

Court No. 1Reserved

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

ORIGINAL APPLICATION No. 660 of 2020

Wednesday, this the 13th day of September, 2023

**“Hon’ble Mr. Justice Ravendra Nath Kakkar, Member (J)
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

No. 3018528H, Rect. Heera Singh, S/o Shri Man Singh, R/o Village – Bhaupura, Post Office – Purakanera, Tehsil – Bah, District – Agra (U.P), Pin- 283113.

..... Applicant

Ld. Counsel for the Applicant : **Shri Virendra Kumar Gupta,
Advocate.**

Versus

1. Union of India, through Secretary, Ministry of Defence, Govt. of India, South Block, New Delhi -110011.
2. Chief of the Army Staff, Integrated Headquarters, Ministry of Defence, South Block – III, New Delhi – 110011.
3. The Director of Military Training, General Staff Branch, Army Headquarters, DHQPO, New Delhi -110011.
4. The Officer in – Charge, the Rajput Regimental Centre, PIN-900427 C/o 56APO.
5. The Commanding Officer, Training Battalion, the RRC, Fathehgarh, U.P. PIN-900427, C/o 56 APO.

.....Respondents

Ld. Counsel for the Respondents. : **Shri RC Shukla,
Central Govt. 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) The Hon’ble Tribunal may be pleased to set aside the letter No. 3018528/HS/ATC dated 14 Aug 2017 by which the applicant declared deserter w.e.f. 02.10.2016, (Annexure No.1) and the speaking order dated 07.04.2020 by which applicant has been dismissed.

(II) To direct the respondents to reinstate the applicant with effect from 02.10.2016 with all consequential benefits and allow him to complete the training of his trade.

(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. Tersely put the case of the applicant is that the applicant was enrolled in the Indian Army on 22.09.2016. He became absent without leave on 02.10.2016. After 9 days, he reported back for duty but he was not allowed to join training. After 30 days apprehension roll was issued and applicant was declared deserter. After three years, he was dismissed from service on

02.10.2019. Being aggrieved, applicant has filed instant O.A for quashing the dismissal order and to reinstate him in service.

3. Learned counsel for the applicant submitted that applicant was enrolled in Indian Army on 22.09.2016. During basic military training, he was suffering from fever and he became very weak. He requested Company Commander for leave who did not pay heed on his request. The applicant got information about serious illness of his mother so he left the Centre and became Absent Without Leave (AWL) with effect from 02.10.2016. After improving condition of his mother, he reported back for duty on 11.10.2016. He met Company Commander with his father (who is an ex-serviceman) and told him about circumstances and requested that he will not do so in future. On the advice of Company Commander he met with Commanding Officer, Training Battalion Rajput Rifles Centre, (RRC), Fatehgarh but he was not allowed to join duty. The applicant moved a written application dated 15.07.2017 by Registered post to the respondents but no reply was given. He moved another application dated 16.08.2017 to the Commandant RRC, Fatehgarh to rejoin duty in Basic Military Training. In response to letter dated 15.07.2017, the applicant received a letter stating that he has been declared deserter. A letter dated 29.08.2017 was also received by his mother in which she was advised to forward MRO for a sum of Rs. 14,312/- towards Final

Settlement of Account (FSA). The applicant moved two applications to Secretary, Ministry of Def, Govt of Indian with copy to Chief of the Army Staff, Integrated Headquarters of MoD, New Delhi. In reply to his appeal dated 16.08.2018, the applicant received a letter dated 13.09.2018 with direction to appear in person and present his case in detail on 05.10.2018 before Appellate Committee. The applicant appeared before the appellate authority where he was given all his original documents except Relationship Certificate. Consequently, the applicant could not appear in examination for other service and his life has been spoiled.

4. Learned counsel for the applicant further submitted that the applicant was declared deserter from 02.10.2016. He became AWL due to his and his mother's illness. It was his first lapse, hence a lenient view be taken and applicant be allowed to join his training. Many recruits in the past and present have been allowed to continue training who were absent from training. No apprehension roll letter dated 05.10.2016 was sent to his father or Superintendent of Police or District Collector of the Agra District. In reply to RTI application forwarded by the applicant, the Public Information Officer, Agra vide his letter dated 03.11.2020 has informed that he has not received apprehension roll letter dated 05.10.2016 from army authorities against the applicant. He further

submitted that Court of Inquiry is forged and circumstances had not been inquired. The applicant was called again and again in Centre but he was not taken back in Basic military training. The applicant submitted reply to show cause notice vide letter dated 18.11.2019 but his reply was not considered. As per rule Commandant of the Centre may retain or discharge recruits who is absent without leave, considering the case on its merit. The applicant was absent without leave only for nine days and he was not absent for 30 days, hence he should have been allowed to join training. Learned counsel for the applicant pleaded that order of dismissal passed by the respondents be quashed and applicant be reinstated in service with all consequential benefits.

