

COURT NO. 1, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
(Through Video-Conferencing)

O.A. No. 2369 of 2021 with M.A. No. 2833 of 2021

In the matter of :

Hav/Clk (SD) Raj Kumar

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri Manoj Kumar Gupta, Advocate

For Respondents : Shri Prabodh Kumar, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN P.M. HARIZ, MEMBER (A)

ORDER

M.A. No. 2833 of 2021 :

Vide this application, respondents seek condonation of 6 days' delay in filing the Reply Statement. In view of the reasons mentioned in the application, delay is condoned and the Reply Statement is taken on record.

MA stands disposed of accordingly.

O.A. No. 2369 of 2021 :

This original application has been filed under Section 14 of the Armed Forces Tribunal Act 2007 by the applicant, a serving Havildar Clerk (Staff Duties) [Hav/Clk(SD)] of the Army Service Corps (ASC). The applicant is aggrieved by the fact that consequent to his reporting to his new duty station directly from where he was attached, without reporting to his parent unit, his parent unit initially declared him being absent without leave (AWL), and later declared him a 'deserter'. Consequently, the applicant's pay and allowances (P&A) has been stopped

since January 2021, and the break in service has to be regularised. The applicant is, therefore, now required to now report to ASC Centre (South) where necessary action will be taken to regularise the break in service. The applicant has made the following prayers :-

- A. To direct the Respondents to release Pay & Allowances of Applicant and set aside the Army HQ letter dt. 13 Oct 2021, and/or
- B. To direct the Respondent to cancel of OSL/Desertion Part-2 Order by the No.519 ASC Bn and afresh Part-2 Order to be published to regularise his posting out movement to Stn HQ well wherein he had already serving since 17 Dec 2020.
- C. Necessary direction to Respondent to disseminate his Pay and allowances including posting transfer grant which is withheld since Jan 2021 without any fault of individual and/or
- D. Direct the Respondent to regularize his posting move and also pay compensation for un-necessary harassment since Dec 2020 and illegal withholding of pay and allowances due to the lapses on the part of CO 519 ASC Bn, and/or
- E. Any other just and equitable order in the interest of justice may kindly be passed.

In the interim, issue directions to release the pay and allowances and stay the operation of the impugned letter dated 13.10.2021.

Brief Facts of the Case

2. The brief facts of the case as per the applicant are that he was enrolled in the Army in April 2008. In April 2018 the

applicant was posted to 519 ASC Battalion from where he was sent on attachment to HQ Northern Command (ST Branch). In August 2009, his posting was issued to Stn HQ Wellington, Nilgiris, Tamil Nadu. Despite protracted correspondence the NCO was not relieved in time from HQ Northern Comd (ST). He was finally relieved on 23.11.2020 and returned to unit permanently. He was also granted 20 days casual leave from 27.11.2020 to 16.12.2020 and was required to report to his parent unit 519 ASC Bn on termination of leave. Since there were numerous correspondences on the delayed move of the NCO and instructions that he would be declared Absent Without Leave (AWL), on expiry of the casual leave, the NCO reported directly to his new unit, Stn HQ Wellington instead of reporting to his parent unit.

3. Despite repeated request from Stn HQ to 519 ASC Bn to regularise the move by publishing necessary Part II order and forwarding requisite movement order, 519 ASC Bn chose to declare the NCO AWL from 17.12.2020 and later declared him a deserter too. 519 ASC Bn insisted that the NCO first report to the parent unit and then the move would be regularised.

4. Instruction from ASC Records (South), HQ 15 Corps (ST) and HQ Northern Comd (ST) to 519 ASC Bn to cancel the AWL Part II Orders and forward requisite movement order went unheeded. In the meanwhile, based on the Part II orders published by 519 ASC Bn declaring the NCO as AWL and later, a deserter, his pay and allowances (P&A) were stopped from January 2021.

5. The issue was then taken up by Stn HQ Wellington with DG S&T, the parent Directorate and Head of Arms of ASC and the matter travelled to Army HQ. The policy of declaring such Clks/PA as AWL and consequently stopping their P&A was also

brought to the notice of the COAS, who then issued necessary instructions to such practices to stop forthwith. Despite numerous instructions from the IHQ of MoD (Army), DG S&T, ASC Records and the Formation HQs, 519 ASC Bn did not cancel the Part II Orders and consequently the P&A were not restored. The NCO also sent a personal application to the COAS dated 12.10.2021 (Annexure A-7) regarding the issue with a prayer to pass instructions for cancellation of Part II orders and restoration of P&A. Aggrieved by the fact that the Part II orders are yet to be cancelled and P&A restored, the applicant filed this OA.

