

IN THE ARMED FORCES TRIBUNAL
REGIONAL BENCH, GUWAHATI.

T.A. 10 OF 2011
(Arising out of WP(C) No.7224/2005)

P R E S E N T
HON'BLE MR. JUSTICE H.N.SARMA, Member (J)
HON'BLE CMDE MOHAN PHADKE (Retd), Member (A)

Sri Dhanu Mia
No.6378523-P Naik
Village Kashipur
Post Office Kashipur
Dist.Cachar,Assam.

..... Appellant/Petitioner.

**Legal practitioner for
Appellant/ Petitioner**

Mr. S.U.Mazumdar

- Versus -

1.Union of India,
Represented by the Commissioner and
Secretary Defence New Delhi-110 011.

2.The Director General Supply and
Transport(Army)
South Block, New Delhi-110 001.

3.The Captain OC HQ COY
HQ 525 ASC Bn C/O 56 APO

Rajouri, Srinagar, Kashmir.

4. The Major SRO
ASC Records (South)
Bangalore-7.

..... **Respondents.**

**Legal practitioner for
Respondents.**

Mr.S.Bhattacharjee
CGSC

Date of Hearing : 28.02.2012

**Date of Judgment : 02.04.2012
& Order:**

JUDGMENT & ORDER

(Cmde Mohan Phadke (Retd.)

This case has come before us by way of transfer under section 34 of the Armed Forces Tribunal Act, 2007 from the Principal seat of Gauhati High Court, wherein it was registered as WP(C) No.7224/2005.

2. The petitioner, Sri Dhanu Mia No.6378523-P Naik, was enrolled in the Army Service Corp of the Indian Army on 17.02.1983. In due course, he was promoted as Lance Naik in 1987 and thereafter as Naik in 1994. In

the year 2001, the petitioner proceeded on 36 days balance of annual leave w.e.f. 15.03.2001 and was granted extension of leave by way of 30 days of advance of annual leave for the year 2002 as requested by him. He was due to report back on 20.05.2001 but failed to do so. After some correspondence the petitioner voluntarily re-joined duty on 06.06.2002, He, however, once again absented himself w.e.f. 12.12.2002. He was accordingly declared 'deserter' after holding a Court of Inquiry and struck off from the strength of the Unit w.e.f. 20.05.2001. The facts, beyond this point, are in dispute. It would, however, suffice to state that the petitioner was dismissed from service as intimated to his wife vide communication dated 5.12.2001 (Annexure-2) by the officiating CO, HQ 525 ASC C/O.56 APO.

3. The petitioner's case is that whilst he was on leave he met with a road accident on 11.5.2001 whilst riding a scooter. He suffered from multiple injuries including a fracture of his collar bone and was admitted to Silchar Medical College and Hospital for treatment. After necessary treatment he was advised rest up to 11.07.2001. His wife accordingly sent a letter by

registered post on 12.11.2001 with a view to inform the Commandant, ASC Centre (South), Bangalore of the accident. On fully recovering his physical health, the petitioner rushed to Rajouri (Kashmir) to re-join his duty on 19.08.2001 but was not allowed to join. He was instead asked to go to Bangalore. He went there but was again not allowed to enter the Centre. The petitioner once again went to Rajouri but was not allowed to resume duties. In response, the officiating CO informed his wife that the petitioner was over-staying his leave w.e.f. 20.05.2001 (Annexure-2) and has been struck off the strength of his Unit to HQ Wing, Depot Coy (South) ASC Centre and College, Bangalore. The petitioner claims that the OC HQ COY then sent a registered letter dated 11.02.2002 (Annexure-3) asking the petitioner to send 'consent' letter for recovery of debit balance of Rs.32,629/- without giving any details of the amount that was supposed to have been drawn in excess by the petitioner. The petitioner claims that he never drew any such amount. Subsequently, the petitioner voluntarily reported for duty at Army Service Corp Centre (South) on 06.06.2002 and served till 12.12.2002 when he was allegedly compelled to leave Bangalore for Silchar as he

