

RESERVED

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

ORIGINAL APPLICATION No. 72 of 2021

Wednesday, this the 27th day of October, 2021

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

Ex Sep Shivbir Singh, R/o Village-Ugarpur, PO-Mandanpur,
Distt-Farrukhabad (U.P.).

..... Applicant

Ld. Counsel for the : **Shri RN Tripathi**, Advocate.
Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence, South Block, New Delhi.
2. The COAS, Sena Bhawan, New Delhi-11.
3. OIC Records Office, The Rajput Regiment.

.....Respondents

Ld. Counsel for the
Respondents.

Shri RC Shukla, Advocate
Central Govt. 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) An order or direction quashing the order of the COAS dated 07 Oct 2000 and reinstating the applicant in the service with all consequential benefits.

(ii) To allow the O.A. with the costs.

(iii) Any other or further order or direction which this Hon'ble Court may deem just, fit and proper in the circumstances of the case.

2. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Indian Army (Rajput Regiment) on 08.03.1988 and after completion of training he was assigned to 25 Rajput as his permanent unit w.e.f. 13.05.1990. While serving with 25 Rajput, applicant was tried by Summary Court Martial for an offence committed under Section 39 (b) of Army Act, 1950 i.e. without sufficient cause overstaying leave granted to him and sentence of 'to be dismissed from the service'. The punishment for dismissal from service was awarded on 10.12.1998 (AN). Against his dismissal, applicant preferred a statutory appeal dated 31.12.1998 (Annexure R-12) to Chief of the Army Staff under the provisions of Section 164 (2) of Army Act, 1950 submitting therein that the Court Martial was illegal and unjust and for

reinstatement into service with all consequential benefits. While the aforesaid appeal was under consideration, applicant filed Civil Miscellaneous Writ Petition (CMWP) No. 10818/2000 before the Hon'ble High Court of Judicature at Allahabad for immediate decision on his statutory appeal dated 31.12.1998 which was rejected by Chief of the Army Staff vide order dated 07.10.2000 during pendency of writ petition. The said writ petition was transferred to this Tribunal and re-numbered as T.A. No. 708 of 2010. This Tribunal vide order dated 05.10.2010 (Annexure R-15) dismissed the T.A. in default and later it was restored. This Tribunal vide order dated 18.07.2018 (Annexure R-16) disposed off the petition directing respondents to decide statutory appeal dated 31.12.1998 by speaking and reasoned order within two months. Since statutory appeal dated 31.12.1998 had already been decided vide order dated 07.10.2000, Records the Rajput Regiment intimated decision on statutory appeal to concerned agencies. This O.A. has been filed for quashing of order dated 07.10.2000 and reinstating the applicant with all consequential benefits.

3. Learned counsel for the applicant pleaded that after dismissal from service applicant had filed an appeal to the appropriate authorities in that it was clearly mentioned that applicant had to stay at home on account of death of his elder brother and he could not inform to authorities concerned for extension of leave due to his unstable mental condition. In the

said appeal it was also pleaded that his punishment for dismissal from service be set aside under the provisions of Section 179 of the Army Act, 1950. He pleaded for his setting aside the impugned order dated 07.10.2000 issued by Chief of the Army Staff and re-instatement into service.

4. On the other hand learned counsel for the respondents pleaded that applicant being a habitual offender was earlier punished four times on account of overstaying leave. The respondents have also pointed out that the applicant had a previous track record of absent without leave/overstayal of leave. His further submission is that applicant did not improve his attitude towards service despite giving him sufficient opportunities. He had overstayed leave for 107 days and on account of that he was punished with dismissal from service by following due procedure. Learned counsel for the respondents further submitted that Chief of the Army Staff had rejected his plea vide order dated 07.10.2000 after having examined all aspects. He pleaded for dismissal of O.A.

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

6. It is not in dispute that applicant was punished four times earlier prior to award of this punishment as dismissal from service. The applicant was granted 60 days annual leave for the period 22.05.1998 to 20.07.1998. On termination of leave,

he was required to report to 213 Transit Camp but he failed to report on duty after expiry of said leave. An apprehension roll dated 05.08.1998 (Annexure-5) was issued and thereafter, under the provisions of Section 106 of Army Act, 1950 a Court of Inquiry was convened on 22.08.1998 which opined that applicant be declared a deserter w.e.f. 21.07.1998.

7. On scrutiny of record we find that during his service, applicant had already been punished for overstaying leave as under:-

Ser No	AA Sec	Offences	Date of punishment	Punishment awarded
(a)	39 (b)	Without sufficient cause overstaying leave granted to him	06.06.1991	14 days Rigorous Imprisonment (red ink entry)
(b)	39 (b)	Without sufficient cause overstaying leave granted to him	20.04.1992	14 days Rigorous Imprisonment (red ink entry)
(c)	39 (a)	Absenting himself without leave	31.03.1995	14 days Rigorous Imprisonment (red ink entry)
(d)	39 (a)	Absenting himself without leave	02.11.1997	14 days Rigorous Imprisonment (red ink entry)

8. A perusal of record specifies that the applicant voluntarily rejoined on 04.11.1998 at 213 Transit Camp after an absence of 107 days. On arrival in unit, a tentative charge sheet was served upon him on 23.11.1998 under Section 39 (b) of Army Act, 1950. Thereafter, hearing of charge under Army Rule 22 was conducted on 23.11.1998 for the offences committed by

applicant under Section 39 (b) of the Act and summary of evidence was recorded by Maj Varinder Sharma, who after perusal of summary of evidence issued charge sheet dated 03.12.1998 along with summary of evidence and a certificate dated 03.12.1998 was obtained from applicant for having received the aforesaid documents. Thereafter, under Section 116 of the Army Act, 1950, Commanding Officer, 25 Rajput convened Summary Court Martial which commenced on 10.12.1998. During Summary Court Martial proceedings applicant was provided Lt Lalit Mohan of 25 Rajput as his friend of accused under Rule 129 of the Army Rules, 1954, and the applicant had never raised any objection with regard to the friend of the accused during his SCM. Since the applicant 'pleaded guilty' of committing the offence, the trial closed on 10.12.1998 at 1250 hrs. Sentence of 'Dismissed from Service' was awarded to applicant by the Summary Court Martial and it was promulgated on the same day. Accordingly, applicant was dismissed from service w.e.f. 10.12.1998 and occurrence to this effect was notified vide Part II order No. 367/2/98.

9. We have also noticed that applicant's unit was located in Counter Insurgency Operational Area of J&K from where he was granted 60 days annual leave and on termination of leave he did not join the unit where shortage of manpower causes great hardship to other soldiers. In the instant case applicant, being a highly indisciplined soldier and a perpetual offender of

deserting the service repeatedly, was dismissed from service by following due process.

10. It is submitted that none of the parties have filed Charge Sheet, Summary of Evidence and Summary Court Martial proceedings. We, therefore have adjudicated the case on the basis of pleadings on record and the grounds taken by both the parties.

11. That apart, the applicant also pleaded guilty to the charge. No explanation whatsoever was given by the applicant to absolve him from the charge. Such self-serving statement made by the applicant lends support to the prosecution version.

12. In view of the above, we refrain from going into the constitutional validity of the Army Act and Rules and order dated 07.10.2000 passed by Chief of the Army Staff.

13. Having considered all aspects of the matter, we find no grounds to interfere with the findings and sentence of the Summary Court Martial and order dated 07.10.2000 passed by Chief of the Army Staff.

14. The petition is accordingly **dismissed**.

15. No order as to costs.

16. Pending miscellaneous applications, if any, shall stand disposed off.

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

Dated: 27.10.2021
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