

COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

B..

OA 762/2020 with MA 892/2020

Lance Dfr Shyam Singh (Retd) Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Manoj Kr Gupta, Advocate
For Respondents : Mr. Satya Ranjan Swain, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN SHASHANK SHEKHAR MISHRA, MEMBER (A)

ORDER
17.10.2025

This case was heard by a Bench consisting of the Hon'ble Chairperson and Lt Gen Shashank Sekhar Mishra and reserved for judgment. Thereafter the judgment was dictated, seen by LT Gen Shashank Sekhar Mishra and in view of the provisions of Rule 98(1)(ii) of the AFT (Practice) Rules 2009 on the basis of the authority given by Lt Gen Shashank Sekhar Mishra this judgment is being pronounced today by the Chairperson.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN SHASHANK SHEKHAR
MISHRA]
MEMBER (A)

JYOTI/AS

COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA 762/2020 with MA 892/2020

Lance Dfr Shyam Singh (Retd) Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Manoj Kr Gupta, Advocate
For Respondents : Mr. Satya Ranjan Swain, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN SHASHANK SHEKHAR MISHRA, MEMBER (A)

ORDER

OA 762/2020 WITH MA 892/2020

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act 2007, the applicant has called into question the tenability of an order dated 16.06.1993 passed under Section 38(i) of the Army Act, 1950 declaring the applicant as a deserter and dismissing him from service. That apart, the applicant prays that the shortfall in his pensionable service be waived and by converting his dismissal into discharge he be granted pensionary benefits in the light of the orders passed by this Tribunal in OA No. 453/2013 on 10.09.2014 and OA No. 401/2013 on 19.11.2013.

2. The facts in brief indicate that the applicant was enrolled in the Indian Army on 11.01.1979 and after completing his training

*OA 762/2020 WITH MA 892/2020
Lance Dfr Shyam Singh (Retd)*

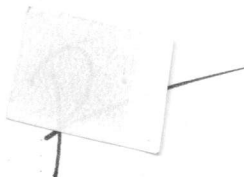
was posted to 72 Armoured Corps Regiment. Between 1979 and 1992 he served the Indian Army for about 13 years and by including his non-qualifying service he would have completed almost 14 years of service. While serving in the Armoured Corps in 1991 the applicant visited his village in Aligarh (Uttar Pradesh) after obtaining sanctioned casual leave. It is stated that while in the village he suddenly fell sick, was treated by a doctor in the nearby hospital at Chandaul (Aligarh) and lost consciousness during the treatment. He was discharged from the hospital and remained under treatment under the supervision of the same hospital. Thereafter the applicant's spouse is reported to have expired due to prolonged illness in July 1992. The applicant was still unwell and had not recovered and because of this mishap he also had difficulty in approaching the Army authorities and could not correspond with them. He indicates that his correspondence did not yield any result. He overstayed the leave because of his medical condition and unconsciousness and on recovery with the advice of his elders and well-wishers he was convinced to return to his Regiment. Accordingly he visited his Regiment after two years on 14/15.03.1993 and submitted the requisite papers for his treatment along with the death certificate of his wife. Thereafter he reported to the Unit authorities on 20.03.1993 and again submitted medical documents and the death certificate. However based on a Summary

*OA 762/2020 WITH MA 892/2020
Lance Dfr Shyam Singh (Retd)*

Trial and Court of Inquiry and without giving him any opportunity of hearing he was declared a deserter under Section 38(i) of the Army Act, 1950 and removed from service without being granted any pensionary benefits. It is the case of the applicant that he did not desert the service intentionally, it was unintentional and on account of compelling circumstances which forced him to remain out of service without leave. He had lost his mental peace and balance, he is an illiterate soldier and he could not report or inform the authorities. He submits that he had served for about 14 years, he is around 61 years of age as of now and since he is an illiterate soldier and his absence was neither intentional nor deliberate he should be reinstated in service or in the alternative, by treating his dismissal as discharge from service and condoning the shortfall in his pensionable service he should be granted pension.

