

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 104 of 2022**

Wednesday, this the 11th day of October, 2023

**“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Maj Gen Sanjay Singh, Member (A)”**

No. 8038434F Pnr (GD) Rohit Kumar Pandey, S/o Shri LP Pandey,
Posted at 1809 Pioneer Unit, PIN-918509, C/o 56 APO, R/o Vill-
Ramnagar Bhojpur, PO-Kishunganj, Teh-Sadar, Distt-Pratapgarh,
UP-230503.

..... Applicant

Ld. Counsel for the : **Shri Virat Anand Singh**, Advocate
Applicant

Versus

1. Union of India through Secretary, Ministry of Defence (Army),
South Block, New Delhi.
2. Chief of Army Staff, AHQ, Sena Bhawan, New Delhi-110106.
3. Senior Record Officer, Pioneer Records, Bangalore, C/o 56
APO.
4. Commanding Officer, 1809 Pioneer Unit, C/o 99 APO.

.....Respondents

Ld. Counsel for the Respondents : **Shri Yogesh Kesarwani**,
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 quash/set aside the apprehension roll dt 01 Oct 2021.

*“(b) To direct the respondents to take applicant on strength
of unit (nearest Pioneer Unit).*

(c) To further direct the respondents to issue suitable direction to attach the applicant to a unit here in Lucknow in light of policy and direction of Hon'ble High Court to meet the ends of justice.

(d) Any other relief as considered proper by the Hon'ble Tribunal be awarded in favour of the applicant.

(e) Allow this application with cost.

2. Brief facts of the case are that the applicant was enrolled in the Army on 03.01.2014. In the year 2020, while serving with 1806 Pioneer Unit at Lucknow, FIR No. 27 of 2020 dated 24.02.2020 was lodged against him under IPC 419, 420, 406, 506 and Section 7/13 of the Prevention of Corruption Act in which he was arrested by Uttar Pradesh Special Task Force (UPSTF) on 25.02.2020 on charges of alleged involvement in an illegal Army Recruitment. On arrest, he was lodged in civil jail by order of Learned District Court, Kaiserbagh, Lucknow. He was enlarged on interim bail till 25.05.2020 by order of Learned Additional District and Sessions Judge by order dated 30.03.2020 on a personal bond of Rs 50,000/- and undertaking from the applicant. On completion of present tenure with 1806 Pioneer Unit, as per his service profile, he was due to be posted to High Altitude Area (HAA) but due to medical restrictions his posting order was issued to 1839 Pioneer Unit (Modified Field Area) vide posting order dated 04.07.2020 with move date as on 05.11.2020. Being aggrieved with posting order, applicant preferred statutory complaint under Section 26 of the Army Act, 1950 on 31.07.2020 to the Chief of Army Staff. During pendency of his statutory complaint, he filed writ petition No. 19032 of 2020 before the Hon'ble High Court at Lucknow

which was disposed off vide order dated 09.11.2020 with directions to the respondents to decide his statutory complaint within 15 days. Meanwhile, his bail was further extended till 31.10.2020 vide order dated 31.08.2020. As his posting order was not stayed by the Hon'ble High Court, he was posted out to 1839 Pioneer Unit where he reported on 12.11.2020. Through bail application No. 421 of 2021 he was granted bail by the Hon'ble High Court of Lucknow vide order dated 18.01.2021 with certain conditions that (i) he will deposit amount of Rs 1,69,000/- in the Hon'ble Court, (ii) he shall not seek any adjournment on the dates fixed for evidence, (iii) he shall remain present before the trial court on each date fixed either personally or through his counsel when the witnesses are present in the court and (iv) he shall remain present in person before the trial court on the dates fixed for opening of the case, framing of charge and recording of statement under Section 313 of Criminal Penal Code. It was also ordered by the Hon'ble High Court that if in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as an abuse of liberty of bail and proceed against him in accordance with law.

