

**E-Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 485 of 2021**

Friday, this the 14<sup>th</sup> day of October, 2022

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

No. 15211683-P Gnr Niraj  
S/o Late Ram Naresh Dwivedi  
R/o Pure Beerbac, Post – Dhingvas, Tehsil – Lalganj,  
District – Pratapgarh (UP)

.... **Applicant**

Ld. Counsel for the Applicant : **Shri Vinay Pandey**, Advocate  
**(Not Present)**

Versus

1. Union of India, through Secretary, Ministry of Defence (Army),  
DHQ PO, New Delhi – 110011.
2. The Chief of the Army Staff, IHQ of MoD (Army), Sena  
Bhawan, New Delhi-11.
3. The Officer-in-charge, Artillery Records, C/o 56 APO.
4. Commanding Officer No. 1 Training Regiment, C/o 56 APO.

... **Respondents**

Ld. Counsel for the Respondents : **Shri Yogesh Kesarwani**,  
Central Govt Counsel

**ORDER (Oral)**

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

- “(a) Issue/pass an order or directions quashing the apprehension letter issued by the Artillery Records vide letter bearing No. 307801/06/A1Bty dated 04 Feb 2017.
- (b) Issue/pass an order or directions quashing the Artillery Records letter bearing number 15211683P/T-10/Dismiss/Dec-21/NE dated 04 Jan 2022.
- (c) Issue/pass an order or directions directing the respondent to reinstate the applicant in service with effect from 13.02.2017 as he has till date neither dismissed, removed/discharge from army service as per law.
- (d) To issue/pass an order or direction of appropriate nature to inquire the matter as to why the applicant has not been taken in to service despite repeated representation, and punish all the concern officers.
- (e) To issue/pass and order or direction of appropriate nature awarding compensation which this Hon’ble Tribunal may think fit in the facts and circumstance of the case, in lieu of sufferings suffered by the applicant due to the act or omission or inaction on the part of respondents.
- (f) Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.
- (g) Allow this application with costs.”

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 30.08.2004. The applicant due to domestic problems and his ill health has sought leave on several times between May 2014 to Feb. 2017 and due to exigencies of time, the applicant had

over stayed leave for which he was punished. In accordance with Army Act Section 106, on completion of 30 days, a Court of inquiry was held and applicant was declared deserter w.e.f. 04.02.2017. The applicant being deserter from a peace area has been dismissed from service on 11.12.2021 after completion of three years of absence/desertion period under the provisions of Section 20(3) of Army Act, 1950 read in conjunction with para 22 of Army Order 43/2001/DV. Being aggrieved, the applicant has filed the present Original Application to set aside his apprehension/desertion order and to reinstate him in service.

3. Learned counsel for the applicant pleaded that applicant was enrolled in the Army on 30.08.2004. The applicant due to his extreme domestic problems and his ill health has sought leave on several times between May 2014 to Feb. 2017 and due to exigencies of time, the applicant had over stayed leave for which disciplinary action has been taken against the applicant. The applicant was lastly granted leave w.e.f. 15.01.2017 to 19.01.2017 which was further extended upto 03.02.2017 but applicant could not rejoin because of his ill health. After recovery of his illness the applicant alongwith his brother visited Artillery Centre, Nasik Road Camp in May 2019 to rejoin duty

but he was not allowed to enter into the premises of Centre and was sent back from the gate only.

4. Learned counsel for the applicant further pleaded that applicant sent an application dated 12.09.2019 to the respondents under RTI Act which was replied vide letter dated 30.09.2019. Thereafter, applicant sent another application dated 19.10.2019 which was replied vide Artillery Records letter dated 09.11.2019, which revealed that applicant has been declared deserter w.e.f. 04.02.2017 and apprehension roll has been issued without following due procedure of law and Article 21 of the Constitution of India. The law for declaring deserter is provided under Section 38 read with Section 106 of Army Act, 1950 which was not followed by the respondents. The respondents have also not followed the procedure as provided in Army Order 43/2001/DV which deals with legal and factual aspects of desertion. The respondents have also not cleared the position of the applicant whether he has been dismissed from service or not because applicant is not in receipt of discharge/dismissal/termination/removal/retired/released order in terms of Section 23 of the Army Act, 1950.

