



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



D.B. Civil Writ Petition No. 18435/2024

Ex No-3203821M Sep Rajbir Singh S/o Rohitash Singh, R/o Vpo - Gahli, Tehsil - Narnaul, Distt - Mahendergarh, Haryana, At Time Posted In 7Th Jat Regt, C/o 56 Apo, Jaipur (Raj), Now Resident Of B-149, Mangal Marg, Bapu Nagar, Jaipur (Raj.) - 302015.

-----Petitioner

Versus

1. The Union Of India, Through Secretary, Defence Ministry, New Delhi-01.
2. The Chief Of The Army Staff, Army Headquarters, Dhq Po, New Delhi-110011.
3. Colonel Of The Jat Regiment, Room No. - 196, Ihq Of Mod (Army), New Delhi-11.
4. Adjutant General Branch, Ihq Of Mod (Army), Addl Dte Gen Service, Room No. 18, Plot No. - 108 (West) H Block, Church Road, New Delhi - 01.
5. Brigadier Of The 7Th Jat Record, Bareilly (Up) - 900498, C/o 56 Apo
6. Commanding Officer (Co), 7Th Jat Regiment, C/o 56 Apo, Pin - 911207.

-----Respondents

For Petitioner(s)	:	Mr. Mina Ram Yadav
For Respondent(s)	:	Ms. Manjeet Kaur, Ms. Garvita Sharma, Mr. Alam Sahni, Ms. Taruna Singh for respondent no. 1

**HON'BLE MR. JUSTICE SUDESH BANSAL
HON'BLE MR. JUSTICE RAVI CHIRANIA
Judgment**

04/05/2026

1. The present writ petition has been filed assailing the order dated 31.05.2024 passed by the Armed Forces Tribunal, Regional Bench, Jaipur in O.A. No.179/2023 dismissing the Original



Application preferred by the petitioner challenging the proceedings which culminated to his dismissal from service.

2. Briefly stated, the facts of the case are that the petitioner was enrolled in the army on 18.03.2009 as sepoy and on completion of military training, he was posted to 7 JAT Regiment w.e.f. 20.03.2010. During the training period, the petitioner absented himself without leave from 04.06.2009 to 06.06.2009 for which he was awarded punishment of three days pay fine and within four months of reporting to the unit, the petitioner again remained absent without leave from 14.07.2010 to 03.09.2010 for which punishment of rigorous imprisonment for 28 days was awarded vide offence report placed on record as Exhibit-P2.

3. Thereafter, the petitioner once again absented himself from duty without leave w.e.f. 09.01.2012 while serving in 7th JAT Regiment and did not rejoin. Subsequently, after completion of 30 days, Court of Inquiry was held under Section 106(1) of Army Act, 1950 (for short "Act of 1950") and the petitioner was declared 'deserter' as per Section 106(2) of Act of 1950 and pursuant thereto, apprehension roll was issued to the District Commissioner and Superintendent of Police, Mahendergarh (Haryana) on 15.02.2012, requesting apprehension of the petitioner and handing him over to the nearest military authorities, but the petitioner neither was apprehended by the police nor did he surrender voluntarily to the unit. Therefore, as per Section 20(3) of the Act of 1950 read with Rule 17 of Army Rules, 1954 (for short "Rules of 1954") and Para 22(b) of Army Order 43/2001/DV,



petitioner was declared 'deserter' and because he remained failed to join his regiment after expiry of 3 years from the date of desertion, hence, was dismissed from service w.e.f. 09.01.2012.

4. Challenging the proceedings of dismissal from service, petitioner preferred Original Application No. 179/2023 on 22.12.2022 i.e. after about more than 10 years of his dismissal, which came to be registered before the Armed Forces Tribunal, Jaipur, and came to be dismissed vide impugned order dated 31.05.2024, whereagainst the petitioner has invoked writ jurisdiction of this Court seeking quashment of order of his dismissal dated 09.01.2012.

5. Learned counsel appearing for the petitioner assailed the impugned order on the ground that Section 106 of the Army Act specifically contemplates Court of Inquiry in cases of absence without leave but copy of proceedings of such Court of Inquiry has not been made available to petitioner nor has been placed on record before the Tribunal, therefore, it has been argued that an adverse inference deserves to be drawn against respondents and due to withholding the court inquiry proceedings, entire proceedings of dismissal of petitioner from service stand vitiated and as such, deserves to be quashed.

6. Learned counsel further submitted that no formal dismissal order, signed by the competent authority under Section 20(3) of the Army Act was produced either before the learned Tribunal or before this Court and therefore the respondents cannot rely merely upon nominal rolls or Part-II Orders for sustaining



dismissal of the petitioner from service. It was also argued that no charge-sheet under Sections 38 and 39 of the Army Act relating to desertion and absence without leave was issued to the petitioner. Learned counsel submitted that in absence of disciplinary proceedings under the aforesaid provisions, the respondents could not have proceeded to dismiss the petitioner from service. Counsel further argued that Section 23 of the Army Act and Rule 12 of the Army Rules contemplate issuance of discharge certificate but no such discharge certificate was ever served to the petitioner. Learned counsel submitted that the respondents failed to follow the mandatory procedure prescribed under law and therefore the entire proceedings stand vitiated.

