

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**COURT NO. 2****O.A. No. 336 of 2013****Tuesday, this the 23rd day of August, 2016****“Hon’ble Mr. Justice D.P.Singh, Judicial Member
Hon’ble Air Marshal Anil Chopra, Administrative Member”**

Ex- Naik/Nursing Assistant Dalavi Satyawan Ramaji (Army No. 13994916 – F), of 328 Field Hospital, C/o 56 APO, aged about 35 years, son of Shri Ramji Dalavi, resident of Village and Post – Umbarde, Tehsil – Vaibhavwadi, District – Sindhudurg (Maharashtra) – 416810.

..... Appellant

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi – 110011.
3. Officer-in-Charge, Army Medical Corps Records, Lucknow Cantt.
4. Commanding Officer, Administrative Battalion, Army Medical Corps, Center and College, Lucknow.
5. Commanding Officer, 328 Field Hospital, C/o 56 APO.

..... Respondents

**Ld. Counsel appeared for the Appellant - Shri P.N. Chaturvedi
Advocate**

**Ld. Counsel appeared for the Respondents - Shri D.K. Pandey
Central Government
Add. Standing Counsel**

ORDER (ORAL)

1. Present Appeal has been preferred Under section 15 of the Armed Forces Tribunal Act 2007 assailing the impugned order of dismissal dated 18.09.2013 passed in pursuance of Summary Court Martial proceedings.
2. We have heard learned counsel for the Appellant and also learned counsel for the respondents assisted by Maj Soma John, OIC Legal Cell.
3. The factual matrix is that the Appellant was enrolled in the Indian Army as Nursing Assistant on 08.03.1996. While serving in the field hospital, he was granted 30 days casual leave with effect from 11.06.2011 to 10.07.2011. He was required to report for duty to 328 Field Hospital on 10th July 2011 but he absented himself unaccountably and reported for duty on 07.05.2013. Thereafter, the Appellant deserted on 25.05.2013 without sanction of leave but he was apprehended by the Civil Police on 17th June 2013 and was subjected to Summary Court Martial proceeding. The punishments awarded to the Appellant during the course of service have been enumerated in Para 6 of the counter affidavit and for ready reference, the same are reproduced below.

Srl No.	Unit where punishment awarded	Date of award	Under Army Act 1950 Sec	Punishment awarded.
(a)	305 field Hospital	17 June 2004	Sec 39 (a)	14 days pay fine
(b)	CH (EC) Kolkata	09 Apr. 2005	Sec 39 (a)	07 days Pay fine
(c)	CH (CC) Lucknow	12 May 2009	Sec 48	14 days pay fine.
(d)	CH (CC) Lucknow	24 June 2009	Sec 39 (a) & 48	28 days Rigorous Imprisonment in Military Custody.

4. Learned counsel for the Appellant has submitted across the bar that during the course of trial of Summary Court Martial, he was attached by the Commandant AMC Centre and not by the higher authority in terms of the Army Order No 7 of 2000. For ready reference, the Army order 7 of 2000 is reproduced below.

"7. Where attachment is visualised in progressing disciplinary/vigilance cases under the Army Act, including the cases which have been taken over from the civil(Criminal) Courts for trial under the said Act, the procedure outlined in Para 3 above will be invoked by the competent authorities as specified therein. During attachment the individuals will continue to be held against the strength and appointment of the parent Unit and no replacement will be made until completion of the disciplinary proceedings. This power however shall not be exercised merely to change the command with a view to secure award of enhanced punishment/penalty e.g. for a trial by Summary Court Martial."

5. Para 10 of the Army order 7 of 2000 however provides that while dealing with the offence of desertion, the provisions contained in Regulation 381 of the Army Regulation would be followed. For ready reference, the Regulation 381 of the Army Regulation is reproduced below.

*'381. **Trial of Deserters.**- Under normal circumstances trial by Summary Court Martial for desertion will be held by the CO of the unit of the deserter. However, when a deserter or an absentee from a unit shown in column one of the table below surrenders to, or is taken over by, the unit shown opposite in column two and is properly attached to and taken on the strength of the latter unit he may, provided evidence, particularly*

evidence of identification is available with the latter unit, be tried by summary court-martial by the OC of that unit when the unit shown in column one is serving in high altitude area or overseas or engaged in counter-insurgency operation or active hostilities or Andaman and Nicobar Islands.

