

E. Court

Form No. 4  
{See rule 11(1)}  
ORDER SHEET

ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI

1. O.A. No. 34 of 2022

Ex. Lt. Swarna Latha Jaripita W/o Shri Kommireddy  
By Legal Practitioner for the Applicant

Applicant

Versus

Respondents

Union of India & Others

By Legal Practitioner for Respondents

Notes of  
the  
Registry  
Orders of the Tribunal

23.06.2022

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

1. Heard Shri S.S. Pandey, learned counsel for the applicant and Shri A.J. Mishra, learned counsel for the respondents.
2. This application has been filed for issuing directions to the respondents to process the applicant's request to accept her resignation from the post of Nursing Officer or administratively terminate her services from Indian Military Nursing Service.
3. Learned counsel for the applicant submitted that applicant was commissioned in Military Nursing Service (MNS) of Indian Army on 05.09.2013 as Nursing Officer for a period of five years. However, owing to some compelling domestic reasons, she claims to have submitted her resignation letter after having put in only twenty two days service. Thereafter she joined the service in Employees State Insurance Corporation (ESIC) in 2013 itself and worked there till 2019 when she left for United States of America where she is still working. She is a green card holder in USA. She came back to India along with her husband and her elder daughter aged 13 years on 05.09.2022 to see her parents and parents-in-law and during immigration clearance at Hyderabad Airport she was apprehended by the civil police against a look out circular issued against her by the respondents, being a deserter. After being apprehended she was firstly taken to Artillery Centre Golconda and after being detained there for five days she was shifted to Military Hospital Ahmednagar where she is still under close custody. She has not been served with any charge sheet nor has been assigned the reason for her arrest.
4. Learned counsel for the applicant further submitted that after forwarding her resignation letter applicant was under bonafide belief that her resignation had been accepted by the respondents. She was never informed that respondents had declared her a deserter for being absent from unit without leave. He submitted that even if it is assumed that she was a deserter then, as per rules, on account of being a deserter she ought to have been dismissed from service after three years from the date of desertion and, in that case, she being no longer subject to the Army Act, no disciplinary action could be taken against her for the alleged desertion. Thus, he submitted that applicant's detention in military custody is quite illegal which should be declared as such and she should be treated to have been dismissed from the service of Indian Army and should be set at liberty to go anywhere she likes and respondents should be directed to release her passport also to enable her to travel to USA on 29<sup>th</sup> of June 2022 as per her schedule program.

5. During course of arguments, the learned counsel for the applicant also submitted that after illegal arrest and application being filed by the applicant in Armed Forces Tribunal, Principal Bench, New Delhi and its copy being served to the respondents through their counsel, the respondents have freed the applicant with oral order that she is free to roam around anywhere but is not allowed to leave the military station. He submitted that this act of the respondents affirms that she was illegally detained and kept in close custody with a view to initiate disciplinary action.
6. The learned counsel relied on the provisions of the Indian Military Service Ordinance 1943, Section 39 of the Army Act 1950, Army Order 43/2001/DV (para 22 (b), 23(f) and 24) to claim that the applicant ought to be treated as dismissed from service after 3 years from her date of absence.
7. He further pleaded that the respondents had never replied / processed the applicant's letter of resignation even at this stage. He submitted that her letter of appointment itself speaks about provisional status of her commission and of only 5 years of initial commission and that on this ground also her initial engagement would have been over in 2018 itself. Moreover for the 22 days of service she did not earn any salary.
8. He submitted that nearly ten years after the date of absence from leave it would be ultra vires for her trial by way of disciplinary proceedings. At this stage only administrative action against her will be proper and she is willing also.
9. Per contra, learned counsel for the respondents, on instructions received, orally submitted that it is being wrongly stated by the applicant that after having put in twenty two days service in Indian Army she had submitted her resignation and she was under bonafide belief that the same was accepted. As a matter of fact no resignation letter was ever submitted or received wherefore there was no question of processing the same. He submitted that after being commissioned on 5th of September 2013 applicant proceeded on seven days casual leave on 3rd of October 2013 and was supposed to join the unit on 9th of that month. He further submitted that when applicant did not return to the unit on the due date and remained absent from unit for a month a Court of Inquiry was conducted in her matter wherein she was declared a deserter with effect from 10th of October 2013 and apprehension roll was issued against her to the civil police. A look out circular was also issued against the applicant in compliance whereof she was arrested by the civil police on 6th of June this year when she landed at International Airport Hyderabad and was then handed over to army authorities. He strongly refuted the allegations that she was kept in close custody firstly at Artillery Centre Golconda and now at Military Hospital Ahmednagar and has been set free only 2-3 days ago after the filing of Original Application. In fact applicant was never in close custody, she is and has always been free and at liberty to go anywhere she wants. No restriction has had been imposed on her, she has been only asked to remain in India as respondents are contemplating to take disciplinary action against her being absent without leave from the unit and a tentative charge sheet in this regard may be served to her within 2-3 days.
10. Learned counsel for the respondents submitted that respondents cannot be forced to initiate administrative action against the applicant for her absence without leave from the unit. It is the prerogative of the respondents whether they initiate administrative action or disciplinary action as the act which the applicant has committed is an offence punishable under section 39 of the Indian Army Act. However, during

