

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 746 of 2020**Tuesday, this the 5<sup>th</sup> day of October, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**No. 13963413P Sep (Dvr/MT) Narendra Ram Krishna Umratar  
S/o Ram Krishna Umratar  
C/o Sri Suresh Kanchchal  
268/641/3 I Floor, Old Saria Mill  
(Near Aish Bagh), Tilak Nagar, Lucknow**.... Applicant**Ld. Counsel for the Applicant : **Shri Rohit Kumar**, Advocate.

Versus

1. Chief of Army Staff, DHQ PO, New Delhi.
2. Commandant-cum-Chief Record Officer and Centre Army Medical Corps Centre and College, Lucknow.
3. Union of India through Secretary Ministry of Defence, New Delhi – 110011.

**... Respondents**Ld. Counsel for the Respondents : **Shri Rajiv Pandey**,  
Central Govt Counsel**ORDER**

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

- “(a) Direct the respondents to provide the documents as sought for in paragraph 4E(a) to (o) of the original application to enable the applicant agitate his case for grant of pensionary benefits to the applicant.
- (b) To issue any other order or direction considered expedient and in the interest of justice and equity.
- (c) Award cost of the petition.”

2. Brief facts of the case are that the applicant was enrolled in the Indian Army (Army Medical Corps) on 19.06.1985. While serving with 2121 Field Ambulance, he was tried by Summary Court Martial (SCM) on 02.09.1992 under Army Act 1950, Section 39(b) for "OVERSTAYING LEAVE". However, SCM proceedings were cancelled and the applicant was reinstated into service w.e.f. 02.09.1992 without any break in service. While serving with 414 Field Ambulance, he was granted 49 days balance of annual leave for the year 1997 from 22.05.1997 to 09.07.1997. Applicant was required to rejoin from leave on 09.07.1997 (AN) but did not report to duty. Since the applicant had not reported for duty on 09.07.1997, 414 Field Ambulance issued Apprehension Roll dated 23.07.1997. The applicant had overstayed leave for more than 30 days, hence, he was declared 'deserter' in terms of Section 106 of Army Act 1950 by a Court of Inquiry held on 11.08.1997 and was placed on supernumerary strength of Administrative Battalion of AMC Centre & College. Subsequently, applicant was dismissed from service w.e.f. 20.10.2000 after 3 years of desertion period under the provisions of Army Act 1950, Section 20 (3) and Army order 439/1963 vide AMC Record Office Part II Order No. 362/004/2000 dated 10.11.2000. The applicant has rendered only 12 years and 20 days of qualifying service. The intimation regarding dismissal from service of the applicant was communicated to Superintendent of Police, Yaotmal vide letter dated 24.02.2001. The applicant submitted an application dated 08.05.2016 seeking information under RTI Act 2005. The same was suitably replied vide AMC Record Office letter dated 26.08.2016

and thereafter, a speaking order by First Appellate Authority was also issued to the applicant. Being aggrieved, the applicant has filed the present Original Application seeking various documents of SCM for grant of pensionary benefits.

3. Learned counsel for the applicant submitted that applicant was dismissed from service by SCM and was called back in service. Thereafter, he was granted leave in the month Sept. 1997 and become a victim of JAHARKHURANI during train journey and had lost his senses and after a long treatment applicant tried to rejoin service but despite his best efforts, he was not allowed to join duty without looking into the fact that applicant had completed his minimum pensionable service, as such he was entitled for the protections contained in Army Headquarters letter dated 25.06.1999. The applicant submitted an application under RTI and asked for the following documents to enable him to prefer his case for grant of pensionary benefits :-

- (a) Court of Inquiry.
- (b) Tentative Charge Sheet.
- (c) Appendix 'A' to AO 70/84 New No. 24/94.
- (d) Apprehension Roll.
- (e) Charge Sheet.
- (f) Summary of Evidence.
- (g) Compliance of Rule 34 (1) of the Army Rules, 1954.
- (h) Summary Court Martial proceedings.
- (i) Observation of the Deputy Judge Advocate.
- (j) Orders of the Competent Financial Authority.
- (k) Orders and reasons for reinstatement in service after 11 months.
- (l) Friend of the accused with his qualification.
- (m) Place and time where I can report to join for duty.
- (n) What is my present status in the Indian Army.

