

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 312 of 2016**Wednesday, this the 18th day of May, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)Ex-Rfn (Musician) Suraj Singh Negi (Army No. 4073877-H)
of Garhwal Rifles (IMA Dehradun)
S/o Ex Hony Capt Shanker Singh Negi,
R/o 74 Vyom Prasth, GMS Road, Post Office – Kanwali,
District – Dehradun (Uttarakhand) – 248001**.... Applicant**Ld. Counsel for the Applicant : **Shri K.K. Singh Bisht**, Advocate.

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of Army Staff, IHQ of MoD (Army), South Block, New Delhi-110011.
3. IHQ of MoD (Army), AG'S Branch, Addl Directorate General of MP/MP-8 (I of R), West Block-III, RK Puram, New Delhi – 110001.
4. Commandant, Indian Military Academy (IMA) PO – Prem Nagar, Dehradun (Uttarakhand) – 248007.
5. Officer-in-charge Records, The Garhwal Rifles, Pin – 900400, C/o 56 APO.

... RespondentsLd. Counsel for the Respondents : **Dr. Shailendra Sharma Atal**,
Central Govt Counsel**ORDER**

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

- “(a) Issue/pass an order or direction to the respondents to quash/set-aside the arbitrary, capricious and illegal order dismissal (Annexure No. A-1(i) of the applicant by respondent No. 4 with effect from 14 August 2007.
- (b) Issue/pass an order or direction to the respondents to quash/set aside the publication of dismissal of the applicant from service vide Indian Military Academy Part II Order No. 0/0041/2008 dated 31.05.2008 (Annexure No. A-1(ii).
- (c) Issue/quash an order or direction of appropriate nature to the respondents to reinstate the applicant with all consequential service and monetary benefits.
- (d) Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.
- (e) Allow this application with costs.”

2. Brief facts of the case are that the applicant was enrolled in the Indian army on 10.08.1992. The applicant was on guard duty in military store of Indian Military Academy (IMA) on the intervening night of 09/10.12.2003 when there was an explosion from store room and a burnt and charred dead body inside the storeroom was found and it was presumed that Suraj Singh Negi (applicant) has been burnt to death. The applicant deserted himself from the site of accidental fire of IMA, Dehradun and later on he was apprehended by Bhatinda police in disguise named Anil and was also involved in ante national activities. The Identity Card, uniform and some classified maps/sketches/incriminating documents were recovered from his possession. The applicant concealed the facts that he was convicted by CJM, Bhatinda under Section 140 of IPC and was awarded sentence of 03 months of RI which he completed while in custody in

Central Jail, Bhatinda. Though the applicant was acquitted by the Hon'ble High Court of Uttarakhand but he was also a deserter w.e.f. 10.12.2003 to 07.07.2005 till he was arrested by Bhatinda Police on 08.07.2005. Since the applicant had served only 11 years and 04 months (including 03 days NQS), he has been dismissed from service as per Army Act and Army Rules after holding a Court of Inquiry giving him a status of 'Non Ex-Serviceman'. The applicant has filed this Original Application to grant him status of 'Ex-serviceman' and to re-instate him into service.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 10.08.1992. The applicant was on guard duty in military store of Indian Military Academy (IMA) on the intervening night of 09/10.12.2003 and was relieved by L/Nk Harendra Bhatt. At about 1.30 in the night, there was an explosion from store room which was extinguished by L/Nk Harendra Bhatt with the help of another soldier Anand Singh. They found a burnt and charred dead body inside the storeroom. Since the applicant was on sentry duty, they called him but he did not turn up and thus, they presumed that Suraj Singh Negi (applicant) has been burnt to death. An FIR was lodged and applicant's father was also called who identified dead body of his son and thus, applicant was reported to be dead due to ASPHYXIA as a result of 95% Thermal Burn in an accidental fire. Accordingly, occurrence of death was published by IMA Dehradun duly supported by a Court of Inquiry. Thereafter, necessary action to

release terminal/death benefits in favour of Smt. Sangeeta Negi (Wife) was initiated and paid to her.

