

**COURT NO. 3, ARMED FORCES TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI  
T.A. No. 456 of 2009  
W.P.(C) No. 7300 of 2009 of Delhi High Court**

**IN THE MATTER OF:**

**Sep Satish Kumar** .....**Applicant**  
Through : Mr. P.D.P. Deo, 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: 19-05-2011**

1. The petition was filed in the Delhi High Court as W.P.(C) No. 7300/2009 and was transferred to the Armed Forces Tribunal on its formation on 26-11-2009.

2. The petitioner/applicant vide this application has prayed for directions to quash the order of dismissal from services w.e.f. 25.02.2005. He has also prayed for being reinstated in service with all consequential benefits.

3. The applicant was enrolled in the Army as Sepoy on 01.12.2003. Having completed his training, he was posted to the Jat Regimental Centre (JRC), Barielly.

4. The applicant had very urgent requirement of his presence at home as was conveyed on 25.02.2005 by his parents. He applied for annual leave for the year 2005 and proceeded accordingly. On 27.04.2005, the applicant became sick and was admitted in Government hospital, Pisawa (Aligarh). Thereafter, he was advised rest as an OPD patient. There being no Army hospital nearby he was forced to continue the treatment in the Government hospital from 27.04.2005 to 03.11.2005. The certificate of treatment dated 04.11.2005 (**Annexure P-1**) was issued.

5. On 06.11.2005, the applicant went to the JRC, Barielly to join duties but was not allowed to do so by his unit despite his having met CHM, Senior JCO and Company Commander. Thus he returned home. On 10.11.2005 the applicant submitted a letter under postal certificate (**Annexure P-3**) to Commandant regarding treatment he was given when he went to join his unit in Barielly. There was no response from the Commandant.

6. The applicant again fell sick and was given treatment from 01.10.2005 to 30.11.2006 (**Annexure P-4**) as OPD patient in Government hospital. On 05.12.2006 the applicant submitted a

reminder/letter to the Commandant, JRC for allowing him to rejoin duty. This letter/reminder also evoked no response (**Annexure P-5**).

7. The applicant was again given OPD treatment by the Government Hospital, Pisawa on 30.12.2007 (**Annexure P-6**). There was a relapse of ailment and the applicant was thus again treated by the Government hospital on 13.08.2008.

8. On 24.10.2008, the applicant approached his counsel to serve a legal notice (**Annexure P-9**) as to why the applicant is being not allowed to join duty and is debarred from treatment as authorized in a Military Hospital. This was replied, by respondent no. 4 on 14.11.2008 (**Annexure P-10**) which stated ***"it is intimated that you were enrolled in Jat Regimental Centre on 01.12.2003 and AWL w.e.f. 25.02.2005. As a recruit you were failed to rejoin from AWL and declared deserter w.e.f 25.02.2005 vide JRC Part II Order no. 3/414/01/05. After lapse of three years you were dismissed from service under Army Rule 20(3) having been declared deserter from service w.e.f 25.02.2005 vide Part II order No. NE/026/007/08. Your all dues is being paid shortly"***.

9. It is further submitted that the respondent No.3 replied to the legal notice vide their letter dated 21.11.2008 (**Annexure P-11**) which reads that ***"it is intimated to you that under the provisions of Para 22(b) of Army Order 43/2001 No.3199989Y Sepoy Satish Kumar had been***

*correctly dismissed from service vide Part II Order no. NB/0025/OCR/08. Absence of individual for more than three years w.e.f 25.02.2005 is applicable in this case.*

**10.** Learned counsel for the applicant argued that the applicant was denied permission to rejoin the unit after he returned on 06.11.2005. This action was illegal on the part of the respondents.

**11.** He further argued that the court of inquiry which was purported to have been conducted by the respondents to declare him deserter, did not give notice to him nor did they invoke Army Rule 180 to record evidence in his presence. Also, no show cause notice was served on the applicant before dismissing him from the service.

**12.** Learned counsel for the respondents stated that there were allegations against applicant and four other recruits of fraudulent enrolment by producing forged documents at the time of enrolment, a Court of Inquiry was being conducted for all the individuals whose mark sheets and certificates were found to be forged by the Board of Secondary Education, U.P. In the applicant's case, the remarks "TOTALLY FORGED" were endorsed by the verifying authority vide letter dated 23.02.2005 (**Annexure R-2**). The applicant along with two other recruits therefore absconded themselves to avoid anticipated disciplinary action without sanctioned leave from unit lines w.e.f 25.02.2005. Since the applicant did not rejoin duty, court of inquiry

was subsequently ordered and he was declared deserter w.e.f 25.02.2005. On completion of three years of this incident, the applicant was dismissed from the service as per Para 22 of the AO 43/01/DV. Despite the “apprehension roll” issued by the unit, the civil police failed to apprehend the applicant, as also the applicant did not rejoin his duties voluntarily for three years. As such, after lapse of three years, applicant was dismissed from service w.e.f 25.02.2005.