5. On the other hand, learned Counsel for the respondents submitted that the applicant was enrolled in Indian Army on 22.09.2016 under Unit Headquarters Quota. Just after 10 days of reporting for training, he absented without leave (AWL) on 02.10.2016. An apprehension Roll dated 05.10.2016 was issued to District Magistrate Agra and Superintendent of Police, Agra to apprehend the applicant and to further handover him to the nearest Military Unit under intimation to Shri Man Singh, father of the applicant (an ex-serviceman). A Court of Inquiry (COI) was convened under the provisions of army Act Section 106 to inquire into the circumstances under which Recruit Heera Singh of 6

Platoon 'A' Training Company had become AWL from Company lines with effect from 02.10.2016. The applicant absented himself from duty without any authority for a period of more than 30 days. The applicant neither surrendered nor apprehended by police authorities and he was declared a deserter wef 02.10.2016. He was Struck of Strength (SOS) to supernumerary strength of Rajput Regimental Centre wef 02.10.2016 and Part II Order to this effect was published vide order dated 31.01.2017. His case was forwarded to Pay Account Office (PAO) (Other Ranks), Rajput Regiment for carrying out his Final Settlement of Accounts (FSA). PAO (ORs) carried out FSA of the applicant with Debit Balance of Rs. 14,312/-. Records, The Rajput Regiment vide letter dated 29.08.2017 forwarded blank Military Receivable Order (MRO) to Smt Batakha Shree, mother of the applicant to deposit Rs. 14,312/- in favour of PCDA (Central Command) Lucknow and to forward a copy of the MRO, duly receipted by the bank to Records, The Rajput Regiment for onwards submission to the PAO (ORs). The applicant submitted an application dated 16.08.2017 for rejoining his training which was replied vide Rajput Regimental Centre Fatehgarh vide letter dated 31.08.2017 mentioning therein that a recruit who has been absent without leave for a period of 30 consecutive days during Basic Military Training period, will not be allowed to rejoin his training in terms of

Integrated Headquarters letter dated 28.02.1986. Then applicant forwarded application dated 23.12.2017 to Secretary Ministry of Defence, Govt of India, South Block, New Delhi. Applicant was informed that he was AWL on 02.10.2016 during Basic Military Training and did not surrender or has not been apprehended till the date and has been declared deserter in terms of Army Act Section 106. The applicant also submitted an application to Appellate Authority under Right to Information Act 2005, to know the status of his case. Rajput Regimental Centre vide letter dated 13.09.2018 informed the applicant that his appeal has been listed for hearing on 05.10.2018 at 1200 hours at office of the Deputy Commandant, Rajput Regiment Centre and he was directed to present there and submit details of his case. It was also informed that in case of his non-appearance, the matter will be heard and decided on the basis of records held with office. His appeal was disposed off vide letter dated 05.10.2018. A show cause notice dated 20.09.2019 was served upon the applicant in accordance with Integrated Headquarters of Ministry of Defence (Army) letter dated 11.03.1980 as to why he should not be dismissed from service under Army Act Section 20 (3) being a deserter. Reply on the said show cause notice is still awaited. Now the applicant has filed instant O.A. with the prayer to set aside the letter dated 14.08.2017 by which the applicant was declared deserter and to

re-instate him in service. Applicant has been dismissed from service with effect from 02.10.2019 in terms of Integrated Headquarters of Min of Def (Army) letter dated 28.02.1986 as he was absent from training for 30 consecutive days. Learned counsel for the respondents pleaded that instant O.A has no substance and is liable to be dismissed.

6. Heard learned counsel for the parties and perused the documents available on record.

7. The moot question before us to decide is 'whether the applicant who has been dismissed from service due to absent from training for 30 days is entitled for reinstatement in service?'

8. There is no dispute that the applicant was enrolled in the Army on 22.09.2016. He absented himself from training on 02.10.2016. After three years, he was dismissed from service on 02.10.2019. Applicant represented his case for re-instatement in service which was rejected.

9. Keeping in view the rule position and facts and circumstances of the case following abnormalities have been observed:-

(a) In counter affidavit, respondents have stated that Apprehension Roll was issued and neither the applicant was apprehended nor he surrendered before military authority.