4. Learned counsel for the applicant further submitted that on the intervening night of 09/10.12.2003, applicant was shocked due to the incident, believing that someone wants to kill him and he ran away from the place of duty and later on he was nabbed by Bhatinda police on 08.07.2005 doing suspicious activities. An FIR was lodged at Police Station Kotwali, Bhatinda bearing No. 408 dated 08.07.2005 under Section 124-A, 170 of IPC and under Section 3 of the Official Secret Act, 1923. Applicant was tried by Additional Sessions Judge, Bhatinda in Case No. 63 and was acquitted of the offences under Section 124-A, 170 of IPC and under Section 3 of the Official Secret Act, 1923. Police Station, Kotwali Bhatinda informed Dehradun Police that Suraj Singh Negi whom Army authorities had declared burnt dead, is alive. Accordingly a case crime under Sections 302, 201, 120-B and 420 of IPC was registered at P.S. Cantt, Dehradun. A charge sheet against the applicant was submitted in the court of CJM, Dehradun and applicant was held guilty by Sessions Judge, Dehradun who sentenced him to undergo life imprisonment and pay a fine of Rs. 10,000/- under Section 302 and 7 years RI and fine of Rs. 5000/- under Section 201.

5. Learned counsel for the applicant further submitted that applicant preferred two Criminal Appeals Nos. 31 of 2007 and 206 of 2008 before the Hon'ble High Court of Uttarakhand at Nainital which were disposed of on 18.06.2010 and both appeals were allowed. The

conviction and sentence awarded by the Trial Court was set aside and applicant was acquitted of the charges of offence punishable under Sections 302 and 201 of IPC. Thereafter, respondent No. 5 informed applicant's wife that fresh discharge book will be issued as applicant has been dismissed from service on 14.08.2007, however, no impugned order was provided to the applicant. The discharge book was received through Soldier Board, Deharadun in which applicant's status was mentioned 'Non Ex-serviceman'. The applicant wrote a letter on 03.02.2012 to Record Office requesting to change status of applicant as Ex-Serviceman. Thereafter, so many letters have been sent to Record Office but no action has been taken by the respondents. The applicant approached various authorities stating that since the applicant was dismissed from service under Section 20 of the Army Act, Rule 17 of Army Rules and para 423 of Regulations for the Army, 1987 on his conviction by Civil Court for the offences under Section 302 and 201 of IPC, he is entitled for status of Ex-serviceman. In reply of the respondents, only assurance was received that applicant's case is under progress but so far nothing has been done to reinstate him in service. Since, the applicant has been acquitted from the criminal case for which he was dismissed from service, he is liable to be reinstated into service with all consequential service and monetary benefits from the date of his discharge.

6. On the other hand, Ld. Counsel for the respondents submitted that applicant was reported as dead on 10.12.2003 due to ASPHYXIA as a result of 95% Thermal Burn in an accidental fire, by IMA

Dehradun vide signal dated 10.12.2003. An occurrence of death was published duly supported by a Court of Inquiry. Accordingly, necessary action with regard to release of terminal/death benefits in favour of Smt. Sangeeta Negi (wife) was initiated and an amount of Rs. 7,13,776/- for terminal/death benefits was paid to the wife of the applicant. Later on, it was intimated by IMA Dehradun vide letter dated 26.07.2005 that Suraj Singh Negi, who was declared dead by Army authorities is alive and has been apprehended by Civil Police, Bathinda on 08.07.2005. IMA Dehradun was directed to publish casualty of apprehension of the applicant. An internal security situation report dated 19.07.2005 initiated by HQ Uttaranchal Sub Area was also received by Record Office intimating apprehension of the applicant in Anti National Activities and Identity Card, Uniforms and some classified maps/sketches were recovered from the applicant. IMA Dehradun also intimated that applicant has been convicted by the Sessions Judge, Dehradun and awarded life imprisonment and fine of Rs. 10,000/- under Section 302 and 7 years RI and fine of Rs. 5000/- under Section 201. IMA Dehradun was directed to publish occurrence of award of punishments and take further action to dismiss the applicant in terms of para 423 of Regulations for the Army, 1987 on being convicted by the Court. The Commandant, IMA Dehradun ordered dismissal of the applicant from service under Section 20 of Army Act, 1950 read with Rule 17 of Army Rules, 1954 and para 423 of Regulations for the Army 1987 and applicant was terminated from service w.e.f. 10.12.2003.

