

**COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

OA 968 / 2016

Sep Kuldeep Singh **Applicant**

VERSUS

Union of India and Ors. **Respondents**

For Applicant : Mr. Praveen Kumar, proxy for
Mr. V S Kadian, Advocate
For Respondents : Mr. Prabodh Kumar, Sr. CGSC
Maj Satvik Grover, OIC, Legal Cell

CORAM

**HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)**

ORDER

The applicant Sep Kuldeep Singh vide the present OA makes the following prayers:-

“(a) Direct respondents to permit the applicant to rejoin the duty and to regularise his service as his absence is due to circumstances beyond his control. AND/OR

(b) Direct respondents to convene medical board for his psychiatric evaluation and provide medical treatment to the applicant for his psychiatric disorder. AND/OR

(c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.”

2. The facts as averred in the reply dated 15.11.2016 filed by the respondents are to the effect:-

- That the applicant was enrolled in 102 Inf Bn (TA) Punjab on 01.02.2010, and whilst serving with this unit he was admitted to Command Hospital, Western Command on 05.08.2013 as a case of “ADJUSTMENT DISORDER FA3.2” and was discharged from hospital on 10.09.2013;
- That on 08.10.2013, he was readmitted to the Command Hospital West Command for further treatment and was discharged to the unit from the hospital on 11.10.2013 after availing due treatment;
- That thereafter, he did not report to the unit after discharge from hospital which aspect came to the notice of the unit after the receipt of the discharge slip and copy of the movement order of the applicant from the Command Hospital Western Command;
- That on receipt of the discharge slip and copy of the movement order, the unit Sig No A-8012 dated 01.11.2013 approached the Command Hospital Western Command asking the whereabouts of the applicant who in turn vide their sig no A-8012 dated 01.11.2013 informed that the applicant had already been discharged from this hospital on 11.10.2013 vide movement order no 201/S-2/MO/2013 dated 11.10.2013;

- That, on receipt of this information from the Command Hospital Western Command, the unit letter no 220/22/A3 dated 16.11.2013 was issued with a desertion roll to the police authorities of District: Kaithal (Haryana) to apprehend the applicant with a copy to Smt Jasmero Devi, mother of the applicant for information and advice for her son to report for duty.
- That, the applicant failed to re-join the unit and thus vide convening order no 108/3/A dated 26.11.2013, the CO ordered a Court of Inquiry to ascertain the circumstances under which the applicant had absented himself without leave (AWL) with effect from 11.10.2013;
- That, after finalization of the Court of Inquiry proceedings, the Court of Inquiry opined that the applicant was absent without leave with effect from 11.10.2013 and had failed to re-join the unit and hence he be declared as a deserter and be taken on the supernumerary strength of the unit;
- That, on the basis of the opinion given by the Court of Inquiry, the unit directed the applicant to be declared a deserter and to be taken on the supernumerary strength of the unit;
- That on the basis of the Court of Inquiry, Part II order no 0/0049/2014 dated 10.01.2014 was published by the unit

declaring the applicant as a deserter with effect from 11.10.2013 and he was held on the supernumerary strength of the Punjab Regiment Centre from the said date.

CONTENTIONS OF THE APPLICANT

3. The applicant, however, through this OA has submitted to the effect that on discharge from the hospital, he went to his unit to join the duties but at the main gate he was intimidated by the guard, that he should go home and take rest and he would be permitted to join the duties only after he became fit. The applicant has further submitted that he, being a psychiatric case, could not understand the gravity of going home without sanctioned leave, and was deceitfully made to leave the unit.

4. *Inter alia*, the applicant submits that he continued his treatment at his native place and vide averments made in para 4.7 of his OA which read to the effect:-

“4.7 That the applicant continued his treatment at his native place. The respondent circulated letter dated 16-11-2013 (ANNEXURE A-2) to apprehend the applicant and he was declared absent without leave w.e.f. 11-10-2013.”,_

affirms the receipt of the letter dated 16.11.2013 no 220/22/A3 of the respondents whereby the Deputy Commissioner District: Kaithal (Haryana), the Superintendent of Police District: Kaithal (Haryana),

and the Station House Officer Police Station: Kalayat District: Kaithal (Haryana) were called upon to take steps to apprehend the applicant and to inform the nearest Regimental Centre/Unit and arrange for his dispatch under Police Escort to the unit i.e. 102 Inf Bn (TA) Punjab PIN – 934302 c/o 56 APO, copy of which letter was endorsed to his mother stating to the effect:-

**“Smt. Jasmero Devi Mother of -You are advised to direct your son
No 10468073W Sep Kuldeep Singh to report this unit forthwith.
House No : 839
Mohalla : Rapria Patti
VPO : Balu
Teh & Dist : Kaithal
State : Haryana”**

”

5. The applicant submits that his parents intimated the police station he was not medically fit and was suffering from a psychiatric disorder and would report to his unit on becoming fit medically. The applicant further submits that after getting treatment and recovering from his disease he contacted his unit's Adjutant Major Basti Singh on mobile no 8222854141, who asked him to join the Regimental Centre at Ramgarh and thereafter the applicant went to the Regimental Centre at Ramgarh on 08/09 July 2015 and thereafter in November 2015.

