

**COURT No.3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

A.

OA 1023/2019 with MA 1694/2019

Ex Swr Ashok Kumar Rajput		Applicant
VERSUS		
Union of India and Ors.		Respondents

For Applicant	:	Mr. RS Dhull & Manoj Kr Gupta, Advocates
For Respondents	:	Mr. Neeraj, Sr. CGSC

CORAM

HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER
08.07.2025

Judgment in this matter has been pronounced today vide a separate signed order. At the time of hearing, certain original documents were kept by us for perusal. Since the judgment in the matter has now been pronounced, these documents be returned to the respondents after taking due acknowledgment.

(JUSTICE NANDITA DUBEY)
MEMBER (J)

(MS. RASIKA CHAUBE)
MEMBER (A)

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OA 1023/2019 with MA 1694/2019

Ex Swr Ashok Kumar Rajput Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Manoj Kumar Gupta, Advocate
For Respondents : Mr. Rudra Paliwal proxy for
Mr. Neeraj, Sr CGSC
Capt Abhishek Kumar, OIC Legal Cell

CORAM

HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER

MA 1694/2019

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay in filing the present OA. MA is allowed and disposed of accordingly.

OA 1023/2019

2. The present OA is filed by the applicant seeking the following relief:

"Invoking the jurisdiction of this Tribunal under section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this OA praying to direct the respondents To direct the respondents to grant disability pension after converting dismissal of the applicant into discharge and access the disability

through re-survey medical board, and to Set aside the dismissal order and discharge certificate dated 09.02.2015 and the composite assessment of disability be done after treating the disease as attributable and aggravated by the Military service. Further, to direct the Respondent to grant service pension, considering more than 16 years service from 15.06.1984 to 20.10.2000, and to grant invalid pension, if not eligible for disability and service pension considering his length of service.”

3. The present case is a typical example of ‘Representation and Relief’. The applicant who had kept quite for 12 years after his dismissal on 20.10.2000 submitted applications dt 10.08.2012 and 24.11.2012 to Armoured Corps Records requesting for grant of Service Pension and Disability Pension respectively. These applications were considered and rejected by order dt 13.10.2012 and 17.12.2012 respectively. Taking advantage of the rejection of the applications, as a cause of action, this OA is belatedly filed on 10.05.2019 to set aside the dismissal order dt. 20.10.2000 and to convert dismissal of applicant into discharge and grant Service Pension and Disability Pension or Invalid Pension, (if not found eligible for Disability Pension and Service Pension). Normally, we would have dismissed this OA on the ground of delay only, however, considering that the case is pending before this Tribunal since, 2019, we propose to decide it on merit.

4. The applicant was enrolled in the Armoured Corps on 15.06.1984. On completion of basic and trade training, he was posted to 49 Armoured Regiment. A perusal of record reveals that during the course of his service the applicant was awarded 4 red ink enteries on account of absence without leave (AWL) due to overstaying while on leave for the period 20.04.1985 to 17.05.1985, 07.08.1986 to 14.09.1986, 06.05.1987 to 12.07.1987, 10.10.1992 to 23.12.1992 and 08.02.1993 to 11.05.1993. He again remained absent without leave (AWL) from unit lines from 01.09.1995, a Court of Inquiry (COI) was accordingly held on 02.10.1995 and the applicant was declared deserter w.e.f. 01.09.1995. He however, joined voluntarily from 14.08.1997 but again remained absent without leave (AWL) from 12.09.1997. He was declared deserter w.e.f. 12.09.1997 after conducting Court of Inquiry (COI) on 29.10.1997. Apprehension Roll was issued on 08.12.1997. He was dismissed from service on 20.10.2000 for being a deserter for more than 3 years under the provision of Sec 20(3) of Army Act, Army Rule 17 and IHQ of MoD letter No. 17774/AG/DV-i dated 11.03.1980. Subsequently, the applicant filed two WP (c) bearing No. 8550/2003 and 8551/2003 before the Hon'ble High Court of Delhi which came to be dismissed on 08.03.2006 for non prosecution. Thereafter after a lapse of 12 years post his dismissal in 2000, the applicant preferred two

petitions/applications respectively for grant of service pension and disability pension on 10.08.2012 and 24.11.2012 to the Armoured Corps Records. Both these petitions/applications came to be dismissed vide orders dt. 13.10.2012 and 17.12.2012 respectively.