7. Learned counsel for the respondents further submitted that it is pertinent to mention that applicant was also convicted by CJM, Bathinda under Section 140 of the IPC in between which the Army authorities were not aware about and he deliberately concealed this fact as he was aware that any conviction can debar him from benefits from the Army. This came to light when applicant in his statement on 14.07.2012, 30.10.2012 and 13.12.2012 admitted that he had also been convicted under Section 140 of IPC and sentenced to 03 months RI by CJM, Bhatinda. This was also a ground to terminate the services of the applicant under Section 20 of Army Act, 1950 read with Rule 17 of Army Rules, 1954 and para 423 of Regulations for the Army, 1987 but since the applicant's services were already terminated on the basis of his conviction by Sessions Court, Dehradun no cognizance of conviction and sentence of CJM Bhatinda could be taken at a later date. This fact has not been mentioned by the applicant in present O.A. which clearly manifests the mal-intention of the applicant and an endeavour to keep the Tribunal in dark. The applicant cannot be reinstated into service keeping in view his earlier conviction by CJM Bhatinda. An application dated 24.03.2011 was received by Records from applicant's wife informing that her husband has been acquitted of the charges and punishments awarded by the Sessions Judge, Dehradun a fresh discharge book showing applicant as Ex-serviceman be issued. Since the applicant had served only 11 years and 04 months (including 03 days NQS) due to absent without leave from 10.08.1992 to 10.12.2003 till he was declared dead by

IMA Dehradun due to accidental fire, the discharge book was issued showing applicant as Non Ex-serviceman as per rules.

8. Learned counsel for the respondents further submitted that applicant filed a Criminal Appeal No. 31 of 2007 before the Hon'ble High Court of Uttarakhand, Nainital against the order passed by Sessions Judge, Dehradun and he was acquitted by the Hon'ble High Court of Uttarakhand but he was also a deserter w.e.f. 10.12.2003 to 07.07.2005 till he was arrested by Bhatinda Police on 08.07.2005. He has committed various offences triable under Army Act and on account of conviction by the CJM Bhatinda under Section 140 of IPC and sentenced to 03 months RI, the effect remains the same or can be more severe on above accounts. In view of factual position, the Original Application does not have any substance and merit in the principles of natural justice, hence, deserves to be dismissed.

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

10. We find that applicant knowingly ran away from the site of accidental fire leaving aside his moral responsibilities and duties of a soldier of Indian Army which caused huge loss to military stores. His desertion and later on apprehension by Bhatinda police in disguise named Anil and his involvement in ante national activities and recovery of Identity Card, uniform and some classified maps/sketches/incriminating documents from his possession showed his indisciplined and immoral acts against the norms of Indian Army.

11. We also find that services of the applicant were terminated under Section 20 of Army Act, 1950 read with Rule 17 of Army Rules, 1954 and para 423 of Regulations for the Army, 1987 on his conviction by the Sessions Judge, Dehradun under Section 302 and 201 of IPC. Though the applicant was acquitted by the Hon'ble High Court of Uttarakhand in the case filed against him under Section 302 and 201 of IPC but his conviction under Section 140 of IPC by the CJM, Bhatinda stands still in force. The applicant concealed this fact that he was convicted by CJM, Bhatinda under Section 140 of IPC and was awarded sentence of 03 months of RI which he completed while in custody in Central Jail, Bhatinda, but his conviction under Section 140 of IPC is still in force and that will also become a ground for his dismissal from service. Besides this, the applicant was also a deserter w.e.f. 10.12.2003 to 07.07.2005 till he was arrested by Bhatinda Police on 08.07.2005, thus he has committed various offences (conviction under Section 140 of IPC, desertion from place of duty and involvement in anti national activities which are triable under Army Act, 1950 which will result his dismissal from service. Hence, applicant being convicted under Section 140 of IPC and a case of desertion from duty, is not in liberty to claim his reinstatement into service.

12. The applicant has been dismissed from service as per Army Act and Army Rules after holding a Court of Inquiry and therefore, applicant's prayer to give him status of 'Ex-serviceman' for his 11 years and 04 months of service and to reinstate him into service after

being convicted by a court of law are not sustainable. Hence, we do not find any irregularity, illegality or violation of any rules neither in giving him status of 'Non Ex-serviceman' nor in terminating the services of the applicant being his conviction/desertion from service, the O.A. is devoid of merits and deserves to be dismissed. It is accordingly **dismissed**.

13. No order as to costs.

14. Pending Misc. Application(s), if any, shall stand disposed of.

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

Dated: May, 2022

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