7. *Per contra*, learned counsel appearing for the respondents supported the order passed by the learned Tribunal and submitted that the petitioner admittedly absented himself continuously from duty with effect from 09.01.2012 without any leave and never rejoined thereafter. It was submitted that apprehension/desertion proceedings under Section 106 of the Army Act were initiated and apprehension roll was issued to the civil authorities as well as to the family members of the petitioner viz his mother(NOK). Counsel for the respondents further submitted that after completion of the prescribed period from peace area, desertion proceedings under Section 20(3) of the Army Act read with Rule 17 of Rules of 1954 and Army Order 43/2001/DV were undertaken and show cause notice under Rule 17 was issued to the petitioner, granting him opportunity to submit his explanation, but, the petitioner neither submitted any reply nor surrendered at any



point of time before the authorities, hence, he was dismissed from service on the ground of absenteeism w.e.f 09.01.2012 after following prescribed procedure.

8. Further submission of counsel for respondents is that petitioner, thereafter remained silent for several years. Representations and legal notices seeking documents and proceedings came to be submitted on behalf of petitioner through advocate only during the year 2022 and then present Original Application No.179/2023 was filed on his behalf before the Armed Forces Tribunal, Regional Bench, Jaipur challenging the dismissal proceedings; the grounds for challenging the proceeding of dismissal, have been dealt with the Tribunal on merits in the order impugned and petitioner has raised the very same ground in this writ petition, as if filing of appeal against the order of Tribunal. His submission is that the reasoning assigned by Tribunal, to dismiss the O.A., are justified and based on record, which are not amenable to be interfered with by this court, in exercise of writ jurisdiction as the impugned order neither suffer from jurisdictional error, nor is against principle of natural justice or against the settled proposition of law and procedure. Looking to the conduct of absenteeism of petitioner, for a long period of more than 10 years, that too without any information and leave is not acceptable in disciplined service of military, hence, order of tribunal may not warrant any interference.

9. We have heard counsel for the parties and carefully perused the material available on record.



10. The first issue under consideration is the challenge raised by the petitioner regarding alleged non-compliance of Section 106 of the Act of 1950. Section 106 of Act of 1950 reads as under:

106. Inquiry into absence without leave.

(1) When any person subject to this Act has been absent from his duty without due authority for a period of thirty days, a court of inquiry shall, as soon as practicable, be assembled, and such court shall, on oath or affirmation administered in the prescribed manner, inquire respecting the absence of the person, and the deficiency, if any, in the property of the Government entrusted to his care, or in any arms, ammunition, equipment, instruments, clothing or necessities; and if satisfied of the fact of such absence without due authority or other sufficient cause, the court shall declare such absence and the period thereof, and the said deficiency, if any, and the commanding officer of the corps or department to which the person belongs shall enter in the court-martial book of the corps or department a record of the declaration.

(2) If the person declared absent does not afterwards surrender or is not apprehended, he shall, for the purposes of this Act, be deemed to be a deserter.

Section 106 of the Army Act deals with inquiry into absence without leave. The petitioner does not dispute the foundational fact that after absenting himself from duty w.e.f. 09.01.2012 continuously and without seeking any leave, he never rejoined his military service. The petitioner has also not placed any material on record demonstrating that he had reported back to the Unit or that the authorities had prevented him from joining duty. The record also reflects that consequent upon unauthorised absence of the petitioner continuously with effect from 09.01.2012, apprehension/desertion proceedings were initiated and apprehension communication dated 15.02.2012 (Exhibit- P3) was



issued to the civil authorities for apprehension of the petitioner.

The Nominal Roll prepared under Army Order 43/2001/DV also records the date of Court of Inquiry as 18.02.2012. In such circumstances, merely because the detailed proceedings of Court of Inquiry were not separately furnished to petitioner, who was not at all present, would not ipso facto invalidate the dismissal proceedings. In addition, it is noteworthy that information of dismissal of petitioner vide letter dated 18.04.2015(Exhibit- P6) was served upon mother of petitioner (NOK).

11. The next contention raised by the petitioner that no copies or details of inquiry proceedings were made available to the petitioner, to hold the dismissal of petitioner from service as valid, also does not merit acceptance. It would be apropos to reproduce Rule 147 of Rules of 1954 hereunder:

147. Right of person tried to copies of proceedings. Every person tried by a court-martial (other than Summary Court Martial) shall, after the proceedings have been signed by the Presiding Officer and in the case of Summary Court-Martial the officer holding the trial, and before they are destroyed, on a request made by such person in writing to the Court or the officer holding the trial or the person having the custody of his proceedings, be entitled for the supply of a copy of such proceedings, within a reasonable time and free of cost, including the proceedings upon revision, if any.

