RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

COURT NO. 2

T.A. No. 1308 of 2010

Wednesday, this the 13th day of April, 2016

"Hon'ble Mr. Justice D.P.Singh, Judicial Member
Hon'ble Air Marshal Anil Chopra, Administrative Member"

No. 14581200-M Ex Naik Ram Kripal Pal, Son of Shri Ram Sahai, Village-Lakhanipur P.O. Gatampur (Gujala) District Kanpur Nagar.

…. **Petitioner**

Versus

1. Chief of the Army Staff, New Delhi.
2. Commandant cum CRO EME Centre & Records through 902 Air Defence Missile Workshop C/O 56 APO
3. P.C.D.A (Pensions) Draupadi Ghat, Allahabad
4. Union of India through Secretary, Ministry of Defence, new Delhi.

….**Respondents**

Ld. Counsel appeared for the Petitioner - Shri Rohit Kumar, Advocate

Ld. Counsel appeared for the Respondent – Shri R.K.S.Chauhan, Central Govt. Standing Counsel

Order

(Per Justice Devi Prasad Singh, Judicial Member)

1. The Petitioner in the instant case was dismissed from Indian Army on the ground of absenting himself without leave for more than three months. Being aggrieved with the order of dismissal, he preferred a writ petition being Writ Petition No. 52682 of 2003 in the High Court at Allahabad, which stood transferred to this Tribunal in pursuance of the provisions contained in Section 34 of the Armed Forces Tribunal Act, 2007 and now, it is registered as T.A. No. 1308 of 2010.

2. We have heard Shri Rohit Kumar, learned Counsel for the Petitioner and Shri R.K.S.Chauhan, learned counsel appearing for Union of India assisted by Maj. Preeti Tyagi, Departmental Representative.

3. Admittedly, the petitioner was enrolled in the Indian Army on 11.04.1985 and served for almost 17 years. During the course of service, he was granted 10 days casual leave from 09.04.2002 to 18.04.2002 and later-on, resumed duties on 30.08.2002 after expiry of sanctioned period. On account of overstaying the sanctioned leave, summary Court Martial proceedings were embarked upon and the petitioner was served a tentative charge-sheet on 11.10.2002. Summary of evidence was recorded on 16.10.2002 and Court Martial proceedings were concluded on 23.10.2002. By the impugned order dated 23.10.2002, the petitioner was punished with dismissal from service. The petitioner then preferred petition under section 164 (2) of the Army Act which culminated in being rejected. The petitioner is alleged to have got a photo copy of the impugned order on 31.07.2003 and approached the High Court by filing a writ petition.

4. Learned Counsel for the Petitioner submits that the order of dismissal from service suffers from the vice of arbitrariness attended with submission that the appeal has been rejected by a non-speaking and cryptic order and that no decision has been taken in letter and spirit of section 39 of the Army Act, 1950. The further submission of learned counsel for the Petitioner is that in case, an individual is on the verge of completion of his service tenure, regard being had to Army order dated 31.06.1991, no action for minor misconduct should be taken and such individual should be discharged after completion of service. On the other hand, learned counsel for the respondents submitted that the petitioner had been a habitual offender and he was punished for misconduct on 11 occasions. The relevant factual matrix is contained in Paragraphs 4 and 5 of the counter affidavit and the same are abstracted below for ready reference.

> *"4. That the petitioner at field on 19th April, 2002 had been granted leave of absence (10 days Casual Leave) from 9th April, 2002 to 18th April, 2002 to proceed to his home, failed without sufficient cause to rejoin at field on 19th April, 2002 on the expiry of the said leave, till he surrendered voluntarily at EME Depot Bn. Secunderabad on 30th August, 2002 at 1600 hours. His period of absence was 134 days.*
>
> *5. That on verification of sheet roll from EME records, it was found that the petitioner has already been awarded the following 11 punishments earlier:-*

(a) 39 (b)	240393	10 days pay fine
(b) 39 (a)	120693	14 days RI
(c) 40	251093	07 days RI
(d) 39 (b)	261095	07 days pay fine
(e) 39 (b)	120297	14 days pay fine
(f) 39 (b)	130697	14 days pay fine
(g) 39 (b)	190398	07 days RI
(h) 39 (b)	18082000	14 days pay fine
(J) 39 (a)	18082000	28 days RI
(k) 39 (b)	29122000	28 days RI
(l) 39 (b)	250302	14 days pay fine

5. It is further argued that sufficient chance was given to the petitioner to reform himself but to no avail, and hence he was punished with dismissal according to the Rules.

