

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

RESERVED
(Court No. 1.)**Transferred Application No. 14 of 2014****Friday the 1st day of April, 2016****“Hon’ble Mr. Justice Abdul Mateen, Member (J)
Hon’ble Lt. Gen. A.M. Verma, Member (A)”**

14823978-Y Sep/MT Ashok Kumar, son of Sri Hari Singh, resident of Village Kasthla Ki Mandhaya, Post Office Kasthla Kasmabad, Police Station Pilakhua, Tehsil Hapur, District Ghaziabad. (U.P.).

Petitioner.

.....

By Shri Rohit Kumar, learned counsel for the petitioner.

Versus

1. Union of India through its Secretary, Ministry of Defence, New Delhi -110 011.
2. Chief Army Staff, New Delhi – 110 011.
3. Commanding Officer, 506 ASC Battalion, The Court, The Summary Court Martial, Bareilly.
4. Presiding Officer, Court of Inquiry ‘B’ Coy (MT), 506 ASC Battalion, Bareilly.
5. The Record Officer, Sena Seva Corps Abhilekh (Dakshin), ASC Records (South), Bangalore-560 007.

.....Respondents.

By Dr. Shesh Narain Pandey, counsel for the respondents, along with Major Soma John, Departmental Representative.

ORDER

1. This writ petition has been filed by the petitioner before the Hon'ble High Court of Judicature at Allahabad being Writ Petition No. 32573 of 2008 and received by this Tribunal, on transfer, and registered as Transferred Application No. 14 of 2014.

2. In this writ petition the petitioner has prayed for quashing the order of his dismissal from service dated 28.7.2006 (Annexure '12' to the writ petition) as also the order dated 30.7.2007 (Annexure '16' to the writ petition) upholding the decision of SCM. He has also prayed for his reinstatement in service.

3. The facts of the case, in brief, are that the petitioner was enrolled in the Army on 22.2.1996 and in May, 2004 he was serving in 506 ASC Battalion. He requested for five days' leave which was granted to him with effect from 10.5.2004 to 14.5.2004. However, at the end of the aforementioned sanctioned leave the petitioner did not rejoin the Unit. The petitioner claims that his wife had fallen ill and he had taken her to a place called Balaji in Rajasthan for treatment. The petitioner also claims that he himself had Psychiatric problem for which he was under treatment. His wife sent a letter to 506 ASC Battalion on 13.10.2005 in which she stated that they, i.e. she and her husband, the petitioner in this case, were living separately from their family and requested that her husband be allowed to join the Unit. Consequently, the petitioner joined the ASC Centre at Bangalore on 13.12.2005 and was admitted in

Command Hospital, Air Force, Bangalore, on 17.12.2005. He was discharged from the hospital on 2.1.2006. The disciplinary proceedings, thereafter, were initiated against the petitioner and eventually he was tried by SCM on 28.4.2006 on the following charges :-

“CHARGE SHEET

The accused No 14823978Y Sep/MT Ashok Kumar of 506 ASC Bn c/o 56 APO is charged with:-

ARMY ACT
SECTION 39 (b)

WITHOUT SUFFICIENT CAUSE
OVERSTAYING LEAVE GRANTED
TO HIM

in that he,

at Bareilly, having been granted 05 days Casual Leave with effect from 10 May 2004 to 14 May 2004 failed to rejoin duty without sufficient cause on expiry of said leave till he rejoined voluntarily on 13 December 2005 at 0830 hours at Army Service Corps Centre and College, Bangalore.

<i>Period under custody</i>	-	<i>Nil</i>
<i>Period of absence</i>	-	<i>577 days</i>
<i>Pay book Ser No</i>	-	<i>Date July 2006</i>

Station : C/O 56 APO

Dated : 22 July 2006

*Sd/-x-x-x-x-x-x-
(A Dilip Kumar)
Colonel
Commanding Officer
506 ASC Bn”*

4. The petitioner was found guilty of the charge and was awarded punishment of dismissal from service.

5. The petitioner, who was represented by Shri Rohit Kumar, states that the provisions of Army Rule 22 were not complied with and he emphasized that the provisions of Army Rule 34 were violated as he had not been given a copy of the charge-sheet 96 hours in advance, as required by law. He also claims that he has been given no opportunity to call any witness in his defence.