was penniless on account of not having received any salary for his stay of 6 months except for a sum of Rs. 600/- that was paid to him on joining the duty. The petitioner claims that while he was staying in Bangalore, some letters (Annexure 13 series) were sent to his residential address and writing of some pseudonymous letters was attributed to him. In support of his argument, the petitioner has placed reliance on certain documents viz Railway Tickets/Telegrams etc. vide his rejoinder dated 1.5.2011. The petitioner was supposed to have superannuated on 17.02.2005. In May 2006, after the period of his superannuation, the order dated 31.05.2005 (Annexure-16) was addressed to his wife to state, "1. Consequent upon the desertion of your husband No. 6378523 Rank NK name Dhanu Mia he has been dismissed from service on 12 Dec 2005 under Army Act sec 20(3).

2. This is for your information."

4. The petitioner claims that despite his making every effort to join duty and running from one place to another, the petitioner was not allowed to join but asked to move from one place to another viz. Kashmir to Bangalore. Aggrieved by his dismissal for desertion, the

petitioner filed the Writ petition being WP(C) No. 7224/05 in the Gauhati High Court with a view to seek a direction to the respondents to: (a) grant pension together with arrears thereof and also the arrears as have accrued from other contributory funds and (b) Count the period of service as on date.

5. In response to the petitioner's claim, as made in the aforesaid Writ Petition, respondents have submitted that the petitioner, who was enrolled on 17.02.1983 as Sepoy (Safaiwala) in the Army Service Corps was promoted to Lance Naik in 1984 and Naik in 1994. He was serving in HQ 525 ASC Bn at Rajouri when he was granted 30 days balance of annual leave from 15.3.2001 to 19.4.2001. The petitioner's request for extension of his leave was accepted and he was granted extension as sought by way of 30 days advance of annual leave of 2002 and was due to report back on 20.5.2001. On his failure to report back for duty, a Court of Inquiry was held to investigate the circumstances of his absence. He was found to have overstayed his leave. He was declared a deserter and struck off from the strength of the Unit w.e.f. 20.5.2001. With reference to the petitioner's contention that he could not report back from duty due to the accident, the

respondents have submitted that the petitioner was treated as an outdoor patient and, therefore, his injury could not have been as grave as it is made out to be. Further that, the petitioner should have reported to the nearest military hospital and got himself treated there instead of unauthorisedly remaining absent. Respondents have further submitted that on receipt of the letter dated 18.10.2001 from the petitioner's wife to say that he had met with an accident and his mental condition was also not good, the Unit wrote a letter dated 17.11.2001 to his wife advising her to direct the petitioner to re-join his Unit. In response, the petitioner sent telegrams etc. to the Unit to say that he would soon rejoin but he did not do so. He was again advised by the Unit vide letters dated 05.12.2001 (Annexure-A to the affidavit in reply) and 10.3.2006 to rejoin Depot Coy (Sup) ASC, Bangalore. This was followed by further communications dated 30.03.2002 and 09.04.2002 (Annexure - 5 and 6 respectively) whereby he was once again instructed to report to OC Depot Coy (Sup)ASC Centre and College, Bangalore along with all relevant documents. The petitioner however, did not comply with any of the aforesaid directions to report to ASC Centre (South),

Bangalore. He instead proceeded to Rajouri (Kashmir) and finally voluntarily rejoined duty in the Army Service Centre (South) on 06.06.2002. After rejoining duty, the petitioner once again absented himself without leave w.e.f. 12.12.2002 from HQ Wing, Depot Coy (Sup) ASC Centre and College, Bangalore. A letter was then addressed to District Collector and Superintendent of Police with a request to arrest the petitioner and hand over him to nearest military Unit. Thereafter, a letter dated 22.3.2002 was addressed to his wife requesting her to ask her husband to surrender. After the petitioner had deserted appropriate Court of Inquiry was held on 30.1.2002 to investigate the circumstances concerning his absence. He was then declared a deserter by the Court of Inquiry. That being so the action of the respondents to declare the petitioner a 'deserter' and dismiss him from service cannot be considered unjust as alleged. Respondents have further contended that as the petitioner was a deserter at the time of his superannuation he could not be considered entitled to any pensionary benefits till such time as the period of his absence was regularized. The respondents have finally urged that the petitioner had approached the Hon'ble

Gauhati High Court after a lapse of 3 years even though he knew that he was due to be dismissed from service w.e.f. 12.12.2005.

