

**COURT NO. 2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
T.A. No. 236 of 2010
W.P.(C) No. 21086 of 2005 of Delhi High Court**

IN THE MATTER OF:

Ex. Hav. Jagdish Chandra Sharma

.....Applicant

Through : Mr. S.M. Dalal, counsel for the Applicant

Versus

Union of India and Others

.....Respondents

Through: Mr. Anil Gautam, counsel for the Respondents

CORAM:

**HON'BLE MR JUSTICE MANAK MOHTA, JUDICIAL MEMBER,
HON'BLE LT GEN M.L. NAIDU, ADMINISTRATIVE MEMBER**

JUDGMENT

Date: 19.09.2011

1. The petition was filed before the Hon'ble Delhi High Court on 07.11.2005 and later on it was transferred to the Armed Forces Tribunal on 13.01.2010.

2. The applicant vide his petition has sought quashing of the Court of Inquiry purportedly conducted by Respondent no. 4 on 05.06.1981. He has also prayed that the impugned order dated 02.08.2005 passed by the Senior Record Officer of the RAJPUT Regiment be quashed. He further seeks that applicant be treated as discharged from service as on 31.12.1981 and that he should be entitled to pension. He has

also asked for balance of amount of pay and allowances which stood to his credit as on 31.12.1981 including Provident Fund and Army Group Insurance Fund.

3. The brief facts of the case are that applicant was enrolled in the Army on 03.12.1959. He rose to the rank of Havildar on 08.07.1970 and was also promoted as CHM. He had rendered more than 21 years of service and had actively participated in 1962 Indo-China War, 1965 Indo Pak War and 1971 Indo Pak War. He was selected for Extra Regimental Employment (ERE) to 12 UP Bn NCC at Fatehgarh on 26.12.1978. In 1980, he suffered a heart ailment and was placed under Low Medical Category CEE (Temporary) w.e.f. 12.03.1980.

4. On 05.03.1981, the applicant was transferred back to the parent Unit i.e. 14 RAJPUT on leave cum posting. Since the location of 14 RAJPUT was not known to the 12 UP Bn NCC, he was given a movement order dated 04.03.1981 (**Annexure P-1**) and single journey railway warrant only up to Khurja, his leave station. He was given to understand by 12 UP Bn NCC that railway warrant from his leave station to his unit location will be sent to him at the leave address at a later date.

5. Before the expiry of his annual leave, the applicant wrote a letter to Commandant Rajput Regimental Centre on 19.04.1986 and to 12 UP Bn NCC on 25.04.1981 with a copy to 14 RAJPUT (**Annexure P-2**

Colly) requesting them to intimate the Nearest Railway Station (NRS) and to send appropriate railway warrant to enable him to rejoin the unit.

6. The respondents neither sent the railway warrant nor any information about the location of the unit. Meanwhile, the applicant fell ill due to heart problem because of which he was taken to the District Civil Hospital Khurja on 01.05.1981 by his wife. There is no Army hospital in the vicinity of his home town. He remained under treatment till 20.11.1981. The applicant immediately sent this information to 12 UP Bn NCC by a telegram on 5 May 1981 (**Annexure P-3**). A copy of this telegram was sent by 12 UP Bn NCC to 14 RAJPUT on 08.05.1981.

7. Instead of sending the railway warrant and intimating the NRS, 14 RAJPUT asked certain queries from the applicant after two and half months vide their letters dated 26.08.1981 and 01.09.1981 (**Annexure P-4 Colly**). The applicant replied to the said queries vide his letter dated 12.11.1981 (**Annexure P-5**). Despite this, he was not informed about the NRS.

8. When physical condition of the applicant improved, he reported to Command Hospital, Lucknow on 30.11.1981 and was admitted for re-categorization. He was then transferred to Army Hospital, Delhi Cantt., New Delhi. At Army Hospital, Delhi Cantt., he was asked to

obtain his old medical category papers. The applicant wrote a letter **(Annexure P-7)** to 14 RAJPUT to forward a authority letter for holding re-categorization board since he has reported to Army Hospital, Delhi Cantt. However, 14 RAJPUT failed to forward any authority letter and relevant medical documents to Army Hospital, Delhi Cantt resultantly his re-categorization medical board was not held at Army Hospital and he was superannuated on 31.12.1981.

9. The applicant was very upset and depressed due to the above stated sequence of events. He also did not receive any pay and allowance after April, 1981. Besides this, his health was deteriorating and was a great cause of concern for him and for his family. He was under severe mental and physical strain.

10. After partial recovery, the applicant sent a representation in March, 1986 for grant of pension. This was rejected by the OIC RAJPUT Records vide letter dated 18.08.1986 **(Annexure P-8)**. After the petition was rejected by Respondent no. 3, the applicant sent several other petitions to various authorities but did not receive any relief. He was unable to pursue the case in the courts of law due to his poor financial condition.

11. On 09.05.2005, a legal notice **(Annexure P-9)** was sent to the respondents on behalf of the applicant to which the response was received on 02.08.2005 **(Annexure P-10)** in which it was stated that

though he was to be discharged from service w.e.f 31.12.1981, he was dismissed from service on 4 May 1981, consequent to a court of inquiry which declared him a deserter since he has not reported to 14 RAJPUT on his termination of his assignment with 12 UP Bn NCC and leave granted to him en route.

12. Learned counsel for the applicant argued that applicant had put in 21 years of colour service and he has been denied pension for an offence for which he was not responsible. Since it was the duty of the authorities to send the proper railway warrant and intimate the NRS which was not done so in this case by the unit concern. There was no reason for his so-called absence or overstayal of leave except for the fact that he was not informed of the NRS and also he was suffering from poor health.

