

Form No. 4 **Court No 1**
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

O.A. No. 840 of 2021

Ex Gnr Ram Kishore Mishra
 By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others
 By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>21.09.2022</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p style="text-align: center;">O.A. No. 840 of 2021 is dismissed.</p> <p style="text-align: center;">For order, see our judgment passed on separate sheets.</p> <p style="text-align: center;">Misc. Applications, pending if any, shall be treated as disposed of accordingly.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) Member (A) <i>rathore</i></p> <p style="text-align: center;">(Justice Umesh Chandra Srivastava) Member (J)</p>

COURT No.1**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION No. 840 of 2021**

Wednesday, this the 21st day of September, 2022

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

No. 14432351-M Ex-Gunner Ram Kishore Mishra, son of Sri Brij Narayan Mishra, R/o Meghaon, District-Bhind (MP).

..... Applicant

Learned counsel for the Applicant : **Shri Gaurav Gupta**, Advocate
Shri Gaurav Singh, Advocate

Versus

1. Union of India, through Principal Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Army Headquarters, New Delhi-110106.
3. Commanding Officer, 230 Medium Regiment, C/o 56 APO.
4. Commanding Officer, Records Artillery Centre, Nasik Road Camp, Nasik.
5. Principal Controller of Defence Accounts, Prayagraj.

.....Respondents

Learned counsel for the Respondents. : **Shri Yogesh Kesarwani**, Advocate
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:-

- (a) To issue order or direction to the respondents to grant the payment of pension alongwith all other retirement benefits since 1st April 2017.*
- (b) Any other relief as considered proper by the Hon'ble Tribunal be awarded in favour of the applicant.*

2. Brief facts of the case are that the applicant was enrolled in the Army on 27.03.2000 with terms of engagement of 17 years colour service and 02 years of reserve liability. He was discharged from service w.e.f. 01.04.2017 (FN) on completion of colour service under Rule 13 (3) III (i) (c) of Army Rules, 1954. The applicant has rendered 17 years and 05 days service including 10 years and 69 days non qualifying service being absent without leave/desertion.

3. While serving with 230 Medium Regiment the applicant was detailed to attend PPTC course at Arty Centre, Hyderabad w.e.f. 18.11.2004 to 29.12.2004. However, the applicant failed to report for the said course without sufficient cause and remained absent without valid reasons. Accordingly, Apprehension Roll dated 06.02.2005 was issued to Superintendent of Police, Bhind (MP) with a copy to next of kin

NOK). After completion of stipulated period, Court of Inquiry (C of I) was held and he was declared a deserter w.e.f. 16.11.2004. Applicant issued legal notice dated 20.10.2008 through Advocate Shri Varun Dev Sharma which was replied vide letter dated 07.11.2008. Thereafter, applicant filed writ petition No 2009 of 2009 before the Hon'ble High Court of Madhya Pradesh Bench at Gwalior for quashing his desertion order and allow him to rejoin the service. This writ petition was transferred to this Tribunal vide order dated 14.10.2009 and re-numbered as T.A. No. 520 of 2010. The said T.A. was disposed of vide order dated 13.04.2012 with direction that *'should the applicant report for joining at the Artillery Centre, Nasik, the Commandant, Artillery Centre Nasik shall permit him to join. It will be open to the respondents to deal with him in accordance with law'*.

4. In compliance of order dated 13.04.2012 the applicant rejoined from desertion at Arty Centre, Nasik Road Camp on 15.11.2014 and was directed to report to 230 Medium Regiment. Applicant again absented without leave from 22.11.2014 to 25.01.2015 and thereafter from 24.08.2015 to 27.08.2015 and was awarded 28 days rigorous imprisonment and 14 days pay fine on 08.02.2016 by Commanding Officer, 230 Medium Regiment for desertion/absent without leave. Thereafter, he was discharged from service w.e.f. 01.04.2017

(FN) on completion of his terms of engagement which included 10 years and 69 days as non qualifying service. This O.A. has been filed for grant of service pension on the ground that applicant has rendered 17 years service.

5. Learned counsel for the applicant submitted that after enrolment and having completed his basic military training the applicant was posted to High Altitude Area where he performed his duties with utmost devotion. He further submitted that in the year 2004 he was directed to attend PTI course at Hyderabad but on his way he suffered from serious ailment and could not join at Hyderabad Training Centre for the said course. It was further submitted that after getting treatment at Gwalior he tried to join at Hyderabad but was refused and asked to join at his unit where on reporting he was also not permitted to join.

