

**ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
T.A. 379 OF 2009
W.P.(C) No. 507 of 1997 of Delhi High Court**

IN THE MATTER OF:

Rifleman Anup Kumar Pradhan**Applicant**
Through: Mr. Sarvesh Bisaria, counsel for the applicant

Versus

The Union of India and others**Respondents**
Through: Mr. Mohan Kumar, Counsel for the respondents

CORAM:

**HON'BLE JUSTICE MANAK MOHTA, MEMBER,
HON'BLE LT GEN Z.U.SHAH, MEMBER**

JUDGMENT

Dated: 06.09.2011

1. The applicant had filed WPC 507/97 in the Hon'ble Delhi High Court. The same was transferred to this Tribunal on 14 Sep 2009. The applicant has prayed for the quashing of his declaration as a deserter

and has also prayed that he be reinstated into service with all consequential benefits.

2. The applicant was enrolled in the Army on 3 Jan 1987. Whilst posted with 1/11 GR the applicant was granted 60 days annual leave in Oct-Nov 1992. The applicant states that due to illness he overstayed leave for the period 1 Dec 92 to 1 March 93(four months). The applicant states that he reported back to the Rear party of 1/11 GR to Nb Sub Govind Dutt Guru on 2 March 93. On 3 March 93 he was despatched to Unit main body located at Arunachal (Railway Station). The applicant states that he was issued railway warrant number 9419033 dt. 3 March 1993 (Annex P-1). On arrival at his unit location the applicant states that he reported to Sub Major Tarachand the same day. He was however not seen by any officer but kept in unit location up to 10 March 1993.

3. The applicant states that on 10 March 93 he was told to return home and wait 20 days for further orders. He returned home as per directions given to him and waited for 20 days but did not receive any instructions. He therefore, reported to the Sub Major of 11 GR

Regimental Centre in the 1st week of April 1993. On 11 April 1993 he was again directed to return home.

4. The applicant states that in Dec 1994 his mother Smt Devi Maya Pradhan received arrears of his pay & allowances.

5. The applicant states that on 19 May 1995 Brig (Retd) B B Thapa President of Ex-Serviceman League represented his case for reinstatement (Annx P-2). His unit 1/11 GR replied on 11 July 1995 (Annx P-4) intimating that he could not be reinstated as he had been declared as deserter w.e.f. 2 Dec 1994(Annx P-4).

6. The applicant states that he filed another representation on 10 Oct 1995 (Annx. P-3).

7. The applicant contents that he was not a deserter as he voluntarily rejoined his unit on 3 March 1993. The applicant also avers that Army Rule 22 was not applied in his case as there was no hearing of charge, all proceedings declaring him deserter are stated to be illegal and liable to be quashed.

8. The respondents in their counter affidavit have stated that the applicant was enrolled in the Army on 3 June 1997. While serving with 1/11 GR, which was committed in operation "RHINO" in Assam, the applicant was granted 60 days annual leave from 3 Oct 1992 to 1 Dec 1992. On expiry of the leave the applicant failed to rejoin his unit and thus an apprehension roll dt 5 Jan 1993 was issued (Annx. R-A). A Court of Inquiry was held on 22 Jan 1993 which recommended that the applicant be declared a deserter. The applicant was thus declared deserter under the authority of Army Act Section 106 as his unit was engaged in active Counter Insurgency Operations.

9. Subsequently, a letter dt 19 May 1995 (Annx P-2) was received from Brig (Retd) B B Thapa requesting for reinstatement of the applicant. There is no provision to reinstate a deserter unless he is first apprehended by the police or voluntarily surrenders. A reply was accordingly sent to Brig (Retd) B B Thapa. SAO 9/S/89 (Annx H-1) specifies that persons who desert their units from field areas will be dismissed on completion of 10 years of desertion.

10. The respondents state that Army Rule 13 (3) Sub Para III (V) and Army Rule 22 can only be applied against a person who is physically present in the unit. The applicant was never present as he had neither been apprehended by the police nor voluntarily surrendered. Army Rule 22 (hearing of charge) could not be applied as the applicant had deserted.

11. The respondents state that there is nothing on record to show that the applicant voluntarily rejoined his unit on 3 March 1993. The applicant only served 5 years and 5 months in the Army and is thus not entitled for pension, the minimum qualifying service for which is 15 years. The respondents have recommended that the application be rejected.

12. The respondents in their reply have stated their earlier contentions and stated that the applicant was declared a deserter on 2 Dec 1992. During the course of arguments the respondents questioned the authenticity of the counter foil of Railway Warrant produced by the applicant and asserted that Arunachal is the name of the state and not of a Railway Station. On completion of 10 years as deserter on 2 Dec 02

the applicant was dismissed from service w.e.f. 29 April 2003 under the authority of Army Act Section 20 (3).

13. In a reply the applicant has stated that he had voluntarily reported back to his unit but was not taken back. He should have been taken back and charged under Army Act Section 39 (absent without leave).

14. In a written submission the applicant has drawn our attention to Army Order 287 of 64 which states that the distinction between “desertion” and “absent without leave” lies in the intention. The applicant did not intend leaving the service and thus he was only absent without leave. The applicant also submitted that he had filed an RTI application and Northern Frontier Railway had confirmed the existence of a railway station named “Arunachal” located between SalChapra and Silchar.

15. We have heard the arguments and perused the record and relevant orders. The applicant was enrolled in the Army on 3 Jan 1997. While serving with his Unit 1/11 GR committed in Operation “RHINO” in Assam the applicant was granted 60 days annual leave from 3 Oct 1992 to 1 Dec 1992. The applicant overstayed leave and his unit 1/11 GR

issued an apprehension roll dt. 5 Jan 1993. A Court of Inquiry was held on 2 Jan 1993 and the applicant was declared a deserter from his unit serving in active Counter Insurgency Operations w.e.f. 2 Dec 1992. Subsequently on completion of 10 years of absence as deserter the applicant was dismissed w.e.f. 29 April 03 under the authority of Army Act section 20 (3).

16. The applicant has produced counter foil of railway warrant no. 9419033 dt 3 March 1993 (Annx P-1). This could not have been in possession of the individual had he not reported back to his unit rear. The contention of the individual that he reported for duty after utilising the warrant for the train journey up to his unit's main location can not be disbelieved. The confirmation by Northern Frontier Railway of the existence of a railway station named Arunachal lends credence to the averment of the applicant that he attempted to rejoin voluntarily but was not accepted back by the unit and was asked to return home. It is thus clear that the intention of the applicant was to rejoin the unit after being absent without leave and his absence can not be termed as "desertion". He, therefore, deserves relief to the extent of not being declared a deserter. His was a case of overstayal of leave whilst his unit

was operationally committed in Counter Insurgency Operations. The applicant, therefore, deserves to be treated notionally in service but without back wages.

17. In view of the above observations we feel that the individual deserves partial relief. We, therefore, direct that the order declaring him as deserter and the order of dismissal be quashed and the applicant be considered having rejoined voluntarily on 3 March 93. The applicant is notionally reinstated in service and will be treated to have continued in service up to the time he became eligible for pension in his present substantive rank. He will thus be entitled for pension on completion of notional 15 years service . He will not however be entitled to back wages for the notional period.

18. The application is disposed of accordingly. No costs.

Z.U. SHAH
(Administrative Member)

MANAK MOHTA
(Judicial Member)

Announced in the open Court
on 6th day of Sep, 2011