6. The defence set up by learned Counsel for the Petitioner is that during the course of enquiry, he had overstayed the leave because of sickness of his wife and the moment, his wife recouped, the petitioner resumed his duties. The defence set up by the petitioner seems to have been admitted in Para 8 of the counter affidavit. The Army order relied upon by the petitioner dated 25.06.1999 being relevant is reproduced below for ready reference.

> *"1. While examining a Post Confirmation Petition under section 164 (2) it was revealed that an QR having five red ink entries was tried by summary Court Martial for an offence of over-stayal of leave by 20 days and awarded the sentence of 'Dismissal'. The said individual had about 13 years of service to his credit at the time of trial. In this case, the punishment of dismissal appeared to be harsh when compared to the nature of offence. Perhaps, the court considered the previous record of service as the dominating factor to determine the sentence vis a vis the merits of a particular act of omission or commission for which the individual was being tried.*
>
> *2. In such situations where the individual has more than four re ink entries it is most appropriate to examine the case under Army Rule 13 on its merits for discharge instead of awarding a sentence of Dismissal which is strikingly disproportionate to the nature of offence.*
>
> *3. The contents of this letter may be disseminated down to unit commanders."*

7. The letter and spirit of the Army order, to our mind, seems to relate to a situation where an individual suffering from minor misconduct and is not a habitual offender. In case, an individual is a

habitual offender, the benefit of aforesaid Army order may not inure to him in the sound discretion of the competent authority.

8. However, in the present case, there is another aspect to be looked at. The absence without leave is, no doubt, misconduct under section 39 of the Army Act, 1950. Section 39 of the Army Act being relevant is reproduced below for ready reference.

> *"39. Absence without leave. ---Any person subject to this Act who commits any of the following offences, that is to say,-*
>
> *(a) absents himself without leave; or*
>
> *(b) without sufficient cause overstays leave granted to him; or*
>
> *(c) being on leave of absence and having received information from proper authority that any crops, or portion of a corps, or any department , to which he belongs, has been ordered on active service, fails, without sufficient cause, to rejoin without delay; or*
>
> *(d) without sufficient cause fails to appear at the time fixed at the parade or place appointed for exercise or duty; or*
>
> *(e) when on parade, or on the line of march, without sufficient cause or without leave from his superior officer, quits the parade or line of march; or*
>
> *(f) when in camp or garrison or elsewhere, is found beyond any limits fixed, or in any place prohibited, by any general, local or other order, without a pass or written leave from his superior officer; or*
>
> *(g) without leave from his superior officer or without due cause, absents himself from any school when duly ordered to attend there,*
>
> *Shall, on conviction by Court Martial, be liable to suffer imprisonment for a term which may extend to three years or such less punishment as is in this Act mentioned."*

9. Admittedly, the petitioner was on sanctioned leave which he overstayed. The provisions contained in clause (b) of section 39 show

that absence without leave or without sanctioned leave under clause (a) of Section 39 of the Army Act may be serious but in case, Army personnel overstays leave, that too, for sufficient cause, as provided in clause (b) of section 39, then, in such situation, lenient view should be taken instead of awarding exemplary punishment of dismissal from service. The Legislatures in their wisdom in clause (b) recites the phrase "without sufficient cause". It implies, in case, sufficient cause was shown, then appropriate authority must take lenient view and pass appropriate order in proportion to overstaying the leave. In the present case, the petitioner has set up a defence that he overstayed the leave because of illness of his wife. If it is so, why respondents have not held any enquiry and cross-examined the petitioner with regard to illness of his wife, is not understandable.

10. In a case while interpreting section 39 (b) in T.A. No. 231 2014 decided on 15.10.2015, **(Basant Kumar V. Union of India),** the essence of what has been held is contained in Paras 41 to 43 which being relevant are reproduced below.

