

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 483 of 2020**Friday, this the 8th day of October, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)Ex Opr Rajeev Kumar Singh (No. 14388552H)
S/o late Sri Ram Deo Prasad Yadav
R/o Village Kakarhati, PO – Sevdhi,
District – Chandauli (UP) – 232109**.... Applicant**Ld. Counsel for the Applicant : **Col AK Srivastava (Retd),**
Shri Dharam Raj Singh &
Shri Shyam Sunder Bajpai, Advocate

Versus

1. The Secretary, Govt. of India (MoD), South Block, DHQ PO, New Delhi – 110011.
2. The Chief of Army Staff, Integrated HQ of MoD (Army), South Block, DHQ PO, New Delhi – 110011.
3. Officer Commanding, Artillery Records, Nashik Road (Maharashtra).
4. Principal Controller of Defence Accounts PCDA (P) Draupadi Ghat, Allahabad-211014.

... 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 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 to quash/set-aside the respondents letter dated 29/09/2016 (Annexure No. A-1) rejecting applicant’s representation to

re-instate him in service w.e.f. 08/03/1991, date from which he was AWL, declared deserter and was dismissed from service w.e.f. 07/05/1994.

- (b) Issue/pass an order or direction of appropriate nature to quash/set-aside order of dismissal from service in respect of the applicant w.e.f. 07/05/1994 passed by the respondents and reinstate him in service with all consequential benefits w.e.f. 07/05/1994.
- (c) Issue/pass an order or direction of appropriate nature to grant him service pension after setting off shortfall in mandatory pensionable service required to earn pension.
- (d) Issue/pass an order or direction of appropriate nature as this Hon'ble Tribunal deems appropriate in favour of the accused.
- (e) Allow this application with costs and interest.”

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 19.06.1985. While serving with HQ 12 Artillery Brigade, the applicant committed offences and had been awarded two punishments under Army Act, Section 39(a) on 21.10.1988 for 22 days detention in military custody and under Section 48 on 21.11.1989 for 20 days Rigorous Imprisonment in military custody respectively. The applicant while serving with 57 Field Regiment was granted 34 days of Balance of Annual Leave from 02.02.1991 to 07.03.1991 but failed to rejoin duty on 08.03.1991 on expiry of leave, therefore, as per procedure, an apprehension roll was issued by the unit to all concerned authorities including father of the applicant i.e. Shri Ram Deo Prasad Yadav vide letter dated 11.03.1991. On completion of 30 days, a Court of Inquiry was held at 57 Field

Regiment to investigate into the circumstances under which the applicant overstayed leave and based on the recommendations of the Court of Inquiry, the applicant was declared deserter w.e.f. 08.03.1991. As per provisions contained in Army Act, Section 20(3) read in conjunction with Para 22(b) of Army Order 43/2001/DV, a peace deserter will be dismissed from service on completion of three years of absence/desertion period, after obtaining the sanction from the competent authority. Accordingly, applicant was dismissed from service w.e.f. 07.05.1994. The same was informed to the applicant and his next of kin through Zila Sainik Welfare Office vide Artillery Records letter dated 10.06.1994 with an advice to apply for outstanding dues. Being aggrieved, applicant has filed this Original Application.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 19.06.1985 after being found medically and physically fit condition. During leave period in Nov./Dec.1990, applicant repeated nausea and headache besides disturbed sleep for which he was advised to take medicines for a month by a native doctor. The applicant recovered but was advised to continue the medicines for a month and thereafter he joined duty. The applicant while posted in Artillery Brigade at Nasirabad was found missing from unit lines for 3-4 days for which without conducting a Court of Inquiry, he was awarded a sentence of 21 days RI in military custody. The applicant due to his mental problem left the unit line for 2nd time as Absence Without Leave (AWL) and was declared deserter w.e.f.

08.03.1991 and thereafter, dismissed from service after about 3 years in a mechanical manner. The respondents never forwarded a copy of proceedings related to applicant's desertion and dismissal including his discharge certificate to his spouse/to him to enable him to prepare his case

