

RESERVED
(Court No 2)

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

Original Application No. 245 of 2018

Tuesday, this the 10th day of October, 2023

**"Hon'ble Mr. Justice Anil Kumar, Member (J)
Hon'ble Lt Gen Anil Puri, Member (A)"**

No. 13622135-Y Nk (TS) Dharmendra Singh Tomar, S/o Shri Maharaj Singh Tomar, R/o Village: Bhind, Post: Chandokhar, District: Bhind (MP), PIN – 474001.

.....Applicant

Ld. Counsel for the Applicant: **Shri R Chandra**, Advocate

Versus

1. Union of India, through, the Secretary, Ministry of Defence, Government of India, New Delhi.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), DHQ-Post Office: New Delhi.
3. Commandant, The Rajput Regimental Centre, Fatehgarh (UP).
4. Officer-In-Charge, Records, The Rajput Regimental Centre,
Fatehgarh (UP).
5. The Commanding Officer, 6 RAJPUT, C/o 56 APO.

..... Respondents

Ld. Counsel for the: **Dr. Shailendra Sharma Atal**,
Respondents Sr. Central Govt. Counsel.

ORDER

1. This instant Original application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 by which he has sought the following reliefs:-

- (I) The Hon'ble Tribunal may be pleased to direct the respondent No to 3 allow the applicant to submit his joining at the Rajput Regimental Centre Fatehgarh (UP) and thereafter to take him on the strength and pay him all consequential benefits including salary in future as per law.*
- (II) The Hon'ble Tribunal may be pleased to set aside the dismissal order (order of dismissal not served to the applicant) and order dated 26.07.2018 (Annexure No A-1 (a) with all consequential benefits.*
- (III) Any other appropriate order or direction which the Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case.*

2. Brief facts of the case are that the applicant was enrolled in Parachute Regiment (PARA) of the Indian Army on 27.06.1997 and was permanently transferred to The Rajput Regiment w.e.f. 14.10.2007. Since applicant gave unwillingness certificate for extension of service by two years, which was notified vide 6 Rajput Part-II Order dated 03.06.2013, he was due to retire from service w.e.f. 01.07.2014 (FN). His retirement order dated 10.06.2013 was issued by Records, The Rajput Regiment. Prior to discharge, applicant was asked to deposit documents with respect to

pension. However, the individual deposited incomplete documents. In order to complete the pension documents for proceeding to pension establishment, he was sent on 08 days Part of Annual Leave for the period 06.03.2014 to 13.03.2014. On completion of leave, he did not report back and after 489 days of overstaying leave, he surrendered at The Rajput Regimental Centre on 16.07.2015. He was awarded 28 days rigorous imprisonment and 14 days pay fine under Section 39 (b) of the Army Act, 1950. On termination of punishment, he was despatched to his unit on 10.10.2015 (AN) with 10 days casual leave. After completion of casual leave, he reported to 213 Transit Camp on 07.11.2015 at 2100 hrs i.e. 16 days after termination of said leave and reached to 6 Rajput on 10.11.2015. On 01.12.2015, the unit took up case with Rajput Records for seeking advice for disposal of the applicant as he could not be retained in service after completion of his terms of engagement to which legal advice was sought with DJAG, HQ 16 Corps, however when no reply was received till 16.01.2016, he was reverted back to the Rajput Regimental Centre, Fatehgarh (UP) as retention of above individual in service beyond Struck of Strength (SOS) date was not in order. He reported to Rajput Regimental

Centre on 20.01.2016 and remained there up to 06.05.2016. During stay at Rajput Regimental Centre, neither he was not taken on strength nor was he paid any salary, therefore, he left the Rajput Regimental Centre on 06.05.2016 to find out some work in civil area for survival of his family. Thereafter, on 17.03.2017, 18.03.2017, 12.01.2018 and 13.01.2018 he tried to report at Rajput Regimental Centre but was not permitted to rejoin his duty. Prior to dismissal from service show cause notice dated 19.04.2018 was issued after invoking Army Act Section 123, to which when no reply was received he was dismissed from service w.e.f. 26.07.2018 after expiry of three years from the date of desertion. This O.A. has been filed for issuing direction to respondent No 3 for allowing his rejoining at the Rajput Regimental Centre and pay all consequential benefits including salary.

3. Learned counsel for the applicant submitted that being enrolled in the Army on 27.06.1997, applicant, while serving with 6 Rajput, was granted leave but on account of late rejoining he was awarded 28 days rigorous imprisonment and 14 days pay fine and thereafter, he was sent to his unit which was located in field area. On rejoining to field area he was kept for some days and was reverted to the Rajput

Regimental Centre where he was also kept for some days without salary. It was further submitted that due to non payment of pay and allowances his family was pressurising for money and therefore, he left the Centre for earning so that he could feed family members.

4. Learned counsel for the applicant further submitted that after some time applicant tried to rejoin duty three times but he was not allowed to rejoin duty and later it came to his knowledge that he has been dismissed from service. It was further submitted that since applicant's apprehension roll was already issued, respondents have no authority to terminate his services as he tried to rejoin his duty time and again but all in vain.

