

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

**ORIGINAL APPLICATION No. 681 of 2021**

Tuesday, this the 12<sup>th</sup> day of July, 2022

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

Ram Gopal Yadav (No. 4203707L Sep) S/o Shri Ram Dularey Yadav, R/o Village Dumari Khas, Post – Sardar Nagar, Tehsil & Police Station-Chauri Chaura, District-Gorakhpur.

..... Applicant

Ld. Counsel for the Applicant : **Shri Ashok Kumar**, Advocate  
**Shri Rashtrapati Khare**, Advocate

Versus

1. The Union of India, through Secretary, Ministry of Defence, Government of India, New Delhi.
2. Officer In-charge Records, 13<sup>th</sup> Battalion, Kumaon Regiment, Pin-911313, C/o 99 APO.

.....Respondents

Ld. Counsel for the Respondents. : **Shri Shyam Singh**, 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 :-

- (i) This Hon'ble Court may graciously be pleased to quash the impugned order 7-12-2016 (Annexure No.A-6) passed by the respondent No.2.*
- (ii) This Hon'ble Court may graciously be pleased to direct the respondent No.2 to discharge/release the applicant from service by considering his domestic problem and also ensure the payment of arrear of salary and other emoluments as per rules of the department to the applicant.*
- (iii) This Hon'ble Court may further be pleased to pass such other and/or further order as deemed fit, proper and necessary in the circumstances of this case.*
- (iv) Award costs to the applicant.*

2. Brief facts of the case are that the applicant was enrolled in Kumaon Regiment of the Indian Army on 08.07.2009. While serving with 26 Rashtriya Rifles (26 RR) he requested for annual leave. He was despatched from 26 Rashtriya Rifles on permanent posting to 13 Kumaon Regiment with 30 days part of annual leave for the year 2016 excluding six days preparatory leave and Sunday on 20.04.2016 (AN). As per movement order

dated 18.04.2016, after termination of leave, he was supposed to report to Dibrugarh Transit Camp by 27.05.2016 (FN) but he failed to do so. The unit authorities made numerous attempts to trace the applicant and finally when the contact was made he was advised to report to unit but when he did not join the unit, apprehension roll dated 13.07.2016 was issued as per Army Order 43/2001/DV. Meanwhile, four letters (one each from the individual and his father and two from his wife) were received by the unit requesting for voluntary discharge from service on compassionate grounds. Consequent to that unit intimated the applicant to report physically for mandatory documentation and regularization of leave prior to discharge. The applicant was also informed to deposit his Identity Card being a Govt property but neither he reported to unit nor deposited his Identity Card till date. After receipt of apprehension roll applicant's wife Smt Usha Yadav forwarded an application to Chief of Army staff requesting for voluntary discharge of her husband and withdrawal of arrest notice. Applicant's application/representation dated 13.07.2016 for premature discharge on compassionate grounds was pending and therefore he filed O.A. No. 217 of 2016

before this Tribunal which was disposed of vide order dated 31.08.2016 directing the respondents to decide his representation within four months with speaking and reasoned order. In compliance of Tribunal's order dated 31.08.2016 the respondents vide letter dated 07.12.2016 issued speaking and reasoned order. This O.A. has been filed to quash order dated 07.12.2016 and issuing directions to respondents to sanction his premature discharge on compassionate grounds.

3. Learned counsel for the applicant submitted that the applicant was enrolled in the Army on 08.07.2009. He was granted leave-cum-posting on 20.04.2016 and after availing leave, before he could join the duties on 27.05.2016, he received information that the condition of his father had turned serious. He further submitted that due to his father's illness he was compelled to stay at home without reporting for duty in his unit. His further submission is that it was in the above backdrop that the applicant applied for premature discharge from Army service.

4. Learned counsel for the applicant further submitted that his parents who are about 80 years old are suffering from various age related diseases. His mother is approx

90% blind and his father is suffering from heart disease and they require constant attendant for their routine work. He further submitted that though his parents are getting treatment with different doctors at Allahabad and Gorakhpur, their condition is deteriorating day-by-day and that is the reason he applied for premature discharge from service but the respondents have not considered his premature discharge application arbitrarily even after Tribunal's order dated 31.08.2016 and passed impugned order dated 07.12.2016 which is under challenge. He pleaded for applicant's premature discharge from Army service solely on domestic compulsions.

5. On the other hand, learned counsel for the respondents submitted that applicant, while proceeding on permanent posting-cum-leave from 26 Rashtriya Rifles to his parent unit, was required to report to Dibrugarh Transit Camp on 27.05.2016 which he failed to report. Accordingly, apprehension roll dated 13.07.2016 was issued in terms of Army Order 43/2001/DV. He further submitted that applications dated 10.07.2016, 13.07.2016, 27.11.2016 and 01.08.2016 were received from applicant, his wife and father requesting for voluntary discharge from service on compassionate grounds and in

response to them it was informed that the applicant should report to the unit if he is desirous of proceeding on premature discharge. He further submitted that on receipt of letter from Smt Usha Devi, applicant's wife, it was informed that applicant should report to unit for completion of discharge formalities but even then he failed to report to his unit. His other submission is that applicant's parents would have been provided all possible assistance with regard to his medical ailments by providing his attachment to Lucknow/Gorakhpur where better medical facilities are existing. Since the applicant overstayed leave, his premature discharge application cannot be considered on compassionate grounds in absentia. Learned counsel for the respondents further submitted that as per records there is nothing adverse against the applicant, however, this does not give him any liberty, being a subject to the Army Act, to overstay leave granted to him. His submission is that the applicant is a deserter, therefore, further action in the matter will be taken in due course of time according to rules on subject. He pleaded for dismissal of O.A.