4. Learned counsel for the applicant further submitted that not being heard for a long time from her husband, wife of the applicant made correspondence with unit and there being no response from the respondents side, she went to Artillery Brigade in Nasirabad on 27.06.1994 and then came to know from Artillery Brigade that her husband was declared deserter w.e.f 08.03.1991 on not being traced or apprehended by police authorities, he was dismissed from service w.e.f. 08.05.1994. Thereafter, wife of the applicant went to Artillery Records, Nashik Road in June/July 1994 where she was told by Record Officer that necessary documentation including remittance of applicant's entitled dues would take some time and the same would be communicated in due course by post and she should go back to her home. However, neither any correspondence received by the wife nor her husband could be traced. In 1996, applicant came to his home in a shabby and pathetic condition with an abnormal behaviour. The family members took applicant to MH Allahabad where he was refused treatment since he was not in position of any Identity Card and therefore, he was treated in District Hospital, Chitrakoot on 01.07.1996, diagnosing mental sickness and treatment continued for two years and further reviewed after 6/12 years. After the applicant's

condition marginally improved, his wife took him to Artillery Brigade in Nasirabad in Oct. 1996 and requested to OC Troops to allow him to join duty till he completes pensionable service to enable him to financially support his poor family but was refused to rejoin duty. The wife of the applicant took him to Artillery Records to allow to join duty but here too he was refused to allow duty.

5. Learned counsel for the applicant further submitted that the procedures as laid down in Section 106 of Army Act has not been complied with as observed by the Hon'ble Apex Court in **Daya Shankar Tiwari vs. Chief of the Army Staff, New Delhi** 2002 (3) AWC 2142. The Hon'ble Apex Court in **Virendra Kumar vs. Chief of the Army Staff, New Delhi** AIR 1986 SC 1060 has assailed that intention to quit service or to avoid duty is a paramount consideration for holding a person to be a 'deserter'. He further submitted that Continuation in service and pension are no more bounty being given by Government instead they are Fundamental Rights of an individual under Article 14, 16 and 301A of the Constitution of India and hence, the applicant cannot be deprived of the entitlements.

6. On the other hand, Ld. Counsel for the respondents submitted that applicant while serving with HQ 12 Artillery Brigade, committed offences and was awarded two punishments under Army Act, Section 39(a) and 48 on 21.10.1988 and 21.11.1989 respectively. The applicant while serving with 57 Field Regiment was granted 34 days of Balance of Annual Leave from 02.02.1991 to 07.03.1991 but failed to rejoin duty on 08.03.1991 on completion of leave, therefore, as per

procedure, an apprehension roll was issued by the unit to all concerned authorities including father of the applicant i.e. Shri Ram Deo Prasad Yadav vide letter dated 11.03.1991. On completion of 30 days, a Court of Inquiry was held at 57 Field Regiment to investigate into the circumstances under which the applicant overstayed leave and based on the recommendations of the Court of Inquiry, the applicant was declared deserter w.e.f. 08.03.1991. As per provisions contained in Army Act, Section 20(3) read in conjunction with Para 22(b) of Army Order 43/2001/DV, a peace deserter will be dismissed from service on completion of three years of absence/desertion period, after obtaining the sanction from the competent authority. Accordingly, applicant was dismissed from service w.e.f. 07.05.1994. The same was informed to the applicant and his next of kin through Zila Sainik Welfare Office vide Artillery Records letter dated 10.06.1994 with an advice to apply for outstanding dues.

7. Ld. Counsel for the respondents further submitted that it is pertinent to mention here that as per para 113 (a) of Pension Regulations for the Army, 1961 (Part-1), an individual who is dismissed from service under the provision of the Army Act, is not eligible for grant of service pension or gratuity. The applicant had served in Army only for 5 years, 8 months and 17 days including 22 days of non qualifying service. Therefore, as per Regulations 132 of Pension Regulations for the Army 1961 (Part-1), minimum 15 years of physical service is mandatory to earn service pension, hence,

applicant is not entitled for service pension. He pleaded for dismissal of O.A.

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

9. In the instant case, applicant was AWL and on completion of 30 days absence period, the applicant was declared deserter w.e.f. 08.03.1991 on the recommendations of Court of Inquiry. As per provisions contained in Army Act, Section 20(3) read in conjunction with Para 22(b) of Army Order 43/2001/DV, applicant was dismissed from service w.e.f. 07.05.1994 on completion of three years of absence/desertion period after obtaining the sanction from the competent authority.

10. In view of above, we find that applicant was dismissed from service after due procedure as per rules/policy on the subject. Hence, the applicant is not entitled the relief prayed in Original Application; neither reinstatement in to service as per Section 20 of Army Act, 1950 nor pensionary benefits as per Regulations 132 of Pension Regulations for the Army 1961 (Part-1).

11. In the result, Original Application deserves to be dismissed. It is accordingly **dismissed**.

12. No order as to costs.

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

Dated: October, 2021

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