

E-Court

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

ORIGINAL APPLICATION No. 596 of 2021

Friday, this the 14th day of October, 2022

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

Ex Rect No Mohd Dilwan Ali, son of Shri Jamsed Ali, resident of Alipue, P.S.-Kairana, Distt-Shamli (UP)-247774.

Learned counsel for the: **Shri Virat Anand Singh**, Advocate
Applicant

Versus

1. Union of India and others through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated HQ of MoD (Army), DHQ, PO-New Delhi-110011.
3. Commandant, Rajput Regimental Centre, Fatehgarh, PIN-900427.

.....Respondents

Learned counsel for the : **Shri Sunil Sharma**, Advocate
Respondents. Central Govt. 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:-

(i) To quash and set aside the order of discharge (copy never served) whereby applicant had been discharged from training.

(ii) To pass orders which their lordships may deem fit and proper in the existing facts and circumstances of the case.

(iii) Allow this application with cost.

2. The thumbnail sketch of the facts is that the applicant was enrolled in the Indian Army on 25.09.2018 at Rajput Regimental Centre, Fatehgarh. During the course of Basic Military Training (BMT) he became absent without leave (AWL) on 18.11.2018 and after efflux of 09 days he voluntarily rejoined duty on 26.11.2018. He was awarded 07 days pay fine under Section 39 (a) of Army Act, 1950. The applicant again became AWL on 11.02.2019 and did not report for duty for 30 consecutive days. A Court of Inquiry (C of I) was held under Section 106 of the Army Act, 1950 which declared him a deserter w.e.f. 11.02.2019. He voluntarily rejoined on 28.03.2019 (total absence period 46 days). Consequently, he was put to trial under Section 39 (a) of the Army Act, 1950 read in conjunction with Section 80 of the Army Act, 1950 and in ultimate analysis, was inflicted punishment of 07 days rigorous imprisonment (RI) in military custody and 14 days pay fine. After serving out the aforesaid sentence, the applicant was served with a Show Cause Notice

dated 20.05.2019 (Annexure 4). In response to the said Show Cause Notice, the applicant submitted reply dated 28.05.2019. On receipt of reply to Show Cause Notice he was discharged from service on 12.06.2019 in terms of IHQ of MoD (Army) letter dated 28.02.1986 and 28.03.2018. Applicant has filed this O.A. to quash discharge order dated 12.06.2019.

3. Learned counsel for the applicant submitted that the applicant was enrolled in the Army on 25.09.2018. He further submitted that while undergoing basic military training, on receipt of information that his father was ill, he left the training centre in intervening night of 11.02.2019. While at home he fell ill and decided to stay till he became quite well. It was further submitted that once the applicant as well as his parents recovered, he rejoined duty on 28.03.2019. On rejoining he was punished and a Show Cause Notice dated 20.05.2019 was served upon him to which he replied and thereafter, he was discharged from service on 12.06.2019. After discharge from service, mother of the applicant submitted mercy petition dated 28.06.2019 and applicant also submitted letter dated Nil to Chief of the Army Staff but when no reply was received, this O.A. has been filed.

4. Learned counsel for the applicant further submitted that once the applicant has been punished for his AWL, his discharge from service leads to double jeopardy. It was

further submitted that the applicant was not given full opportunity to prove his innocence and also he was not allowed for personal interview before Company Commander and the Centre Commandant to explain the truth of his AWL. He pleaded that in the circumstances discharge order dated 12.06.2019 is liable to be set aside.

5. Per contra, it is contended that the applicant was harnessed for basic military training w.e.f. 25.09.2018. He initially absented during training w.e.f. 18.11.2018 and rejoined voluntarily on 26.11.2018 after absence of nine days and thereafter, he again absented unaccountably during training w.e.f. 11.02.2019 and reported voluntarily on 28.03.2019 after efflux of 46 days. It is further contended that in the instant case, the applicant, after serving out the sentence for 07 days RI and 14 days pay fine, was again served Show Cause Notice and reply was received. It was also contended that the applicant was rightly discharged from service as an undesirable and inefficient soldier as he had absented during basic training initially for 09 days and thereafter for 46 days.

