

**ARMED FORCES TRIBUNAL CHANDIGARH REGIONAL BENCH
AT CHANDIMANDIR**

TA 155 of 2009
(Arising out of CS 320 of 2003)

Ex Sapper Raj Kumar Singh	...	Applicant
Vs		
Union of India and others	...	Respondents

ORDER
29.07.2010

Coram : Justice Ghanshyam Prasad, Judicial Member
Lt Gen N. S. Brar (Retd.), Administrative Member

For the Petitioner (s)	Brig (Retd) Rajinder Kumar, Advocate
For the respondent(s)	Mr. Brijeshwar Singh, CGC

Lt. Gen. N. S. Brar (Retd.)

This civil suit has been transferred from the Court of Civil Judge (Senior Division) Ambala and is taken up under Section 14/15 of the Armed Forces Tribunal Act 2007.

The case of the plaintiff, Raj Kumar, is that he was enrolled in the Corps of Engineers on 31.08.1991 and was serving in 65 Engineer Bridge Regiment (PMS) when he proceeded on one month's annual leave on 03.01.2000. He requested for extension of leave by 15 days which was granted. He thereafter requested for another extension of leave by 15 days which was also granted. Thereafter he fell sick and requested for grant of 10 days advance leave from the next years entitlement which was also granted. Thus his leave was extended up to 16.03.2000. In the meantime he had

suffered from some mental ailment which deteriorated. He remained under treatment with a civil hospital till 19.08.2003. On becoming fit he proceeded to the unit who directed him to The Records Bengal Engineer Group, Roorkee who in turn refused to entertain him and take him back on strength. No reason was given for not taking him back into service. Legal notice was sent to the defendants on 23.09.2003. Failing to get any response this civil suit was filed seeking a decree of declaration to the effect that his dismissal from service was illegal and for his reinstatement in service.

Written statement was filed on behalf of the respondents. Pleadings had been completed and the learned Civil Judge (Senior Division) Ambala framed five issues on 06.02.2008 of which the primary one being as to whether the dismissal of the plaintiff from service was illegal and in violation of the statutory procedures and was liable to be set aside. The other issues were related to consequential benefits. One PW was examined and vide separate statement of the plaintiff evidence on behalf of the plaintiff was closed. Thereafter this suit was transferred to this Tribunal.

Learned counsel for the plaintiff restated the facts of the plaintiff proceeding on leave on 03.01.2000 which was successively extended up to 16.03.2000. He thereafter contended that the plaintiff developed some mental ailment and undertook treatment from one Dr Anil K Gupta. Medical documents relating to the treatment are on record. The plaintiff sought treatment from the Ranchi Institute of Neuro Psychiatry and Allied Sciences, Kanke, Ranchi from 26.08.2002 to 19.08.03 when he was certified fit to resume his duties (Exhibit P11). The parents of the plaintiff did not know that he was to be admitted in

a military hospital for treatment. The parents and brother of the plaintiff wrote letters to the unit intimating the medical condition of the plaintiff; however, there was no response. It was further contended that the plaintiff had not overstayed leave without sufficient cause as he had overstayed due to medical reasons. There was no apprehension roll issued or any intimation given to the next of kin of the plaintiff. No show cause notice was issued. The plaintiff came to know about proceedings against him only when he along with his brother reported for duty in September 2003. However, he was not taken on unit strength.

Learned counsel for the defendants stated that the plaintiff was granted one month's leave which was extended three times up to 14.03.2000 and not 16.03.2000. Requests for these extensions and intimation of these extensions were sent at the address given in his official records and were received by him. (Annexure R1). When the plaintiff did not report for duty after expiry of his leave a court of inquiry was ordered on 17.07.2000 which declared him a deserter wef 15.03.2000. Apprehension roll was sent, however, no reply was received from the police. He was thereafter kept on supernumerary strength for three years and struck off strength wef 20.04.2003 under Army Act Section 20(3). Show cause notice is issued in all cases of dismissal / discharge except desertion as the individual being a deserter cannot be issued such show cause notice. As the plaintiff was a deserter his whereabouts were not known however the Zila Sainik Board, Bast Singh Bhum (Bihar) and the next of kin of the plaintiff were informed about his overstaying leave / desertion through letters dated 04.09.2001, 21.12.2001, 09.07.2002 and 07.09.2002 as

indicated in the reply to the interrogatory. The learned counsel further stated that in cases of personnel falling sick during leave the procedure detailed in Para 1347 of Regulations for the Army is to be followed. This reads as under

Sickness During Leave (a). *A soldier falling sick while on leave must report himself sick at once to a medical officer of the armed forces or to military, naval or air force hospital if one exists at the station. He will report to the civil hospital/dispensary if there is one at the station, for treatment. When neither service nor civil medical facilities are available at the station, he should report to the armed forces/civil hospital/dispensary at the nearest station, nearest medical officer or armed forces/civil hospital/dispensary. He will obtain a certificate from the government civil surgeon stating that owing to the severity of his illness, it was impracticable for him to undertake the journey to such hospital. If a civil surgeon is not available in the station he may obtain such a certificate from an assistant surgeon employed in a government/district board hospital/dispensary and in the absence of this facility from the village headman. In either case the individual concerned is himself responsible for ensuring that the certificate is immediately sent to authority, which granted him leave. If the commanding officer has any reason to believe that a soldier has admitted to a civil hospital, he will take necessary action to get it verified from the doctor concerned.*

A medical certificate from a civilian government medical officer or a private medicate practitioner will by itself not be accepted as entitling him to the grant of an extension of leave, except in very exceptional cases when

- i) It was impossible for the individual to follow the procedure mentioned above owing to severe illness and the non existence of service/civil facilities nearby; and*

- ii) *The leave sanctioning authority is satisfied with the bona fides of the case.*
- iii) *In view of the peculiar circumstances obtaining in Nepal and certain hill districts e.g. Kumaon, and other remote localities, the above procedure will have to be applied with discrimination at the discretion of the leave sanctioning authority.*

He finally contended that notwithstanding the plaintiff's claimed illness or otherwise, by failing to report to any military establishment or hospital he had wilfully failed to rejoin after expiry of his leave and continued to do so till he was struck off strength after three years.

Considered the pleadings of the parties and perused the documents on record.

It is an admitted fact that the plaintiff proceeded on leave on 03.01.2000 which was successively extended up to 14.03.2000 and he failed to rejoin thereafter. In case of sickness the plaintiff was required to report to the nearest military hospital for treatment which was not done at any stage. His purported treatment was got done at Ranchi. In his evidence as PW 1 it is admitted that he is aware of a military hospital at Ranchi Cantonment. His contention of not being aware of reporting to a military hospital and also not being aware of being entitled to treatment in military hospital lacks credibility given that he had about nine years of service and even his dependents are entitled to treatment in military hospitals. His failure to do so negates any justification for overstaying leave and substantiates his intention of not rejoining duty. As the extension of leave was applied for and approval was received at his recorded home address it would be fair to assume that repeated communications sent about his overstaying

leave / desertion were received by him and ignored. His relatives found it fit to take him back to his unit after nearly three and half years of overstay of leave when he had been struck off strength and intimated about the same.

Considering the facts and circumstances of the case we are of the view that the plaintiff wilfully overstayed leave granted to him and was declared a deserter and struck off strength in accordance with rules and regulations. His dismissal from service cannot be said to be illegal. The suit is accordingly dismissed.

(Justice Ghanshyam Prasad)

(Lt. Gen. N. S. Brar (Retd.))

July 29, 2010

RS