5. It is contended on behalf of the applicant that he suffered from mental illness and personality disorder and was admitted for psychiatric management on 21.07.1987. His absence from duty and overstaying was the result of his disorientation and loss of memory. It is further submitted that, after medical examination, he was placed in Low Medical Category (LMC) by the Medical Board, therefore, dismissal of the applicant from service due to desertion when he was suffering from mental disorder is illegal. It is argued that the dismissal was in breach of prescribed procedure, as the same was done without holding any enquiry into the allegations and without giving any opportunity of hearing to the applicant. It is further urged that discharge/dismissal after 4 red ink entries is not mandatory and since his absence is attributable to mental disorder, the punishment of dismissal is excessive and could not stand judicial scrutiny. It is prayed that considering 16 long years of service of the applicant his dismissal be converted to discharge to enable the applicant to get service pension and disability pension. To substantiate his arguments, learned counsel has placed reliance on the decisions of Hon'ble Supreme Court in

Veerendra Kumar Dubey Vs Chief of Army Staff & Ors. (2015) SC 627 and Vijay Shankar Mishra Vs Union of India & Ors. (2016) SC 795, Union of India Vs. Rajbir Singh (2015) SCC 264 and AFT, RB, Chennai in Ex Sep D Ramana Naik dt. 29.01.2015 and AFT, RB Lucknow in Sub Jagirman Rai Vs. UOI & Ors. in OA 307/2016 dt. 19.05.2022.

6. Per contra, the stand of learned counsel for the respondents is that the applicant was habitual offender and a bad example for others in the Regiment. He was already punished four times as he either absented himself from duty or overstayed the leave. He again went AWL from the unit lines on 01.09.1995. On expiry of 30 days of absence, a Court of Inquiry (COI) was held on 02.10.1995 and the applicant was declared as 'deserter' wef 01.09.1995 in terms of Army Act, Section 106. However, (after 1 year 11 months and 12 days from the date of desertion), the applicant voluntarily joined duty on 14.08.1997. Thereafter, he again absented himself without leave from unit lines w.e.f. 12.09.1997. Applicant's wife was also informed that her husband has again absented himself from Regiment on 12.09.1997. Vide their letter she was advised to convince her husband to rejoin the duties but to no avail. It is pointed out that in accordance with para 377 of the Regulations for the Army 1987 Revised, an apprehension roll was issued to all concerned. The applicant was again

declared deserter w.e.f. 12.09.1997, after conducting a Court of Inquiry (COI) on 29.10.1997. Thereafter completion of 3 years of desertion, the applicant was dismissed from service on 20.10.2000 under the provisions of Army Act and occurrence of this effect was notified by Armoured Corps Records.

7. It is further submitted that the applicant contention that he was dismissed while suffering from mental disorder and categorized under Low Medical Category (LMC) is not correct. Referring to the medical records of applicant, it is submitted that earlier the applicant was treated for psychiatric disorder as the explanation offered by him for overstay and absence without leave was to the effect "*he was under someone's magic spell*". He was initially placed under Low Medical Category (LMC). However, after his psychiatric and narco analysis the specialist opined that the applicant was conscious and deliberate and only for fear of punishment he was groping for some plausible reason to avoid punishment. The specialist after evaluation opined that he was lazy, lethargic, anxious, worried and chronic case of overstay of leave (OSL). After evaluation, the Medical Board upgraded the applicant to category 'AYE' on 26.06.1989 declaring him fit for all duties. His discharge from service was based on a Court of Inquiry (CoI) which declared him a deserter and subsequently only after 3 years was he

dismissed from service, hence he is neither entitled to disability pension nor invalid pension.

8. It is further submitted that the applicant is not entitled to pensionary benefits in terms of Para 113 (a) of Pension Regulations for the Army, 1961 (Part-1) being a dismissal case. Learned counsel for the respondents further submitted that otherwise also the applicant had rendered only 10 years and 172 days of qualifying service in the Army excluding 2 years and 280 days of non qualifying service, since the applicant has not completed minimum 15 years qualifying service in terms of Regulations 132 of Pension Regulations for the Army, he is not entitled for service pension.