6. The learned counsel for the respondents has heavily relied upon policy letter dated 28.02.1986 in which it is postulated that in case a recruit absents himself without leave for a period of 30 consecutive days during basic military training, he will not be allowed to rejoin his training again. It

was submitted that since the applicant has absented for 30 consecutive days, he was rightly discharged from service being an inefficient and undesirable soldier. He pleaded for dismissal of O.A.

7. Heard Shri Virat Anand Singh, learned counsel for the applicant and Shri Sunil Sharma, learned counsel for the respondents and perused the record.

8. Undisputedly the applicant was enrolled in the Army on 25.09.2018. During the course of his basic military training he absented without leave on 18.11.2018 and voluntarily rejoined on duty on 26.11.2018 (09 days absence). He was awarded 07 days pay fine under Section 39 (a) of the Army Act, 1950. The applicant again absented without leave on 11.02.2019 and he did not rejoin his duty for 30 consecutive days. A C of I was held in terms of Section 106 of the Army Act, 1950 which declared him as a deserter w.e.f. 11.02.2019 and desertion roll was forwarded to the District Magistrate and Superintendent of Police, District-Shamli (UP) with a copy to his father at the given address.

9. The applicant reported for duty after 46 days on 28.03.2019 and on rejoining he was awarded 07 days RI and 14 days pay fine under Section 39 (a) of the Army Act, 1950. Since he was absent for 30 consecutive days during basic military training, a Show Cause Notice dated 20.05.2019 was served upon him to which he replied on 28.05.2019. For

convenience sake, extract of Show Cause Notice is reproduced as under:-

“सेना नियम 17 के तहत कारण बताओ नोटिस

1. आपको सूचित किया जाता है कि आप दिनांक 11 फरवरी 2019 को बिना अवकाश के प्रशिक्षण से अनुपस्थित हुये तथा आप तब तक प्रशिक्षण से अनुपस्थित रहे जब तक आपने स्वयं दिनांक 28 मार्च 2019 को प्रशिक्षण केंद्र में रिपोर्ट किया | जिस कारण आप कुल 46 दिन प्रशिक्षण से बिना अवकाश के अनुपस्थित रहे | आपके उपरोक्त अनुपस्थिति के कारण सेना अधिनियम की धारा 39 (ए) के तहत कर्नल नवीन शर्मा, प्रशिक्षण बटालियन कमांडर ने दिनांक 08 अप्रैल 2019 को आपको 07 दिन का कठोर कारावास एवं 14 दिन की वेतन कटौती की सजा दी | इससे पहले भी आप दिनांक 18 नवम्बर 2018 को बिना अवकाश के प्रशिक्षण से अनुपस्थित हुये तथा आप तब तक प्रशिक्षण से अनुपस्थित रहे जब तक आपने स्वयं दिनांक 26 नवम्बर 2018 को प्रशिक्षण केंद्र में रिपोर्ट किया | जिस कारण आप कुल 09 दिन प्रशिक्षण से बिना अवकाश के अनुपस्थित रहे | आपको उपरोक्त अनुपस्थिति के कारण सेना अधिनियम की धारा 39 (ए) के तहत कर्नल नवीन शर्मा, प्रशिक्षण बटालियन कमांडर ने दिनांक 17 दिसम्बर 2018 को आपको 14 दिन की वेतन कटौती की सजा दी थी | आपको उपरोक्त अनुशासनहीन आचरण व सैन्य प्रशिक्षण के दौरान अनुपस्थिति से यह प्रमाणित होता है कि आप बगैर किसी वास्तविक समस्या के बिना अवकाश के अनुपस्थित थे जो आपके सैन्य प्रशिक्षण के प्रति विमुखता तथा निरसता को दर्शाता है |

2. एकीकृत मुख्यालय रक्षा मंत्रालय (सेना) के पत्रांक 20032/Trg/Inf-2 दिनांक 28 मार्च 2018 के परिच्छेद 14 (b) व A/20314/MT-3 दिनांक 28 फरवरी 1986 के अनुच्छेद 4 में निहित प्रावधानों के अनुसार यदि कोई रंगरूट बेसिक सैन्य प्रशिक्षण के दौरान प्रशिक्षण से लगातार 30 दिन तक अनुपस्थित होता है तो उसे पुनः प्रशिक्षण करने की इजाजत नहीं होगी बल्कि उसे सैन्य सेवा से डिस्चार्ज किया जाएगा |

