

**RESERVED**  
**Court No. 1**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW**

**O.A. No. 385 of 2011**

Thursday, this the 23<sup>rd</sup> day of August, 2018

**Hon'ble Mr. Justice SVS Rathore, Member (J)**  
**Hon'ble Air Marshal BBP Sinha, Member (A)**

**15685036X SIGMN (Dvr MT)** Sharma Naresh Kumar Ramesh Bhai of PMO BSS. New Delhi Attached to Depot. Regiment (Corps) of Signals Training Centre, Jabalpur R/o Village Bithia, Post Avarampur, Tehsil and District Hathras.

.... Applicant

Ld. Counsel for the: Shri Virat Anand Singh, Advocate.  
Applicant

Versus

1. Union of India, through Secretary Ministry of Defence, Army Head Quarters New Delhi.
2. Chief of Army Staff, IHQ of Ministry of Defence (Army) South Block, New Delhi – 110001.
3. Officer Incharge, Depot Regiment (Corps of Signals) PMO, BSS, New Delhi.
4. The Commanding Officer, Depot Regiment (Corps of Signals) PMO, BSS, New Delhi.

....Respondents

Ld. Counsel for the: Shri D.K. Pandey, Advocate.  
Respondents.

**ORDER**

**“(Per Justice SVS Rathore, Member (J))”**

1. By means of this O.A. under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has made the following prayers:-

“1. issue an order or direction in the nature of certiorari quashing the impugned punishment order 20.09.2011 passed by respondents (Annexure-1 of the Compilation No.1)

2. issue an order or direction in the nature of mandamus commanding the respondents to reinstate the applicant in service on the same post and pay scale with all consequential benefit.

3. issue any other or order or direction, which this Hon’ble Tribunal may deem fit and proper under the facts and circumstances of the case.

4. to award the costs of this application to the applicant against the respondents.”

2. In brief the facts giving rise to the instant O.A. may be summarized as under.

3. The applicant was enrolled in the Army in the year 2001 on the post of driver Mt. The applicant was granted 10 days balance of annual leave from 03.09.2010 to 12.09.2010 by PMO BSS, which leave was extended for 04 days advance of annual leave from 13.09.2010 to 16.09.2010. He did not report to the unit on the due date i.e. 17.09.2010. The applicant surrendered voluntarily in the Depot Regiment (Corps of Signals) on 28.05.2011 at 1800 hours. Thus, he over stayed leave by 253 days. A Court of Inquiry was conducted and Summary of

Evidence was also recorded. Thereafter the applicant was charge-sheeted as under:-

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**CHARGE SHEET**

The accused **No. 15685036X** Sigmn (Dvr MT) Sharma Naresh Kumar Ramesh Bhai of PMO BSS, New Delhi attached to Depot Regiment (Corps of Signals) is charged with:-

**First Charge WITHOUT SUFFICIENT CAUSE OVER STAYING LEAVE GRANTED TO HIM,  
Army Act  
Section 39 (b)**

in that he,

at peace, while on active service, on 17 September 2010, having been granted balance of annual leave from 03 September 2010 to 12 September 2010 to proceed to his home was extended for 04 days advance of annual leave from 13 September 2010 to 16 September 2010 by his unit, failed without sufficient cause, to rejoin his unit PMO BSS, New Delhi on 17 September 2010 at 0001 hour, on expiry of the said leave until surrendered voluntarily to Depot Regiment (Corps of Signals) on 28 May 2011 at 1800 hours.

**Second Charge LOSING BY NEGLECT CLOTHING AND EQUIPMENT THE PROPERTY  
Army Act  
Section 54(b) OF THE GOVERNMENT ISSUED TO HIM FOR HIS USE,**

in that he,

at PMO BSS, on 04 Nov 2010 when his kit was finally checked by a Court of Inquiry held at PMO BSS, New Delhi was found deficient of the items as mentioned in the list annexed as annexure-1 to this charge sheet, the property of the government issued to him for his use, valued Rupees 1209.00 (Rupees one thousand two hundred and nine only).