3. Learned counsel for the applicant invited our attention to the provisions of sub-section (1) of Section 38 of the Army Act, 1950 and argued that desertion can only be established in accordance with the aforesaid statutory provision if there is a deliberate intention to commit desertion. In the absence of desertion without any intention an offence under Section 38 is not made out and therefore the provisions of Section 38(1) are not applicable to the applicant. That apart it is asserted that even if desertion as defined in

*OA 762/2020 WITH MA 892/2020
Lance Dfr Shyam Singh (Retd)*



Section 38 of the Army Act is established for the said offence a man in uniform cannot be dismissed from service as for desertion the punishment prescribed is only imprisonment as contained in subsection (1) of Section 38. As no dismissal from service is prescribed under this statutory provision the applicant cannot be dismissed from service. Furthermore learned counsel argues that condonation of shortfall is permitted by virtue of the law laid down by this Tribunal in the case of Ex-Sgt Rabin Majumdar v. UOI and others (OA No. 453/2013 decided on 10.09.2014) and therefore the applicant is entitled to pensionary benefits. He further relies on a judgment of the Hon'ble Supreme Court in the case of Ranjit Thakur v. UOI and others (1987 AIR 2386, 1988 SCR (1) 512 dated 15.10.1987) to contend that the punishment imposed upon him is highly excessive, disproportionate and beyond the permissible limit. It is submitted that the Army authorities before dismissing the applicant from service did not consider his past service and also the fact that he was unconscious for a long period of time during his absence, that he was under treatment of a qualified doctor and therefore the same should have been condoned and the illegal action interfered with. That apart, there being a delay of 9490 days i.e. more than 26 years the same should be condoned as the applicant was under treatment with doctors and could not approach the

Tribunal within the time prescribed and on this ground MA No. 892/2020 has been filed seeking condonation of delay.

4. The respondents have filed a detailed counter affidavit and rebutted the contentions of the applicant. Apart from raising a serious objection to the unexplained delay in approaching this Tribunal it is the case of the respondents that the applicant was enrolled in the Armoured Corps on 11.01.1979 and after completion of the basic trade training he was posted to 72 Armoured Regiment with effect from 19.08.1980. Thereafter he was posted to 11 Armoured Regiment on 17.05.1984. While serving with the 11 Armoured Regiment he was tried by a Summary Court Martial for committing the offence of desertion from service under Section 38(1) and was awarded the punishment of reduction to rank and dismissal from service on 16.06.1993 which is impugned in this petition. It is the case of the respondents that the applicant had rendered only 12 years, 03 months and 09 days of service excluding two years, one month and 26 days of non-qualifying service on account of overstay of leave and desertion. A true copy of the Summary Court Martial has been filed by the respondents as Annexure R1. The applicant admitted his desertion and was held guilty of the charges leveled against him. That apart, the respondents

*OA 762/2020 WITH MA 892/2020
Lance Dfr Shyam Singh (Retd)*

point out that during his entire service the applicant had been awarded the following punishments:

SL. No.	Army Act Section/Offence	Date of punishment	Punishment awarded	Remarks/Authority
A.	39(b) without sufficient cause overstaying leave granted to him from 26.05.1986 at 0100 hours to 24.06.1986 at 11:00 hours	26.06.1986	20 days RI	11 Armoured Regiment. Daily Order Part II No. 0/0094/0001/1986
B.	38(1) Desertion from 06.03.1991 to 31.03.1993.	16.06.1993	Reduced to ranks. Dismissed from ranks	11 Armoured Regiment. Daily order Part II No 0/0123/0001/1993.

It is the case of the respondents that the applicant was a habitual offender, his performance was very poor and his military behaviour and general conduct were not up to the mark as expected of a soldier. Because of his conduct he was granted a red ink entry in his service book. While posted in the 11 Armoured Regiment on 05.02.1991 he was sent on temporary duty to 44 Armoured Regiment for repair of a tank at 455 Armoured Troop Workshop vide movement order dated 04.02.1991. On completion of the temporary duty he was supposed to report back to his unit on 05.03.1991 but the applicant failed to join duty on that date and was declared a deserter after a Court of Inquiry was conducted. The applicant thereafter joined voluntarily on 31.03.1993 at 2200 hours and for his absence of 02 years and 26 days he was summarily tried

OA 762/2020 WITH MA 892/2020
Lance Dfr Shyam Singh (Retd)

and action was taken which is impugned in this OA. It is stated that almost 26 years after his dismissal from service on 21.01.2020 he submitted a petition and on 26.03.2020 through his counsel he sent a legal notice challenging the action and thereafter filed this petition. On 17.06.2020 i.e., after 26 years of dismissal he approached this Tribunal. It is the case of the respondents that apart from the fact that there is an inordinate and unexplained delay in invoking the jurisdiction of this Tribunal the applicant was subjected to a Court of Inquiry and Summary Court Martial as is evident from Annexures R2, R3 and R4 and the applicant having failed to establish the allegations leveled against him has been punished for the offence under Section 38(1) read with the punishment prescribed under Section 72 of the Army Act.

