

**ARMED FORCES TRIBUNAL,
REGIONAL BENCH, GUWAHATI**

OA-16/2025

Ex Sepoy Lianchungnung Vaiphei

..... Applicant

By legal practitioners for Applicant
Dr Gaurabjyoti Sharma
Krishangee Bhattacharyya

-Versus-

UOI & Ors

..... Respondents

By legal practitioner for Respondents
PJ Barman, CGSC

CORAM:

**HON`BLE MR. JUSTICE UMESH CHANDRA SHARMA, MEMBER (J)
HON`BLE LT GEN C.P. MOHANTY, MEMBER (A)**

ORDER

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs :-

- (i) *The Hon'ble Tribunal be pleased to direct the respondents to regularize his absent/overstayed leave period of 1507 days i.e. 4 years 1 month and 16 days from 05.02.2017 to 21.03.2021*

as qualifying service and grant pension to the applicant with all consequential benefits of arrears with interest.

(ii) The cost of the application

(iii) Any other relief(s) as the Hon'ble Tribunal may deem fit and proper.

2. Briefly stated, the facts of the case are that the applicant was enrolled in the Indian Army as a Sepoy on 18 March 2008. While posted at Visakhapatnam, he was granted 29 days of sanctioned leave from 7 January 2017 to 4 February 2017. During his leave, he allegedly suffered from various illnesses, including mental illness, and therefore could not return for duty on expiry of his leave. He remained absent for a total of 1507 days and eventually rejoined on 22 March 2021 at Administrative Battalion, Assam Regimental Centre. A summary trial was subsequently conducted for the offence of overstaying leave. On 3 June 2021, the applicant was found liable and was punished with 14 days' pay fine. The applicant, being aggrieved by the respondents' failure to take into account his non-qualifying service of 4 years, 1 month and 16 days, as reflected in his PPO, submitted a representation dated 07.05.2025 seeking consideration of the said period for

determining his qualifying service and eligibility for pension upon his discharge on 31.03.2025 on completion of tenure. But after rejoining, he continued service regularly until his discharge on 31.03.2025 upon completion of tenure. His qualifying service was recorded as 12 years, 10 months and 28 days. His non-qualifying service was recorded as 4 years, 1 month and 16 days (1507 days). The applicant challenges the authorities' failure to regularize his 1507 days of absence from service. The applicant stated that in the order dated 09.04.2021 it was mentioned that the applicant is required to be attached for the purpose of disciplinary proceedings in order to regularize the period of absence,. It could be adjusted against available leave or treated as leave without pay. Despite that order, the Records authorities did not regularize the absence, treating the applicant claims is arbitrary and illegal. Hence, the present OA has been filed.

3. Dr Gaurabjyoti Sharma, learned counsel for the applicant has submitted the written argument where it has been stated that while the applicant was on sanctioned leave of 29 days w.e.f. 07.01.2017 to 04.02.2017, he had suffered from various illness including mental illness and overstayed the leave. Thereafter he voluntarily rejoined his duty on

22.03.2021 after total period of absence of 1507 days on production of medical certificate. Summery trial was conducted and by order dated 03.06.2021, punishment of 14 days pay fine was imposed on the applicant. Thereafter, the applicant was discharged from service on 31.03.2025 on completion of his tenure. From the PPO, the applicant has come to know that his net qualifying service is 12 years 10 months 28 days and non-qualifying service is 4 years 1 month and 16 days. Hence, the applicant has submitted representation dated 07.05.2025 for taking into account the non qualifying service of 4 years 1 month and 16 days for determining eligibility/qualifying service for grant of pension, which is still pending for disposal. Learned counsel for the applicant has submitted that Sec 106 of the Army Act, 1950 provides for an enquiry into absence without leave and a person to be declared by the Court of Inquiry an absentee or to be deserter. However, in the instant case, no court of inquiry was held as per Sec 106(1) of Army Act immediately after 30 days of absence and he was not declared as a deserter and also not apprehended and hence he cannot be declared as a deserter as per Sec 106(2). Learned counsel for the applicant has relied upon the Judgment passed by Hon'ble Gauhati High Court in **Dharani Dhar**

Kalita v. UOI (2015 2 Gau LR732 para 7, 9, 15, 16,31,33,34 & 49) whereby the order of desertion has been set aside. He also relied upon the Judgment of Hon'ble Apex Court in **Virendra Kumar vs Chief of the Army Staff (1986) 2 SCC 217 (para 12,13,14,15,16 & 17)** wherein the Hon'ble Apex Court directed the respondents to treat the petitioner therein to be in service till the date of rejoining and all benefits retiral or otherwise be paid to him. In view of above submission, the learned counsel for the applicant has submitted that the OA be allowed directing the respondents to regularize his absent/overstayed leave period of 1507 days from 05.02.2017 to 21.03.2021 as qualifying service and grant pension to the applicant with all consequential benefits of arrears with interest.

4. We have perused the judgments. Facts of the case of **Virandera Kumar (supra)** are totally different from the facts of the case in hand, hence, principle laid down in Virendra Kumar (supra) cannot be applied in this case in favour of the applicant.