Arguments by the Counsel for the Applicant

6. The Counsel took us through the service profile of the applicant and stated that, though posted to 519 ASC Bn in April 2018, he was attached to ST Branch in HQ Northern Comd for the complete tenure. The Counsel then explained that as per the posting order issued in August 2020 in respect of the applicant, he was required to report to Stn HQ Wellington on 15.10.2020. He then went on to explain how despite instructions and appeal by the applicant too, he was not relieved in time to be able to report to the new unit as per instructions. The Counsel then explained that as per the existing instructions as given in the posting order, if the applicant did not report on schedule he would be declared AWL/deserter.

7. The Counsel then went on to explain how on being relived on 23.11.2020 the applicant had been granted 20 days casual leave and how fearing punitive action by the new unit, the applicant had reported directly to Stn HQ Wellington. The Counsel then added that consequent to this 519 ASC Bn declared the applicant AWL and deserter, as a result of which

his P&A were stopped from January 2021. The Counsel then took us through the various correspondence on the efforts made by various HQ/ establishments to regularise the move and how it had not fructified till date, as 519 ASC Bn would not cancel the Part II Orders pertaining to the applicant's AWL/desertion. The Counsel vehemently concluded that the P&A needs to be restored forthwith as it is causing grave financial crisis to the applicant and his family, and that the posting be regularised at the earliest.

Arguments by the Counsel for the Respondents

8. The Counsel briefly took us through the service profile of the NCO and stated that though the applicant was posted to 519 ASC Bn located in field area, he remained attached to HQ Northern Command located in a peace area. He then stated that on completion of his attachment, the applicant was granted 20 days casual leave and was instructed to report to 519 ASC Bn on termination of the leave. The Counsel further added that despite being a Hav with almost 13 years of service and a person who is well versed with rules and regulations, the applicant wilfully did not report to 519 ASC Bn on termination of his leave, and instead reported to his new unit. Since the applicant did not report to 519 ASC Bn, as was required, the unit declared him AWL and subsequently declared him a deserter and completed the requisite documentation. The Counsel vehemently stated that the current situation of the applicant has been brought upon by himself and his wilful disobedience of orders and not reporting back to his unit on termination of leave in December 2020.

Consideration of the Case

9. Heard both sides at length and on perusal of the various documents on record in the OA (a total of 36), the following issues are established:-

(a) In April 2018, on being posted to 519 ASC Bn (under HQ 15 Corps/ HQ Northern Comd) the applicant was sent on temporary duty to 222 ASC Coy (Sup) located at Udhampur and further attached to HQ Northern Command (Supply & Transport) Branch where he worked as a clerk.

(b) In August 2020, ASC Records (South) issued the posting order in respect of 10 NCOs including the applicant. The applicant was posted to Stn HQ Wellington and was to report on 15.10.2020. As per the policy in vogue, the posting order also contained instructions that should the NCOs not report within 15 days of the designated date of reporting, the receiving unit should declare the individual AWL and, after a period of 30 days, if the individual still does not report, he be declared a deserter.

(c) Since there was no information of the applicant's move, Stn HQ wrote to 519 ASC Bn and others indicating that the NCO should report on due date, failing which he will be declared AWL/ deserter.

(d) The requirement of providing a suitable relief to the applicant had been projected by HQ Northern Comd (ST) in September 2020 itself. The applicant too had submitted an application to the unit requesting that he be relieved on time so that he could proceed on posting. On 16.10.2020 Stn HQ Wellington issued a signal declaring the applicant will be reported as AWL since he had not reported on the due date.

(e) Despite many reminders, the applicant was finally relieved only on 23.11.2020. HQ Northern Comd (ST) also granted him 20 days casual leave from 27.11.2020 to 16.12.2020, on termination of which the applicant was required to report to his parent unit, 519 ASC Bn. Accordingly, necessary movement order was issued by 222 ASC Coy (Sup), the unit to which the applicant was attached whilst working with the Comd HQ.

