

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A. No.07 of 2014

Monday, the 22nd day of December, 2014

The Honourable Justice V.Periya Karuppiah
(Member-Judicial)
and
The Honourable Lt Gen K Surendra Nath
(Member-Administrative)

(No.1369886) Ex L/Nk S.Madhu (Age 52 years)
Mittareddyhalli Village, Dinnahalli PO
Dharmapuri Taluk & District, Tamil Nadu 636804

...Applicant

By Legal Practitioners:
Mr.S.P.Ilangovan and Mr.B.A.Thayalan

vs

1. The Chief of the Army Staff, Army Headquarters
Sena Bhavan, DHQ Post, New Delhi – 110 011
2. The Oi/C, MEG Records, PIN: 900493, C/o 56 APO
3. The PCDA (Pensions), Draupatighat, Allahabad, UP 211014
- *4. UoI Rep. by Defence Secretary
Ministry of Defence, South Block, New Delhi – 110 011 ...Respondents

**Impleaded as per Order of the Hon'ble Tribunal in MA No.58 of 2014, dated 26.03.2014.*

Mr.N.Ramesh, CGSC

ORDER

[Order of the Tribunal made by
Hon'ble Lt Gen K Surendra Nath, Member (Administrative)]

1. The applicant, Ex L/Nk S.Madhu has filed this Original Application praying to call for all the records relating to the order of dismissal of the Applicant from the Army and set aside the same and convert the dismissal into discharge on extreme compassionate grounds and to further condone the deficiency of 315 days of shortfall in the qualifying service for pension and to grant him appropriate service pension.
2. The applicant submits that he was enrolled in the Indian Army on 07.11.1979 and was Posted to 11 Engineer Regiment and served there till 1994. During the period when the Unit was in Delhi, there were serious domestic problems as his wife was paralysed and bedridden, his mother was serious and there was no one to take care of his five children. Therefore, he had requested a transfer to Bangalore but was not given the same. However, he was temporarily attached to MEG Depot Bn at MEG Centre, Bangalore. He would further claim that during the period, the situation at home became serious and he alleges that he was not granted leave. He would claim that due to serious mental stress and on account of pressing problems at home, he was unable to perform his duties. Despite his domestic problems, the Depot Bn arranged to send him back to his parent unit which further upset him and he went home to attend his family and remained absent without leave from 27.12.1994. He was declared a deserter and was dismissed from service with effect from 15 May 1998. The applicant would claim that he had applied to rejoin the Unit thereafter but was not

permitted to do so. He would further aver that he had 14 years of unblemished service and his character was found 'exemplary' and he had served in several field areas for which he was awarded medals. After learning that several persons were being granted family pension despite a shortfall in service, he had applied to the respondents 1 & 2 for condoning his shortfall of 315 days in the qualifying service to be eligible for service pension. However, the applicant claims, the respondents dismissed the application without application of mind. He would, therefore, pray to the Hon'ble Tribunal that his dismissal be converted to discharge on extreme compassionate grounds and to further condone the deficiency of 315 days of qualifying service of 15 years for being eligible to draw service pension and to grant him the same.

3. The respondents in their counter would submit that the applicant was enrolled in the Army on 17 November 1979 and while serving with Depot Battalion, MEG Centre, Bangalore, he became Absent without leave (AWL) with effect from 0830 hrs on 27 December 1994. As the applicant did not report back for duty from the AWL, a Court of Inquiry was held on 23 February 1995 and the applicant was declared a deserter with effect from 27 December 1994. Since the applicant had deserted from a peace station, in accordance with the existing rules on the subject, he was dismissed from service with effect from 15 May 1998, after a period of 3 years from the date of desertion and necessary publications were published under the provisions of the Army Act Section 20(3) read in conjunction with Army Rule 17. They would further claim that as per provisions contained in Rule 113(a) of Pension Regulations for the Army Part-1 (1961), 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, therefore, no provision exists for condonation of shortfall in service for grant of service pension. The respondents would also bring out that the applicant's claim of 'Exemplary' service was not true as he had a Red ink entry as he was awarded with 14 days Rigorous Imprisonment for an offence under Army Act Section 42 (e). The claim that the applicant was not given leave was also not true as he was attached to the Depot Battalion on 17 April 1994. Thereafter, he had availed of 50 days of balance of Annual leave from 04 July 1994 to 22 August 1994. He was attached at MEG Centre, Bangalore for more than 8 months before he was given orders to be repatriated to his parent Unit. Further, on finding out that the applicant was 'Absent without leave', an apprehension roll was sent to the Superintendent of Police, Dharmapuri to enquire into the applicant's whereabouts and the said Superintendent of Police, *vide* his letter dated 28 January 1998 had stated that "the whereabouts of Madhu is not known". The respondents would further aver that the applicant, a soldier with 14 years of service had adequate knowledge of rules and regulations and the consequences of being a deserter. Despite this, the applicant had not made any efforts to return to the Unit nor reported to the nearest Police Station or Military Unit and, therefore, he was finally dismissed on 15 May 1998, at the end of 3 years from the date of desertion.