6. The respondents in their counter affidavit stated that the petitioner had been granted five days' leave which he overstayed by 577 days. The respondents state that since the petitioner's wife was unwell, she would have been admitted in the nearest Military Hospital where she would have been given good medical treatment. Since the petitioner had not reported after availing the leave period, a Court of Inquiry was held, as required, vide Section 106 of the Army Act and he was declared a deserter with effect from 15.5.2004. The petitioner voluntarily surrendered at ASC Centre, Bangalore, and was admitted in Command Hospital, Air Force, on 17.12.2005. The respondents state that Psychiatrist in the Command Hospital did not see any serious medical problem with the petitioner. He was discharged on 3.1.2006. From ASC Centre, Bangalore, the petitioner was dispatched to 506 ASC Battalion on 10.1.2006 whereafter disciplinary proceedings were initiated against him. The respondents state that the requisite procedure was followed and the petitioner had been given opportunity to call witnesses in his defence. The respondents state that no provision of law was violated and the punishment awarded to him was just and appropriate.

7. Heard both the sides at length and examined the documents.
8. The respondents have produced the original file which contains all the relevant ink-signed documents of the SCM. In this folder of original documents there is an ink-signed charge-sheet dated 22.7.2006 which is in the format reproduced in Para 3 above. Also there is a letter dated 25.7.2006 signed by Capt. R.S. Suri on behalf of the Commanding Officer, 506 ASC Battalion, which says that the petitioner would be tried by SCM on 28.7.2006 at 1000 hours. This letter further goes on to say that copies of Summary of Evidence and charge-sheet are being handed over and asked the petitioner to name the witnesses whom the petitioner intended to call in his defence and also name of the person to be the friend of the accused. There is an ink-signed receipt signed by the petitioner dated 26.7.2006 which says that he had received a copy of the charge-sheet and a copy of Summary of Evidence on 25.7.2006 at 1000 hours. The petitioner replied to this letter vide his letter dated 26.7.2006 in which he mentioned that he did not want to call any defence witness. This establishes that the charge-sheet was handed over on 25.7.2006.
9. The petitioner has attached a copy of the charge-sheet dated, which is dated 27.7.2006. The layout of the photo-copy of the charge-sheet dated 27.7.2006 is as follows :-

“CHARGE SHEET

The accused No 14823978Y Sep/MT Ashok Kumar of 506 ASC Bn c/o 56 APO is charged with :-

ARMY ACT
SECTION 39(b)

WITHOUT SUFFICIENT CAUSE OVERSTAYING LEAVE
GTD TO HIM

In that he,

at Bareilly, having been gtd 05 days CL wef 10 May 2004 to 14 May 2004 failed to rejoin duty without sufficient cause on expiry of said lve till he rejoined voluntarily on 13 Dec 05 at 0830 hrs at ASC Centre and College, Bangalore.

Pd under custody - Nil

Pd of absence - 577 days

PB Ser No_ - Date July 2006

Station : c/o 56 APO
Dated : 27 July 2006

Sd/-x-x-x-x-x-x-x
(A Dilip Kumar)
Colonel
Commanding Officer
506 ASC Bn”

10. We note that there is no charge-sheet dated 27.7.2006 in the original file, produced by the respondents. We also note that the layout of the charge-sheet in original file is quite different from the photo-copy of the charge-sheet that has been attached by the petitioner in his writ petition. The photocopy shows that the statement of the charge runs in four lines whereas the ink-signed charge-sheet dated 22.7.2006 runs in eight lines. The petitioner in para 19 of his petition mentions charge-sheet dated 27.7.2006. The respondents in their counter affidavit, in para 22, state that the charge-sheet dated 27.7.2006 is based on facts and evidence.

11. This brings to fore the fact that a charge-sheet dated 27.7.2006 which does not exist in the original file has been produced by the petitioner and which has been acknowledged by the respondents in their counter affidavit. We are of the view that the charge-sheet dated 27.7.2006 does not exist and the petitioner appears to have manipulated

this document by photo-copying a document several times and have produced this charge-sheet dated 27.7.2006. The acknowledgement of this charge-sheet by the respondent in their counter affidavit, in our view, is inadvertent and erroneous. We do believe that the petitioner has manipulated the documents to place before this Court a document which he knows has been manipulated. We very strongly condemn such a behaviour on the part of the petitioner and strongly advice him to desist from such a practice.

