

**FORM NO – 21**  
**(See Rule 102 (1))**

**ARMED FORCES TRIBUNAL, KOLKATA BENCH**

**APPLICATION NO : TA 120 OF 2010 (WP-C 17286/2008)**

**WEDNESDAY, THIS SEVENTH DAY OF MARCH, 2012**

**CORAM : Hon'ble Mr. Justice Sadhan Kumar Gupta, Member (Judicial)**  
**Hon'ble Lt. Gen. K.P.D. Samanta, Member (Administrative)**

Gagan Bihari Dhal, aged about 48 Yrs,  
S/o Madan Dhal, Vill & PO Ratapat via Kanpur,  
P.S. Barmba, Dist. Cuttack

..... Petitioner

-VS -

1. Union of India, represented through Under Secretary, Ministry of Defence, New Delhi -11.
2. Chief of Army Staff, Sena Bhawan, New Delhi -110 011
3. Officer-in-Charge, Records , Sena Chikitsa Corps. Abhilekha, Army Medical Corps Records, Lucknow -226 002 (UP)

..... Respondents

For the petitioner : Mr. Bishikeshan Pradhan, Advocate

For the respondents : Mr. Anand Bhandari, Advocate

**O R D E R**

**Per Justice Sadhan Kumar Gupta, Member (Judicial) :**

Initially, the petitioner filed a writ petition being No. WP© 17286 of 2008 before the Hon'ble Orissa High Court, which was subsequently transferred to this



Bench of the Tribunal in view of the advent of the Armed Forces Tribunal, Act, 2007 and the same has been re-numbered as TA 120 of 2010.

2. The case of the petitioner, in short, is that he joined the Army Medical Corps on 7.12.1984 as a Sepoy and was discharging his duties diligently. He was also promoted to the post of Naik. While the petitioner was working as such at Kumaon (Assam), he was transferred to MH, Allahabad in the year 1993. During the transition period, he sought to see his old parents at his native village. While he was in his native place, the petitioner suddenly fell ill leading to his mental insanity. The petitioner remained under medical treatment for a long period and thereby was prevented from joining his new place of posting and during this period, he remained under constant medical treatment till 31.5.05 ( it should be 30.5.2002 as per annexure-1). After that, he was fully recovered and was declared fit to join his normal duty.

3. The petitioner submitted a representation on 11.6.2002 with the respondent No. 3 requesting him to reinstate him in service. However, the said respondent No. 3 informed him by letter dt. 16.8.02 that the petitioner was declared a deserter and was dismissed from service w.e.f. 20/4/1996, as per provision of the Army Act,1950. Thereafter, the petitioner by his letter dt. 2.9.02 requesting the respondent No. 3 to supply him a copy of the dismissal order and other documents, which were denied by the respondents on the ground that since the petitioner was declared deserter and was dismissed from service, he was not entitled to receive such copies. Ultimately, the petitioner submitted a representation with the President of India but without any result. Finding no other



alternative, the petitioner had to approach the Hon'ble High Court at Cuttack by filing this writ petition, which has since been transferred to this Bench.

4. The respondents contested the application by filing counter affidavit wherein they have denied the allegations, as made by the petitioner in his application. It is stated in the counter affidavit that when the petitioner was directed to join his new place of posting at Allahabad, he did not join such post and after waiting for a reasonable period and after issuing apprehension roll with the concerned Superintendent of Police, a court of enquiry was held and thereafter on the basis of the recommendation of such court of enquiry, the petitioner was declared deserter and dismissed from service. According to the respondents, there is no provision for reinstatement in service, as claimed by the petitioner. It is the specific case of the respondents that the petitioner intentionally, for reasons best known to him, did not join the place of posting and remained absent for more than six years. According to the respondents, if the petitioner was at all sick, then it was his duty to inform such fact to his old department as well as to the concerned authorities at the new place of posting. The petitioner did not take any step nor did he avail of the service of the military hospital when he was allegedly sick. Instead, the petitioner has claimed that he was treated by a civil doctor. The medical certificate, as annexed by the petitioner in this respect, is not at all believable and the respondents claimed that the same was a fabricated document and should not be relied upon. They have prayed for dismissal of the application.



5. The petitioner filed a rejoinder to such counter affidavit wherein he again reiterated his claim, as mentioned in the writ application. In addition to what has been stated in the writ petition, the petitioner has claimed that while on his way to join his new assignment, he received a telephone call to the effect that his mother was sick and as such, he had to rush to his native place and there, after seeing the condition of his mother, the petitioner fell sick and developed mental problem.

6. We have considered the submissions, as made by the Id. advocates for both the sides and have also perused the documents, as have been annexed in connection with the application. It is the admitted position that the petitioner was enrolled in the Army in the year 1984. There is also no denial of the fact that in the year 1993, the petitioner was directed to join MH, Allahabad. However, the petitioner did not join his new assignment. There is nothing on record to show that the petitioner informed his old department as well as the new one intimating the circumstances, which prevented him from joining the new assignment. Instead, he waited for more than six years to submit representation after representation with the concerned authority and ultimately filed the instant writ petition in the year 2008. There is no explanation whatsoever on the part of the petitioner as to such delay in taking appropriate steps. Be that as it may, it appears from the record that the respondents, before declaring the petitioner as deserter, followed the prescribed procedure, as laid down, by way of sending apprehension roll with the concerned Superintendent of Police and the District Magistrate. It further appears that a regular court of enquiry was held regarding



the unauthorized absence of the petitioner, which opined that since there was no explanation from the side of the petitioner with regard to his long absence without leave, so he should be declared deserter. Relying upon the enquiry report, the concerned authority declared the petitioner as deserter and dismissed him from service. We find nothing illegal in it. It is palpably clear that the petitioner sat idle for more than six years since 1993 when he was directed to join at Allahabad. Simply because the petitioner has filed one certificate issued allegedly by a civil doctor, that does not mean that the petitioner was in a position to establish his claim that during these six years, he was really sick and as such, unable to join his service. We have perused the medical certificate, which has been annexed as annexure-1. The certificate appears to be suspicious in nature. There are some interpolations in it. Moreover, if the petitioner was treated in a civil hospital, then there would have been no reason for him in not filing the medical papers from the said hospital. Instead, he preferred to obtain a medical certificate from a private doctor and this certificate also appears to be suspicious in nature. As such, we refrain ourselves from placing any reliance upon this certificate. It may also be pointed out here that the petitioner is not a lay man and he was attached with the military hospital. As such, if the petitioner was actually sick, then it was proper on his part to approach the nearest military hospital instead of being referred to a civil doctor, as claimed by him.

7. Be that as it may, the fact remains that the petitioner was absent for more than six years without any reason whatsoever and as such, we hold that the respondent authorities were perfectly justified in declaring him as a deserter and




consequently dismissed him from service. We also find no acceptable ground to pass order of reinstatement of the petitioner in the Army, as prayed by him. As such, we are of the opinion that there is no merit in this application and the relief, as sought for cannot be given to him.

8. In the result, the Transferred Application stands dismissed on contest but without cost.

9. Let plain copy of the order be given to ld. advocates for both the sides.

  
(LT. GEN K.P.D.SAMANTA)  
MEMBER(ADMINISTRATIVE)

  
(JUSTICE S.K.GUPTA)  
MEMBER (JUDICIAL)