(R S Sharma)  
Col

Place: Jabalpur (MP)  
Dated: 13 September 2011

Commanding Officer  
Depot Regt (Corps of Signals) ”

4. The case of the applicant as per his O.A. is that the charges levelled against the applicant were vague, without clarity and the defence of the applicant was jeopardised and every opportunity was left to improve the charges at the subsequent stage. In the month of September, 2010 the applicant proceeded on sanctioned leave for 10 days, which was further extended for 04 days due to sole reason that he fell ill and became serious due to brain haemorrhage. He was admitted in Military Hospital Mathura on

20.09.2010 and constantly he was under treatment of the aforesaid hospital of Mathura for a pretty long time. Due to above unavoidable circumstances the applicant was neither capable to send any information to his authorities for further extension of leave nor he could approach the authorities personally or through any responsible person. The applicant however resumed his duty when he was declared fit from Military Hospital Mathura but the controlling authority of the applicant declined to appreciate and consider the genuine circumstances and the authority concerned hastened to order Summary Court Martial and produced the tutored prosecution witnesses. It has been mentioned in the amended copy of the petition that the true copy of the statements of the so called prosecution witnesses has been filed and marked as Annexure No.3. However, no such Annexure No.3 has been filed either with the O.A. or with the amended copy of the O.A. It is also pleaded that no opportunity was extended for cross-examination of the witnesses and remark was mentioned otherwise in the order sheet. It has also been pleaded that entire proceeding was recorded in English language while the applicant had pressed that the same be recorded in Hindi. It has also been argued that the plea of guilty was not voluntary and Regulation-381 of Regulations for the Army, 1987 (Volume 1) was not followed and Section 143 of the Army Act, 1950 was also not complied with. Second charge was also illegal as the applicant had already deposited the money which the department suffered due to loss of the clothing and equipment material.

5. Learned counsel for the applicant has argued that there was violation of the provisions of DSR Regulation 381 and Section 143 of the Army Act. It has also been pleaded that the attachment order of the applicant was passed on 17.06.2011 while in the original record the said date was fabricated and the attachment order was shown to have been passed on 04.06.2011.

6. On behalf of the respondents it has been argued that the allegations of the learned counsel for the applicant are incorrect. Due procedure, prescribed under Rules and Regulation was followed. The allegation of fabrication of document is entirely baseless as the order of attachment was passed on 04.06.2011 and order dated 17.06.2011 is entirely in different context and is not the order of attachment. After recording Summary of Evidence the order of dismissal of the applicant from service was passed In Summary Court Martial proceeding.

7. In the list of dates and events filed by the applicant it is mentioned that on 16.09.2010 he was granted annual leave and on 10.03.2011 he recovered completely from head-ache. On 28.05.2011 the applicant surrendered voluntarily at Depot Regiment Signals, Jabalpur. Thus even after the applicant recovered completely, he took more than 02 months and 18 days to surrender in the Unit. Learned counsel for the applicant has placed reliance on the pronouncement of Hon'ble High Court of Calcutta in CO No. 1419/2015 **Khan Mohammad Khan & others vs. Jam Mohammad Khan** decided on 11.06.2015 and also on a

judgment of a Co-ordinate Bench of this Tribunal in T.A. No. 451 of 2010 **Shambhunath Patel vs. Union of India and others** dated 03.06.2011. In the alternative it has also been argued that the punishment of dismissal from service was disproportionate to the charges levelled against the applicant and on the said point he has placed reliance upon the pronouncement of Hon'ble Supreme Court in the case of **S. Muthu Kumaran vs. Union of India and others** reported in (2017) 4 SCC 609. So far as the case law relied upon by the learned counsel for the applicant in the case of **Khan Mohammad Khan** (supra) is concerned, we fail to understand as to why the learned counsel for the applicant has cited this case in support of his case. That was an order passed in a Civil Revision directed against the judgment and order passed by the learned Additional District Judge, 4<sup>th</sup> Court, Murshidabad in Miscellaneous Appeal No. 26 of 2011 reversing the order dated 04.04.2011 passed by the learned Civil Judge, which was a case of land dispute. So we do not find that the said case law has any bearing on the issue involved in this case. So far as the case of **Shambhunath Patel** (supra) is concerned, this is a case decided by a Co-ordinate Bench of this Tribunal wherein the provisions of Section 143 of the Army Act, 1950 have been considered. The aforesaid provision was interpreted by the Co-ordinate Bench in Para-11 of the judgment as under:-