12. Now the issue of date on which the charge-sheet was handed over to the petitioner. The respondents have attached along with their counter affidavit photo-copy of a document in which the date is faint but still readable. According to it the charge-sheet was handed over to the petitioner on 22.7.2006. This has been attached as Annexure CA-6. Annexure CA-7 is a photo-copy of a certificate signed by the Commanding Officer dated 26.9.2006, which says that the charge-sheet had been handed over to the petitioner under a letter dated 22.7.2006. The respondents have also attached photo-copy of a letter dated 22.7.2006 under which the charge-sheet and Summary of Evidence had been handed over to the petitioner and the petitioner had been asked to name the witnesses in his defence. The respondents have attached a letter signed by the petitioner dated 26.7.2006 as Annexure CA-9 in which the petitioner has referred to letter dated 25.7.2006 and **not** 22.7.2006 and has stated that no defence witness is required by him.

13. There is no ink-signed letter dated 22.7.2006 in the original file. This leads us to draw the inference that the charge-sheet and Summary of Evidence were handed over to the petitioner under letter dated 25.7.2006 and which was acknowledged by the petitioner vide his receipt dated 26.7.2006 and letter dated 26.7.2006. Also, the petitioner responded to this letter dated 25.7.2006 by stating that he did not want any defence witness. Thus, we are being led to believe by the respondents that the charge-sheet was handed over to the petitioner on 22.7.2006, which is not true as the charge-sheet actually was handed over on 25.7.2006 which is less than 96 hours before the trial as required by Army Rule 34. Army Rule 34 states as under :-

*“34. **Warning of accused for trial.**-(1) The accused before he is arraigned shall be informed by an officer of every charge for which he is to be tried and also that, on his giving the names of witnesses or whom he desired to call in his defence, reasonable steps will be taken for procuring their attendance, and those steps shall be taken accordingly.*

The interval between his being so informed and his arraignment shall not be less than ninety-six hours or where the accused person is on active service less than twenty-four hours.

(2) The officer at the time of so informing the accused shall give him a copy of the charge-sheet and shall, if necessary, read and explain to him the charges brought against him. If the accused desired to have it in a language which he understands, a translation thereof shall also be given to him.

(3) The officer shall also deliver to the accused a list of the names, rank and corps (if any), of the officers who are to form the Court, and where officers

in waiting are named, also of those officers in Court-Martial other than a summary Court-Martial.

(4) It appears to be Court that the accused is liable to be prejudiced at his trial by any non-compliance with this rule, the Court Shall take steps and, if necessary, adjourn to avoid the accused being so prejudiced.”

14. The Hon'ble Supreme Court in the case of **Union of India and others v. A.K. Pandey** reported in 2009 (10) SCC 552 have held that violation of Army Rule 34 render Court Martial proceedings null and void which deserves to be set aside.

15. There is no doubt that the petitioner has committed the crime of being absent without leave. Also the opinion of the doctor, which is at pages 41 and 42 of the writ petition states that *“No Psychiatric illness could be established during interviews, observation, serial MSEs & routine investigations. No past neuro-psychiatric history. No genetic loading.”* The petitioner also appears to have manipulated the charge-sheet in which the date has been mentioned as 27.7.2006. On the other hand the respondents have faltered by manipulating documents so as to establish that the charge-sheet was handed over more than 96 hours in advance. Also the respondents have placed on record no document to explain the reason for a certificate dated 26.9.2006 that the charge-sheet had been handed over on 22.7.2006. The factual matrix is that the charge-sheet was handed over under a letter dated 25.7.2006 which was received on 26.7.2006 which is less than 96 hours before the trial held on 28.7.2006. In the backdrop of the above facts the trial is liable to be quashed since the provision of Army Rule 34 had been violated.

16. While condemning the action of the petitioner in manipulating documents we very strongly condemn the action of the respondents in manipulating documents so as to produce before us the facts which are not true. It is particularly reprehensible since such an action is being taken by the Government authorities. We very strongly advice the respondents to make their personnel aware that nothing but the truth must be brought before a Court of Law. Any departure from truth is liable to invite heavy penalty.

17. The order of dismissal dated 28.7.2006 (Annexure '12' to the writ petition) passed in SCM and the reviewing order dated 30.7.2007 (Annexure 16 to the writ petition) passed by the officiating DGST stand quashed. The petitioner will be deemed to be discharged from service with effect from 28.7.2006. Since the petitioner has approached this Court with unclean hands by manipulating the charge-sheet to mislead the Court and to gain undue advantage from the same, we are of the opinion that the petitioner is not entitled to pension and related benefits. Accordingly, the T.A. is allowed in part to the above extent only. No order as to costs.

(Lt. Gen. A.M. Verma)
Member (A)

(Justice Abdul Mateen)
Member (J)

PG/-