9. We have heard the learned counsel for the parties in detail and perused the record.

10. It is not in dispute that the applicant remained absent without sanctioned leave, without permission and deserted the service voluntarily for a long period which resulted in his dismissal on 20.10.2000 in terms of para 22 of the Army order and letter IHQ of MoD letter No. 17774/AG/DV-1 dated 11.03.1980. It is evident from the records that earlier also he was declared deserter on 01.09.1995. Apart from that there are 4 red ink entries for which he was awarded punishment.

11. Admittedly the applicant was dismissed from service u/s 20 (3) of the Army Act, 1950 for being a deserter for more than 3 years. As per para 113 of Pension Regulations for the Army 1961 (Part-1), a dismissed army person is not entitled to grant of any type of pension and gratuity. For convenience sake the aforesaid paras be read as under:

“113. (a) An individual who is dismissed under the provisions of the Army Act, is ineligible for pension or gratuity in respect of all previous service. In exceptional cases, however, he may, at the discretion of the President be granted service pension or gratuity at a rate not exceeding that for which he would have otherwise qualified had he been discharged on the same date.

(b) An individual who is removed from service under Army Act. Section 20, may be considered for the grant of pension/gratuity at the rate not exceeding that for which he would have otherwise qualified had he been discharged on the same date. The competent authority may, however, make, if considered necessary, any reduction in the amount of pension/gratuity on the merits of each case.

(c) An individual who is discharged under the provision of Army Act and the rules made there under remains eligible for pension or gratuity under these Regulations.

Note: Those discharged from service due to misconduct, lack of integrity or moral turpitude are not normally eligible for gratuity, but they may be sanctioned gratuity in exceptional cases at the discretion of the President at a rate not exceeding that for which they are normally qualified.

12. In absence of any explanation for absence and in view of the facts brought out in para 7 above the only conclusion would be that the applicant deserted the service voluntarily and intentionally and remained absent without permission/sanctioned leave for a long period of 3 years which resulted in his dismissal in terms of MoD letter No. 17774/AG/DV-1 dated 11.03.1980, which deals with desertion. For the sake of brevity the same is reproduced as under:

Court of Inquiry

(a) *Court of inquiry will be held in the case of all absentees after 30 days of their absence under Army Act Section 106. In calculating the period of 30 days, the date on which the person concerned absented and the date on which the Court of Inquiry assembled to inquire into his absence must be excluded.*

(b) xxxx

(c) xxxx

(d) xxxx

(e) xxxx

(f) xxxx

Procedure to be followed

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 Section 20 (3) as under:-

(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 Notification SRO 17-E dated 5 Sep 77. reproduced In AO 175/77, or while serving with a force engaged in operations, or in order to avoid such service.*

(ii) *Those who desert with arms or lethal weapons.*

- (iii) *Those who desert due to subversive 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).*

(b) *After 3 years of absence/desertion in other cases.*

The following procedure will be adopted for dismissal:-

(a) *A nominal roll in respect of such absentees/deserters will be prepared by Record Offices concerned in triplicate in the form set out in Annexure I to Appendix 'A' to this letter. The terminal roll (in duplicate) will then be forwarded to the Commandant Centre/Depot concerned having Brigade Commander's powers under the Army Act Section 8 or, if he has no such powers, then to the sub area commander in whose jurisdiction the Record Office is located, for sanctioning dismissal under Army Act Section 20 (3).*

If the nominal roll consists of more than one sheet, each sheet will be serially numbered. The nominal roll will be accompanied by a statement as per Appendix 'A' which will be pinned to the tap sheet of the nominal roll. Such nominal rolls will be submitted to the authority concerned by 20 Apr and 20 Oct each years.

(b) *After obtaining orders for the dismissal of the persons mentioned in the nominal roll, one copy of the nominal roll will be returned to the Record office concerned.*

13. A bare perusal of Pension Regulation of the Army 113 (a) would show that an individual who is dismissed under the provisions of the Army Act, is ineligible for pension or gratuity in respect of all previous service. However, in exceptional circumstances at the discretion of President, he may be granted service pension or gratuity at a rate not exceeding that for which he would have otherwise qualified had he been discharged on the same date. From the aforesaid, it is

clear that applicant cannot claim pension or gratuity as a matter of right as he is not entitled to same on account of dismissal from service even otherwise applicant had only 10 years and 172 days of qualifying service, which is below the minimum qualifying service for grant of pension.

