI) submitted thereon and we find that applicant is highly arrogant and rude in his behaviour.

14. We also find that a telegram was sent to applicant on 11.06.2019 (Exhibit IX) vide which he was informed that he should rejoin duty. In this regard the Commandant had personally spoken thrice to Ex Naik Brij Raj Singh, father of applicant but the Commandant was told that applicant was not traceable.

15. The Court of Inquiry had opined that applicant be declared deserter w.e.f. 11.07.2019 in accordance with AO 43/2001/DV

and para 526 of Record Office Instructions and therefore, applicant was placed on supernumerary strength of the Guards Regimental Centre w.e.f. 11.06.2019. It further opined that applicant's Identity Card bearing machine No. G-060431 issued on 25.05.2018 be destroyed by burning and a certificate to this effect be retained.

16. We have also observed that there are certain letters/telegrams on record to establish that applicant was informed to join duty by due date and no material is on record to show that his leave was extended as averred by the applicant.

17. Thus, keeping in view of the aforementioned situation when we examine the facts and circumstances of the instant case, it is clear that applicant's leave was never extended, rather he was intimated that he should rejoin duty and apply for further leave in case there is further necessity. The applicant was declared a deserter by the duly constituted Court of Inquiry and he did not report to any authority after expiry of leave granted to him. In the Court of Inquiry two witnesses had disclosed that he wanted to surrender his Identity Card due to lengthy procedure of discharge from service.

18. Hence, we do not find any illegality or irregularity in declaring applicant a deserter. In the Army discipline cannot

be overlooked in such matters. Therefore, we do not find any substance in the present O.A. which deserves to be dismissed.

19. It is, accordingly dismissed.

20. No order as to costs.

21. Miscellaneous applications, pending if any, shall stand disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 26.10.2021

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