5. Learned counsel for the applicant further submitted that despite knowing the fact that applicant was not on strength of 6 Rajput/The Rajput Regimental Centre, he was awarded rigorous imprisonment, despatched to 6 Rajput and from where he was granted 10 days casual leave for the year 2015 and also as per para 3 of the counter affidavit, on 16.01.2016 applicant was reverted back to the Rajput Regimental Centre, Fatehgarh. It was further submitted that keeping in view that applicant was reverted back to The Rajput Regimental Centre

in the year 2016, he could not have been dismissed from service before completion of three years from 2016 but speaking order dated 26.07.2018 clearly speaks that he was dismissed from service w.e.f. 26.07.2018 which is not justified. The learned counsel pleaded for setting aside applicant's dismissal order dated 26.07.2018 and grant consequential benefits.

6. On the other hand, learned counsel for the respondents submitted that applicant being enrolled in the Army in Parachute Regiment was permanently transferred to The Rajput Regiment on 14.10.2007. He submitted his unwillingness certificate for extension of service by two years and this was notified vide Part II Order dated 03.06.2013. Accordingly, as per Para 34 (a) (i) of Defence Service Regulations for the Army, 1987 (Revised Edition) applicant completed his terms and condition of service with Army on 27.06.2014 and was to be released from the Army w.e.f. 01.07.2014 (AN) for which retirement order was already issued on 10.06.2013. It was further submitted that the applicant was asked to deposit his pension documents with respect to grant of pension. He, however deposited incomplete documents. In order to complete the pension

documents for proceeding to pension establishment, applicant was granted 08 days Part of Annual leave w.e.f. 06.03.2014 to 13.03.2014 but on completion of aforesaid leave, he did not rejoin his duty. Apprehension roll was issued and after absence of 489 days he surrendered voluntarily on 16.07.2015. On rejoining he was awarded 28 days rigorous imprisonment and 14 days pay fine and after termination of punishment he was despatched to 6 Rajput on 10.10.2015 with 10 days casual leave for the period 12.10.2015 to 21.10.2015 with permission to prefix 11.10.2015 and suffix 22.10.2015. He, however, reported to 6 Rajput on 10.11.2015 after overstaying leave for 16 days where he was kept and later despatched to The Rajput Regimental Centre on 16.01.2016 as retention of above individual in service beyond SOS date was not in order.

7. Learned counsel for the respondents further submitted that after awarding punishment of rigorous imprisonment and pay fine, applicant was neither taken on strength of The Rajput Regimental Centre nor was he taken on strength of 6 Rajput as he had already completed his terms of engagement on 27.06.2014 in terms of Para 134 (a) (i) of Defence Service Regulations for the Army, 1987 (Revised Edition). It was

further submitted that since applicant had already completed his terms of engagement he was not kept in The Rajput Regimental Centre and sent to his home and punishment awarded to him being illegal was set aside on 22.12.2017 under the provisions of Para 442 of Defence Service Regulations for the Army, 1987 (Revised Edition) and Army Order 109/60.

8. Learned counsel for the respondents further submitted that when no response was received of show cause notice dated 19.04.2018 even after expiry of 03 months, he was dismissed from service w.e.f. 26.07.2018 under Army Act, Section 20 (3) read in conjunction with Army Rule 17. He pleaded for dismissal of O.A. stating that applicant being a habitual offender does not deserve any sympathy.

9. Heard Shri R Chandra, learned counsel for the applicant and Dr. Shailendra Sharma Atal, learned counsel for the respondents and perused the record. We have also perused the original records produced in the court.

10. There is no dispute that applicant was enrolled in the Army on 27.06.1997. It is also not disputed that during the course of his service he was awarded various red ink and

black ink entries for overstaying leave. After a prolonged overstayal of leave/desertion, applicant reported to The Rajput Regimental Centre on 16.07.2015 where he was awarded 28 days rigorous imprisonment and 14 days pay fine. Annexure A-1 is the movement order dated 10.10.2015 issued by the Rajput Regimental Centre, Fatehgarh directing the applicant to report to his parent unit i.e. 6 Rajput. This movement order also shows that while despatching applicant to his parent unit he was granted 10 days casual leave w.e.f. 12.10.2015 to 21.10.2015 with permission to prefix 11.10.2015 and suffix 22.10.2015 being Sunday/Holiday. Based on said movement order, applicant reported to 6 Rajput Regiment which was located in field area on 10.11.2015 i.e. after delay of 16 days from the date of actual reporting. Since his SOS date was already over on 01.07.2014 (FN), on reporting to unit, a case was taken up with higher authorities for obtaining necessary directions to complete disciplinary proceedings under the provisions of Section 123 of Army Act, 1950 but when nothing was heard till 16.01.2016 he was directed to report to The Rajput Regimental Centre where he stayed up to 06.05.2016 without taking him on strength and without any pay and allowances.