6. It is further submitted by the applicant that he contacted the Admn. Subedar Major, seeking permission to re-join the duties, but

was asked for an authority letter from the unit for re-joining the Regimental Centre at Ramgarh.

7. *Inter alia*, the applicant submits that he also requested vide an application dated 25.07.2015, that he be allowed to join duties which however was not responded to, and that he also moved an RTI dated 07.09.2015 for the same and made a First Appeal under the RTI Act 2005 on 30.10.2015. The applicant submits that there was no response thereto and though he was willing to join the duties, the respondents did not permit him to join and had rather issued the letter to the civil authorities to apprehend him and were declaring him as a deserter though he had made ample efforts to rejoin duties.

8. The applicant submits that as a consequence thereof he filed OA 204 of 2016 which was disposed of vide order dated 12.04.2016 of the AFT, (Principal Bench), New Delhi with observations to the effect:-

“This is an application seeking prayer for direction to the respondents to permit the petitioner to rejoin his duty and to regularize his services or to convene Medical Board for Psychiatric evaluation and to provide medical treatment. We, however, find that there is no proper application in this case, but only an application (which may be dated 25.07.2015) wherein it is only mentioned that petitioner had jointed the 102 Infantry Battalion (TA) Punjab on 01.02.2010. In August, 2013 he became ill and for 35 days he was admitted in Command Hospital, Chandimandir. After grant of sick leave the petitioner was examined by Medical Board which discharged him on 11.10.2013 and after reaching to the Unit in Kalka on 11.10.2013 he was not permitted to join since he was unwell. He was thereafter getting himself medically treated. In November, 2013 some police personnel have come to his residence alleging that he has deserted from

service. We find that there is no prayer in this application even requesting that he joined the Unit or that there is an application for joining the Unit. It would not be proper for this Tribunal to interfere with such an application at present. The petitioner is directed to approach with the authorities who may consider it and dispose of the same.

With these observations the application is dismissed.”,

The applicant thus submits that thereafter he submitted a representation dated 23.05.2016(copy of which is on the record annexed as Annexure A6 to the OA), to the Commandant of the Punjab Regiment Ramgarh Cantt (Jharkhand-829131) and to the Commanding Officer 102 Infantry Battalion (TA) Punjab PIN-934302, c/o 56 APO stating that he was willing to join the unit and that he was reporting to the unit as well.

9. The applicant submits that though he reported to the Punjab Regimental Centre, he was not permitted to rejoin duty and even when his counsel contacted Maj Sharma of 102 Infantry Battalion (TA) Punjab for his re-joining, there was no satisfactory response.

10. *Inter alia*, the applicant submits that the Records, The Punjab Regiment vide letter dated 19.07.2016 no 10468073/R/NER, informed the mother of the applicant that a cheque of the arrears of pay and allowance had been sent to the Zila Sainik Board, Kaithal (Haryana) which could be collected.

11. The applicant further submits that in terms of Section 106 of the Army Act 1950, a person who is absent without leave is declared a deserter after 30 days of his absence and the authority declares him a deserter and places him on the regimental role till 03 years in case the desertion takes place in peace and in terms of para 376 of the Defence Service Regulations 1987, the said deserter person remains on the roll of the Army. The applicant further submits that in terms of para 377 of the Defence Service Regulations the authority takes action to apprehend the deserter with the help of the civil authority by issuing the apprehension roll and submits that in the instant case, however, he himself had been trying to re-join duty since the first day of the date of discharge from the hospital even before filing the OA before the Tribunal for directions to the authority to permit him to join duties, but it was the respondents who were not permitting him to join back.

12. *Inter alia*, the applicant submits in terms of Section 142 (5) of the Army Act 1950, a person who rejoins the unit voluntarily should be permitted to join duty after completing the surrender certificate.

