

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 348 of 2020**Tuesday, this the 30<sup>th</sup> day of November, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**Ex Recruit No. 301983N Pradeep Singh  
S/o Shri Suresh Singh  
ETC Training Battalion, The Rajput Regiment Centre  
Fatehgarh (UP)  
R/o Ward No. 05, Dhani Badhan,  
District- Jhunjhunu, Rajasthan-333514**.... Applicant**Ld. Counsel for the Applicant : **Shri Vinay Pandey**, Advocate.

Versus

1. Union of India, through Secretary, Ministry of Defence (Army),  
DHQ PO, New Delhi-11.
2. The Chief of Army Staff, IHQ of MoD (Army), New Delhi-  
110011.
3. The Commandant, The Rajput Regiment Centre, Fatehgarh  
(UP).
4. PCDA (P) Allahabad.

**... Respondents**Ld. Counsel for the Respondents : **Shri G.S. Sikarwar**,  
Central Govt Counsel**ORDER (Oral)**

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

- “(a) Issue/pass an order or direction of appropriate nature quashing the discharge of the applicant with effect from

11.05.2018 and reinstate the applicant into the Army service with all consequential benefits.

- (b) To issue/pass an order of appropriate nature directing the respondents to grant compensation which this Hon'ble Tribunal deem fit on account of double jeo pardy and consequential sufferings caused to the applicant in the present set of facts.
- (c) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.
- (d) Allow this application with costs.”

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 29.03.2017. During the Basic Military Training the applicant absented himself without leave (Absent Without Leave) on 21.06.2017 and voluntarily reported at Training Battalion on 03.07.2017. Therefore, Commanding Officer of Training Battalion awarded 10 days pay fine to the applicant. The applicant again absented himself without leave on 10.09.2017. Accordingly, Rajput Centre issued Apprehension Roll dated 11.09.2017. Since the applicant remained absent for more than clear 30 days, a Court of Inquiry was convened by Rajput Centre to inquire the circumstances under which applicant became AWL. After having been remained absent for clear 46 days, the applicant voluntarily reported at Training Battalion on 26.10.2017. Accordingly, Commanding Officer of Training Battalion exercised his powers under Army Act awarded 28 days Rigorous Imprisonment and 14 days pay fine to the applicant on 19.02.2018. Since the applicant had been absent without leave for a period of 30 consecutive days during the Basic Military Training period, the Commandant Rajput Regimental Centre served a Show

Cause Notice dated 31.03.2018 to the applicant for proposed dismissal or removal from service under the provisions of IHQ of MoD (Army) letter dated 28.02.1986. The applicant was discharged from service on the grounds “**Unlikely to Become an Efficient Soldier**” under Army Rules 13 (3) IV w.e.f 11.05.2018. Being aggrieved with procedure of discharge, applicant has filed this Original Application.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army in medically and physically fit condition. During the course of training, applicant was granted leave however, he could not report training centre on time due to certain unavoidable domestic compulsions and as such he overstayed leave for 13 days and secondly for 46 days. The applicant was awarded punishments for both instances. The respondents have not considered the reply of Show Cause Notice submitted by the applicant and discharged him arbitrarily in a very mechanical way taking shelter of policy letter dated 28.02.1986. The respondents by discharging the applicant after punishing for same offences have committed grave mistakes in the eyes of constitutional mandates of Article 14, 20(2) and 21 of the Constitution of India. He also submitted that can anybody be punished for twice of any similar offence, more so when the same is prohibited vide Article 20 of the Constitution of India, 1950. He pleaded to quash his discharge order and to reinstate the applicant into service with all consequential benefits.

4. On the other hand, Ld. Counsel for the respondents submitted that applicant was enrolled in the Indian Army on 29.03.2017. During

the Basic Military Training the applicant absented himself without leave (AWL) on 21.06.2017. The Rajput Regimental Centre issued Apprehension Roll dated 22.06.2017 to apprehend the applicant. After having been remained absent for 13 days, the applicant voluntarily reported at Training Battalion on 03.07.2017. Accordingly, Commanding Officer of Training Battalion exercising his powers conferred upon him under Army Act Section 39 (a) awarded 10 days pay fine to the applicant. The applicant again absented himself without leave on 10.09.2017. Accordingly, Rajput Centre issued Apprehension Roll dated 11.09.2017. Since the applicant remained absent for more than clear 30 days, a Court of Inquiry was convened by Rajput Centre under the provisions of Army Act, Section 106 to inquire the circumstances under which applicant became AWL. After having been remained absent for clear 46 days, the applicant voluntarily reported at Training Battalion on 26.10.2017. Accordingly, Commanding Officer of Training Battalion exercised his powers under Army Act and awarded 28 days Rigorous Imprisonment and 14 days pay fine to the applicant on 19.02.2018. Since the applicant had been absent without leave for a period of 30 consecutive days during the Basic Military Training period, the Commandant Rajput Regimental Centre served a Show Cause Notice dated 31.03.2018 to the applicant informing particulars of the proposed cause of action against him and allowed reasonable time to reply in writing reasons he had to urge against his proposed dismissal or removal from service under the provisions of IHQ of MoD (Army) letter dated 28.02.1986. The applicant sent his reply dated 23.04.2018 which

was not considered sufficient by Commandant Rajput Centre being his absence as illegal and approved his discharge from service on the grounds "**Unlikely to Become an Efficient Soldier**" under Army Rules 13 (3) IV. Accordingly, Speaking Order dated 11.05.2018 was issued to the applicant and he was finally discharged from service w.e.f. 11.05.2018. A discharge certificate dated 11.05.2018 was issued to the applicant under the provisions of Army Act, Section 23 read with Army Rule 12.

5. Learned counsel for the respondents further submitted that according to IHQ of MoD (Army) letter No A/20314/MT-3 dated 28.02.1986, "**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 again, such recruits will be discharged after necessary disciplinary action. The absentees for less than 30 consecutive days may be considered for relegation if otherwise found suitable for retention**". In the instant case, the applicant has absented himself from training w.e.f. 10.09.2017 i.e. more than 30 days, therefore, the applicant is not eligible for reinstatement into service as per existing rules and regulations. He pleaded that O.A. may be dismissed.

6. We have heard learned counsel for both sides and perused the material placed on record.

7. We find that applicant is a habitual deserter. He was AWL for more than 30 consecutive days and he was discharged from service as per rules and policy on the subject after holding a Court of Inquiry,

hence the applicant is not entitled for the relief prayed to quash his discharge order and to reinstate him in to service.

8. In the result, we do not find any illegality or illogicality in discharging the applicant from service. The O.A. lacks merit, deserves to be dismissed. It is accordingly **dismissed**.

9. No order as to costs.

10. Pending Misc. Applications, if any, stand disposed off.

**(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)**

Member (A)

Member (J)

Dated: 30<sup>th</sup> November, 2021

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