14. The prayer of the applicant is to convert dismissal into discharge, for which he has placed reliance on the judgment passed by Hon'ble Supreme Court in the case titled *Veerendra Kumar Dubey Vs Chief of Army Staff & Ors.* (supra) and *Vijay Shankar Mishra Vs Union of India & Ors.* (Supra). AFT, RB, Chennai in *Ex Sep D Ramana Naik* (supra) and AFT, RB Lucknow in *Sub Jagirman Rai Vs. UOI & Ors.* (supra).

15. So far as the judgments relied upon by the applicant for converting his dismissal into discharge are concerned, the same are not applicable to the facts of present case. In the case of *Veerendra Kumar Dubey* (supra), the grievance of the appellant primarily rested upon the alleged excessive punishment meted out by way of mechanical discharge for the red ink entries suffered by him without holding any enquiry or giving applicant therein any opportunity of hearing. In the case of *Vijay Shankar Mishra* (supra), the appellant therein was discharged under low medical category BEE (permanent) for the reason that he was unlikely to become an efficient soldier. The submission of

the appellant were that the mere fact he had been punished while in service on nine occasions inclusive of six red enteries as was no ground to exercise the power under Rule 13(3) Table III ((v)), as mere award of four red ink enteries does not render a discharge mandatory. Hon'ble Supreme Court relying on the judgement of *Veerendra Kumar Dubey* (supra) to meet the ends of justice treated the appellant to be in service till the time he would have completed the qualifying service for grant of pension.

16. In the case of *Ex Sep D Ramana Naik* (supra), the appellant pleaded guilty and was dismissed from service under after Summary Court Martial (SCM) proceedings, on account of absence without leave (AWL). In case of *Sub Jagirman Rai* (supra), a GCM was held on account of AWL of 2 days and unbecoming conduct of the applicant, wherein he pleaded guilty. In the aforesaid two cases Hon'ble Tribunal after going through the explanation offered by the appellants therein and considering the long service rendered found the punishment and dismissal awarded to be too harsh and excessive and converted their dismissal to discharge to enable the appellant/applicant who had completed the qualifying pensionable service to earn pension.

17. Whereas in the present case, it is reiterated that the applicant was dismissed under Section 20(3) Rule 17 of the Army Rules 1954 on 'Administrative ground' on account of being a deserter and not on the

ground of any medical ailment or disability as is evident from the Medical Board proceedings dt 26.06.1989, wherein the applicant was found fit for all duties and upgraded to category 'AYE'. Since his dismissal was not due to any medical ailment he is neither entitled to Disability Pension nor Invalid Pension. Further, the facts on record reveal that the applicant does not have the minimum qualifying service for grant of pension, having only 10 years and 172 days of qualifying service in the Army excluding 2 years and 280 days of non qualifying service. Applicant was a habitual offender and had taken too many liberties despite several punishments, as discussed in paras as evident from hereinabove. He had four red ink enteries to his credit (though not taken into consideration for dismissal) and declared 'deserter' twice. Thereafter, the applicant was dismissed by an administrative order, as deserter under provision of Sec 20(3) of Army Act, Army Rule 17 and IHQ of MoD letter No. 17774/AG/DV-1 dated 11.03.1980 and not on the basis of the 4 red ink entries awarded earlier as contended. Discipline is the hallmark of the Armed Forces and such gross indiscipline on the part of applicant could not be countenanced by the Army. In case the applicant's OA is accepted, it would send a wrong signal to other Army personnel.

18. Accordingly, in view of the facts and circumstances of the case, we are of the considered opinion that no leniency can be shown

to the applicant. No interference is therefore, called for as the Statutory Provisions/Regulations debarred the applicant from claiming the pension on account of disqualification stipulated in Pension Regulations 113 (a). No case for interference is made out. This application is dismissed

Pronounced in the open Court on this 8th of July, 2025.

(JUSTICE NANDITA DUBEY)
MEMBER (J)

(RASIKA CHAUBE)
MEMBER (A)

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