CONTENTIONS OF THE RESPONDENTS

13. The respondents on the other hand vide their reply dated 15.11.2016 submit that the applicant had deserted himself from the Command Hospital Western Command, Chandimandir and was required to be dismissed from service with effect from 11.10.2016 after

completion of three years from the date of desertion i.e. 11.10.2013 being a peace area and that the applicant is a military deserter who did not report back to the unit for duty.

ANALYSIS

14. Vide order dated 02.09.2016 in the present OA, the applicant was directed to file an affidavit disclosing the date, time and place and before which authority he reported for duty after the order dated 12.04.2016 in OA 204/2016 was passed.

15. The applicant filed an affidavit dated 05.09.2016 and has submitted vide paras 6,7 and 8 thereof to the effect:-

***“6. That the Counsel intimated the applicant to collect the copy of the order and to report to the Unit. It took some time due to personnel difficulties to collect the copy of the said order and on receipt of the copy of order dated 12.04.2016 alongwith the covering letter dated 23.05.2016, the applicant personally reported at his parent Unit in Kalka on 13.06.2016 at about 11a.m in the morning and reported to Subedar Roshan who was performing the duties of the Rear Officer Commanding of 102 Infantry Battalion (TA) Punjab at Kalka, the covering letter dated 23.05.2016 alongwith the order dated 12.04.2016 passed in OA No 204/2016 was submitted to him. Sub Roshan intimated the applicant that since the Commanding Officer is presently at Srinagar alongwith the Unit and as a Rear OC he cannot take a decision can only intimate the Commanding Officer and the CO only can take decision for further course of action. He intimated that he will send these documents through FAX/ message and also directed applicant to wait. The applicant alongwith one of his relative waited for whole day till 2000 hrs in the evening but he did not get any intimation of decision and came back. The applicant also given his mobile no to Sub Roshan to communicate the decision of the Commanding Officer as soon as he receive.*”**

7. That the applicant informed the Counsel that he reported to unit at Kalka and met Sub Roshan, Rear OC for joining of duties but nothing has been intimated about joining as he said that he cannot take any decision without direction of Conumanding Officer and so to appraise the authorities about the court proceedings. The Counsel asked the name and Mobile No of Adjutant so that he can inform him about the direction of the Hon'ble Tribunal. The Counsel for the applicant herein during that week called Maj RK Sharma, Adjutant on his mobile No 09419244424 (the exact date and time not known) and appraised him about the direction of the Hon'ble Tribunal, Maj RK Sharma intimated the Counsel that as soon as he receive the court order he will put up the same to the Commanding Officer and he will take decision thereon.

8. That the Counsel advised the applicant to forward copy to the Unit as well as to The Records at Ramgarh. The copy was again forwarded to both the addressee by speed post on 22.06.2016 but till date no decision has been received.”

16. Vide order dated 28.03.2018, the respondents were granted time to file a counter affidavit thereto which was then submitted by the respondents vide affidavit dated 03.08.2018 stating to the effect that vide letter dated 25.08.2016, they had asked the applicant to clarify as to how was his mental condition and that if, he was undergoing any treatment, to send the concerned documents. The respondents also submitted thereby that the applicant was also warned through this letter, copy of which is annexed as Annexure R1 that he had become a deserter and was liable to be punished as per law and the applicant was called upon to submit his reply to which no reply was submitted by him.

17. The respondents submit that vide letter dated 14.09.2016 they reiterated to the applicant that he had been sent to be transferred to lower medical category S-3 (T-24) from 10.10.2013 by Command Hospital, Western Command and on 11.10.2013, he became a deserter from the Command Hospital, Western Command and at that time his mental condition was not good.

18. The respondents also informed the applicant that they did not have any medical document pertaining to his treatment and that the present unit was located in Srinagar **and the applicant was called upon to submit about his mental condition and the relevant documents as to where he was taking treatment.** Copy of the said letter dated 14.09.2016 has been annexed by the respondents as an Annexure R2.

19. The respondents submit that despite the letters dated 25.08.2016 and 14.09.2016, the applicant did not respond thereto and vide letter dated 24.09.2016, the Western Command informed him to immediately report to the unit at the present address by the said letter, copy of which is annexed by the respondents as an Annexure R3 and was also informed that if he could not report to that present address then he should report to the rear location of the unit at Kalka.

20. The applicant vide reply dated 21.10.2016 informed that he had filed the present OA 968 of 2016 and that even then he was suffering from mental disorder. The respondents have placed on record copy of the reply dated 21.10.2016 of the applicant, as Annexure R/4.

