

**(2012) 07 DEL CK 0261**

**In the Delhi High Court**

**Case No : Writ Petition (C) No. 896 of 2012**

Jaya Shree Dey

APPELLANT

Vs

UOI and Ors

RESPONDENT

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**Date of Decision :** 17-07-2012

**Acts Referred:**

**Citation :** (2012) 07 DEL CK 0261

**Hon'ble Judges :** J.R. Midha, J;Gita Mittal, J

**Bench :** Division Bench

**Advocate :** Mohan Kumar, for the Appellant; Barkha Babbar, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

1. This matter has been repeatedly adjourned on the request of the petitioner urging that some additional documents have to be filed. At least four adjournments have been granted since 6th March, 2012 for this purpose. No additional documents have been brought on record. No particulars or relevance thereof are disclosed. We are not inclined to adjourn this matter for this purpose any more. We may also note that when the matter was called out, learned counsel for the petitioner opened arguments in the matter and only after we indicated that we were unable to find any infirmity in the order, the adjournment is requested by learned counsel to place additional documents. In any case, this writ petition assails the judgment dated 21st April, 1990 passed by the Armed Forces Tribunal in TA No.732/2009. The judgment of the tribunal has to be tested on the material which was before the tribunal and not on additional material.

2. The petitioner before this court was granted Short Service Commission on 16th December, 2005 in the Army Medical Corps vide an appointment letter dated 17th November, 2005. The petitioner has claimed that she joined the service under the impression that she would be completing her five years tenure at Delhi. She was initially posted for two years at the Base Hospital, Delhi and thereafter vide posting order dated 2nd January, 2009, she was transferred to

the Military Hospital at Akhnoor (J & K).

3. We find that the impugned order notices the stand of the respondents to the effect that subsequent to commission, officers on Short Service Commission with the Armed Force Medical Corps are detailed for the Medical Officer Basic Course (MOBC) at Lucknow. It was customary to post officers to field area on completion of MOBC. Out of the total of 73 officers who attended the course with the petitioner, 70 officers were posted to field unit and only three officers including the petitioner were posted to peace stations. The posting order mentions that the posting was for a period of two years only and the applicant, therefore, knew that her tenure at Delhi was limited and was to expire in June, 2008. The posting order posting the petitioner was issued after completion of this tenure, only on 2nd January, 2009 with instructions to the petitioner to report to 310 Field Hospital by 5th February, 2009 after the petitioner had served three years in the Base Hospital, Delhi. The petitioner preferred an application dated 27th January, 2009 for cancellation of the posting with the condition that if the request was not acceded to, she may be released from the army. The petitioner simultaneously applied for 60 days annual leave.

4. The respondents urged before the Armed Forces Tribunal that as per para 9 of Annexure A to army instructions 75/78, (as amended), the permission to resign before completion of five years of service is to be granted by the Directorate General, Armed Forces Medical Services.

5. The petitioner was advised by the Base Hospital, Delhi to apply for release from her new unit where she stood posted.

6. It is noteworthy that the petitioner's application for 60 days annual leave was also processed by her new unit which was along with 15 days furlough leave.

7. The petitioner failed to report to the place of posting instead she filed a writ petition bearing No.852/2009 in this court challenging the posting order which was withdrawn by her on 10th February, 2009.

8. The petitioner again applied for release from service and also for furlough leave in addition to the 60 days annual leave already granted. This application was received on 4th March, 2011 by the new unit of the petitioner in Akhnoor.

9. The respondents have pointed out that an application for release requires an interview with the Commanding Officer of the unit who is to endorse his recommendation before forwarding the application for release to the higher authorities. It appears that the petitioner was also informed that since she failed to report for duty by the due date, she had been declared "overstay of leave" and disciplinary proceedings against her were being contemplated. The application for release was returned without any action thereon on 14th May, 2009 informing the petitioner that she was required to report to her new unit for duty on 16th April, 2009. The petitioner also stood notified that her application for release could not be processed till disciplinary proceedings against her were

completed.

10. Before this court and Armed Forces Tribunal, the petitioner has set-up a plea that she was seeking release from military on account of her family circumstances. The respondents urged that the petitioner was aware of her family circumstances when she applied for Short Service Commission as well as the nuances of the service which require posting. In fact, there is nothing to support the petitioner's contention that she was under the impression that her five years in Short Service Commission would all be spent at Delhi. On the contrary her first posting order was for a fixed tenure at the Base Hospital only. We find no substance in this plea which is urged by the petitioner.

11. The respondents informed the Armed Forces Tribunal that as the petitioner failed to report to new unit on 14th April, 2009, she was declared as deserter and an apprehension roll was raised on 27th April, 2009. With effect from 14th July, 2009, she was placed under Disciplinary and Vigilance Ban-"type D". Her case for release could not be processed in view of the pending disciplinary case against her.

12. It is trite that leave is not a right. The petitioner's leave in the instant case was not processed by the new unit as the petitioner did not report to it. The petitioner has accepted her posting when she made the applications for leave and the release to the new unit. The petitioner has not urged before the Armed Forces Tribunal or before this court that it was not the new unit which was to process her application for leave as well as her release. She also does not dispute that she has to appear before the Commanding Officer to be interviewed before he can make appropriate recommendations to the competent authorities on her application for release.

13. The petitioner has urged that she was discriminated against inasmuch as one Lieutenant Colonel Kritika Kaushik, who was similarly placed, was granted release which has been denied to the petitioner. The respondents point out (and as also noticed by the tribunal) that the Lieutenant Colonel Kritika Kaushik had completed her initial five years of commission and was in the extended spell of her short service. More liberal rules are applicable to officers on extended service as against those on the initial tenure of the commission. As per the applicable rules, officers on extended commission are normally sanctioned release as and when they apply. The petitioner admittedly was only into about three years of her commission that is in the first spell of the commission tenure. As such the petitioner can seek no parity with the manner in which Lieutenant Colonel Kritika Kaushik was treated.

14. We find that the Armed Forces Tribunal has sympathetically considered the case of the applicant and observed as follows:-

12. We have heard the arguments at length and perused the records. There terms and conditions for SSC officers in their first tenure of five years and those on extended SSC tenure are different. Thus her case was different from Mrs. Lt

Col Kaushik. The case of release is to be considered by DGAFMS vide letter dated 5.2.2009. She was advised to apply for premature release from her new unit as per the proforma enclosed. The applicant willingly sought a short service commission despite her domestic problems, which are common to most married officers. The applicant being a women officer can expect some consideration but cannot willfully disobey orders and bypass the procedure. In military custom when an officer submits an application he/she is interviewed to enable the commanding officer to endorse his recommendations on the application. She is presently under a DV ban. We therefore direct that if the applicant reports to her new unit and applies for premature release the same be considered. Her status as a deserter and imposition of DV ban will not prejudice her move to her new unit and applying for premature release. Her application for premature release be considered on merits. The application is partly allowed accordingly. No costs.

The petitioner is unable to point out any infirmity entitling interference with the order passed by the Armed Forces Tribunal imposed by way of the present writ petition which is hereby dismissed.