course of hearing he admitted that in regard to absence without leave from the unit a case for her dismissal from service was initiated on 14.02.2017 for seeking prior approval of the competent authority, in accordance with provisions of para 22 (b) and 24 of AO 43 /2001/DV . However, there being some error in the case, the same was returned and now it has been initiated afresh in February 2022.He also admitted that applicant being an MNS officer, she can only be dismissed from service for the offence she has committed and no other punishment can be awarded to her.

11. He further submitted that if allowed, respondents will complete disciplinary action against the applicant within a month for dismissing her from service whereafter she will be at liberty to go abroad. But so long as disciplinary proceedings are not completed her presence will be required, therefore, she should not be allowed to go beyond India, rather she should be directed to deposit her passport with respondents till completion of the proceedings.

12. During course of hearing when learned counsel for the respondents was asked that when no other punishment but dismissal from service can be awarded in the case which is also permissible and allowed by way of administrative action as per rules and which has already been initiated against the applicant firstly in 2017, and the same being returned after there being some error therein, and secondly in February 2022 then why was a disciplinary action being contemplated against the applicant, as she is no longer a person subject to the Army Act, learned counsel replied that he has no objection in taking administrative action against the applicant to ensure her dismissal from service if this tribunal so orders. However, he submitted that even for completing administrative action at least a month will be required as also the presence of the applicant as her reply to show cause notice is must. He submitted that in past show cause notice was sent to applicant twice but was never replied.

13. In reply to above, the learned counsel for the applicant submitted that there will be no objection to the applicant if administrative action initiated against the applicant in February 2022, as said by the learned respondents' counsel, is put to effect and completed within a month to ensure dismissal of applicant from the service of Indian Army. However, he submitted that in any case proceedings must be completed within a month as applicant is in service of government organisation in USA and is committed to requirements of her employer. As regards passport, he submitted that it is already lying with respondents as it was deposited at the time of her apprehension.

14. Upon hearing submissions of learned counsel of the both sides and after going through the facts and circumstances of the case we find that applicant was commissioned in MNS of Indian Army on 05.09.2013 as Nursing Officer and being absent without leave from the unit with effect from 10th October 2013, a Court of Inquiry was held against her wherein she was declared a deserter w.e.f.10.10.2013. As per Army Rules, applicant ought to have been dismissed from service after three years from the date of desertion, but the same was not done in her case for the reasons best known to the respondents as a result of which she is still a deserter and needs to be dismissed from service. We also find that in case of MNS, as per rules, even if someone deserts the unit, the maximum punishment which can be awarded to her/him is dismissal from service. No punishment in nature of imprisonment can be awarded and dismissal from service can be awarded by way of administrative action also. Hence, disciplinary action is not necessarily required for this. We also find that in case of the applicant the administrative action for her dismissal from service was initiated

against the applicant way back on 14.02.2017, however, why she was not dismissed from service and why her case was remitted back after being kept pending for five long years is best known to the respondents. Be that as it may, the fact is that applicant is still a deserter and needs to be dismissed from service of Indian Army, in order to bring closure to the matter.

15. In the facts of the case we feel appropriate that procedural formalities for dismissal of service may be completed through administrative action and no disciplinary action is required for the same. Accordingly, we direct the respondents to complete administrative action against the applicant, (which they have already initiated in February 2022 for the second time) within a period of one month from today by dismissing her from service and applicant will provide all necessary cooperation in completion of these proceedings. In the meantime applicant will not leave the country (India) but she will be at liberty to go to anywhere in India for which no permission from the respondents will be required. Applicant is directed to deposit her passport with the Commanding Officer of her unit, if the same is lying with her, which the Commanding Officer will return to the applicant immediately after the expiry of one month period as provided in the order. In the event of passport being taken by the civil police/immigration authority or any other authority, as applicant says, the said authority will return the same to the applicant after the expiry of one month from the date of this order on production of certified copy of the order.

16. In view of above, Original Application stands finally disposed of.

17. Any pending application, if any, also stands disposed of.

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(Vice Admiral Abhay Raghunath Karve)  
Member (A)

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(Justice Umesh Chandra Srivastava)  
Member (J)

AKD/-