

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BNCH AT NAINITAL)****ORIGINAL APPLICATION No. 125 of 2022**

Wednesday, this the 11th day of October, 2023

“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”

“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”

No. 4088461-H Rifleman Kuldeep Singh, S/o Late Fateh Singh,
18th Garhwal Rifles, C/o 56 APO, R/o Village- Tankilla, Post Office-
Paldwari, Tehsil- Ukhimath, District- Rudraprayag (Uttarakhand).

..... **Applicant**

Ld. Counsel for the : **Shri MS Bhandari, Advocate**
Applicant

Versus

1. Union of India through Secretary, Ministry of Defence,
Central Civil Secretariate, New Delhi - 110001.
2. Commanding Officer, 18 Garhwal Rifles (DRAS), Pin No
910718.
3. Commandant, Garhwal Rifles Regimental Centre (GRRC),
Lansdowne, District- Pauri Garhwal,

.....**Respondents**

Ld. Counsel for the :**ShriNeeraj Upreti,**
Respondents. **Central Government Counsel.**

ORDER**“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”**

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

- (i) Issue a direction to the respondents by directing the respondents to permit the applicant to work in 18th Garhwal Rifles by taking him in the services of the respondents wef 07.04.2018.
- (ii) Issue a direction to the respondents to pay/ release the entire pension/ pensionary benefits including all the dues/ service benefits due to 15 years services rendered by the applicant in the respondent Army/ 18 Garhwal Rifles with effect from 06.04.2018.
- (iii) Any other relief to which the applicant is found entitled may also very kindly be granted to the applicant.

2. Factsofthecasearethatthe applicant was enrolled in Indian Army on 03.10.2003. He was granted leave with effect from 23.03.2018 but he could not join duty on expiry of leave and he was declared deserter. On 30.03.2018, Apprehension Roll was issued. A Court of Inquiry was held and applicant was declared deserter. He was dismissed from service on 25.03.2021 vide discharge certificate

dated 20.04.2021. He submitted representation for reinstatement in service which was rejected. Being aggrieved, applicant has filed this application with the prayer to re-instate him in service and grant service pension.

3. Learned counsel for the applicant submitted that after enrolment applicant was posted in various places of the country such as Arunachal Pradesh, Manipur, Uttarakhand, Punjab, Jammu and Kashmir, Himanchal Pradesh, Delhi and Maharashtra. He participated in Peace Army and went to serve Republic of Kango and thereafter he was attached to Army Holiday Home, Nainital, Uttrakhand. On 22.03.2018, he was granted 15 days leave wef 22.03.2018 to 06.04.2018. He sustained injury in his lower back and was suffering acute pain in his back . He reported to 18 Garhwal Rifles after completion of 15 days leave but on 28.03.2018 a warrant was issued against him. He submitted representation dated 27.11.2019 against warrant but no suitable reply was given by the respondents. His wife again submitted application on 07.12.2019 for grant of pension/ pensionary benefits to the applicant. He was informed by the respondents vide letter dated 07.02.2020 to report at unit for disciplinary proceeding. Due to Covid-19, Nationwide Lockdown applicant was unable to move for his unit and in June 2020, the applicant got lockdown pass wef 23.06.2020 to 24.06.2020 from Uttarakhand to Meerut City. On 23.06.2020 applicant along

with his wife reached in his unit at Meerut and was medically examined in Army Hospital. He went to join duty on 23.06.2020 but he was not permitted to enter the unit and was forced to return from unit gate. Applicant has served in army for a period of 15 years and except the present controversy, there was no complaint or inquiry pending against him and the applicant is having an unblemished service record. Respondents are depriving the applicant from his pensionary benefits in illegal and arbitrary manner. Prayer of the applicant for grant of pensionary benefit was rejected. Applicant preferred O.A. No 731 of 2021 which was dismissed as withdrawn vide order dated 17.11.2021 with liberty to file a fresh. Learned counsel for the applicant pleaded that respondents be directed to grant pension and pensionary benefits to the applicant.

4. On the other hand, learned counsel for the respondents submitted that the applicant was granted two days Part of Annual Leave with effect from 23.03.2018 to 24.03.2-18. The applicant failed to report for duty on 25.03.2018. Apprehension Roll was issued on 29.03.2018 under intimation to Next of Kin of the applicant. However, neither the applicant was apprehended nor did he surrender within the period of 30 days. A Court of Inquiry was ordered vide order dated 25.04.2018 and applicant was declared deserter wef 25.03.2018. Applicant had rendered only 14 years, 05 months and 22 days of qualifying service at the time of desertion.

An enquiry for veracity of leave certificate of the applicant for granting leave from 23.03.2018 to 06.04.2018 for 15 days was made. It was established that applicant was not granted leave during the time period mentioned in this leave certificate submitted by him. Applicant forged the leave certificate by over righting it. No for veracity of He was dismissed from service on 25.03.2021 vide discharge certificate dated 20.04.2021. Since the applicant was dismissed from service, he is not entitled to pension and pensionary benefits. Instant O.A. has no substance and is liable to be dismissed.

5. We have heard learned counsel of both the parties and examined the documents placed on record.

6. Admittedly, the applicant was absent from his Unit from 23.03.2018 and he has produced forged leave certificate. He has rendered 14 years, 05 months and 22 days of qualifying unblemished service. It was his first mistake. He tried to report to the Unit several times between 2018 to 2020 but was not allowed to rejoin. He has produced photocopies of letters that he wrote to his unit. The respondents have acknowledged one letter.

7. In the instant case the applicant was on the verge of completing minimum service for being eligible for pension. He went to join his duty with his wife and he was medically examined at Army Hospital Meerut. Thereafter, he went to join duty on 23.06.2020 but

he was not allowed to enter in the unit. For sending a show-cause notice, the last known address of the applicant was available with the respondents. The respondents should have sent show cause notice on that address or should have allowed him to join duty and thereafter initiated disciplinary action. However, it emerges that neither the respondents issued show cause notice nor allowed the applicant to join duty and proceeded to dismiss the applicant from service. As per provisions of Army Rule the person who is to be dismissed from service has to be informed first. In this case, the applicant was not informed about his dismissal, therefore, we hold the dismissal of the applicant as legally not sustainable.

8. The applicant has completed 14 years and 05 months and 22 days of qualifying service and another few months of service in the Army would have entitled him to pension. Attempts made by the applicant to rejoin the Unit has been substantiated by evidence. We are of the view that he tried to rejoin the Unit which was not allowed and, therefore, the applicant deserves a sympathetic consideration.

9. Accordingly, this O.A. is **partly allowed**. The dismissal order dated 20.04.2021 annexed along with counter affidavit is set aside. It is directed that the applicant would

be considered to be notionally in service till he reaches the service which entitles him to pension and thereafter, he shall be granted pension and pensionary benefits on regular basis. We clarify that the applicant shall not be paid salary during the period of notional service. Implementation within a period of four months from the date of receipt of a certified copy of this order by the respondents.

10. No order as to cost.

11. Major Danish Farooqui, Departmental Representative for the respondents orally submitted to grant Leave to Appeal against the above order which we have considered and no point of law of general public importance being involved in the case the plea is rejected.

(Vice Admiral Atul Kumar Jain) (Justice Ravindra Nath Kakkar)
Member (A) Member (J)

Dated : 11 October, 2023
Ukt/-