> *"41. The provision as contained in sub-section (b) of Section 39 of the Army Act, 1950 means in case army personnel overstays leave without sufficient cause, he may be punished in terms of provision of Section 39 of the Army Act, 1950. Sufficient cause necessarily implies an element of sincerity, bona fide and reasonableness without any negligent inaction or mala fide.*
>
> *42. Hon'ble Supreme Court in Collector, Land Acquisition, Anantanag Vs Mst. Katiji, AIR 1987 SC 1353 held, 'sufficient cause' is not a catchword. It is adequately elastic to enable to Court to apply the law in a meaningful manner which sub-serves the ends of justice that being the life-purpose of the existence of the institution of Courts in Sankaran Villai vs V.P.Veguduswami, AIR 1999 SC 3010, Hon'ble Supreme Court held that the expression 'sufficient cause' necessarily implies element of sincerity, bona-fides and reasonableness alongwith sincerity. The*

words 'sufficient cause' provides under sub-section (b) of Section 39 of the Army act, 1950 the pari material to the words used in Section 5 of the Indian Limitation Act. Hon'ble Supreme Court in the case of State of Bihar Vs Kameshwar Prasad Singh, (2000) 9 SCC 94 held that a liberal approach be given for sufficiency of cause. In the case of Ram Nath Sao vs Gobardhan Sao, AIR 2002 SC 1201, their Lordships of Hon'ble Supreme Court held that while dealing with sufficient cause under the Indian Limitation Act, Courts should see that there is no negligence or inaction on the part of parties. In the case of Sher Bahadur vs Union of India (2002) 7 SCC 142, while interpreting the word 'sufficiency of evidence' Hon'ble Supreme Court held that it postulates existence of some evidence which links officer under charge with the alleged misconduct. In the case of Singh Enterprises vs CCE, (2008) 3 SCC 70 Hon'ble Supreme Court held that the word 'sufficient cause' as found in different statutes essentially means as adequate or enough cause. In Sheoduttrai Pannalal vs CIT., (1941) 9 ITR 118, in tax matter, it has been held that sufficient cause refers to question of fact.

43. In view of aforesaid propositions of law, 'sufficient cause' implies presence of legal and adequate reasons inasmuch as to justify overstay of leave by army personnel. It means to be viewed with reasonable standard and practicable caution.

Since it is a question of fact while recording finding and punishment, a finding should be recorded precisely to establish that without sufficient cause, the armed force personnel overstayed the leave. In the absence of such a finding, the punishment awarded may vitiate keeping the facts and circumstances of each case. Vice versa, over-staying leave may be defended showing sufficient cause as ever overstay of leave should be of reasonable period under compelling circumstance showing justification in not applying for extension of leave."

11. The distillate of the above discussion is that where an individual is punished on the ground of overstaying the leave, then it shall be obligatory on the part of Disciplinary Authority or Punishing Authority

to record a finding with regard to sufficiency of cause. In the absence of such a finding, the order of punishment shall be an instance of non-application of mind. A perusal of the impugned order shows that by no stretch of imagination, the authorities have applied mind with regard to sufficiency of cause shown by the respondents during the course of enquiry. It was necessary for the authorities of the Army to ascertain the illness of petitioner's wife and to have recorded a finding as to whether the defence set up by the petitioner was correct or not. In the absence of any such finding, the petitioner could not have been punished for the offences committed under section 39 (b) of the Act.

12. Apart from the above, since it is a case of overstaying the leave, specific finding should have been recorded with regard to justification or there being no justification of overstaying the leave. Merely saying that the petitioner overstayed the leave without sanction, that too, under the teeth of defence set up by the petitioner with regard to illness of his wife shall not be sufficient. The charge in the instant case was framed on 18.10.2002 showing that the petitioner failed to go back and re-join duty without sufficient cause. The finding recorded during the course of Court Martial, that too, within foureen minutes shows that the accused/petitioner had declined to cross examine the witnesses and ultimately, he was held guilty of the charges. The verdict of the Court Martial does not contain any finding as to how the petitioner has not shown sufficient cause. Rather, it has been held that the petitioner was previously convicted by the Court Martial or Criminal Court. It appears that previous conviction in Court Martial has influenced the order of the authority concerned resulting in exemplary punishment of dismissal. The verdict of the Court Martial and sentence awarded thereon is reproduced below.