3. The applicant, while being posted with 1839 Pioneer Unit was granted 32 days leave w.e.f. 16.05.2021 to 14.06.2021, failed to rejoin his unit without sufficient cause on expiry of leave. Since the applicant did not rejoin the unit on 15.06.2021, apprehension roll dated 15.06.2021 was issued. However, he rejoined voluntarily at

Pioneer Corps Training Centre, Bangalore on 02.08.2021 after a period of unauthorized absence of 49 days. On rejoining, he was charged under Section 80-82 of the Army Act, 1950 and punishment of 07 days rigorous imprisonment and 14 days pay fine was inflicted by Commandant of the Centre on 06.08.2021. Later, he was posted out to 1809 Pioneer Unit (Jorhat) on 14.08.2021. While serving in present unit he was granted 07 days casual leave for the period 11.09.2021 to 17.09.2021 to attend the court hearing at Lucknow on 13.09.2021. Since he failed to rejoin the unit after completion of aforesaid leave, apprehension roll dated 01.10.2021 was issued. Applicant's contention is that after expiry of leave he tried to report in the unit but was refused to enter gate of the unit, whereas respondents' contention is that applicant has never reported to his unit. This O.A. has been filed for setting aside the apprehension roll dated 01.10.2021 and take applicant on strength of nearest Pioneer Unit or attach him in Lucknow.

4. Submission of learned counsel for the applicant is that while applicant was posted at Lucknow, his name figured in an FIR in Civil Police Station, Sadar Cantonment in which he was arrested by police. It was further submitted that he was enlarged on interim bail vide order dated 31.02.2020. The applicant made a representation to Chief of the Army Staff (COAS) on 31.07.2020 for his attachment in Lucknow but during pendency of said representation he filed writ petition No. 19032 of 2020 before the Hon'ble High Court at Lucknow which was disposed off vide order dated 09.11.2020 with directions to

the respondents to decide his representation within 15 days. Thereafter, his representation was rejected by Chief of the Army Staff vide order dated 09.12.2021.

5. Further submission of learned counsel for the applicant is that he was required to attend court hearing on 13.09.2021 for which he was granted 07 days casual leave for the period 11.09.2021 to 17.09.2021 but when after expiry of leave he reported for duty he was not allowed to rejoin duty and was declared a deserter vide apprehension roll dated 01.10.2021 followed by Court of Inquiry. It was further submitted that being aggrieved with denial of reporting in the unit he reported to Centre Commandant, Pioneer Corps on 14.12.2021 but on being granted no redressal, he returned back and filed present O.A. His submission is that since his court case is pending in the court of law at Lucknow, his apprehension roll be set aside and he be attached to Lucknow to defend his case.

6. Per contra, learned counsel for the respondents submitted that applicant, while serving with 1806 Pioneer Unit at Lucknow, was arrested by UPSTF, Lucknow on 25.02.2020 for an offence under Section 419, 420, 406, 506 of IPC and Section 7/13 of the Prevention of Corruption Act on charges of alleged involvement in an illegal Army Recruitment and he was sent to jail on the order of Learned District Court, Kaiserbagh. It was further submitted that vide order dated 30.03.2020 passed by Learned Additional District and Sessions Judge he was granted interim bail till 25.05.2020 on a personal bond of Rs 50,000/- alongwith an undertaking from the applicant.

7. Learned counsel for the respondents further submitted that though as per his service profile he was due to be posted to High Altitude Area but since applicant was in low medical category, his posting order was issued for 1839 Pioneer Unit which was located in modified field area with instructions to move by 05.11.2020. It was further submitted that applicant preferred statutory complaint dated 31.07.2020 for issuance of appropriate order from the authority and hold the posting order under abeyance till finalization of the case at Lucknow. During the pendency of said statutory complaint, he filed Writ Petition No. 19032 of 2020 (S/S) before the Hon'ble High Court at Lucknow and vide its order dated 09.11.2020 respondents were directed to decide applicant's statutory complaint within 15 days. Meanwhile, his interim bail was further extended till 31.10.2020 by order dated 31.08.2020 and since there was no specific order passed by the Hon'ble High Court with respect to stay of his posting, he was posted out to 1839 Pioneer Unit where he reported on 12.11.2020. Later, he was granted regular bail by the Hon'ble High Court, Lucknow vide order dated 18.01.2021 with certain conditions.