4. Learned counsel for the applicant further submitted that applicant submitted appeal dated 30.09.2016 under RTI Act 2005 which was replied by Appellate Authority in utter disregard to Section 6 of the Right to Information Act 2005. The actions of the respondents were not only against the principles of natural justice, Army Act/Army Rules but were violative of Article 14 and 21 of the Constitution of India (AIR 1997 SC 27) as well as the Hon'ble Apex Court judgments reported in AIR 1996 SC 513 and 1998 (5) SCC 513. The applicant has not been provided the documents of SCM proceedings in terms of Rule 147 of Army Rules 1954 and Army Order 51/87 debaring the applicant to submit his case/his grievances before the appropriate forum.

5. On the other hand, Ld. Counsel for the respondents submitted that applicant while serving with 2121 Field Ambulance, was tried by Summary Court Martial (SCM) on 02.09.1992 under Army Act 1950, Section 39(b) for "OVERSTAYING LEAVE". However, the SCM proceedings were cancelled and the applicant was reinstated into service w.e.f. 02.09.1992 without any break in service. While serving with 414 Field Ambulance, he was granted 49 days balance of annual leave for the year 1997 from 22.05.1997 to 09.07.1997. Applicant was required to rejoin from leave on 09.07.1997 (AN) but did not report to duty. Since the applicant had not reported for duty on 09.07.1997, 414 Field Ambulance issued Apprehension Roll dated 23.07.1997. The applicant had overstayed leave for more than 30 days, hence, he was declared 'deserter' in terms of Section 106 of Army Act 1950 by a Court of Inquiry held on 11.08.1997 and was

placed on supernumerary strength of Administrative Battalion of AMC Centre & College. Subsequently, applicant was dismissed from service w.e.f. 20.10.2000 after 3 years of desertion period under the provisions of Army Act 1950, Section 20 (3) and Army order 439/1963 vide AMC Record Office Part II Order No. 362/004/2000 dated 10.11.2000. The applicant has rendered only 12 years and 20 days of qualifying service. The intimation regarding dismissal from service of the applicant was communicated to Superintendent of Police, Yaotmal vide letter dated 24.02.2001.

6. Ld. Counsel for the respondents further submitted that applicant has submitted an application dated 08.05.2016 seeking information under RTI Act 2005. The same was suitably replied vide AMC Record Office letter dated 26.08.2016 and thereafter, a speaking order by First Appellate Authority was also issued to the applicant. He submitted that documents of Summary Court Martial proceedings being asked by the applicant have been destroyed by burning on 26.03.2004 as per para 592 of Regulations for the Army, 1987 read with Para 146 (2) of Army Rules, 1954.

7. Learned counsel for the respondents further submitted that para 113 (a) of Pension Regulations for the Army, 1961 (Part-1) and Para 41 (a) of Pension Regulations for the Army, 2008 (Part-1) stipulates that "an individual who is dismissed under the provisions of Army Act, is ineligible for pension or gratuity in respect of all previous service", therefore, applicant being a deserter and subsequently dismissed from service, is not entitled for service pension. As per para 132 of

Pension Regulations for the Army, minimum qualifying service to earn service pension is 15 years and applicant has rendered only 12 years and 10 days of qualifying service, therefore, applicant is not entitled for service pension as per rules. He pleaded for dismissal of O.A.

8. We have heard learned counsel for both sides and perused the material placed on record.

9. We find that applicant was tried by Summary Court Martial (SCM) under Army Act 1950, Section 39(b) for "OVERSTAYING LEAVE", however, SCM proceedings were cancelled and the applicant was reinstated into service w.e.f. 02.09.1992. The applicant was again declared deserter for overstaying leave for more than 30 days in terms of Section 106 of Army Act 1950 by a Court of Inquiry held on 11.08.1997. Subsequently, applicant was dismissed from service w.e.f. 20.10.2000 after completion of 3 years of desertion period under the provisions of Army Act 1950, Section 20 (3) and Army Order 439/1963. The applicant was dismissed from service after due procedure as per rules on the subject. Hence, the applicant is not entitled for any pensionary benefits as his total qualifying service is less than 15 years.

10. Since the documents of Summary Court Martial proceedings as asked by the applicant have been destroyed by burning on 26.03.2004 as per para 592 of Regulations for the Army, 1987 read with Para 146 (2) of Army Rules, 1954, therefore, it cannot be made available to him being destroyed as per rules.