"PROCEEDINGS BEFORE SENTENCE

The following minutes by the Court are read and explained:-
If the Court does not record the accused person's convictions and character of its own knowledge, evidence as to these matter will be taken as on Page 'F' of the form of proceedings for a General or District Court Martial.
It is within my own knowledge from the records of the EME Depot Bn that the accused 14581200M Nk/Dvr (MT) Ram Kripal Pal has been previously convicted by Court Martial or criminal court. (A separate statement giving full particulars of any previous conviction to be annexed court:-

Within last 12 months		*Since enrolment*
39 (b)	*240393*	*10 days pay fine*
39 (a)	*120693*	*14 days RI*
40	*251093*	*07 days RI*
39 (b)	*261095*	*07 days pay fine*
39 (b)	*120297*	*14 days pay fine*
39 (b)	*130697*	*14 days pay fine*
39 (b)	*190398*	*07 days RI*
39 (b)	*18082000*	*14 days pay fine*
39 (a)	*18082000*	*28 days RI*
39 (b)	*29122000*	*28 days RI*
39 (b)	*250302*	*14 days pay fine*

That he is at present undergoing……..Sentence……
That irrespective of his trial his general character has been ……..fair…… ……..sd/-
(The Court)
That his age is 35 years 09 months 22 days
His service is 17 years 06 months 12 days
And his rank is Naik (TS)
That he has been in arrest (confinement) for…….days

That he is in possession of or entitled to the following military decorations and rewards.
…….

**Any recognized acts of gallantry or distinguished conduct should also be entered here.*

. SENTENCE BY THE COURT

Sentence Dismissed Reduction *Taking all these matter into consideration. I now sentence the accused No. 14581200 M Nk/Dvr (MT), 902 AD EME Depot Battalion to Ram Kripal Pal to be dismissed from the service and to be reduced to the ranks.*

Sd/-
(Anupam Baseu)
Col

Signed at Secunderabad this Twenty Third day of October 2002.

Sd/-
(Anupam Basu)
Col
CO

……
Commanding the EME Depot Bn Secunderabad
(holding the trail)
The trial close at 1340 (The Court)
Promulgated by extract taken at Secunderabad on this the Twenty third of October 2002

Sd/-
(A.A. Rethinam)
Capt
OC
Document

IAFD – 907
No_____ Date of 19

……
Trial by Summary Court Martial under the Army Act
No……
Unit …….
at ……..
19……..
On the……of ……19……

Register No……of the …….

Army/Command

Deputy Assistant *Judge Advocate General*

13. Now, we switch on to next point. In the instant case, the Authorities have travelled beyond the allegations contained in the charge sheet. It would appear that the charge sheet was framed only with regard to overstaying the leave without sufficient cause but

punishment has been awarded after taking into account the Petitioner's previous conduct. For the sake of ready reference, the charge sheet dated 18.10.2002 is reproduced below.

> "This charge sheet is read (translated) and explained to the accused marked B-2 signed by the Court and attached to proceedings.
>
> *B2*
>
> *Sd/- (RK Pal)*
> *14581200M Nk/Dvr (MT)* *(The Court)*
>
> *Instruction: Transaction of superior authority for trial by summary Court Martial should be entered with the and signature of the officer at the foot of the charge sheet when sanction is necessary*
>
> *Arraignment*
>
> *By the Court-How say you 14581200M Nk Dvr(MT) Ram Kripal Pal Ex-902 AD Msl (Wksp att to EME Depot Bn are you guilty or not guilty of the said charge preferred against you?*
>
> *Guilty*
> *Answer* *Guilty (The Court)*
>
> *Sd/-*
> *14581200M Dvr (MT)*
> *Ram Kripal Pal*
> *(Accused)* *(The Court)*
>
> *Are you guilty or not guilty of the charge?*
>
> *(The Court)*
>
> *The accused having pleaded guilty to…….charge*
> *The provision of Army Rule 115 (2) are here complied with.*
>
> *Complied with*
>
> ……
>
> **If the accused pleads guilty to any charge the provisions of Army Rule 115 (2) must be complied with and the fact that this has been done recorded.*
>
> *"Before recording the plea of guilty offered by the accused, the Court explained to the accused the meaning of the charge to which he had pleaded guilty and ascertained that the accused has understood the nature of the charge to which he had pleaded guilty. The Court also informed the accused the general effect of plea of guilty and difference in procedure which will be followed consequent to the said plea. The court having satisfied itself that the accused understood the charge and effect of his*

plea of guilty, accepts and records the same. The provisions of AR 115 (2) is complied with."