In no circumstances will a man be tried by summary court-martial held by a CO other than the CO of the unit to which the man properly belongs; a unit to which the man may be attached subsequent to commission of the offence by him will also be a unit to which the man properly belongs."

6. Relying on the provisions of Regulation 381 of Army Regulations, Maj Soma John OIC Legal Cell submits that Commandant has got power to attach the Appellant. However without entering into the dispute who attached the Appellant the question is whether any irregularity was committed during the course of attachment or trial of Summary Court Martial. If an irregularity is committed with regard to arrest or detention, the same does not seem to render the trial illegal unless otherwise it suffers from procedural irregularity. Of course, in case, the attachment is found to be not in accordance with the Rules, it is open to a person to approach the appropriate authority seeking claim for compensation, prefer a petition for habeas

corpus or approach the Hon'ble Apex court under Article 32 of the Constitution of India.

7. In view of the above, we are of the view that the argument advanced by learned counsel for the Appellant with regard to violation of Regulation 381 of the Army Regulation or Army Order 7 of 2001 does not make out a case of any irregularity having been committed so as to render the trial illegal.

8. So far as submission of learned counsel for the Appellant that Army order 22 of 2000 has not been complied with, is concerned, we feel called to say that the argument is not borne out from the record. From a perusal of the Summary Court Martial proceeding and other allied records, it would transpire that the witnesses were produced during Summary Court Martial and their statements were recorded. It is not disputed that summary of evidence was recorded and thereafter court martial proceedings took place. The witnesses were produced during Summary Court Martial, who appeared and testified to the allegations against the Appellant. If it is so, it is not comprehensible how provisions of Rule 22 of the Army Rules have not been complied with.

9. Apart from the above, there is one more reason why we are not inclined to interfere with the impugned

order and it is that Appellant had absented himself from duty unaccountably and without sanctioned leave for the period spanning 687 days. It is a huge delay for an individual, who is serving in the Army. Indian Army is an elite Army renowned for its discipline all over the world. The factum of absence for the aforesaid period has not been denied. While filing the O.A/ Appeal, nothing has been brought on record to indicate that the Appellant was not absent from duty. Once the factum of absence from duty is not denied, then it shall be a futile exercise of power to record any further evidence than what has been done during the course of summary of evidence. During summary of evidence, the Appellant himself admitted the absence from duty. The quintessence of what has been stated by the Appellant is reproduced below.

"6. Keeping in view these aspects, I had decided not to join the unit i.e 328 Field hospital and absented myself from the unit. Why should I go to unit where a CO has not paid any attention to a request of their soldier and started maintenance allowance to my wife without considering all the facts. I have written to my Commanding Officer that I will not join the unit till

my full pay and allowance have not been restored.

7. I would like to mention that I had filed a case in the civil court to order my family to stay with me and the decision of the case likely to come shortly. Till my complete money which has been paid to my wife is not refunded to me by the Military authorities, I do not want to serve in Army, If Military auth refunds my money paid to my wife who is staying at her parental address, then I am willing to serve in Army otherwise not."

10. In view of the above we do feel that since absence from duty is admitted and the Appellant was dismissed from service after recording of statements during summary of evidence wherein the Appellant has not disputed absence from duty, in our considered view, no case for interference with the impugned order is made out.

11. Before we part with the case, it would be useful to say that the whole argument of the learned counsel for the Applicant hinges on procedural irregularity. The factum of absence from duty unaccountably and without sanctioned leave is writ large in the instant case which has not been denied in the least. The precise argument is that the Commandant was not

empowered to order for attachment of the Applicant. This argument has been considered and discountenanced. Even-if it be assumed that there was some procedural irregularity though there exists none as discussed supra, it would turn the tide in favour of the Applicant.

12. As a result of foregoing discussions, the present Appeal (O.A/Appeal No 336 of 2013) being devoid of merit is dismissed accordingly.

(Air Marshal Anil Chopra)
Member (A)
MH/-

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