

RESERVED
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No 945 of 2022

Monday, this the 30th day of October, 2023

Hon'ble Mr. Justice Ravindra Nath Kakkar, Member (J)

Hon'ble Vice Admiral Atul Kumar Jain, Member (A)

No. 2617724X, Ex Sep Ravi Kumar Singh,
S/o Shri Veer Pal Singh,
R/o House No. 52,
Village - Bhinduliyapalacy,
Post Office – Binawar,
Tehsil and District - Badaun (UP)

.....Applicant

Ld. Counsel for the : **Wg Cdr Ajit Kakkar (Retd)**, Advocate
Applicant Brief Holder **Shri Manoj Kumar Awasthi**,
Advocate

Versus

1. Union of India, through its Secretary Ministry of Defence, South Block, New Delhi-110011.
2. The Chief of the Army Staff, Army Headquarters, New Delhi-110011.
3. The Officer-in-Charge Records, Records, Madras Regiment Centre, C/o 56 APO.
4. The Commanding Officer, 11 Madras, C/o 99 APO.

....Respondents

Ld. Counsel for the : **Shri Rajeev Narayan Pandey**,
Respondents Central Govt. Standing Counsel

ORDER

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) To issue an order to set aside/quash the impugned order no. 2617724/SR/Lib/NE-4 dated 13.09.2018 passed by respondent no. 3 as **Annexure no.1** of the original application.

(b) To issue an order or directions to the respondents to reinstatement in services and grant of the consequential benefits of the service period.

(c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case is also granted along with cost of the OA.”

2. The factual matrix of the case is that applicant was enrolled in the Army on 15.09.2010. The applicant was posted with 11 MADRAS unit and deserted from service w.e.f. 04.06.2015 while deployed in Uri Sector (J&K) for active Operations. As per policy, apprehension roll was issued to the Superintendent of Police, Badaun District (UP) by 11 MADRAS unit vide letter dated 08.06.2015. The applicant neither rejoined duty nor he was apprehended by the civil police. A Court of Inquiry (COI) was conducted by 11 MADRAS and it was opined that the applicant has been willfully 'Absent Without Leave' (AWL) w.e.f. 04 June 2015 and recommended to declare the applicant deserter w.e.f 04 June 2015. Thereafter, a letter dated nil was received by the unit from Sarpanch of the applicant's village wherein it was mentioned that the applicant was suffering from mental disorder and was under treatment. In reply, a letter dated 20.09.2015 was sent by the unit to

the Village Sarpanch asking him to instruct the applicant to report to Military Hospital, Agra immediately for further treatment. In addition, the unit of the applicant sent another letter dated 06 Oct 2015 to Next of Kin (wife) of the applicant to admit the applicant in Military Hospital, Agra immediately for further treatment. It was also mentioned in the letter that the applicant will be treated as absent without leave till he reports to the Military Hospital, Agra for medical treatment, and disciplinary action will be taken against the applicant as per military law but no reply was received back from Next of Kin. Thereafter, applicant sent a petition dated 03.07.2018 to Union of India to reinstate him into service which was replied by the respondents vide 11 MADRAS letter dated 19.07.2018 rejecting request of the applicant. Being aggrieved, the applicant has filed the present Original Application to reinstate him into service and grant consequential benefits.

3. Learned counsel for the applicant submitted that the applicant was enrolled in the Indian Army on 15.09.2010. At the time of enrollment, the applicant underwent a medical examination conducted by a competent medical officer and he was found absolutely medically fit. The applicant while posted with 11 MADRAS in Uri Sector (Field posting) suffered from mental diagnosis and abnormal behavior on 04.06.2015 but the applicant was not referred to Military Hospital for treatment by the Commanding Officer of the unit. Meanwhile the applicant's unit, 11 Madras, moved to Shimla (Ducksai). The learned Counsel for the Applicant further submitted that the Commanding

Officer of the unit did not grant leave to the applicant to take treatment at his own. Rather, the applicant was sent to his home station along with two guards, without any proper authority, by the Commanding Officer. Further, the Commanding Officer of the unit told the applicant to take proper treatment at home station and report back to unit after recovery of health.