On bare perusal of the above mentioned rule, it comes to fore that only a person tried by Court Martial or Summary Court Martial is entitled for supply of a copy of such proceedings whereas in the present case, the petitioner was dismissed from service for being a deserter and after conducting a due and



diligent enquiry as per Section 106 of Act of 1950. Moreover, the contention of petitioner that he was not given opportunity to defend himself, also does not have feet to stand on since thirty days' time was granted to the petitioner to show cause as to why he should not be dismissed from service and it was further mentioned that if no reply was received within the stipulated period, it would be presumed that the petitioner had no objection to dismissal from service. A communication dated 18.04.2015 (Exhibit- P8) was also addressed to the petitioner's mother informing her that the petitioner had failed to voluntarily rejoin even after three years of desertion from peace area and therefore, the competent authority had dismissed the petitioner from service with effect from 09.01.2012.

12. Another contention of petitioner is in relation to competence of authority to pass the impugned dismissal order. In this regard, it is worthy to note that after declaring the petitioner as deserter, as per Section 106 of Act of 1950, an apprehension roll was issued to District Commissioner and Superintendent of Police, Mahendergarh (Haryana) on 15.02.2012 but petitioner could neither be apprehended by authorities nor he surrendered voluntarily, pursuant to which he was dismissed from service vide order dated 18.04.2015, hence, after 3 years of absence/desertion of petitioner from the peace area, that too without any probable cause, the case was transferred to OIC Records, The JAT Regiment under the due opinion of the commanding officer, being a competent authority sanctioned the dismissal of petitioner from service. Further, from the dismissal



order of petitioner dated 18.04.2015(Exhibit- P6), merely due to absence of mentioning the rank of signing officer, it may not be assumed after more than 10 years that same was not issued by competent authority.

Hon'ble Supreme Court in case of **Union of India & Ors. v. Manoj Deswal & Ors. [(2016) 15 SCC 711]**, has clearly held that as per Rule 13(3) of the Rules of 1954, Commanding Officer can discharge a non attested person enrolled under the Act, if the concerned authority deems that deserter was unlikely to become a efficient soldier. Hence, the contention of petitioner that the dismissal order was not passed by the competent authority, does not find any strong footing.

13. Further, the factum of dismissal of petitioner from service was communicated to mother of petitioner vide JAT regiment letter dated 18.04.2015 (Exhibit- P8) and a show cause notice was also issued but neither the petitioner nor his mother made any representation against dismissal of petitioner from service. The petitioner admittedly did not submit any reply to the aforesaid notice. Once opportunity was granted to the petitioner and the petitioner himself chose not to avail the same, it cannot subsequently be contended that Rule 17 stood violated. The requirement of Rule 17 is grant of reasonable opportunity before dismissal and not actual participation by the delinquent.

13. Another important aspect of the matter is the conduct of the petitioner himself. The petitioner admittedly remained absent continuously from 09.01.2012 and never voluntarily surrendered before the authorities. Even after issuance of notice dated



05.02.2015, the petitioner neither submitted any reply nor approached the authorities for joining duty. Representations seeking documents came to be submitted only during the years 2021 and 2022 i.e. after more than 10 years and the Original Application itself came to be filed only on 22.12.2022. The prolonged silence on the part of the petitioner assumes significance because the petitioner was fully aware that he had not rejoined duty after 09.01.2012. Despite that, the petitioner chose not to approach the authorities within a reasonable period. The conduct of the petitioner clearly reflects abandonment of service and thereafter an attempt to revive stale claims after several years has rightly been dealt with by the Tribunal. Such conduct of the petitioner shows indiscipline and carelessness on his part which also affects the ethics and morales of other members of Army Unit. It has been rightly observed by Hon'ble Supreme Court in case of **Ex. Sepoy Madan Prasad v. Union of India & Ors. [(2023) 9 SCC 100]** in Para No. 11 as hereunder:

"11. It is apparent from the above table that the appellant was a habitual offender. There were four red ink entries and one black ink entry against him before the present incident cited at Serial No. (f) above. Such gross indiscipline on the part of the appellant who was a member of the Armed Forces could not be countenanced. He remained out of line far too often for seeking condonation of his absence of leave, this time, for a prolonged period of 108 days which if accepted, would have sent a wrong signal to others in service. One must be mindful of the fact that discipline is the implicit hallmark of the Armed Forces and a non-negotiable condition of service."

(emphasis supplied)

14. Having considered the entire material available on record, this Court is of the view that the petitioner has failed to make out any case for interference in the order of Tribunal, within the



scope of writ jurisdiction under article 226 of the Constitution of India. Consequent upon unauthorised absence of the petitioner from duty continuously with effect from 09.01.2012, and waking up from slumber after more than 10 years, as the OA was filed by petitioner on 22.12.2022, petitioner does not deserve any equity as well and warrant no interference in his order of dismissal from service.

15. Consequently, we do not find any infirmity in the order dated 31.05.2024 passed by the learned Armed Forces Tribunal, Jaipur warranting interference by this Court under Article 226 of the Constitution of India and same is hereby affirmed.

16. The writ petition being devoid of merit is accordingly dismissed.

17. Pending applications, if any, also stand disposed of.

18. No order as to costs.

(RAVI CHIRANIA),J

(SUDESH BANSAL),J