SD/-
(The Court)

Sd/-
No 14581200 M/NK/Dvt (MT)"

14. Question with regard to the importance of framing of charge has been considered by the Armed Forces Tribunal Regional Bench Kolkatta in **O.A No 45 of 2013 decided on 13.07.2015, Sunderkema vs Union of India** (delivered by one of us (J.D.Singh). The relevant portion of the said judgment is reproduced below-

"32. Sections 111,112 & 113 of 12954 Rules show that the accused should be informed of the charges against him and it shall be read and if necessary be translated to his own language and the accused will have right to object that charges do not disclose an offence under the Army Act and is not in accordance to Rules. In case the Commanding Officer is satisfied to the objection raised by the accused in pursuance of Rule 112 he may discharge the accused or amend the charges in pursuance of power conferred by Rule 113 to meet out the requirement of law.

33. Chapter V of Rules 1954 lays down the procedure of investigation of charges and remand. Rule 28 provides that charge-sheet shall contain all the charges. Rule 29 p[provides that every charge-sheet shall begin with the name and description of the present charge and Rule 30 provides that charge-sheet shall contain statement of the offence and statement of the particulars of the act, neglect or omission constituting the offence and other particulars. Under Rule 31 charge-sheet shall be signed by the Commanding Officer of the accused and shall contain the place and date of such signature. Rule 32 provides for validity of effective charge-sheet. In case it contains any mistake in the name or description of person charged and there shall be presumption in supporting the same which may reasonably be presumed to be impliedly included though not expressed therein.

X x x x x x x x x x x

35. Provisions contained in chapter V, Sec.-1 of the Rules seems to cover general provisions while dealing with procedural aspect as well as power of Commanding Officer during course of Court Martial, Distt. Court Martial, Genera Summary Court Martial and Summary Court Martial and hence procedure prescribed therein is applicable in the present case.

X x x x x x x x x x x

37. Accordingly, it was incumbent on the S.C.M. to frame charges in the manner provided by 1954 Rules. It may be noted that Appendix II of the Army Rules, 1954 contains a format of charge-sheet with regard to different offences. The alleged charge-sheet (supra) at the face of record is not in the required format and does not contain ingredients which should be borne out from the plain reading of the charge-sheet. Format 109 of the Appendix II of the Army Rules contains format with regard to framing of charges for offence punishable under Section 354 of the I.P.C.

X x x x x x x x x x

40. Purpose of charge-sheet is to specify the accusation for which the accused has been charged and required to meet during the course of trial. It is the first notice to an accused of the matter whereof he/she is accused and it must convey to him with sufficient clearness and certainty that the prosecution intends to prove against him and of which he would have to clear mind. Object of the framing of charge is to enable the accused of the case he is required to answer during trial. Charges must be properly framed and evidences tendered must relate to matters stated in the charge. It has been settled by the Hon'ble Supreme Court that charge is not an accusation in abstract but a concrete accusation of an offence alleged to have been committed by the accused. Further the accused is entitled to know with the greatest precision and particularly the acts said to have been committed and section of the penal law infringed; otherwise he must be seriously prejudiced in his defence vide ***AIR 1958 SC Page 672-Srikantiah B.N. v. State of Mysore; AIR 1948 Sind 40, 48: (1948) 40 Cr.L.J. 712- Waroo v Emperor & AIR 1963 SC 1120-Birichh Bhuian v State of Bihari.***

41. To specify a definite criminal offence is the essence of Criminal Jurisprudence which is in tune with Article 14 of the Constitution of India and part and parcel of Principle of Natural Justice. Offence whatever may be, no trial may proceed without framing of charges. Section 211 of Cr.P.C deals with the contents of charges. Section 212 of Cr.P.C provides that the charge shall indicate the particulars, place and person, the time and place of the office and Section 213 of Cr.P.C provides that when manner of committing offence must be stated. Section 215 of the Cr.P.C deals with the effect of errors for framing of charges.

42. It is further well settled that even if there are irregularity in framing of charges it may not be fatal unless irregularity and omission has misled and caused prejudice to the accused and occasioned a failure of justice itself not vitiates the trial. Failure to specify the manner and mode of offence makes a charge, vague but where particulars are on record there could not have been any prejudice to the accused. Section 221 of the Cr.P.C like Section 113 of the Army Rules, 1954 takes care of the situation and provides safeguard empowering the Criminal Court or the SCM to convict the accused for an offence with which he is not charged although on facts found in evidence, he could have been charged for such offence alongwith other offences to which charges are framed. Further merely because of an inapplicable provision has been mentioned in the charge, trial may not be invalidated vide ***3950 (3976) (SC): AIR 2005 SC 3820: 2005 (3)-State (NCT of Delhi) v Navjot Sandhu, 2005 Cr.L.J; (1995) 4 SC 181-State of J & K v Sundershan Chakkar; (2001) 4 SCC 38- Omvati v State (Delhi Admn.)' AIR 2011 SC 3114-Rafiq Ahmed @ Raffi v State of U.P.: AIR 2012 SC 1485-Rattiram v State of M.P.; AIR 2012 SC 3026-Bhimanna v State of Karnataka: AIR 2013 SC 840-Darbara Singh v State of Punjab:.***