5. It is the case of the respondents that apart from being unauthorisedly absent the applicant did not submit any proof of his ailment as alleged in the petition. It is also stated that all procedures for conducting the SCM were adhered to and in the SCM he pleaded guilty. He did not have any explanation except for contending that he was sick but he did not report to the nearest Military Hospital. Further as per the documents produced by him the applicant's second wife, Smt. Sunita Devi is still alive and living with him. It is further stated by the respondents that even with regard to his

*OA 762/2020 WITH MA 892/2020
Lance Dfr Shyam Singh (Retd)*

ailment and treatment as alleged in the application no proof was submitted by the applicant during the trial. Even in the representation or in the OA filed before this Tribunal he has not produced any document in support of his contention. The medical certificates and other documents have not been produced the details of the hospital or the doctor who treated him have also not been provided. The respondents state that the applicant has come up with a false claim which is stale and beyond the period of limitation prescribed and therefore the application is liable to be dismissed.

6. We have heard the learned counsel for the parties at length and perused the records.

7. There being a delay of about 26 years in invoking the jurisdiction of this Tribunal, the application filed by the applicant under Section 22(2) for condonation of delay i.e. MA No. 892/2020 is taken note of. A perusal of the application indicates that it is a two-page application consisting of seven paragraphs and a prayer clause seeking condonation of a delay of 9,490 days. It is a fact that the applicant was dismissed from service after a Summary Court Martial on 16.06.1993 and he invoked the jurisdiction of this Tribunal by filing the application under Section 14 of the AFI Act on 17.06.2020 i.e. after a period of more than 26 years. In Para 1 of the application for condonation of delay the applicant states that he was

*OA 762/2020 WITH MA 892/2020
Lance Dfr Shyam Singh (Retd)*

unaware of the legal remedies available to him being an illiterate person, in distress and without financial means. He further submits that it was only on legal advice that he submitted a representation through his counsel, sent an ROG and thereafter approached this Tribunal. However, he does not indicate what ailment he suffered from, why he remained silent for about 26 years before approaching counsel, where he was undergoing treatment, the nature of his ailment or treatment or who the treating doctor was. No document in support of these assertions has been filed. In Para 2 the applicant submits that he is not to be blamed for the delay as it was caused by lack of knowledge and awareness. He therefore seeks condonation of delay relying on certain judgments of the Hon'ble Supreme Court. In Paras 3, 4 and 5 except for reproducing certain judgments of the Hon'ble Supreme Court on condonation of delay and contending that pension is a continuous right and a recurring cause of action nothing substantive has been indicated in the application to justify the delay.

8. The provisions of Section 22(2) of the AFT Act and the powers available to this Tribunal to condone delay are akin to Section 5 of the Limitation Act which mandates sufficient cause being shown for each day's delay. A perusal of the averments made by the applicant in the application clearly shows that he has miserably failed to substantiate the inordinate delay of 26 years in invoking the

*OA 762/2020 WITH MA 892/2020
Lance Dfr Shyam Singh (Retd)*



jurisdiction of this Tribunal. Far from giving any justifiable reason the applicant has not even provided details of his alleged ailment, the treatment undertaken or the doctor who treated him. On the contrary as per the counter affidavit of the respondents the records indicate that after the death of his wife the applicant has been living with his second wife, Smt. Sunita Devi. Therefore his contention that after his wife's death he was unaware of anything and had lost his mental balance appears to be nothing but an afterthought. This by itself is sufficient to dismiss the application.

9. However, in spite of the aforesaid, we deem it appropriate to evaluate the merits of the claim and examine whether, by condoning the shortfall in service, any pensionary benefit can be granted to the applicant as prayed for.

