

**ARMED FORCES TRIBUNAL
REGIONAL BENCH
JABALPUR**

CORAM :

**HON'BLE MR JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN GOPAL R, MEMBER (A)**

OA 267/2015

**No 6496988M Ex L/Nk Ganga Ram Sharma,
S/o Shri Madav Prasad Sharma,
R/o Village & Post – Sardar Nagar,
Tehsil – Bundhni, District – Sehore (M.P)**

.....Applicant

Versus

- 1. Union of India,**
Through the Secretary, MoD
Government of India, New Delhi.
- 2. COAS,**
IHQ of MoD(Army), DHQ PO,
New Delhi.
- 3. OIC,**
ASC Records (AT),
Bangalore (Karnataka)
- 4. Commanding Officer,**
810, AT Company, ASC (MA Mules),
C/o 99 APO

.....Respondents

For Applicant : Mr KC Ghildiyal, Sr Advocate with
Mr HC Singh, Advocate

For Respondents : Mr Aakash Malpani holding brief of
Mr HS Ruprah, CGSC

ORDER

1. The individual had been enrolled in Army Service Corps (Animal Transport) as a Sepoy (Chef) on 25.09.2003. While posted with 663ASC Coy (Tank Transporter), the applicant was diagnosed as suffering from **GENERALIZED ANXIETY DISORDER** by MH, Jodhpur and was placed in Low Medical Category S3 (T-24) w.e.f. 06.10.2009. The next medical review board was due on 23.03.2010 and the individual had reported to MH, Jodhpur on 03.04.2010. His medical category was reviewed and had been recommended to continue in LMC S 2 (T-24) w.e.f. 23.03.2010. Once again, his medical category was reviewed and he was recommended to continue in S 2 (T-24) w.e.f. 07.09.2010. In his next medical re-categorisation board, the individual was placed in Low Medical category S 2 (P) for two years w.e.f. 21.02.2011.

2. The individual from 663 ASC Coy Tank Transporter Unit had been posted to 5004 ASC Battalion (MT) and had been taken on strength on 07.08.2011. As the unit was deployed in Counter Insurgency (CI) Operational area and the individual being in Low Medical category S 2 (P), vide Para 17 of Army Order 03/2001, he was reverted to Adm Battalion, Depot Coy ASC Centre North, in peace location. While serving at ASC Centre North, the individual was admitted in Command Hospital (Air Force), Bangalore for Psychiatric evaluation on 04.10.2011. After due perusal of all the medical documents, the medical authorities placed him in S 3 (T-24) for **HYPOCHONDRIACAL DISORDER** w.e.f. 11.11.2011 and also upgraded the disability of **GENERALIZED ANXIETY DISORDER** w.e.f. 11.11.2011 to S 1. On discharge from CH(AF), Bangalore on 11.11.2011, the individual was posted from 5004 ASC Battalion (MT) to

810(AT) Coy ASC (MA MULES) vide ASC Records (AT) letter No. 7747/32/73/T-14/CA-1 dated 23.09.2011.

3. Accordingly, ASC Centre (North) had issued Movement Order No. 8348/Dep/LMC/HQW/ST-12 dated 12.11.2011 to the applicant with instructions to report his new unit on 29.12.2011 after availing 40 days balance of annual leave with six days of preparatory leave. The individual failed to report on due date and was declared OSL w.e.f. 30.12.2011. An apprehension roll had been issued by the unit to District Superintendent of Police, Sehore (M.P.) on 07.01.2012. The copy of the same had been endorsed to his NOK with an advice to motivate him to join duty. As per provisions, the Court of Inquiry held on 29.01.2011 at 810 AT Coy ASC (MA Mules) declared him as a deserter w.e.f. 30.12.2011. A Part II Order regarding the same had also been published regarding declaration of deserter vide 810 ASC Coy (AT) Part II Order No. 0/0018/2012 dated 03.02.2012. On 30.12.2014, he was dismissed from Service for having been a deserter.