Applicant has categorically stated that he himself went to Rajput Regimental Centre number of times and he attended meeting of Appellate Committee held on 05.10.2018 at Record Office but he was not arrested by military authorities. No police came to his house to arrest him. He filed RTI dated 05.10.2020 before Superintendent of Police, Agra asking whether they have received any Apprehension Roll for arrest to Rect Heera Singh. A Reply was given by Nodal Officer Public Information, District- Agra vide letter dated 23.10.2020 that he did not receive any apprehension roll for arrest to Recruit Heera Singh. Thus, it appears that letter dated 05.10.2016 was not forwarded to the Superintendent of Police, Agra. Copy of letter of Nodal Officer Public Information, District- Agra dated 23.10.2020 is reproduced as under:-

प्रभारी जनसूचना प्रकोष्ठ,

आगरा

कृपया अपने पत्रांक आर टी आई दिनांक 05/10/2020 का अवलोकन करने का कष्ट करे जिसके द्वारा रिक्रूट हीरा सिंह पुत्र श्री मानसिंह निवासी - भाऊपुरा, पोस्ट पुराकनेरा, जनपद - आगरा, द्वारा राजपूत रेजिमेंट के पत्र दिनांक 07.04.2020 के द्वारा अप्रिहेंसन रोल भेजे जाने के सम्बन्ध में सूचना के अधिकार अधिनियम 2005 के अंतर्गत सूचना उपलब्ध कराये जाने विषयक है ।

उक्त सम्बन्ध में अवगत कराना है कि रिक्रूट हीरा सिंह पुत्र श्री मानसिंह निवासी- भाऊपुरा, पोस्ट - पुराकनेरा, जनपद आगरा के नाम से चरित्र सत्यापन सेल

के अभिलेखों में कोई अप्रिहेंसन रोल का आना नहीं पाया गया है। रिपोर्ट सादर सेवा में प्रेषित है।

पत्रांक- व -11/2020

प्रभारी सत्यापन सेल

दिनांक - अक्टूबर 23, 2020

पुलिस कार्यालय, जनपद आगरा

10. In Counter affidavit, respondents have stated that Apprehension Roll dated 05.10.2016 was issued to District Magistrate Agra and Superintendent of Police, Agra to apprehend the applicant and to further handover him to the nearest Military Unit under intimation to Shri Man Singh, father of the applicant (an ex-serviceman) but neither the applicant was apprehended by Civil Police nor he surrendered before the military authority. On perusal of documents, it appears that Apprehension Roll was not dispatched otherwise it would have been received by Police Authority as well as by father of the applicant.

(b) In this case a Court of Inquiry was held on 16.01.2017.

Following abnormalities have been observed:-

(i) Court of Inquiry was held on 16.01.2017 and three witnesses Nk Parashu Ram, Platoon Havildar, Hav Safeequl Khan, Company Havildar Major and Sub Jagat Singh, Company Senior JCO were examined. Court of Inquiry was held on 16.01.2017 but No 2999801K Nk Parashu Ram, the Witness No 1 has

given his statement and signed Court of Inquiry on **14.01.2017** before conducting of Court of Inquiry whereas Capt Sachin Kumar has signed Court of Inquiry on **16.01.2017**.

(ii) In Court of Inquiry dated 16.01.2017, No. 2995187H Hav Safeequl Khan of Rajput Regimental Centre is Witness No 2 who was performing duty of Company Havildar Major of 'A' Training Company was asked question No 5 **'Did you reported to anybody about Recruit Heera Singh being AWL from your Coy? He replied "Yes, After the thorough searched of Coy lines as well as Trg Area, I reported the matter to No. 2995187H Hav Safeequl Khan, who was performing the duties of CHM ATC"**.

(ii) Further, in Court of Inquiry dated 16.01.2017, JC-480942P Sub Jagat Singh, Company Senior JCO of Rajput Regimental Centre witness No 3 who was performing duties of Company Senior JCO was asked question No 5 **'Did you reported to anybody about Recruit Heera Singh being AWL from your Coy? He replied "Yes, After the thorough searched of Coy lines as well as Trg Area, I reported the matter to**

No. 2995187H Hav Safeequl Khan, who was performing the duties of CHM ATC”.

(c) The applicant preferred an appeal dated 16.08.2018. The Appellate Committee at Rajput Regimental Centre, Fatehgarh vide letter 13.09.2018 informed the applicant to appear in person and present his case in detail on 05.10.2018. The applicant appeared before applicant committee on the date fixed where he was given certain documents but Relationship Certificate was not given to him. Consequently, he could not apply for other services and his life spoiled.

11. Thus, keeping in view of the afore mentioned situation when we examine the facts and circumstances of the case, it is clear that Apprehension Roll was not dispatched to concerned addressees. Applicant was given all his documents except Relationship Certificate. Consequently, he could not apply for other services and his life spoiled. Court of Inquiry was held in very casual/ cursory manner only to complete formalities with intention to throw out the applicant from service and has no authenticity.