3. उपर्युक्त के अनुसार, अतः आप कारण बताएं कि क्यों न आपको एकीकृत मुख्यालय रक्षा मंत्रालय (सेना) के पत्रांक A/20314/MT-3 दिनांक 28 फरवरी 1986 व 20032/Trg/Inf-2 दिनांक 28 मार्च 2018 के प्रावधानों के अनुसार सेना नियम 13 (3) Item (iv) के तहत सैन्य सेवा से डिस्चार्ज किया जाये ?

4. इस संबंध में आप अपना लिखित जवाब दिनांक 28 मई 2019 तक इस कार्यालय को प्रेषित करें |”

10. The policy letter of 1986 postulates that recruits who absent during basic military training for 30 consecutive days will be discharged after necessary disciplinary action. The

absentees for less than 30 consecutive days may be considered for relegation if, otherwise, found suitable for retention. The policy further postulates that once the technical training of a recruit has commenced, the discretion to discharge the recruit for such absence will be left to the Commandant of the Centre, who may retain or discharge him considering the case on its merit. The policy of 1986 (supra) being relevant is quoted below for ready reference:-

"Relegation for absent without leave

4. A recruit who has been absent without leave for a period of 30 consecutive days during basic mil trg period, will not be allowed to rejoin his trg again. Such rectx will be discharged after necessary discp action. The absentees for less than 30 consecutive days may be considered for relegation, if otherwise, found suitable for retention. However, once the tech trg of a recruit has commenced, the discretion to discharge the recruit for such absence will be left to the Comdt of the Centre, who may retain or discharge him considering the case on its merit."

11. After serving out the sentence for his absence on second occasion during basic military training, the applicant was issued a Show Cause Notice to which he replied on 28.05.2019. We observe that the applicant seems to be rightly discharged from service as inefficient and undesirable soldier being absent for 30 consecutive days. In the instant case, the order of discharge is reasoned and speaking whereby the applicant was examined in all its pros and cons and after due consideration, the applicant was held to be

unlikely to become efficient soldier. Being relevant, the order of discharge is quoted for ready reference.

"1. It is certified that No 3021503F Rank Rect Name Mohd Dilwan Ali of the Rajput Regimental Centre, Fatehgarh (UP) has been discharged from Army Service in terms of Para 4 of IHQ of MoD (Army) letter No A/20314/MT-3 dt 28 Feb 1986 being absent for more than 30 consecutive days during BMT and is unlikely to become efficient soldier under Army Rule 13 (3) IV. He has rendered 08 months, 18 days service from 25 Sep 2018 to 12 Jun 2019 (AN). The indl will be struck off ration strength from Army Service with effect from 13 Jun 2019.

2. His date of enrolment in the Army is 25 Sep 2018."

12. Thus, Keeping in view the fact that the applicant had lost interest in completing the Basic Military Training which is mandatory to become a soldier and that he had committed the offence of absence without leave on two occasions within a short span of three months that too as a recruit, we have no hesitation to say that he was rightly discharged from service, being Unlikely to Become an Efficient Soldier, by the competent military authority.

13. It is also an undisputed fact that discipline is the backbone of the Army, and has a direct impact on the efficiency of a soldier as well as efficacy of a unit. The applicant being an unattested recruit repeatedly committed the offence of absence without leave even after undergoing punishment for the same offence few days back, violating the statutory provision and standing orders. He did not even

consider to make a request to the authorities for grant of leave and instead resorted to leave the unit lines without any permission on two occasions. He did all these knowing the consequences.

14. Thus in the facts and circumstances of the case we are of the view that the O.A cannot be sustained and is liable to be dismissed.

15. The O.A is accordingly **dismissed**.

16. No order as to costs.

17. Miscellaneous application (s), if any, stand disposed of.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 14.10.2022

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