4. The Counsel for the applicant avers that on posting out from ASC Centre (North), the applicant had proceeded to his native village to avail the balance of 40 days annual leave. The applicant was supposed to have rejoined duty on 29.12.2011 in 810 AT Coy ASC. Accordingly, on 27.12.2011 the individual boarded the train at Itarsi Railway Station. While in train, information had been received from a relative of the applicant that his wife had suffered serious attack of low blood pressure. Due to the sudden illness of his wife and as the applicant was already suffering from mental illness, he fell unconscious and was de-boarded from the train at Mughalsarai Railway Station for medical care by fellow travellers. Based on information gleaned from his diary, fellow travellers had passed on the

information and with the help of relatives; the individual had been taken back to his village.

5. An application dated 30.01.2012 had been forwarded by the Wife of the individual to 810 AT Coy ASC (MA Mules) (Annexure R/5). Perusal of this letter reveals that reasons for his absence due to mental state had been explained. On 29.12.2011 and 11.01.2012, by way of telegram, the same had been communicated to 810 AT Coy ASC (MA Mules). In response, 810 AT Coy ASC (MA Mules) letter No 1073/ST-12 dated 09.02.2012, the wife of the individual had been informed that the individual had been declared as a deserter from 30.12.2011 and all documents had been forwarded to ASC Centre (North). After recovery, the individual claims to have gone to ASC Centre (North), Bangalore in December 2013, but was not even allowed to make entry in the In gate. The individual along with his wife again visited ASC Centre (North) Bangalore on 17.08.2015 and was permitted to enter and was advised to contact the Record Office. The individual had again submitted an application dated 19.08.2015 addressed to OIC Records. In turn, a letter dated 19.08.2015 was handed over to him stating that he had been dismissed being a deserter on 30.12.2014 and there is no provision to rejoin. The occurrence regarding dismissal had been published by order of Central Commandant ASC Centre North and necessary Part II Order had also been published vide ASC Records (AT) Part II Order No. 1/0656/2015 dated 30/04/2015.

6. After having been declared deserter, final settlement of account of the individual had been done and the same was closed with the debit balance of Rs. 48/- and AFPP with a balance of Rs 54,821/-. The individual/NOK had been contacted by the authorities regarding payment of AFPP fund balance

and no communication has been received in this aspect for the applicant/
NOK.

7. Feeling aggrieved by the dismissal especially on the ground that his whereabouts for three years were not known, despite knowing the same, the OA has been preferred with the following prayers:-

- (a) To quash the order of dismissal w.e.f. 30.12.2014.
- (b) To reinstate the applicant in service w.e.f. 30.12.2014 with all consequential benefits including arrears of salary and continuity in service etc.
- (c) Any other appropriate order or direction which the Tribunal may deem just and proper in the nature and circumstances of the case including cost of litigation.

8. We have heard both the sides and also perused the material placed on record.

9. On perusal of Records, it is evident that the Applicant was enrolled in the Indian Army on 25.09.2003. He was declared a deserter w.e.f. 30.12.2011 and dismissed from Service on 30.12.2014 under provisions of AR 17 and AA Sec 20.

10. We find that the wife of the applicant on 29.12.2011 itself had intimated by means of a telegram to 810 AT Coy ASC (MA Mules), information regarding the individual with proof of despatch, though the Respondents have denied receipt of same. The next telegram originated on 11.01.2012 from the individual regarding extension of leave from 14.01.2012 to 28.01.2012 which has been admittedly received by the Respondents, but averment is that, no action could be taken on the same as

the individual had already overstayed leave and there was no communication for the absence from 30.12.2011 to 13.01.2012. Further on, there has been a communication from the wife to the authorities on 30.01.2012 again stating the reasons for absence. We hold that the inability to rejoin duty of the individual and the reasons for same had been brought to the notice of the competent authorities.