12. It is trite law that a thing should be done in the manner provided in the statute and not otherwise. When the statute

provides for a particular procedure, the authority ought to follow the same and cannot be permitted to act in contravention of the same. It has been hitherto uncontroverted legal position that where a statute requires to do a certain thing in a certain way, the thing must be done in that way and not contrary to that at all. Other methods or mode of performance are impliedly and necessarily forbidden. The aforesaid settled legal proposition is based on a legal maxim "*Expressio unius est exclusio alterius*", meaning thereby that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner and following other course is not permissible. (Vide: **Taylor v. Taylor**, (1876 1 Ch D 426: 45 LJ Ch 393; **Nazir Ahmed v. King Emperor**, AIR 1936 PC 253; **Deep Chand v. State of Rajasthan**, AIR 1961 SC 1527, **Patna Improvement Trust v. Lakshmi Devi**, AIR 1963 SC 1077; **State of Uttar Pradesh v. Singhara Singh**, AIR 1964 SC 358, **Chettiam Veettil Ammad v. Taluk Land Board**, AIR 1979 SC 1573; **State of Bihar v. J.A.C, Saldanna**, AIR 1980 SC 326; **State of Mizoram v. Biakchhawna**, (1995) 1 SCC 156, **J.N.Ganatra v. Morvi Municipality Morvi**, AIR 1996 SC 2520; **Haresh Dayaram Thakur v. State of Maharashtra**, AIR 2000 SC 2281; **Dhananjaya Reddi v. State of Karnataka**, AIR 2001 SC 2512; **Commissioner of Income-tax v. Anjuman M.H.Ghaswala**, AIR

2001 SC 3868; **Prabha Shankar Dubey v. State of Madhya Pradesh**; AIR, AIR 2004 SC 486; **Ram Phal Kundu v. Kamal Sharma**, AIR 2004 SC 1657 and **Indian Bank's Association v. Devkala Consultancy Service**, AIR 2004 SC 2615.

13. In '**State of Uttar Pradesh v. Singhara Singh**', AIR 1964 SC358, the Apex Court held as under:

“8. The rule adopted in Taylor v. Taylor, (1876) 1 Ch D 426: (1875) (1) Ch D 426): 45 LJ Ch 393 is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted.”

14. Keeping in view the mental pain, agony and humiliation suffered by the applicant, it is a fit case where the applicant should be awarded compensatory cost and the relief may be moulded accordingly. Hon'ble Supreme Court in the case of **Ramrameshwari Devi and others V. Nirmala Devi and others**, (2011) 8 SCC 249 has given emphasis to compensate the litigants who have been forced to enter litigation. This view has further

been rendered by Hon^{ble} Supreme Court in the case reported in **A. Shanmugam V. Ariya Kshetriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam** represented by its President and others, (2012) 6 SCC 430. Adhering to old junk system, gross injustice done to the applicant is a case of mind set. It requires hammering by administration of justice so as to obey and respect law and remain within the four corners of empire of law.

15. The question of award of cost is meant to compensate a party who has been compelled to enter litigation unnecessarily. The purpose is not only to compensate a litigant but also to caution the authorities to work in a just and fair manner in accordance to law. The case of **Ramrameshwari Devi and others** (supra) rules that it the party who is litigating, is to be compensated.

16. Apart from aforesaid judgments of Hon^{ble} Supreme Court, under Section 18 of the Armed Forces Tribunal Act, 2007, Tribunal has been conferred statutory power to impose cost while deciding application under Section 14 and an appeal under Section 15 of the Armed Forces Tribunal Act, 2007 as it may deem just, to quote:-

*18. **Cost.**- While disposing of the application under section 14 or an appeal under section 15, the Tribunal shall have power to make such order as to cost as it may deem just.”*

17. The purpose of statutory provision seems to compensate Armed Forces person who is representing his grievance keeping in view facts of case depending upon the gravity of injustice caused to him. Applicant was enrolled in the Army on 22.09.2016 and he was dismissed from service on 02.10.2019. He is a recruit who has not completed his basic military training. At this belated stage he cannot be reinstated in service.

18. In view of what has been discussed above, action of the respondents dismissing the applicant from service needs sympathetic consideration. The loss applicant has suffered cannot be compensated by means of money. The respondents are directed to pay cost of Rs. 2,00,000/- (Rupees two lacs only) which shall be deposited in Registry of this Tribunal expeditiously, say within a period of three months from today and the same shall be released in favour of the applicant through cheque.

19. With the aforesaid directions, O.A. is **disposed off** finally.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated : 13 September, 2023

Ukt/-