6. Heard Shri Ashok Kumar and Shri Rashtrapati Khare, learned counsel for the applicant and Shri Shyam Singh,

learned counsel for the respondents and perused the material placed on record.

7. There is no dispute that the applicant while proceeding on leave-cum-posting from 26 Rashtriya Rifles to his parent unit i.e. 13 Kumaon did not report to Dibrugarh Transit Camp on 27.05.2016 after completion of leave. Efforts were made by the unit to trace the applicant. Initially he could not be contacted but after numerous attempts, through one of the acquaintance of a unit person, who resides near applicant's village, he was finally traced and contacted over telephone. Despite advice and counselling by various appointments of the unit he failed to report. Accordingly, apprehension roll dated 13.07.2016 was issued as per Army Order 43/2001/DV.

8. Four letters dated 10.07.2016, 13.07.2016, 27.11.2016 and 01.08.2016 were received by the unit from applicant, his wife and father requesting for voluntary discharge from service on compassionate grounds. In response to aforesaid letters applicant was advised to report to his unit so that his discharge could be processed under Rule 13 (III) (iv) of the Army Rules, 1954 as per which physical presence is required for completion of mandatory documents and regularization of absence

period w.e.f. 27.05.2016 till his reporting in unit. The applicant was advised vide letter dated 24.05.2018 to deposit his Identity Card which is a property of the Govt which in fact has not been deposited as yet.

9. O.A. No. 217 of 2016 was filed by the applicant which was disposed of vide order dated 31.08.2016 with directions to the respondents to decide his representation dated 13.07.2016. This representation was decided vide order dated 07.12.2016 by a speaking and reasoned order, which for convenience sake is reproduced as under:-

*"1. In reference to the Hon'ble AFT Bench Lucknow order dated 31 August 2016 passed in subject case, your request for discharge from service and payment of arrears of salary and other emoluments was re-considered and in pursuance of same and the orders passed by the Hon'ble AFT Bench Lucknow through O.A. No 217 of 2016 panel on 31 August 2016 this reasoned speaking order, is passed after taking the grounds raised by you in the application dated 13 July 2016 into account.*

*2. Whereas you were despatched from 26 Rashtriya Rifle on permanent posting to 13 Kumaon with 30 days part of annual leave for the year 2016 alongwith 6 days preparatory leave excluding Sunday on 20 April 2016 (After Noon) and journey period. You were required to report by 27 May 2016 (Fore Noon) at Dibrugarh Transit Camp but you failed to do so. Moreover, it is pertinent to note that when you did not report to this unit on time, the unit traced you out at your village and asked you to report to the unit at the earliest. In spite of advice and counselling by various appointments, you refused to report to the unit. Hence, apprehension roll was issued to by all concerned on 13 July 16 in compliance to instructions contained in Army Order 43/2001/DV.*

*3. Whereas unit received four letters dated 10 July 2016, 13 July 2016, 27 July 2016 and 01 August 2016*



*(one each from you and your father and two from your wife, respectively) requesting for voluntary discharge from service on compassionate grounds. These letters were suitably replied to and you were requested to report to the unit, so that your discharge could be processed under Army Rule 13 III (iv) in your physical presence after ascertaining mandatory documentation and regularization of your service from the date of absence that is with effect from 27 May 2016 to till date.*

*4. Whereas the health related aspects of your parents, as mentioned by your letters dated 10 July 2016, 13 July 2016 and 27 July 2016, were looked upon with utmost compassion, and the unit would have rendered all possible assistance to you to look after them by taking up a case with Records, The Kumaon Regiment for your attachment at Lucknow on compassionate grounds. However, you did not approach the unit for the same and at the same time it does not absolve you from reporting to the unit on due date (i.e. 27 May 16 (fore noon). Thus, you committed an offence under Army Act Section 39 (b) by overstaying leave granted to you.*

*5. Whereas you requested for the voluntary discharge from service on compassionate grounds in absentia, the same is contrary to the existing Army Laws and can only be processed in consonance with Army Rule 13 III (iv). The same requires your physical presence at this unit, scrutiny of a number of documents by the Commanding Officer while granting voluntary discharge and regularization of your period of absence.*

*6. However, in compliance of the Hon'ble AFT order, you are hereby once again advised to report for duty forthwith. Your discharge process will be taken up on priority with utmost compassion after regularization of absence period and completion of required documentation in consonance with Army Rule 13 III (iv). The payment of arrears of salary and other emoluments will also be paid, thereafter.*

*7. And now therefore, after due deliberation of all above circumstances and facts, it is reiterated that your request for discharge from service in your absence cannot be accepted to, being impracticable and in violation of Army Rule 13 III (iv) and Army Act Section 39 (b).*

*8. And in pursuance whereof court order dated 31 August 2016 passed by the Hon'ble AFT Bench Lucknow, stands complied with."*

10. From the aforesaid, we are clear that this Tribunal's order dated 31.08.2016 has been complied with. We further observe that applicant is a deserter from field area and has never reported to any Army authority w.e.f. 27.05.2016. We also observe that impugned order dated 07.12.2016 has been passed keeping in view the provisions laid down in Army Regulations/Acts and we find no illegality in it.

11. As per rules on the subject, if the applicant desires to proceed on premature discharge from service on compassionate grounds, his physical presence is mandatory in the unit for completion of discharge formalities.

12. In view of the above we hold that order dated 07.12.2016 was issued in accordance with Army Rules/Act and it requires no interference.

13. O.A. is **disposed of** accordingly.

14. No order as to costs.

15. Miscellaneous applications, pending if any, stand disposed of.

(Vice Admiral Abhay Raghunath Karve)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated : 12 July 2022

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