**13.** Learned counsel for the respondents also drew our attention to the details of medical certificates produced by the applicant. A detailed examination suggests that all these certificates have been obtained much after the event. Also the UPC receipts produced by the applicant do not confirm that the concerned letters have actually been dispatched to the addressee. The respondents have denied the receipt of said these letters. There is no presumption of delivery of letter in case of UPC. The applicant has not been able to establish that such request was ever made.

**14.** Learned counsel for the respondents also drew our attention to the legal notice and explained that the legal notice did not talk of the applicant having reported to Barielly to rejoin the unit on 06.11.2005. It appears that the entire sequence of event is being reconstructed post the event in order to make a case for the applicant. It also confirmed that the applicant was suffering from mental sickness/depression. The ailment also disqualifies the applicant from becoming a good soldier.

Had he remained in service, he would have been brought before proper medical authority for treatment or disposal as considered fit by them.

**15.** The learned counsel for the respondents argued that the fact that the matriculation certificate and mark sheet which were found to be forged, were submitted by the applicant to the Recruiting Officer at the time of recruitment. The averment made by the applicant, that the alleged correct certificates are now appended as Annexure R-1 to the rejoinder are of no consequence, since the certificate on the basis of which the applicant was enrolled by the Recruiting Officer was submitted by the individual and is at Annexure R-1 to the counter affidavit was found forged.

**16.** We have heard both the parties at length and also examined the documents. We have bestowed our best consideration to the applicant and we are of this opinion that invoking Army Rule 180 in conducting the Court of Inquiry in case of deserter is not possible because the individual was not traceable despite the apprehension roll issued by the unit to the civil police. The fact of the matter is that the individual left the unit without sanction to his alleged application for leave. He has failed to produce any leave certificate or copy of the application for grant of leave to support his contention, even he has not been able to disclose that for which period he applied for leave. He alleged to be fallen ill on 27.04.2005 as per Annexure P-1. He has not explained the

circumstances for not joining earlier to this date. As such, he was absent without leave w.e.f. 25.02.2005 and as per his own averment he sent alleged letter for the first time on 10.11.2005 (Annexure P-3).

**17.** The certificates that have been produced by the applicant indicate that he was suffering from mental disease. This should not have prevented him from reporting to the proper military authorities or the nearest Military Hospital, Aligarh, which is well connected by means of communication for him to either report back to his unit or to the nearest Military Hospital. As per his own contentions, after his absence from duty i.e. 25.02.2005 for the first time the applicant made efforts to rejoin on 06.11.2005 i.e. after an absence period of 254 days. Therefore, his absence from the unit and not joining the unit despite his claimed effort having been made on 06.11.2005 does not seem logical and trustworthy. He has thus been correctly dismissed w.e.f. 25.02.2005 under Section 20 of the Army Act read with Army Rule 17 read with conjunction para 22 of AO 43/01/DV after following the procedure. Para 22 of AO 43/01/DV reads as under:

“22. A person subject to the Army Act, or a reservist, subject to Indian Reserve Forces Act, who does not surrender or is not apprehended, will be dismissed from service under Army Act Sec 20 read with the Army Rule 17, as the case may be, in accordance with instructions given below: -

- (a) After 10 years of absence/desertion in the following cases:
  - (i) Those who desert while on active service, in the forward areas specified

in Extra Ordinary Gazette SRO 17E dated 05 Sep 77, (reproduced on page 751 of MML Part III) or while serving with a force engaged in operation, or in order to avoid such service.

- (ii) Those who desert with arms or lethal weapons.
  - (iii) Those who desert due to subversive/espionage activities.
  - (iv) Those who commit any other serious offence in addition to desertion.
  - (v) Officers and JCOs/WOs (including Reservist Officers and JCOs, who fail to report when required).
  - (vi) Those who have proceeded abroad after desertion.
- (b) After 3 years of absence/desertion in other cases.
- (c) The period of 10 years mentioned at sub Para (a) above may be reduced with specified approval of the COAS in special cases.”

**18.** Para 22(b) of the AO quoted above clearly lays down that the delinquent person shall be dismissed from service after 3 years of absence/desertion. In this case, the applicant was declared a deserter w.e.f. 25.02.2005 by the Court of Inquiry which was held on 21.04.2005, which established that the applicant was a deserter having left the lines on 25.02.2005 without obtaining leave of absence. This finding was concurred by the Officer Commanding on 29.04.2005.

**19.** We do not consider the issue of forged certificates needs to be adjudicated as it has no relevance to the case or the prayers therein.



Without any satisfactory proof of voluntarily being absent, thus, he was not entitled for rejoining nor any notice was required as he was deemed to be aware of consequences of being absent. The applicant has not even established when he applied for leave, further more mere applying for leave would not serve any purpose and due sanction was necessary before proceeding on leave. In this background, notice was not required as he was aware about the consequences of being absent without sanctioned leave. The impugned order does not require any interference.

**20.** In view of the foregoing, the T.A. is dismissed. No orders as to costs.

**M.L. NAIDU**  
**(Administrative Member)**

**MANAK MOHTA**  
**(Judicial Member)**

**Announced in the open Court**  
**on this 19<sup>th</sup> day of May, 2011**