8. Learned counsel for the respondents further submitted that while being posted with 1839 Pioneer Unit, he was granted 32 days leave up to 14.06.2021 but when he did not rejoin duty after expiry of leave, apprehension roll dated 15.06.2021 was issued. However, he rejoined voluntarily at Pioneer Corps Training Centre, Bangalore on 02.08.2021 after a period of unauthorized absence of 49 days for which he was awarded 07 days rigorous imprisonment and 14 days

pay fine and posted out to 1809 Pioneer Unit on 14.08.2021. His statutory representation was rejected by Chief of the Army Staff vide order dated 09.12.2021.

9. It was further submitted that while serving with 1809 Pioneer unit, the applicant was granted 07 days leave w.e.f. 11.09.2021 to 17.09.2021 to attend the court hearing at Lucknow on 13.09.2021, but after expiry of said leave when he did not rejoin duty, apprehension roll dated 01.10.2021 was issued but he is still absconding. It was submitted that till date neither applicant has reported to unit concerned nor did he report to Pioneer Corps Centre, Bangalore otherwise as per norms he being a bonafide military personnel would have been allowed entry in unit on production of his Identity Card. He pleaded for dismissal of O.A. on the ground that applicant is a deserter w.e.f. 18.09.2021 vide apprehension roll dated 01.10.2021 and he never reported to unit.

10. Heard Shri Virat Anand Singh, learned counsel for the applicant and Shri Yogesh Kesarwani, learned counsel for the respondents and perused the record.

11. The undisputed facts of the parties are that applicant was enrolled in the Army (Pioneer Corps) on 03.01.2014 and while posted with 1806 Pioneer Unit, he, being involved in alleged criminal case, was arrested by UPSTF, Lucknow on 25.02.2020. He was enlarged on interim bail till 25.05.2020 by Learned Additional District and Sessions judge, Lucknow vide order dated 30.03.2020. After bail, he was taken on strength of 1806 Pioneer Unit. Thereafter, as per

service profile, he was due to be posted to High Altitude Area but since he was placed in low medical category, his posting order was issued to 1839 Pioneer Unit located in modified field area and move date was fixed as 05.11.2020.

12. Against his posting order, he filed statutory complaint dated 31.07.2020 for holding the posting order under abeyance till finalization of his criminal case. During pendency of statutory complaint, he filed writ petition No. 19032 of 2020 (S/S) which was disposed off vide order dated 09.11.2020 with directions to respondents to decide his representation within 15 days. His statutory complaint was rejected vide order dated 09.12.2021 keeping in view of all aspects i.e. his overall profile and in the light of relevant rules, policies and comments of intermediate authorities. For convenience sake, order dated 09.12.2021 is reproduced as under:-

“1. No 8038434F Pnr (GD) Rohit Kumar Pandey, Pioneers, has submitted a Statutory Complaint dated 31 Jul 2020 against posting order issued by Records Pioneer Corps on 04 July 2020. The individual states that he was arrested by Special Task Force (STF) Lucknow on 25 Feb 2020 along with another NCO for their alleged involvement in a fraudulent enrolment case on the basis of a complaint filed by a civilian and was released on interim bail of eight weeks due to prevailing COVID outbreak on 30 Mar 2020. In the meantime, his posting was issued by Records Pioneer Corps on 04 July 2020 with move date of 05 Nov 2020. He requests that his posting order be held in abeyance till finalisation of the case filed against him by the Special Task Force.

2. The individual has requested that his case be placed before COAS for kind intervention and appropriate orders. Meanwhile his posting order be held in abeyance till finalisation of the case filed against him by the Special Task Force, Lucknow.

3. I have perused the statutory complaint of the individual along with his overall profile and relevant documents. After consideration of all aspects of the complaint in the light of relevant rules, policies, comments of intermediate authorities and examining it against the redress sought, it emerges that the complaint lacks merit and substance.