6. Learned counsel for the applicant further submitted that during the period when applicant was to join Hyderabad Training Centre, there was a tragic incident in which his brother-in-law and sister expired and he had to shoulder additional responsibility of looking after sons and daughters of his in laws. It was further submitted that as soon as the applicant recovered from the incident he continuously tried to rejoin his duties at different places but was not permitted to do so. Applicant's learned counsel further submitted that by

order dated 13.04.2012 passed in T.A. No. 520 of 2010 he rejoined at Artillery Centre, Nasik Road Camp wherefrom he was discharged from service w.e.f. 01.04.2017 (FN) without granting pension and other consequential benefits which is contrary to the Hon'ble Supreme Court judgment passed in the case of **Associated Cement Companies Ltd vs PN Sharma**, AIR 1965 SC 1595. He pleaded for grant of pensionary benefits to the applicant w.e.f. 01.04.2017.

7. On the other hand, learned counsel for the respondents submitted that applicant deserted the service w.e.f. 16.11.2004 while proceeding to attend PPTC-3 at Arty Centre, Hyderabad which was scheduled from 18.11.2004 to 29.12.2004. Accordingly, apprehension roll was forwarded and after 30 days C of I was conducted which declared him a deserter. He further submitted that applicant rejoined the duty from desertion as per order dated 13.04.2012 passed in T.A. No. 520 of 2010, but he again deserted the unit twice for the period 22.11.2014 to 25.01.2015 and 24.08.2015 to 27.08.2015. He was awarded 28 days rigorous imprisonment and 14 days pay fine and after completion of terms of engagement he was discharged from service w.e.f. 01.04.2017 (FN).

8. Learned counsel for the respondents further submitted that since the applicant has not completed 15 years qualifying

service, therefore he is not entitled to service pension as per Regulation 47 of Pension Regulations for the Army, 2008 (Part-I). He pleaded for dismissal of O.A. on the ground that the applicant has rendered only 06 years, 09 months and 28 days qualifying service, he is not entitled to earn service pension.

9. Heard Shri Gaurav Gupta and Shri Gaurav Singh, learned counsel for the applicant and Shri Yogesh Kesarwani, learned counsel for the respondents and perused the record.

10. Undisputedly the applicant was enrolled in the Army on 27.03.2000. While posted with 230 Medium Regiment he was detailed to undergo PPTC-3 at Artillery Centre, Hyderabad commencing from 18.11.2004 but he failed to attend the same and remained absent without leave (AWL). Being AWL his apprehension roll was issued and C of I was conducted which declared him as a deserter w.e.f. 16.11.2004. The applicant rejoined duty on 17.11.2014 vide this Tribunal's order dated 13.04.2012. The relevant portion of the order passed in T.A. No. 520 of 2010 is reproduced as under:-

"4. It is not clear from the counter affidavit whether the service of the applicant has been terminated or any order of dismissal has been passed against him. Col Veerendra Mohan, the departmental representative has made statement on the basis of clarification given to him by Col Records, Artillery Centre, Nasik that as yet no order of dismissal has been passed against the applicant.

5. *The counsel for the applicant submitted in the circumstances if no order of dismissal has been passed against the applicant he may be permitted to join the unit.*

6. *In our opinion in the absence of any order of dismissal or termination of his services it is open to the applicant to join at the Artillery Centre, Nasik as it has been pointed out by the departmental representative that the unit of the applicant is in active field area at present.*

7. *We, therefore dispose of the original application with the direction that should the applicant report for joining at the Artillery Centre, Nasik, the Commandant, Artillery Centre, Nasik shall permit him to join. It will be open to the respondents to deal with him in accordance with law."*

11. After order of this Tribunal being passed, the applicant rejoined his duty on 15.11.2014. He again absented without leave from 22.11.2014 to 25.01.2015 and from 24.08.2015 to 27.08.2015 and was awarded 28 days rigorous imprisonment and 14 days pay fine. Applicant was discharged from service w.e.f. 01.04.2017 on completion of terms of engagement which included 10 years and 69 days of non qualifying service.

12. From the record it is clear that since the applicant has 06 years, 09 months and 28 days qualifying service at his credit, he is not entitled to service pension in terms of Regulation 47 of the Pension Regulations for the Army, 2008 (Part-I) which for convenience sake is reproduced below:-

"47. MINIMUM QUALIFYING SERVICE FOR SERVICE PENSION: *Unless otherwise provided for, the minimum qualifying service for earning a service pension is 15 years."*

13. Further, in terms of policy letter dated 21.05.1986 there is a provision that Officer-in-Charge, Records may condone shortfall upto six months service for grant of service pension

and Service Headquarters vide policy letter dated 14.08.2001 may condone shortfall beyond six months and upto 12 months but the above policy is not applicable in applicant's case as his shortfall in service is more than 12 months i.e. 10 years and 69 days on account of absent without leave/desertion, out of his total rendered service of 17 years and 05 days. Therefore, the applicant is not eligible for grant of service pension.

14. In view of the above, the O.A. is **dismissed** being devoid of merit.

15. No order as to costs.

16. Pending application(s), if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated:21.09.2022

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