4. In view of the above, the respondents have prayed that the Tribunal may pass appropriate orders to dismiss the Original Application as it is devoid of merit and substance.

5. We have heard the arguments of Mr.S.P.Ilangovan and Mr.B.A.Thayalan, learned counsel for the applicant and Mr.N.Ramesh, learned Central Government Standing Counsel as well as Maj Suchithra Chellappan, learned JAG Officer (Army) appearing for the respondents and also perused all the documents that were placed before us.

6. There is no doubt that the applicant was enrolled in the Indian Army on 07 November 1979. While serving with 11 Engineer Regiment at Delhi, he had requested for a posting close to his home town on compassionate grounds as his wife had suffered a paralytic stroke and his mother was also bedridden and the fact that there was no one to look after his five children. Based on his request, he was attached to MEG Centre, Bangalore from 17 April 1994 and continued to be attached there for a period of 8 months, when he was ordered to return to his Unit with effect from 27.12.1994. While under orders to report back to his parent Battalion, the fact that the applicant had absented himself without leave w.e.f. 27.12.1994 from the Depot Battalion, MEG Centre is also not disputed. The applicant had admitted his mistake in absenting himself without leave and has pleaded that this was done due to the extreme stress he was facing because of acute domestic problems and was not in a proper state of mind when he deserted. Thereafter, he was declared a deserter and finally dismissed from service after 3 years from the date of desertion, on 15 May 1998, under the provisions of Army Act Section 20 (3) read in conjunction with Army Rule 17.

7. We have examined the contents of the Court of Inquiry declaring him a deserter and find no infirmity in the applicant being declared a deserter and his

final dismissal from service on 15 May 1998. We, therefore, see no reason to interfere with the dismissal order passed against the applicant. However, the applicant at the time of desertion, claims that he had a service of 14 years and 50 days. This appears to be incorrect. The individual had joined Army on 07 November 1979 and was declared a deserter on 27 December 1994. He also had a punishment of 14 days RI which is a non-qualifying service. After excluding the non-qualifying service, the total service of the applicant works out to 15 years and 36 days. Therefore, the applicant would have qualified to receive service pension but for the fact that he was declared a deserter from 27 December 1994. In accordance with para 113 (a) of Pension Regulations for the Army Part I (1961), a person who is dismissed from service under the provisions of the Army Act is ineligible for pension or gratuity. However, discretion has been given to the Government, in exceptional cases, to grant service pension or gratuity at a rate not exceeding that for which he would have otherwise qualified had he been discharged on the same date. The applicant had earlier applied for condonation of shortfall of service and to grant him pension. His case was rejected by Respondents that shortfall of service cannot be condoned. However, we have seen that he has more than 15 years of qualifying service for pension.

8. In view of the foregoing, we conclude that the applicant at the time of desertion had more than 15 years of service and, thus, would have been eligible for service pension but for the provisions of para 113 (a) Pension Regulations. However, para 113 (b) of the said Regulations has given discretion to the Government to grant pension / gratuity to persons removed from service under

Army Act Section 20. While the act of absence of the applicant without leave from his Unit and subsequent desertion cannot be condoned, the applicant has pleaded for mercy attributing his actions to the distressing domestic circumstances.

9. We, therefore, recommend that the applicant file a mercy petition to the competent authority, i.e., the 4th Respondent (Union of India), in writing, for grant of pension and gratuity within one month of this Order. On receipt of the said mercy petition, the competent authority is directed to consider the case on merits under the provisions of Rule 113, Pension Regulations and dispose the mercy petition through a Speaking Order, within three months, thereafter. O.A. is accordingly disposed off. No order as to costs. Fee for the counsel for the applicant is fixed at Rs.5000/- (Rupees Five thousand only).

Lt Gen K Surendra Nath
Member (Administrative)

Justice V.Periya Karuppiah
Member (Judicial)

22.12.2014

Member (J) – Index : Yes/No

Internet : Yes/No

Member (A) – Index : Yes/No
ap

Internet : Yes/No

To:

1. The Chief of the Army Staff, Army Headquarters
Sena Bhavan, DHQ Post, New Delhi – 110 011
2. The Oi/C, MEG Records, PIN: 900493, C/o 56 APO
3. The PCDA (Pensions), Draupatighat, Allahabad, UP 211014
4. UoI Rep. by Defence Secretary
Ministry of Defence, South Block, New Delhi – 110 011
5. Mr.S.P.Ilangovan and Mr.B.A.Thayalan
Counsel for the applicant.
6. Mr. N.Ramesh, CGSC
For Respondents.
7. The Member Secretary
The Tamil Nadu State Legal Services Authority
Satta Udhavi Maiyam Buildings
North Fort Road, High Court Compound
Chennai – 600 104
8. OIC/Legal Cell,
ATNK & K Area,
Chennai-600009.
9. Library, AFT/RB, Chennai.

Hon'ble Justice V.Periya Karuppiah
(Member-Judicial)

and

Hon'ble Lt Gen K Surendra Nath
(Member-Administrative)

O.A.No. 07 of 2014

Dated: 22.12..2014