4. Learned counsel for the applicant further stated the following: -

(a) The applicant went to MH Bareilly on 07.04.2015 for medical treatment of his mental illness and abnormal behavior but MH Bareilly refused to provide any medical treatment since the applicant was not in possession of Leave Certificate. Thereafter, on 03.07.2015 the applicant approached Aditi Medical Care Hospital for treatment. On 20.07.2015, the applicant tried to get medical treatment from Mental Hospital, Badaun.

(b) The applicant took treatment from Dr Chandra, Psychiatric Specialist, Rampur Garden, Bareilly on 27.07.2015. Dr Chandra also advised MRI of Brain, which was held in BL Diagnostics Center at Agra on 30.07.2015. The MRI report indicated that **“MRI Brain is within normal limit”**.

(c) In accordance with Commanding Officer of the unit's letters dated 20.09.2015 and 06.10.2015, the applicant approached MH Agra for the treatment but he was denied treatment due to non-availability of any leave certificate, as he was sent home without any leave certificate/documents. The applicant then

reported to MH Bareilly on 09.04.2018 but he was again refused treatment due to non-availability of leave certificate.

(d) The applicant approached Commanding Officer, 11 Madras for reporting back to the unit, however, the applicant was asked to report to the Madras Regimental Center as all the service documents of the applicant have been dispatched to Records.

(e) The applicant and his father requested repeatedly to the Commanding Officer and Officer-in-charge Records, Madras Regimental Center but he was not permitted to report in the unit as well as in Records.

(f) The applicant was not absent from the unit knowingly but due to unavoidable circumstances related to his mental disorder.

5. Learned Counsel for the applicant brought out that the applicant submitted a petition dated 13.09.2018 for his restatement into service but the same has been rejected by the respondents. Thus, applicant has been unjustly and arbitrarily denied from re-instatement into service without any fault on his part which is against the principles of natural justice. He pleaded for reinstatement of applicant into service forthwith.

6. On the other hand, learned counsel for the respondents submitted that applicant was enrolled in the Army on 15.09.2010. The applicant was posted with 11 MADRAS unit and deserted from service w.e.f. 04.06.2015 while he was deployed in active operations on Line of Control at Uri Sector. As per policy, apprehension roll was issued to

District Collector and Superintendent of Police, Badaun District, U.P. by 11 MADRAS vide letter dated 08.06.2015. The applicant neither rejoined duty nor he was apprehended by the civil police. A Court of Inquiry was conducted by 11 MADRAS and it was opined by the court that applicant has been Absent Without Leave w.e.f. 04.06.2015 and accordingly, he was declared deserter. Thereafter, an application dated nil received from Sarpanch of applicant's village wherein it was mentioned that applicant was suffering from a mental disorder and is presently under treatment. In reply, a letter dated 20.09.2015 was sent by the unit of the applicant to village Sarpanch requesting him to instruct applicant to report to Military Hospital, Agra for treatment. The unit of the applicant again requested wife of the applicant (Next of Kin) to admit the applicant in Military Hospital, Agra for treatment but no reply was received back from Next of Kin. Thereafter, applicant sent a petition dated 23.05.2018 to Union of India to reinstate him into service which was replied by the respondents vide letter dated 19.07.2018 rejecting request of the applicant.