10. As far as the argument of the applicant's counsel that no offence under Section 38 was made out due to lack of proof of intention for desertion, and further that dismissal is not a punishment prescribed for the offence of desertion under Section 38(1), is concerned, we are unable to accept the aforesaid submission. Section 38(1) of the Army Act reads as under:

“38(1) Any person subject to this Act who deserts or attempts to desert the service shall, on conviction by court-martial, if he commits the offence on active service or when under orders for active service, be liable to suffer death or such less punishment as is in

OA 762/2020 WITH MA 892/2020
Lance Dfr Shyam Singh (Retd)

this Act mentioned; and if he commits the offence under any other circumstances, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

11. From the aforesaid it is clear that any person subject to the Army Act who deserts or attempts to desert service shall on conviction be subjected to court martial and if the commission of the offence is proved he shall be liable to imprisonment and other punishments as detailed therein. There is nothing in this Section to indicate that establishment of intention is required to make out a case of desertion. Desertion is nothing but a physical act whereby an officer or a person subject to the Army Act leaves service in the Army and fails to report for duty i.e. remains unauthorisedly absent from the place of work without sanctioned leave or permission. No intention for the said purpose is required on the contrary, the only requirement is to show that he was physically not present at his place of duty, that he was not on sanctioned leave and that he had not been authorised by the competent authority to remain away from duty.

12. In the present case, the applicant was detailed for temporary duty. After completing the said duty on 04.02.1991 i.e. the repair of a tank at 455 Armoured Troop Workshop he was required to report back to duty on 05.03.1991. The applicant failed to rejoin duty on

OA 762/2020 WITH MA 892/2020
Lance Dfr Shyam Singh (Retd)

05.03.1991 and remained absent from his place of duty in an unauthorised manner from 06.03.1991. An inquiry was held on 25.04.1991, but his whereabouts were not found and he reported back for duty only after about two years on 31.03.1993 at 22:00 hrs. These facts are established from the SCM proceedings (Annexure R1), the movement order dated 04.02.1991 (Annexure R2), the movement order dated 05.03.1991 issued by the 44 Armoured Corps Workshop (Annexure R3) and the CoI conducted on 25.04.1991 (Annexure R4). All these documents clearly indicate that the applicant failed to report for duty. Thereafter when he rejoined a charge sheet dated 12.06.1993 for unauthorised absence was issued to him. The charge sheet framed under Section 38(1) alleged that he had deserted service on 05.03.1991 after completing temporary duty with the 44 Armoured Regiment and had failed to report to duty until 31.03.1993. The SCM in the matter commenced as evident from the proceedings produced before us which show that the SCM was held at Amritsar in June 1993. The applicant appeared in the proceedings, the charges and records were produced before him and before recording his plea of guilt the Court explained to the accused the meaning of the charges and allegations levelled against him, the consequences of pleading guilty and the right available to him to defend himself by offering an explanation or justification for his absence. The applicant understood the same and accepted his

*OA 762/2020 WITH MA 892/2020
Lance Dfr Shyam Singh (Retd)*

guilt merely stating that he was unable to report for duty. Taking note of all these factors the charges were held proved and on 16.06.1993 the competent authority directed his dismissal from service.

13. From the aforesaid, it is clear that the applicant was subjected to SCM and he accepted his guilt, whereafter action was taken. Even though Section 38 of the Army Act defines desertion and prescribes punishment for the offence, Section 72 of the Army Act provides for alternate punishments awardable by a Court Martial. Section 72 contemplates that subject to the Army Act, a Court Martial on convicting a person for any offence under Sections 34 to 68 inclusive may award either the punishment prescribed for the offence or in lieu thereof any one of the lesser punishments set out in Section 71. Under Section 71(e) dismissal from service is one of the prescribed lesser punishments.