“11. The aforesaid provision lays down that if in any trial for desertion or absence without leave overstaying leave or not joining when warned for service a person who is being tried for desertion or absence without leave states in his defence

any sufficient or reasonable excuse for his unauthorized absence and in support of his contention refers to any officer in service of the Government, the court shall address such officer and adjourn the proceedings until his reply is received.”

8. In that case the petitioner had filed medical certificates issued by the doctors and therefore in the facts of the case it was held that it was the duty of the respondents to verify the said documents. The facts of that case were entirely different because in the facts of that case the petitioner had taken medical treatment from Medical Specialist, Government T.B. Hospital Rewa, Madhya Pradesh and remained under his treatment throughout and on having become fit to resume duties he immediately reported at 1 Signal Training Centre at Jabalpur on 11.05.2007. In that case total absence of the petitioner was for 150 days on account of which he was charge-sheeted and Summary Court Martial proceeded against him. Learned counsel for the petitioner had also filed several medical papers in the said case but in the facts of the instant case the case of the applicant is that he was suffering from severe head-ache. Several medical papers have been filed on behalf of the applicant but we are compelled to say that there is not even a single certificate or medical certificate issued by any doctor suggesting that the applicant has any kind of head-ache, what to say of brain haemorrhage. On the contrary the learned counsel for the respondents has invited our attention towards the finding on ECG and MRI reports filed by the applicant, to show that in both the reports no abnormality was detected in

the head of the applicant. Learned counsel for the applicant has also drawn our attention to the fact that the applicant got himself treated initially at Military Hospital Mathura for routine check up and thereafter in different private hospitals in Agra, Aligarh, Hathras, Girdharnagar (Gujarat) and has deliberately avoided to get his treatment done at Military Hospitals. It is submitted that the ground of the applicant that he was seriously ill has absolutely no legs to stand because in that case he would not have been in a position to travel from Mathura to Gujarat. Delhi is much close to Mathura with best medical facilities available including Research & Referral Hospital of Army. But applicant avoided to seek medical treatment there. Thus, in the facts of the instant case there was no medical document showing that the applicant was found suffering from any abnormality in the head for which any doctor has issued medical certificate to the applicant. It may be mentioned that most of the documents filed by the applicant are either receipts of medicines purchased or prescriptions, which we do not find sufficient to establish that the applicant was suffering from any serious ailment of his head. Since there was no medical certificate issued by any doctor, therefore, there was no occasion for the respondents to comply with the provisions of Section 143 of the Army Act.

9. Learned counsel for the applicant has also drawn our attention towards DSR about non compliance of Regulation 381 of Defence Services Regulations, which reads as under:-



**“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 later 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.”

In this paragraph there is a table, which in column one says, “A unit of Signals” and against that in column two “Signal Training Centre, Jabalpur”. Thus, it is evident that the petitioner was attached to a unit to which he belonged, as stipulated in Para 381 of the Regulations for the Army. Being a signal man, he was rightly attached with Signal Training Centre, Jabalpur where the SCM has taken place. Since in the instant case, there is attachment order dated 04.06.2011 of the applicant and the applicant has been tried by the CO of the Unit wherein he was attached, that too at the place of his parent Unit, so we do not find that there is any violation of the aforementioned DSR.