7. Learned counsel for the respondents further submitted that applicant's contention that he was sent to his home along with two guards without any authority/leave certificate is false and fabricated. **The applicant had absconded from unit on 04.06.2015 while he was deployed in Uri Sector on Line of Control.** The applicant was advised by the respondents to report to Military Hospital, Agra immediately for further treatment vide letters dated 20.09.2015 and 06.10.2015 but the applicant neither reported to MH Agra nor he

surrendered himself to any military authorities and continued to remain deserter from the service. However, on 09.04.2018, his next of kin brought him to Military Hospital, Bareilly for treatment with regard to his mental disorder and abnormal behavior. The graded specialist (psychiatric) has written on the case sheet that the applicant claimed to be possessed by some ghost and underwent treatment with some faith healers. The graded specialist (psychiatric) opined that there were no psychiatric issues, and advised the applicant to report to concerned military authority for further legal action being a deserter but the applicant failed to report to Army authorities. Now, after lapse of 7 years, 4 months and 17 days from the date of desertion, the applicant has filed the present Original Application to reinstate him into service and grant all consequential benefits without any satisfactory explanation for his absence for more than 07 years. The respondents took a liberal view of his absence without leave by granting him an opportunity to rejoin duty and report to MH Agra for medical treatment but the applicant failed to do so. Since discipline is hallmark of the Army and an offender absenting himself from field duty for over 07 years cannot be retained in the service. He pleaded for dismissal of the Original Application being devoid of merit and against the existing policies/rules and regulation on the subject.

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

9. In the instant case, we observe that applicant has deserted from service w.e.f. 04.06.2015 while he was posted in 11 MADRAS in an

active operational area of Uri Sector. In this regard a Court of Inquiry was ordered by the Commanding Officer of the unit vide order dated 09.01.2016. Based on findings/opinion of the Court of Inquiry, the applicant was declared deserter w.e.f. 04.06.2015 as per existing Act/Rules/Policy.

10. Perusal of the record establishes that 11 Madras had sent a letter No. 2612080/CF/A1 dated 20.09.2015 to the Sarpanch of Village – Bhinduliya Placy, Dist – Badayun (UP) of the applicant, with a copy to Mrs Upasana Singh, wife of the applicant in which it was stated/requested that, *“You are requested to instruct Sep Ravi Kumar Singh to report at MH Agra immediately for further treatment. Individual will be treated as absent without leave till he reports to Military Hospital Agra and disciplinary action will be taken against him as per military law.”* Thereafter, a letter dated 06.10.2015 was also sent by the unit i.e. 11 MADARAS to Mrs Upasana Singh, wife of the applicant requesting her to admit the applicant in MH Agra for further treatment with a copy to Superintendent of Police, Badaun. Both the letters are annexed alongwith the counter affidavit as annexures CA-5 and CA-6 respectively. In addition, 11 MADRAS vide letter dated 13.06.2018 also sent appeal of the applicant dated 23.05.2018 for reinstatement into service which was examined and rejected by Records, Madras Regiment as per policy. Further, the MRI reports of the Brain (BL Diagnostic Center) dated 30.07.2015 submitted by the applicant indicates that **“MRI Brain is within normal limit”**. The NCCT Brain (Seth Diagnostics) report dated 17 April 2018 also

indicates “**CT Findings do not reveal any significant intracranial pathology**”.

11. In view of aforesaid observations, we find that the applicant was negligent towards his duties and discipline of the Indian Army. The applicant deserted himself from duty while posted in an operational area in Uri Sector which shows his irresponsible behavior, utter disregard to military indiscipline and lackluster attitude towards his duty. Even after making repeated correspondence with Sarpanch of the unit and NOK (wife) of the applicant, the applicant did not report to MH Agra for treatment or join his unit for duty. Therefore, being a field deserter, disciplinary action needs to be taken against the applicant as per the rules/policy on the subjects averred by the respondents in their counter affidavit.

12. In view of aforesaid, we do not find any irregularity or illegality in or arbitrariness on the part of the respondents, and therefore, the applicant is not entitled to the relief prayed in the Original Application for re-instatement into service and grant consequential benefits.

13. Resultantly, Original Application deserves to be dismissed and is accordingly, **dismissed**.

14. No order as to costs.

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

(Vice Admiral Atul Kumar Jain)
Member (A)

Dated: October, 2023
SB/DDS

(Justice Ravindra Nath Kakkar)
Member (J)