21. Vide the reply affidavit dated 03.08.2018, the respondents have stated *inter alia* to the effect:-

“That the Respondents herein are willing to permit the applicant to join his duties at the earliest. Earlier also, on many occasions the applicant was asked to join the duty but he did not.”

22. In reply to a specific Court query put to the counsel for the applicant during the course of the hearing on 28.03.2025, as to whether the applicant after the date of the said reply affidavit dated 03.08.2018 which was taken on record, ever chose to make an attempt to rejoin his duties, the response was with a reply in the negative. Significantly, the proceedings of the date 20.11.2018 indicate that the counsel for the applicant submitted that no rejoinder was sought to be filed.

23. Apparently, the applicant despite having been granted an opportunity to resume duties, vide the reply dated 03.08.2018 of the respondents taken on record on 20.11.2018 had ample time to make an attempt to rejoin duties but chose not to do so.

24. Significantly, the response of the applicant dated 21.10.2016 annexed as Annexure R4 to the letter of the respondents calling upon the applicant vide letter no 10468073/SR/ R&D/Pen dated 29.09.2016, vide paras 7, 8, 9 and 10 thereof is to the effect:-

“7. To rejoin the duty, I was compelled to file Court case an OA No 204/2016 in the Armed Force Tribunal (Principal Bench) at New Delhi for seeking directions to direct the authority for my rejoining the duty and to address the issue in the light of law. I was directed to approach with the authorities and to file the representation to the authority who may consider it and dispose of the same. Accordingly, I submitted a representation dated 23 May 2016 through my counsel as I was willing to join the unit. I reported to the unit at Kalka on 13 Jun 2016 at about 1100 a.m. and reported to Sub Roshan who was performing the duties of Rear OC, the Court Order dated 12 Apr.2016 along with covering letter of Counsel dated 23 May 2016 was submitted to him. Sub Roshan told me that the CO was at Srinagar, he can not permit him to rejoin without decision of CO. He forwarded the documents through FAX and directed me to wait. I waited there for whole day but no decision was taken. He then took my mob No and told me that he will intimate the decision of CO as and when received. My Counsel also telephonically contacted to Maj RK Sharma and appraised him of Court Order and requested for my re-joining but he did not reply satisfactorily.

8. I filed fresh OA No 968/2016 before the Armed Force Tribunal (PB) New Delhi on 23 Aug 2016 submitting the entire facts and praying for seeking directions of rejoining. The case was registered for hearing on 09 Sep 2016 and the matter is still pending in the Tribunal for disposal.

9. I received a letter No 10468073/K/A3 dated 10 Aug 2016 on 07 Sep 2016 at about 1605 hours in reference to my Counsel letter dated 23 May 2016 directing me to intimate about my mental conditions. Thereafter again on 12 Sep 2016, I received a letter dated 25 Aug 2016 to provide the medical documents regarding my medical conditions. Now I received a letter dated 29 Sep 2016 to show cause as to why I may not be dismissed from service under the provisions of Army

Order No 43/2001/DV and Army Act Section 20 (3) read in conjunction with Army Rule 17.

10. Sir, I still suffering from mental disorder and not recovered fully, kindly peruse the medical documents annexed with this reply. I tried to rejoin the duties and made ample attempts /efforts so that I can get proper treatment from service hospital and to serve the nation with dedication and sincerity. I am from very humble and poor family back ground and suffering financially even then I filed Court Case twice for seeking directions of rejoining as the authorities are not permitting me to rejoin. Since the day I relieved from Command Hospital Chandimandir on 11 Oct 2013, I straight way reported to my unit, but I was declared deserter which was not fair. I need sympathetic consideration and request you humbly not to dismiss me from service keeping in view the above facts and also request to permit me to rejoin the unit.”,

and there is not a whisper of an averment in this letter of the applicant dated 21.10.2016 that he made any attempt to rejoin his duties, after receipt of the letter dated 29.09.2016 of the respondents.

25. Apparently, it cannot be overlooked that as laid down by the Hon'ble Supreme Court in ***Ex Sepoy Madan Prasad vs UOI & Ors*** (2023) 9 SCC 100, **discipline is the implicit hallmark of the Armed Forces and is a non-negotiable condition of service**, which in the instant case has not been adhered to by the applicant.

26. In the circumstances there is apparently no merit in the prayer made by the applicant seeking that he be permitted to resume duties with the Indian Army and to regularize his absence, nor to direct the

convening of any Medical Board or assessment of his psychiatric evaluation. The OA 968/2016 is thus dismissed.

Pronounced in the open Court on 21st day of April, 2025.

[RASIKA CHAUBE]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

AP