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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision : 27.01.2026*+ **W.P.(C) 10902/2020**

EX RFN DEEPAK KUMAR

.....Petitioner

Through: Mr. S M Dalal, Advocate.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Jaswinder Singh, CGSC and
Major Anish Muralidhar in person.**CORAM:****HON'BLE MR. JUSTICE V. KAMESWAR RAO****HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****V. KAMESWAR RAO, J. (ORAL)**

1. This petition has been filed by the petitioner challenging the order of the Armed Forces Tribunal (Tribunal) dated 20.03.2018, whereby the Tribunal has dismissed the Original Application No. OA 758/2017 ('OA', for short) filed by the petitioner by stating in paragraphs 16 to 19 as under:

"16. We have carefully considered the submissions made by the respective sides and gone through the record. There is no dispute about the fact that for being eligible for service pension, minimum service period of 15 years is required. In the case of Applicant, no doubt, he has been released from service after completing his initial term of 20 years and 20 days of service. Nevertheless, during this period, other than not



completing required period of embodiment, the Applicant had shown conduct which is not expected of a uniformed soldier. A soldier is required to adhere to punctuality and discipline and be amenable to the orders of his superior officers. By frequently absenting after availing of leave only shows the casual nature of the applicant towards his TA service.

17. On one particular occasion, he had absented for almost a year, after having availed leave, when he had to be declared a deserter and was subjected to Summary Court Martial on his arrest. His period of absence and punishment undergone by him during his full service, resulted in not completing his pensionable service as he had only total embodied service of 14 years and 173 days. If that is so, by condoning the deficiency of service will add premium on the deliberate misconduct of the Applicant, as if nothing has happened on that account.

18. Army, being a disciplined force is not like a civil service where a person can join duty and leave the service whenever he wants to do so. A soldier has to maintain the dignity of his uniform and strictly adhere to punctuality and regularity in his conduct and he has to act as per the command of his superior officers. In the instant case, the Applicant had failed to do so, therefore, in our considered view, we feel that he does not deserve to be given the service pension which will give a wrong signal to others as if discipline and good behavior have no relevance. For these reasons, the Original Application of the Applicant is totally mis-conceived and devoid of any merit.

19. There is no justifiable ground for condoning the deficiency of 192 days shortfall in qualifying service of 15 years for grant of service pension. Accordingly, the Original Application is dismissed. No order as to costs.”

2. The facts as noted from the petition are that the petitioner was enrolled in 126 INF Bn of Territorial Army (TA), JAK RIF on 12.07.1995. While on embodied service, the petitioner was granted 40 days of Part of Annual Leave with effect from 26.05.2006 to 04.07.2006. However, on



expiry of said leave he did not report to 213 Transit Camp for rejoining his duty and subsequently returned voluntarily at 213 Transit Camp on 24.07.2006 (FN), thus absented himself without leave for 19 days, for which, he was tried summarily and awarded 'Severe Reprimand' by his Commanding Officer on 03.07.2006.

3. In 2014, the petitioner was granted 28 days Part of Annual Leave with effect from 31.05.2014 to 27.06.2014 which was extended by 09 days with effect from 28.06.2014 to 06.07.2014 but he did not rejoin his duties on the expiry of the leave. Accordingly, Apprehension Roll was issued by 126 Infantry Battalion TA) JAK RIF vide letter No. 214/3/A dated 29 Jul 2014 under provision of Para 6 of Special Army Order 9/5/89 and a Court of Inquiry was ordered by the Commanding Officer of 126 Infantry Battalion (Territorial Army) JAK RIF to investigate the circumstances under which the petitioner had overstayed his leave.

4. The Court of Inquiry proceedings held on 10.10.2014, wherein, the petitioner was declared as deserter under Section 106 Army Act with effect from 07.07.2014. Subsequently, he rejoined his duties on 10.07.2015, thereby absented without leave for 338 days. He was again tried by Summary Court Martial ('SCM', for short) on 20.06.2015 and was awarded '45 days Rigorous Imprisonment' and 'Reduction in Rank' by his Commanding Officer. The terms of service of the petitioner was reduced from 24 years (for a Havildar) to 15 years (for a sepoy), resulting in discharge from service with effect from 31.07.2015.

5. It is noted that on the date of discharge, the petitioner was short of 189/192 days for completing the qualifying service for grant of pension.

6. Suffice to state, the petitioner was discharged without pension,



gratuity, leave encashment, TAGIF, FSA, ECHS card etc. The petitioner on submitted an application for condonation of shortage of 189/192 days of a qualifying service which was duly recommended by his Controlling Officer by relying upon the Ministry of Defence circular dated 14.08.2001 whereby shortfall of one year of qualifying service could be condonable by the IHQ OF MoD (Army). The respondents rejected the said request of the petitioner vide communication dated 09.08.2016.

7. The case of the respondents before the Tribunal was that the petitioner was discharged on fulfillment of terms of engagement under TA Rule 4(A) of the Territorial Army Regulation 1948, on account of rendering 20 years and 20 days of service but he had rendered only 14 years and 173 days of embodied service.

8. The reason given by the respondents is that the service record of the petitioner was not good. Instances have been given wherein the petitioner not only frequently absented for long duration but also tried by SCM and sentenced to imprisonment for 45 days.

9. The Tribunal in paragraphs 16 to 19 has held that there is no justifiable ground for condoning the shortfall of 189/192 days of qualifying service of 15 years for grant of service pension.

10. The submission of Mr. S M Dalal, learned counsel for the petitioner is primarily that the petitioner is entitled to relaxation of the qualifying service so that the petitioner can avail the retirement benefits. He has relied upon the following judgments in support of his submissions:-

- a. Union of India v. Surender S Parmar (2015)3 SCC404**
- b. Hans Raj Singh v Union of India, Pb & Hr CWP No.10610/2012**
- c. Sohan Singh v Union of India, AFT (Chandigarh) OA646/2014**
- d. Union of India v Thomas Vaidayan in CA 5327/15**



e. Col Opendra Kumar Verma v Union of India & Ors: CA5760/2018
f. Ex Sep Padam Singh v. Union of India & Ors

11. Having heard the learned counsels and perused the impugned order, the issue which arises for consideration is whether the petitioner is entitled to the condonation of shortfall of the qualifying service.

12. Surely, in the case in hand, more particularly what has been narrated by us in the above paragraphs it is clear that the Tribunal is justified in the facts to dismiss the OA. On a specific query to Mr. Dalal as to, what was the reason for petitioner to be was absent for 338 days, he states that, as his mother and wife were living with children at home town and there was a dispute with neighbor, he had to stay back. The said submission does not appeal us.

13. That apart, that the petitioner has not challenged any of the punishment imposed upon him in a Court of law. It follows those findings are standing against the petitioner, it means it is concluded that the petitioner was a deserter who remained absent without any justification.

14. If that being the reason, we are of the view that the present petition lacks merit and is liable to be dismissed. We order accordingly.

V. KAMESWAR RAO, J

MANMEET PRITAM SINGH ARORA, J

JANUARY 27, 2026/RT