5. Learned counsel for the applicant further pleaded that case of the applicant is totally covered by the judgment of the Hon'ble High

Court of Himachal Pradesh in **Sandhya Devi Parmar vs. Union of India**, 1997 Shimla LC 310 and therefore, desertion order of the applicant be set aside and applicant be reinstated in service w.e.f. 03.02.2017.

6. On the other hand, learned counsel for the respondents submitted that applicant while attached with 36 Artillery Brigade absented himself on 24.11.2013, therefore apprehension roll dated 01.12.2013 was issued. As per Section 106 of Army Act, 1950, a Court of Inquiry was held on 22.01.2014 at 90 Field Regiment and applicant was declared deserter w.e.f. 26.11.2013. On expiry of 119 days of absence, the applicant voluntarily surrendered himself at Artillery Centre, Nasik on 24.03.2014. Thereafter, applicant absented himself from Gwalior on 27.05.2014, hence, a Court of Inquiry was held on 27.06.2014 and applicant was declared deserter w.e.f. 27.05.2014. Thereafter, after expiry of 618 days of absence, the applicant voluntarily surrendered at Artillery Centre, Nasik Road Camp on 03.02.2016. During attachment with Artillery Centre, he was granted 5 days leave from 15.01.2017 to 19.01.2017 which was further extended upto 03.02.2017 but applicant did not rejoin his duty at Artillery Centre, Nasik. Subsequently, as per Army Order 43/2001/DV, an apprehension roll was issued but the applicant has

not reported back for duty. Hence, in accordance with Army Act Section 106, on completion of 30 days, a Court of inquiry was held on 04.04.2017 and applicant was declared deserter w.e.f. 04.02.2017.

7. Learned counsel for the respondents further submitted that under the provisions of Section 20(3) of Army Act, 1950 read in conjunction with para 22 of Army order 43/2001/DV, the applicant being deserter from a peace area has been dismissed from service on 11.12.2021 after completion of three years of absence/desertion after obtaining sanction of the competent authority. He pleaded that Original Application be dismissed being devoid of merit and substance.

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

9. We find that applicant was an indisciplined soldier and habitual offender in absenting himself without leave (AWL). During his service, the applicant has absented himself on many occasions and was punished for his irresponsible attitude and indisciplined nature towards his duty. Even after repeated counsellings, the applicant did not show any improvement in his personal/military discipline and conduct. The applicant was declared deserter on many occasions for

his offence (AWL) by holding a Court of Inquiry as per rules. Finally, he has been dismissed from service w.e.f. 11.12.2021 after completion of three years of absence/desertion period being a peace area deserter under the provisions of Section 20(3) of Army Act, 1950 read in conjunction with para 22 of Army Order 43/2001/DV after following due procedure as per rules/policy on the subject. Hence, the applicant is not entitled the relief prayed in Original Application to quash his apprehension/desertion order and to reinstate him in service.

10. In the result, we do not find any illegality or infirmity in declaring the applicant deserter from service being absent without leave and thereafter, dismissal from service after completion of desertion period of three years being a peace area deserter. There is also no violation of any Article of the Constitution of India. The dismissal of the applicant has been made as per rules and policy on the subject. The reliefs prayed by the applicant to quash his apprehension/desertion order and to reinstate him in to service are not sustainable. The Original Application lacks merit, deserves to be dismissed. It is accordingly **dismissed**.

11. No order as to costs.

12. Pending Misc. Application(s), if any, shall stand disposed off.

**(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)**

Member (A)

Member (J)

Dated: October, 2022

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