6. The main thrust of the petitioner's case is that his initial absence was due to serious injuries that he had suffered due to a scooter accident on 11.5.2001. On regaining his physical fitness, the petitioner made several attempts to rejoin duty but was not allowed to do so. In support of this contention, the petitioner has in his rejoinder affidavit dated 01.08.2001 submitted some postal receipts and telephone call receipts at Annexure-7 to show the communications that he had issued to the respondents. All the receipts produced at Annexure-7 appear to pertain to the month of July, 2001 (except receipts at Annexure-7A, 7B and 7C, in which the year is not clear). The petitioner has also produced at Annexure-9 and 9A, two Railway tickets both of which do not bear any name but relate to the journey from Jammu Tawi to Guwahati (20.8.2001) and Jammu Tawi to Silchar (28.11.2001). The petitioner has thereby sought to establish his sincerity in seeking to rejoin duty. The Respondents have vide their affidavit dated 10.3.2006

countered his contention by saying that after unauthorisedly overstaying his leave, one communication dated 18.10.2001 was received by the Unit sent by the petitioner's wife to say that he had met with an accident and his mental condition was also not well. In response thereto, the Unit had advised his wife vide a letter to ask the petitioner to rejoin the Unit. The petitioner had, thereafter, sent a telegraphic message/telegram to the Unit to say that he would rejoin the Unit but he never did. On 05.12.2001, 31.03.2002, 9.04.2002 and 24.05.2002, the petitioner was advised to report for duty. In between, on 11.2.2002, the Unit had sent a consent certificate to the petitioner to liquidate the debit balance of Rs. 38,629.00. The petitioner finally voluntarily rejoined duty on 6.6.2002 at Depot Coy (Sup), ASC, Bangalore but again deserted w.e.f. 12.12.2002. The respondents have thus contended that the petitioner failed to rejoin despite several communications being issued to him to that effect. The petitioner's contention that he made several attempts to rejoin is of no help as it relates to the year 2001. After that the petitioner had voluntarily rejoined on 6.6.2002 but had again unauthorisedly absented himself w.e.f. 12.12.2002. From

this absence, the petitioner never reported back for duty. The respondents have also brought out that even after rejoining on 6.6.2002, the petitioner once again deserted on 12.12.2002 and was finally declared a 'deserter'. After an absence of over three years, the petitioner was dismissed from service on 12.12.2005 as indicated in the letter dated 31.5.2006 (Annexure-16) of ASC Records (South) Bangalore to Smti Lalita Begam Laskar.

7. We have heard Mr.S.U.Mazumdar, learned counsel appearing for the petitioner and Mr.S.Bhattacharjee, learned CGSC appearing for the respondents.

8. In the present case, it is not in dispute that the petitioner was absent w.e.f. 12.12.2002 till his dismissal from service and beyond. The desertion is thus clearly established by the period of petitioner's absence itself. The petitioner having deserted from service is not entitled to pensionary benefits as claimed vide regulation 113 of the Pension Regulation for the Army 1961(Part-I). Regulation 113(a) of the Pension Regulation reads, " An individual who is dismissed under the provisions of the Army Act is ineligible for pension or gratuity in respect of all previous

service." Consequently, the petitioner is not entitled to have his service counted for pension.

9. In the light of the above discussion, the petition is considered to be devoid of merit. It is accordingly dismissed. However, in the facts and circumstances of the case, there will be no order as to the costs.

MEMBER(A)

MEMBER(J)

chakravarti