43. However, in the present case at the face of record charges were not framed and hence the omission appears to be fatal. In a case reported in 1979 Vol I SCC Page 86-Bhupesh Deb Gupta V State of Tripura. Hon'ble Supreme Court has set aside the conviction since charges were framed entirely indicating different

factual aspects which have no co-relation with the offence for which the accused was charged. Hence it was held that it caused prejudice to the accused.

44. Framing of charges is the part and parcel of Article 14 of the Constitution of India. That is why it has been held by Hon'ble Supreme Court in the case of Roop Singh Negi (supra) that the Enquiry Officer is not permitted to travel beyond the charges and any punishment imposed on the basis of the finding which was not the subject matter of charges is illegal.

Principle of Natural Justice is equally applicable to the Armed Forces personnel. In the case of Sheel Kr. Roy (supra). Hon'ble Supreme Court held that it is well settled legal principle accepted throughout the world that a person merely by joining Armed Forces does not cease to be a citizen or be deprived of his human or constitutional right."

15. The word "Punishment" means "penalty for transgressing of law". Any action of the employer to the detriment of the employee would not come within the ambit of expression "punishment" as long as no offence was found to have been committed by the employee- **(Vide AIR 1057 SC 82 L.D.Sugar Mills Vs. Pt Ram Swarup; 2006 (40 scc 278 Standard Chartered Bank Vs Directgorate of Enforcement.)**

In view of the above, while aarding the punishment, the Presiding Officer of Court Martial should have considered only the miscoduct for which the petitioner was tried under Court Martial and punishment accordingly. The quantum of punishment should have been based on the misconduct for which the Petitioner has been tried.

16. Unlike Cr.P.C, our attention has not been adverted to any provision which may be attracted, while assessing the quantum of punishment in pursuance of Court Martial. Section 235 and 236 of the Cr.P.C contain a provision where the previous conviction is looked into

while awarding the punishment, but for that, section 236 itself contains procedure for due compliance of principles of natural justice. In the present case, the Presiding offier of the Court Martial without informing the Petitioner about personal knowledge, took into account the petitioner's alleged previous conviction which seems to be an instance of exceeding the jurisdiciton, vitiating the punishment awarded to the petitioner.

17. In view of the above, the punishment awarded to the Applicant seems to have travelled beyond the charge sheet, which is not permissible and suffers from the vice of arbitrariness. To sum up the punishment is vitiated mainly for the following reasons.

(i) No finding has been recorded by the Court Martial proceeding with regard to defence set up by the Petitioner regarding illness of his wife. Whether the illness of wife was correct fact or not and why the defence set up has not been relied upon by the authority concerned is not borne out from the record though admitted in the counter affidavit.

(ii) The punishment is influenced by the past conduct of the petitioner and the authorities travelled beyond the charge sheet.

18. It is well settled that Court Martial proceeding or Authority may not travel beyond the allegations contained in the charge sheet at least while recording a finding of guilt. The Commanding officer of Court Martial noted in the verdict that it was in his personal knowledge that accused was previously convicted. It has not been brought on record while convicting the petitioner by the Commanding officer with brief sketch of previous misconduct for which the petitioner was punished. A mechanical reliance has been placed while making up

mind to convict the petitioner for overstaying the leave ignoring the defence set up by Applicant as well as the charges framed and in view of the above, the impugned order suffers from the vice of arbitrariness and is vitiated and the T.A deserves to be allowed.

19. Accordingly the T.A. is allowed. The impugned order dated 23.10.2002 is set aside with all consequential benefits. However, the past wages are confined to 25%. For the purpose of post retiral dues, the Petitioner shall be deemed to be in service to the full length of his rank and consequential benefits would accrue to him accordingly. Let consequential benefits be provided within four months from the date of receipt of a certified copy of this order.

20. There shall be no order as to costs.

(Air Marshal Anil Chopra)
Member (A)

(Justice D.P. Singh)
Member (J)

Dt April ,2016

MH/-