(f) On termination of the 20 days leave, instead of reporting to 519 ASC Bn, his parent unit as per movement order issued to him, the applicant reported directly to his new duty station, Stn HQ Wellington.

(g) Stn HQ Wellington therefore, informed 519 ASC Bn of the fact that the applicant had reported to the new duty station on termination of his leave. And, that since the applicant had reported without proper movement, the move be regularised by publishing requisite Part II order for posting out and to forward a movement order.

(h) In the meanwhile, since the applicant did not report to his parent unit on expiry of leave, 519 ASC Bn declared him AWL from 17.12.2020. Moreover, on receipt of info from Stn HQ Wellington, that the applicant had reported there directly, 519 ASC Bn intimated Stn HQ Wellington that the applicant be reverted forthwith to the unit for taking clearance and completing other posting out formalities.

(i) Based on a case taken up by Stn HQ Wellington, ASC Records too requested 519 ASC Bn complete the requisite documentation and regularise the posting. Alongside, another Section of the Records office issued instructions to 519 ASC Bn regarding the documentation to be completed to declare the applicant AWL/ deserter. Apparently, this section issued an

apprehension roll too, based on all of which the applicant's P&A were stopped.

(j) Over the next few months, correspondence continued amongst Stn HQ, ASC Records, and 519 ASC Bn requesting the unit to cancel the Part II Orders of AWL/ Desertion in order to put a closure to the case. Even HQ 15 Corps and HQ Northern Comd (ST) advised the unit to take necessary action to cancel the Part II Orders, all with no avail on part of 519 ASC Bn.

(k) Ultimately the matter travelled to IHQ of MoD. In July 2021, DGST was informed to instruct the ASC Record Office not to accept any declaration of AWL of PA/Clk based on the DGSD Policy dated 17.08.2020 and to restore all cessation of P&A of PA/Clks undertaken based on this policy. It also directed that a new draft policy be submitted by 15.08.2021 for approval of the competent authority.

(l) In July 2021, AG's Branch also sent out instructions to all Record Offices that the competent authority has directed that declaring an individual AWL by the receiving unit even as he continues to serve in the previous unit and stoppage of salary through UMO or any other communication to PAO(OR) by Records Office / Unit must cease with immediate effect. And that salary withheld till now was required to be released on priority for which proactive role has to be played by all concerned Record Offices. Record offices were also instructed to take certain specific action and also forward monthly progress reports. This letter was also copied to all Comd HQs and Line Directorates for their information and necessary action (Annexure A-8).

(m) Based on the above directions from Army HQ, once again instructions went out from all to 519 ASC Bn to cancel the AWL/ desertion Part II orders pertaining to the applicant so

that his move on posting could be regularised and the P&A restored. Even explanation has sought by DGST from 519 ASC Bn as to why the posting was not implemented on time to begin with. Stn HQ Wellington too sought confirmation from ASC Records on restoration of P&A in the light of the instructions issued by Army HQ. The applicant too submitted a personal application to COAS, requesting early resolution and release of P&A.

(n) Finally, DGST vide its letter 77344/UMO/Gen/ Q/1/ST-12 dated 13.10.2021 intimated Stn HQ that the whole episode had resulted in a break in service for the applicant from 17.12.2020 till date, and that in order to regularise it, the applicant is now required to report to Depot Coy (Impugned order : Annexure A-1).

10. This Tribunal is seized of the issues involved in the management of Clerks and PAs, and the difficulties faced by ASC Records and DGST in particular, and all other Records in ensuring that posting issued for clerical staff are implemented in a timely manner. The Tribunal has examined many cases where the clerks themselves have circumvented postings to meet their personal requirements. Regrettably, it is also seen that this has often been made possible with the acquiescence of offices/ establishments to which they are posted.

11. In the case at hand, it is seen that a NCO was sent on attachment to another organisation for the entire duration of his tenure with a specific unit, culminating in the current impasse. Respondents need to review such prolonged attachment resulting in poor command and control, and management of personnel involved. It needs to make necessary provision to ensure that such requirements are met through formal postings than through *ad hoc* arrangements of

attachments. Such prolonged attachments must only be an exception, that too with requisite approval of the competent authority.