14. From the above, it is clear that when a person in uniform is tried for the offence of desertion under Section 38 of the Army Act, he may be punished with imprisonment as prescribed therein or in the alternative, the competent authority may impose a lesser punishment as provided in Section 71 which includes dismissal from service. Therefore the argument advanced by the applicant's counsel that dismissal from service is not a punishment for desertion under Section 38 cannot be accepted. The punishments for offences under

*OA 762/2020 WITH MA 892/2020
Lance Dfr Shyam Singh (Retd)*

Sections 34 to 68 are prescribed in Chapter VI of the Army Act. While each offence under Chapter VI carries its own specific punishment Chapter VII (Section 71) enumerates punishments that can be awarded by a Court Martial and Section 72 empowers the Court to award alternate lesser punishments from that list. That being so, as a lesser punishment was awarded to the applicant after court martial in accordance with Section 38 read with Section 72 we are unable to accept the first contention of the applicant in this regard.

15. As far as reliance placed on the judgments rendered by the Hon'ble Supreme Court in the case of *Ranjit Thakur* (supra) to contend that the punishment is disproportionate to the misconduct is concerned it is pertinent to note that in *Ranjit Thakur* (supra) itself the Hon'ble Supreme Court in Para 5 while considering the scope of judicial review of an administrative action laid down the principle that judicial review generally speaking is not directed against the decision but against the decision-making process. The question of choice and quantum of punishment is within the jurisdiction and discretion of the Court Martial but the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be disproportionate to the offence nor should it shock the conscience of the Court. The doctrine of proportionality ensures that even though provisions are available to a Court Martial to

OA 762/2020 WITH MA 892/2020
Lance Dfr Shyam Singh (Retd)

impose punishment and sentence unless the sentence is an outrageous defiance of logic it should not be interfered with unless it is irrational, perverse or shocking to the conscience of the Tribunal or the Court.

16. If we analyse the case at hand in the backdrop of the aforesaid principle it is very clear that the applicant remained unauthorisedly absent from duty for a period of more than two and a half years. He was a habitual offender having been punished for similar offences earlier. Even though an offence of desertion under Section 38 of the Army Act has been established against him instead of imposing the severe punishment of imprisonment under Section 38 the alternate reduced punishment of dismissal from service under Section 72 has been awarded taking note of the fact that the applicant would not become a disciplined soldier. The action taken in the matter therefore is neither illegal nor perverse nor is the punishment imposed disproportionate or shocking to the conscience of this Court. A man in uniform discharging duties in the Armed Forces in the manner done by the applicant irresponsibly and irrationally acts in a way unbecoming of a disciplined soldier and hence his dismissal from service cannot be faulted with nor does it warrant interference.

17. The second issue is whether in such a case the punishment of dismissal can be converted to discharge and pensionary benefits granted to the applicant. In our considered view the same is not

*OA 762/2020 WITH MA 892/2020
Lance Dfr Shyam Singh (Retd)*

permissible. Admittedly the applicant has only about 12 years of qualifying pensionable service whereas condonation of shortfall in qualifying service to earn pension is permissible only to the extent of one year. In accordance with the law laid down by this Tribunal and followed in various cases condonation of shortfall beyond one year is not permissible (refer to the Full Bench judgment in Smt Shama Kaur Vs. Union of India and Ors (OA No.1238 of 2016 decided on 01.10.2019), That apart in terms of Para 113(a) of the Pension Regulations for the Army, 1961 (Part I) an individual who is dismissed under the provisions of the Army Act is ineligible for pension or gratuity in respect of all previous service and in terms of Para 132 of the said Regulations a minimum of 15 years of service is required to earn service pension. That being so in the facts and circumstances of the case there is no provision, statutory or otherwise, which permits this Tribunal to convert dismissal into discharge and grant pension to him.

18. A similar issue was considered by the Hon'ble Supreme Court in Shish Ram v. Union of India and Others (C.A. No. 4523/2006 decided on 23.11.2011) where after taking note of Regulation 113(a) of the Pension Regulations grant of pensionary benefits to a dismissed employee was rejected on the ground that the statute does not permit it.

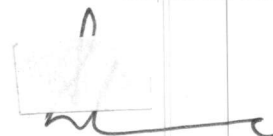
19. Accordingly, taking note of the totality of the facts and circumstances of the case and apart from the question of inordinate delay in approaching the Court even on merits we find no ground to interfere.

20. The MA and the OA therefore stand dismissed.

21. Pronounced in open Court on this the 17th day of October, 2025.



[JUSTICE RAJENDRA MENON]
CHAIRPERSON



[LT GEN SHASHANK SHEKHAR
MISHRA]
MEMBER (A)

/JYOTI/