13. Learned counsel for the applicant further argued that applicant had constantly kept his old unit i.e. 12 UP Bn NCC and his Regimental Centre informed of his status and condition. All these communications were also endorsed to 14 RAJPUT but he did not evoke any response from any one of them so that he could take necessary action.

14. Learned counsel, therefore, prayed that this period should not be counted as overstayal or deserter since the applicant was always informing his old unit and the regimental centre about his status and

medical condition. Therefore, there is no reason for him to be declared as deserter.

15. Learned counsel for the respondents stated that the facts are not disputed. However since the applicant was medical category well before 12.03.1980, he was not recommended for retention in service by Screening Board. As such he was discharged from the Army under Army Rule 13(3) III (V) read in conjunction with Army Rule 13(2A) w.e.f. 31.12.1981.

16. Learned counsel further stated that since the 14 RAJPUT was moving as a Unit, 12 UP Bn NCC had issued the applicant a single journey railway warrant from Fatehgarh to Khurja. The applicant was admitted in the District Civil Hospital Khurja and no information to this effect was given by him to his parent Unit i.e. 14 RAJPUT. On 01.09.1981, the Unit wrote letter to the applicant (**Annexure R-1**) at his home address and sought more information about the applicant admission in the District Civil Hospital Khurja and also intimating to him that he was due for re-categorization on 12.04.1981.

17. Learned counsel for the respondents further argued that after attaining of prescribed time limit for overstayal of leave granted to him, the applicant was dismissed from service in terms of Army Act Section 20(3) read in conjunction with Army Order 635/63 after taking approval from the competent authority. Since the applicant was dismissed from

Army services being absent without leave in terms of Army Order 635/63, he was not entitled for service pension as stipulated in para 113(a) of Pension Regulations for the Army 1961 (Part I).

18. Learned counsel for the respondents further stated that on agitation of the applicant when he sent the petition, his case was examined in detail. It has transpired that vide letter dated 18.08.1986 (**Annexure R-3**), para nos. 4 and 5 of which read as under :

“4. However, 12 UP Bn NCC Fatehgarh (UP) had sent to his home address his rly wrt from Khurja (NRS of the NCO) to Silcher (NRS 14 RAJPUT at that time) which the NCO did not wilfully receive inspite of its being delivered to him by the postman several times. Copy of 12 UP Bn NCC letter No. 152/181/A dated 14 Sep 81 and No. 187/26/A dated 17 Jul 86 enclosed.

5. From the above fact it appears that individual had intention to desert from the service while enroute posting to his parent unit viz 14 RAJPUT while in the field area which is also evident from the fact that he did not represent his case till 13 Mar 86 and has now submitted his application on the 14 Mar 06 only.”

19. Having heard both the parties at length and having examined the documents, we are of the opinion that the respondents were constantly informed by the applicant regarding his ill health and also that he was not in receipt of the railway warrant from his leave station to NRS. So much so, letter dated 01.09.1981 (**Annexure R-1**) gives

reference of his telegram which was addressed to 12 UP Bn NCC Fatehgarh. This telegram was forwarded by the 12 UP Bn NCC to 14 RAJPUT vide their letter dated 08.05.1981. 14 RAJPUT letter dated 26.08.1981 (**Annexure P-4**) acknowledges applicant's telegram of 1 May 1981 and refers to their letter of 19 May 1981.

20. We also note that applicant was sent on leave cum posting by 12 UP Bn NCC on 05.03.1981 and his leave was up to 05.05.1981. The very fact that the telegram which intimated that the applicant was admitted in the District Civil Hospital Khurja on 01.05.1981 was received by the respondents, it is beyond comprehension as to how the Unit could have declared him deserter w.e.f 23.10.1981.

21. It is also seen from the averment made in the reply submitted by the respondents to have quoted the provisions of SAO 9/S/89 in order to declare him absent w.e.f 04.05.1981 and treat him as dismissed from service. The provisions of 1989 were certainly not applicable in the year 1981. Respondents have not produced any evidence to show that the other activities that are required to be undertaken by the respondents in terms of issue of Apprehension Roll and conduct of Court of Inquiry was done by the respondents in this case.

22. We also note with dismay that the applicant did not adhere to the well laid down procedure which enjoins him to report to the Regimental Centre when the NRS of his Unit is not known. The

applicant was posted in Fatehgarh as part of 12 UP Bn NCC and was very well aware as to the location of the Regimental Centre being co-located. Khurja is not very far from Fatehgarh nor is it far from Agra. Both of these places have military hospitals. We observe that applicant too has not exerted himself in making all attempts to report to his Unit.

23. Be that as it may, the applicant has more than 21 years of service which he has performed diligently. The applicant having informed his parent unit and also the Regimental Centre of his whereabouts, it is legally not sustainable that he be declared a deserter and be dismissed from service.

24. Learned counsel for the respondents also agitated the issue of delay and laches in filing the present petition. Since the case was admitted by Hon'ble Delhi High Court, and it has been transferred to this Tribunal for adjudication, we do not find any force in this contention, secondly, it is a case related to a pension matter being continuous cause of action.

25. In view of the foregoing, we quash the Court of Inquiry purported to be held on 05.06.1981 and the impugned order dated 02.08.2005 passed by the Senior Record Officer, The RAJPUT Regiment Record and direct that the applicant be treated as discharged from service w.e.f 04 May 1981. All consequential benefits to the applicant will follow. The exercise should be completed within 180 days from the

date of issue of this order. Delay in payment of financial dues beyond 180 days of the order will attract 12% interest till the date of payment.

26. In view of the foregoing, the T.A. is partially allowed. No orders as to costs.

M.L. NAIDU
(Administrative Member)

MANAK MOHTA
(Judicial Member)

Announced in the open Court
on this 19th day of September 2011