At the time of arguments, he has relied upon the judgment of **Maan Singh vs Union of India & others, Manu/SC/0142/2003** dated 18.02.2003 in which the applicant was Delhi Police Constable.

Rules and Regulations of Army and Delhi Police Establishment are totally different, hence, principle laid down in this judgment also cannot be applied in favour of the applicant.

Dharani Dhar Katika vs. Union of India (2015 2 Gau LR

732 is a case with regard to CRPF. Rules and Regulations of Paramilitary forces are also quite different, hence, judgment in case of CRPF personnel cannot be applied in favour of the applicant-individual.

5 Per contra, Mr. PJ Barman, learned CGSC appearing for the respondents has submitted that the applicant was enrolled into Assam Regiment on 18 March 2008. The applicant was granted 29 days of annual leave w.e.f. 07 Jan 2017 to 04 Feb 2017. However, on expiry of leave, he did not report back to his unit and concurrence of over stayed leave (OSL) w.e.f. 05 Feb 2027 was published. Unit 957 had initiated Apprehension Roll to the Office of Deputy Commissioner, Churachandpur, Manipur to apprehend the applicant under intimation to his mother being NOK. However, on expiry of 30 days of desertion, no intimation was received ^{by} ~~to~~ unit from applicant's mother as well as from other authorities. Accordingly, as per para 17 of SAO 9/S/89 and Sec

106 of the Army Act, 1950 the applicant was declared as deserter w.e.f. 05 Feb 2017. That on expiry of 4 years, 1 month & 17 days, the applicant had voluntarily rejoined duty on 22 Mar 2021 and as per Sec 39(b) of Army Act, The Assam Regiment awarded 14 days pay fine to the applicant on 03 Jun 2021. Thereafter, he was discharged from service on 31 Mar 2025 under Rule 13(3) III (i) on completion of his term of engagement. At the time of discharge, the applicant had rendered 12 years, 10 months and 28 days of qualifying service and 4 years, 1 month 16 days of non qualifying service. Learned counsel for the respondents has submitted that in cases where individual has completed 15 years of service or more but does not have minimum qualifying service for earning service pension due to spell of non-qualifying service should normally be considered for condonation of shortfall in qualifying service. However, in the instant case, the applicant has earned 12 years, 10 months and 28 days of qualifying service, which does not fall under the purview of the circumstances for condonation of shortfall in qualifying service for grant of service

pension. Learned counsel for the respondents has submitted that the applicant's claim to regularize his absent/overstayed leave period of 1507 days w.e.f. 05 Feb 2017 to 21 Mar 2021) as qualified service is not valid and same may be rejected.

Consideration

6. We have heard Dr Gaurabjyoti Sharma, learned counsel appearing for the applicant and Mr.PJ Barman, learned Central Govt. Standing counsel representing the respondents and considered the rival submissions including the written argument submitted by the learned counsel for the applicant.

7. From perusal of record, it reveals that the applicant was granted 29 days of annual leave w.e.f. 07 Jan 2017 to 04 Feb 2017. However, on expiry of leave, he did not report back to his unit and concurrence of over stayed leave (OSL) w.e.f. 05 Feb 20¹⁷ was published. Unit 957 had initiated Apprehension Roll to the Office of Deputy Commissioner, Churachandpur, Manipur to apprehend the applicant under intimation to his mother being NOK. However, on expiry of 30 days of desertion, no

intimation was received ^{by} to unit from applicant's mother as well as from other authorities. Accordingly, as per para 17 of SAO 9/S/89 and Sec 106 of the Army Act, 1950 the applicant was declared as deserter w.e.f. 05 Feb 2017. On expiry of 4 years, 1 month & 17 days, the applicant had voluntarily rejoined duty on 22 Mar 2021 and as per Sec 39(b) of Army Act, The Assam Regiment awarded 14 days pay fine to the applicant on 03 Jun 2021. Thereafter, he was discharged from service on 31 Mar 2025 under Rule 13(3) III (i) on completion of his term of engagement. At the time of discharge, the applicant had rendered 12 years, 10 months and 28 days of qualifying service and 4 years, 1 month 16 days of non qualifying service.

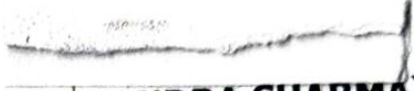
8. It has now been settled by the Hon'ble Supreme Court of India in Civil Appeal arising out of Diary No. 27246/2023, **Union of India & others Vs. Balakrishnan Mullikote** that short fall beyond the period of one year and six months cannot be condoned. In the instant case, there is a short fall of 04 years, 01 month and 16 days. therefore,

it cannot be condoned and the applicant is not entitled for grant of service pension.

9. Accordingly, the Original Application is dismissed being devoid of merit.

10. There shall be no order as to costs.

Pronounced in the open Court on this 10th day of September, 2026.


(UMESH CHANDRA SHARMA)
MEMBER(J)


(LT.GEN C.P.MOHANTY)
MEMBER(A)

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