

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.18691 OF 2024

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Union of India,
Ministry of Defence (Army)
Vs.

.. Petitioner

Ashok Rajaram Tadas

.. Respondents

...

Mr. Amrendra J. Mishra, Advocates for the Petitioner

Mr. Yogendra Pratap Singh, Advocate for the
Respondents

**CORAM : SHREE CHANDRASHEKHAR, CJ &
GAUTAM A. ANKHAD, J.**

DATE : 12th JANUARY 2026

P.C. :

Challenging the judgment delivered on 15th February 2023 in Original Application No.81 of 2016, the Union of India through officer In-charge of the Ministry of Defence (Army) has filed this writ petition invoking the jurisdiction of this Court under Article 226 of the Constitution of India.

2. Review of the order passed by the Tribunal in Original Application No.81 of 2016 was sought by the petitioner-Union of India in Review Application No.17 of 2024 which was dismissed by an order dated 5th August 2024 and this order is also under challenge in this writ petition.

3. Mr. Amrendra J. Mishra, the learned counsel for the petitioner-Union of India submits that the respondent who was an ex-sepoy, did not report for duty and remained absent and, as a consequence thereof, he was dismissed from service and the said order was not amenable to the jurisdiction of the Armed Forces Tribunal. The

learned counsel for the petitioner-Union of India further submits that the delay of 9 years in approaching the Tribunal was ignored and Original Application No.81 of 2016 was entertained without any plausible reason.

4. The respondent-sepoy, who was enrolled in the Army on 22nd March 1982, obtained the order of discharge on his own request on compassionate grounds under Rule 13(3)(III)(iv) of the Army Rules, 1954. His date of retirement was fixed as 31st October 1998 and he was dispatched from his parent unit to Depot Battalion at Khadki for completion of the pension drill. He did not report to the Depot Battalion and remained absent without leave. The Apprehension Roll was issued on 28th November 1998 to the Deputy Commissioner, Akola and other civil authorities but he could not be apprehended or surrendered before the Military Authorities. The Court of Inquiry was ordered by the Commanding Officer and the respondent-sepoy was declared a deserter with effect from 1st October 1998. On conclusion of the proceedings on 5th January 1999, an order of dismissal from service was passed. However, it is not disputed that the advance pension claims of the respondent-sepoy was processed and he was granted service pension from 1st November 1998 to July 2014, revised from time to time. About 15 years after the order of the Court of Inquiry, the pension granted to the respondent-sepoy was temporarily suspended with effect from 1st August 2014. In Original Application No.81 of 2016, the respondent-sepoy challenged the pension suspension order and the dismissal order and prayed for regularization of the leave absence from his accumulated leave.

5. This is not in dispute that the respondent-sepoy was granted the benefit of premature retirement. For not reporting for duty, the

respondent-sepoy took a plea that he was made to consume some sedative substance by two CRPF men who looted his belongings but this plea was not accepted by the Tribunal. The Tribunal proceeded in the matter primarily on the basis of the undisputed fact that the respondent was granted premature retirement w.e.f. 31st October 1998. The Tribunal considered this aspect in paragraph no.6 of its decision dated 15th February 2023 which is reproduced hereunder:

“6. Consideration of above sort of sequence of events shows that there were no malafides involved in the applicant not being able to report at BEG Centre, Pune. He states that since he started getting pension, he assumed that he was not required to report at Record Office, BEG Centre at Pune in future and he, therefore, did not go there thereafter. Thus, no malafides are perceivable in the actions of the applicant. Hence, although he has not been able to prove the loss of his belongings after being sedated, but the circumstances as depicted do not point to any fault on the part of the applicant apart from misgiving and negligence at the maximum. The applicant had started getting his pension which he continued to draw till July 2014 when the same was stopped by the PDA viz. SBI, CPPC, Belapur CBD. His service tenure was otherwise unblemished and he would not have gained in any manner by deliberately remaining absent for the last few days (less than 30 days) from his Depot Unit, that is BEG Centre, Pune where he was to carry out only the pension drill. The errors on his part are of not such nature that he should suffer the consequences of dismissal from service. Consequently, the order of dismissal from service is set aside. The applicant is to be treated as discharged from service w.e.f. 01.11.1998. The applicant shall be liable to be paid his pension and gratuity etc. from the date it was stopped by the respondents. Consequently, the decision of the respondents to stop service pension of the applicant is directed to be recommenced from the date it was stopped. The arrears of the service pension shall also be calculated and paid within three months from the date of this order. Default will result in interest @ 8% per annum on the arrears of pension accrued w.e.f. date of this order.”

6. This is well settled that unauthorised absence from duty and, that too, in a disciplined force shall amount to misconduct. But then, the departmental authority is required to record a finding that the absence from duty was unauthorised and intentional. In *“Krushnakant B. Parmar v. Union of India”*, 2012 (3) SCC 178, the Hon’ble Supreme Court observed as under:

“18. In a departmental proceedings, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in the absence of such finding, the absence will not amount to misconduct.

19. In the present case the inquiry officer on appreciation of evidence though held that the appellant was unauthorisedly absent from duty but failed to hold that the absence was wilful; the disciplinary authority as also the appellate authority, failed to appreciate the same and wrongly held the appellant guilty.”

7. Moreover, in the face of the benefit of premature retirement granted to the respondent-sepoy, the stand taken by him that he was pensioner, and therefore thought that he was not required to report for duty seems to be a plausible explanation.

8. Having regard to the aforesaid aspects of the matter, Writ Petition No.18691 of 2024 is dismissed.

[GAUTAM A. ANKHAD, J.]

[CHIEF JUSTICE]