On 06.05.2016 applicant left the Regimental Centre for earning livelihood for his family. Thereafter, w.e.f. 17.03.2017 he tried to report to the Regimental Centre four times but was not allowed as his SOS date was already over.

11. Prior to dismissal from service, Show Cause Notice was despatched to the applicant through letter dated 19.04.2018 and on receipt of no response he was dismissed from service w.e.f. 26.07.2018 under the provisions of Army Act Section 20 (3) read with Army Rule 17.

12. It is not disputed that applicant was due to retire on 30.06.2014 (AN) and in the year 2014-15, he overstayed leave for 489 days and on surrender, knowing well that his SOS date was already over, he was awarded 28 days rigorous imprisonment and 14 days pay fine by The Rajput Regimental Centre which being technically invalid was later set aside vide order dated 22.12.2017 by Officer-in-Charge, Records in terms of Army Order 109/60 and Para 442 of Defence Service Regulations for the Army, 1987 (Revised Edition). After termination of punishment, he was despatched to 6 Rajput Regiment on a valid movement order dated 10.10.2015 from where he was reverted back to The Rajput Regimental Centre

and after three years of desertion he was dismissed from service.

13. A question cropped up whether an individual, whose SOS date was already over, may be retained in Armed Forces and issued a valid movement order? In regard to this it is crystal clear that the Army authorities have erred while allowing applicant to join service when he had already completed his terms of engagement.

14. On perusal of record, we find that applicant was enrolled on 27.06.1997 and as per his terms of engagement, he was due to retire on 30.06.2014 i.e. after completion of 17 years service. During the course of his service he has 262 days (245+17) non qualifying service till his date of discharge i.e. 30.06.2014. If this non qualifying service is subtracted from his total service even though he has 16 years plus service to his credit which is adequate for grant of service pension in the rank of a Sepoy which he was holding.

15. Applicant had completed his terms of engagement on 27.06.2014. In this regard we have perused the speaking order dated 26.07.2018, para 2 of which shows that applicant had completed his terms of engagement on 27.06.2014. Prior to completion of his terms of engagement he was granted

short leave for completion of pension related documents when he overstayed leave. For convenience sake, extract of para 2 of letter dated 26.07.2018 is reproduced as under:-

"2. WHEREAS, you got enrolled in the PARA Regiment on 27 Jun 1997 and were permanently transferred to The Rajput Regiment on 14 Oct 2007. Thereafter, you were posted to 6 RAJPUT and taken on strength of the Unit with effect from 02 Nov 2007. You were completing terms and condition of service on 27 Jun 2014 and were due for discharge from Army Service with effect from 01 Jul 2014. A retirement order bearing No 2118/224/RS dated 10 Jun 2014 was issued by Records The Rajput Regiment. To prepare the pension documents, you were granted 08 days PAL with effect from 06 Mar 2014 to 13 Mar 2014 but, you did not rejoin duty on completion of said leave. Accordingly, apprehension roll was issued by 6 RAJPUT vide letter No 91/A dated 29 Apr 2014."

16. Be that as it may, there is no dispute that he had completed his terms of engagement on 30.06.2014 (AN) with qualifying service of more than 15 years and when he has completed his terms of engagement, there ought to be no denial for grant of service pension.

17. Thus, keeping in view that applicant has served more than 16 years in the Army, applicant's dismissal from service w.e.f. 26.07.2018 as mentioned in speaking order dated 26.07.2018 being unjustified is set aside keeping in view that he had already completed his terms of engagement on 27.06.2014 and was eligible for grant of service pension w.e.f. 01.07.2014. It is pertinent to mention that non qualifying

period, if any, for completion of 15 years service shall be deemed to be notional.

18. In view of the above, O.A. is **allowed** to the extent of grant of service pension to the applicant. The respondents are directed to grant service pension to the applicant w.e.f. 01.07.2014 for life alongwith arrears but due to law of limitation, he shall be entitled to arrears of service pension w.e.f. three years preceding the date of filing of this Original Application. This Original Application was filed on 04.05.2018. The whole exercise shall be completed within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 8% p.a.

19. No order as to costs.

20. Miscellaneous application(s), pending if any, stand disposed off.

(Lt Gen Anil Puri)
Member (A)
Dated: 10.10.2023
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(Justice Anil Kumar)
Member (J)

RESERVEDCourt No 2

Form No. 4

{See rule 11(1)}
ORDER SHEET

ARMED FORCES TRIBUNAL, REGIONAL BENCH,

LUCKNOW

O.A. No. 245 of 2018

Nk (TS) Dharmendra Singh Tomar

Applicant

By Legal Practitioner for the Applicant

Versus

Union of India & Ors

Respondents

By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>10.10.2023</u> <u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u> <u>Hon'ble Lt Gen Anil Puri, Member (A)</u></p> <p>Judgment pronounced. O. A. No. 245 of 2018 is allowed. For orders, see our judgment and order passed on separate sheets.</p> <p>(Lt Gen Anil Puri) Member (A) <i>rathore</i></p> <p>(Justice Anil Kumr) Member (J)</p>