4. I, therefore, direct that the statutory complaint submitted by individual be rejected, being devoid of merit and substance.

5. The individual be informed accordingly.”

13. Meanwhile, applicant's interim bail was extended up to 31.10.2020 vide order dated 31.08.2020. Later, he was granted bail by the Hon'ble High Court Lucknow vide order dated 18.01.2021. Since the Hon'ble High Court, Lucknow while passing order dated 09.11.2020 did not mention about his stay order, he was posted out to 1839 Pioneer Unit where he reported on 12.11.2020. While serving in the unit he was granted 32 days leave for the period 16.05.2021 to 14.06.2021 but after expiry of leave, he failed to rejoin duty. Accordingly, apprehension roll dated 15.06.2021 was issued, however, he rejoined voluntarily at Pioneer Corps Training Centre, Bangalore on 02.08.2021 after a period of unauthorized absence of 49 days for which he was inflicted seven days rigorous imprisonment and 14 days pay fine on 06.08.2021 and posted out to 1809 Pioneer Unit on 14.08.2021.

14. While serving with 1809 Pioneer Unit, he was granted 07 days casual leave w.e.f. 11.09.2021 to 17.09.2021 to attend the court hearing at Lucknow on 13.09.2021. Since after expiry of leave he did not rejoin duty on 18.09.2021, apprehension roll dated 01.10.2021 was issued. Applicant's contention is that after expiry of leave, he tried to rejoin his duty on 17.09.2021 at 1809 Pioneer Unit, but was refused admission in the unit. In regard to this respondents' contention is that applicant neither reported the unit nor did he inform unit authorities about his arrival and refusal at the entry gate. His other contention in this regard is that applicant being a bonafide

military personnel has every right to enter the unit on producing his Identity Card.

15. We have given our anxious consideration to the rival submission of both the parties and we find that neither there is any record with regard to his reporting the unit nor has the applicant produced any document showing that he reported the unit and was denied entry in the unit. In such circumstances, applicant's contention that he reported the unit and was denied entry, is disbelieving and does not inspire confidence.

16. Applicant is on bail and his case is subjudice with Learned Additional District and Sessions Judge. Applicant had filed Criminal Misc case No. 1304 (C) of 2021 before the Hon'ble High Court, Lucknow for non implementation of order dated 09.11.2020 which has still not been listed and statutory complaint has already been rejected by the Chief of the Army Staff vide order dated 09.12.2021. In such situation, this Tribunal cannot exercise power of judicial review on Hon'ble High Court order.

17. The record shows that being involved in a criminal case, applicant was granted frequent leave to attend court case (total leave granted 142 days between 12.11.2020 to 01.06.2021), even then he overstayed leave for 49 days when he was granted leave for the period 16.05.2021 to 14.06.2021 and he reported voluntarily to Pioneer Corps Training Centre, Bangalore where 07 days rigorous imprisonment and 14 days pay fine was inflicted upon the applicant under section 39 (b) of the Army Act, 1950. Further, in addition to

aforesaid leave, while serving with 1809 Pioneer Unit when he was granted leave for the period 11.09.2021 to 17.09.2021 to attend court hearing at Lucknow on 13.09.2021, he never turned up after expiry of leave, with the result apprehension roll dated 01.10.2021 was issued to various agencies.

18. As per rules on the subject, applicant would have now been declared a deserter after 30 days from the date of issue of apprehension roll followed by a C of I. Since applicant is in possession of his Identity Card and has not been dismissed from service, he has every right to surrender in terms of Section 142 (5) of the Army Act, 1950. On reporting, respondents shall take him on their strength and proceed in accordance with rules.

19. In view of the above, applicant's request to set aside apprehension roll dated 01.10.2021 and issue direction for his attachment at Lucknow being not justified is not acceded.

20. Apropos above O.A. is **dismissed**, accordingly.

21. No order as to costs.

22. Pending Misc. Application (s), if any, shall be treated to have been disposed off.

(Maj Gen Sanjay Singh)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 11.10.2023
rathore