11. It is also seen from Regulation-41(a) of the Pension Regulations for Army, 2008 (Part-I) that –

“41 (a) An individual who is dismissed under the provisions of Army Act, 1950 or removed under the Rules made thereunder as a measure of penalty, will be ineligible for pension or gratuity in respect of all previous service. In exceptional case, however, the competent authority on submission of an appeal to that effect may at its discretion sanction pension/gratuity or both at a rate not exceeding that which would be otherwise admissible had he been retired/discharged on the same date in the normal manner.”

12. Army Rule 17 also stipulates that:

“A show cause notice is required to be given under this rule to the individual whose dismissal or removal from service is contemplated, except when the authority competent to order such dismissal or removal considers it inexpedient or impracticable to give such notice as stipulated in the proviso to the rule”.

13. In this case, it was expedient and reasonably practical that the authorities could have issued Show Cause Notice to the individual as the whereabouts of him were known as well as the fact that the individual/wife was in communication with the authorities. As related to the ibid case, we

tend to disagree with the OIC Records, who in his noting dated 20.04.2015, while sanctioning dismissal of a bunch of individuals including the applicant had stated that **“It has not been practicable to comply with the provisions of Army Rule 17 in their cases”**. Hence the Respondent’s stance is on a wrong footing, on the issue of Dismissal on the ground that the individual had been absent for 3 years and during the period the individual had not been apprehended by police nor voluntarily surrendered. We also hold that the line of arguments advanced by the Respondents in Para 1 (a) of the additional supplementary reply statement that **“No such provision exists with regard to show cause notice to a deserter before dismissal”**, as contrary to the laid down statutory provisions.

14. A reference has also been made to *SAO 9/S/89* regarding Ingredients & Proof of Desertion. A person is guilty of desertion, if he absents himself, either to quit the service altogether or to avoid some particular duty which he would be required. We are of the opinion, that in the ibid case, the individual cannot be guilty of Desertion, as despite his psychiatric state, he/his wife has been communicating with the authorities for extension of leave and permission to rejoin.

15. Another undisputable factor is that the individual when he had been posted from ASC Centre (North), Bangalore to 810 AT Coy ASC (MA Mules), was in psychiatric medical category S 2 (T-24). On receipt of information regarding his wife’s illness, while enroute to the new unit and consequent disturbed mental mood/state leading to overstayal gets corroborated from the Opinion of Classified Specialist (Psychiatry) of CH(AF), Bangalore who as part of his opinion dated 31.10.2011 in the

Medical Re-categorisation Board (Annexure A/2) had stated *“His judgement and insight were coloured by his mood state”*.

16. As the statutory provisions of AR 17 which stipulates issue of Show Cause Notice and it was expedient and reasonably practical to issue the same, due to non-compliance of the same by the authorities, we are constrained to hold the dismissal procedure as Null and Void.

17. In view of the above, the OA is allowed to the following extent:-

(a) To treat the individual as notionally in Service upto the date of dismissal (31.12.2014) with no backwages or arrears on any count.

(b) To subject the individual through a Medical Board within 8 weeks of this order, to assess his present medical category and in the opinion of Medical Board, if the psychiatric ailment persists, based on the same, initiate procedures for medical invalidation, entitling him for Invalid Pension. Arrears of Invalid Pension to be confined to three years from the date of issue of this order.

(c) In the event of the individual is found fit, to notionally consider the individual in service from the date of absence (30.12.2011) till he attains minimum qualifying service for pension and thereafter discharge him so that Service Pension is granted. Arrears of Service Pension to be confined prior to three years from the date of issue of this order.

(d) Other retiral benefits be confined to the actual physical service rendered by the individual.

18. The order to be complied with within 4 months of receipt of this order, failing which it will carry interest @ 6% per annum.

19. No order as to costs.

Pronounced in open Court on 18th July 2023

(JUSTICE RAJENDRA MENON)
MEMBER (J)

(LT GEN GOPAL R)
MEMBER (A)

A/L