12. With the posting order having been issued in August 2020, the hierarchy did not take action to implement the posting of the applicant on time. Even while HQ Northern Comd sought relief well in time, it has taken two full months for the relief to be provided. The current punitive orders of declaring an individual AWL, should he fail to report within the stipulated period and subsequently be declared a deserter, clearly indicates that the onus of implementing the posting is on the individual. It is not understood, what the poor soldier can do when the hierarchy does not exhibit any urgency or involvement in supporting the posting system, and is also not made and held responsible in implementing postings. Clearly, in this case, while the applicant may have had any other reason not to report to his parent unit, the issue of being declared AWL/ deserter subsequently resulting in stoppage of P&A must have clearly weighed on the applicant when he decided to report directly to the new unit on expiry of leave.

13. It is gratifying to note that when this punitive policy was brought to the notice of the COAS, necessary corrective measures were immediately instituted to ameliorate the difficulties faced by the clerical/PA staff. Sadly, the implementation of these orders by the subordinates and the Records are clearly found wanting. Despite the corrective instructions have been issued in July 2021, it is yet to be implemented in the case of the applicant.

14. It is also pertinent to mention that, having completed the attachment and having been granted 20 days casual leave with instructions to report to the parent unit, the applicant clearly

disobeyed the instructions by not reporting to 519 ASC Bn, his parent unit; precipitating the whole episode, and consequentially suffering the stoppage of P&A for almost 11 months now.

15. 519 ASC Bn, the parent unit of the applicant is well within its right to expect the applicant to report to the unit on expiry of leave, as this is the standard operating procedure. However, the subsequent action of the Unit in declaring the applicant AWL/ deserter seems to be an action driven by an urge of retribution. However, once the organisation was seized of the complete situation and took a decision to regularise the movement of the applicant and instructed 519 ASC Bn to cancel the AWL/ deserter Part II Orders, the recalcitrant and stubborn attitude of the unit in refusing to implement formal orders, must be clearly seen as an act of disobedience of orders. Sadly, since the whole issue seems to have been handled by the staff, no Commander in chain has stepped in to make CO 519 ASC Bn accountable and implement the instructions.

16. It is seen from the latest instructions of DGST to Stn HQ Wellington that the entire episode has resulted in a break in service of the applicant from 17.12.2020 till date. And that in order to regularise the break in service, the applicant is now required to report to the Depot Company, ASC Centre (South). In our opinion, the regularisation can be undertaken through executive directions by the competent authority without the applicant having to physically report to the Depot Company.

17. In view of the foregoing, the OA is allowed and we direct the following :-

- (a) The Part II order issued by 519 ASC Bn regarding AWL/ desertion is hereby cancelled.

- (b) Apprehension Roll, if any, issued in respect of the applicant is also hereby cancelled, if not already cancelled.
- (c) Applicant be taken on strength of Stn HQ with effect from 17.12.2020 and necessary Part II order be published by the unit.
- (d) The pay and allowances of the applicant be restored forthwith. All arrears be also paid forthwith.
- (e) Break in service be regularised by the competent authority through necessary executive directions, without the applicant having to report to Depot Company.
- (f) Respondents to investigate the reasons for delay in providing necessary relief and implementing the posting order; and take suitable action against those responsible as deemed appropriate.
- (g) Respondents to investigate and take suitable action as deemed appropriate against:-
 - (i) CO 519 ASC Bn for not implementing the instructions to cancel the Part II order and regularise the posting of the applicant.
 - (ii) The applicant for not reporting to 519 ASC Bn, his parent unit on expiry of the casual leave granted to him.
- (h) Respondents to review the current instructions on implementation of posting of clerks/ PAs in both ASC and Non ASC Units and include requisite provisions to make both, the organisation and

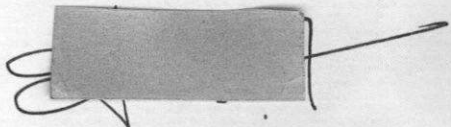
individual clerk/PA responsible for timely implementation of postings.

- (i) Respondents to file a status reports on restoration of pay and allowances and regularising the posting of the applicant within one month of this order. Status report on action taken against CO 519 ASC Bn, the applicant, and review of instructions on implementing posting of clerks/PAs be filed within four months of this order.

18. With the aforesaid directions, OA stands disposed of. There is no order as to costs.

Pronounced in open Court on this 8th day of December, 2021.


[JUSTICE RAJENDRA MENON]
CHAIRPERSON


[LT GEN P.M. HARIZ]
MEMBER (A)

/ng/