10. In the instant case we have also examined the original records. Perusal of the original records shows that the applicant

has pleaded guilty in the instant case. He has signed the plea of guilty and has also stated that whatever he has said is O.K. He has also said that whatever punishment is given to him is acceptable to him. The statement made by the applicant has been duly signed and he has also placed his service number under his signature. He has signed in English. The Summary Court Martial proceedings are conducted on a prescribed format. No defence evidence was produced by the applicant. Learned counsel for the applicant has vehemently challenged the Court of Inquiry and Summary of Evidence but those all are pre-trial proceedings. Hon'ble Apex Court in the case of **Union of India vs. Maj A Hussain** (1998) 1 SCC 537 has held when there is sufficient evidence to sustain a conviction, it is unnecessary to examine if pre-trial investigation was adequate or not. In the facts of this case overstaying leave is admitted to the applicant and he has also pleaded guilty which we find to be voluntary. Absence of the applicant was also voluntary as the applicant has utterly failed to explain as to why he did not join duty immediately after being fit. Why he joined after 2 month and 18 days. Learned counsel for the applicant has also argued that the applicant was suffering from severe head-ache and was not normal, as a result of said head-ache he was falling unconscious several times during the day. As stated in the earlier part of this order there is not even a single document or any medical certificate issued by any doctor on record whereby any inference of serious ailment of head or mind of the applicant can be presumed. From the list of events filed by

the applicant himself it is clear that even after becoming absolutely fit he remained in his house for a period of more than two and half months. After careful examination of the entire proceedings, we do not find any illegality in the impugned order. Army is an organisation which maintains very high standard of discipline.

11. Learned counsel for the applicant has also argued that the applicant was charge-sheeted on two counts. The second was for the loss of Government property which was issued to him. It is submitted that the applicant has deposited the amount to make good the loss of the Government property and even thereafter he has been charged of the said offence, so it was a double jeopardy. We do not find any substance in this submission of the learned counsel for the applicant because the second charge against the applicant is as under:-

**Second Charge LOSING BY NEGLECT CLOTHING AND EQUIPMENT THE PROPERTY  
Army Act OF THE GOVERNMENT ISSUED TO HIM FOR HIS USE,  
Section 54(b)**

in that he,

at PMO BSS, on 04 Nov 2010 when his kit was finally checked by a Court of Inquiry held at PMO BSS, New Delhi was found deficient of the items as mentioned in the list annexed as annexure-1 to this charge sheet, the property of the government issued to him for his use, valued Rupees 1209.00 (Rupees one thousand two hundred and nine only)."

Thus, by making good the loss of deficient items to the tune of Rs.1209/- does not absolve him from the responsibility of loss of said items. He was charged as the items were found deficient and he cannot be said to have been absolved from the said charge only because he has made good the Government loss. Apart from it the punishment also does not reflect that the

said second charge was also made basis for his dismissal. Therefore, the ground of double jeopardy also does not find any substance and is hereby rejected.

12. Lastly the learned counsel for the applicant has submitted that the punishment of dismissal from service for overstaying leave by 253 days is disproportionate to the charges levelled against him. On the point of disproportionate sentence, learned counsel for the applicant has placed reliance on the case of **S. Muthu Kumaran** (supra). In that case the order of dismissal was converted into the order of discharge on the ground that the appellant cannot seek for any employment in service. **S. Muthu Kumaran** was a case regarding recruitment racket but in the instant case the applicant has overstayed leave for a period of 258 days and overstaying leave in Army is a serious offence because it disturb the overall administration of the unit. Apart from it, if liberal view is taken regarding overstaying the leave then the person who is asked to go to the field area would remain absent and thereafter he will come again to join duty and it will not be a healthy practice for the Army. A Co-ordinate Bench of this Tribunal in the case of **Ex Signal Man Pal Jaswant Singh vs. Union of India & others** had dismissed the O.A. while challenging his overstaying of leave for 310 days. The said order was challenged before the Apex Court by preferring Diary No.17392 of 2018 and Hon'ble Apex Court vide its order dated 18.07.2018 has dismissed the said appeal on the ground of delay as well as on merits. The facts of that case are similar to the facts

of this case and therefore keeping in view the aforementioned case and facts of **Pal Jaswant Singh**, which is identical to the facts of the instant case, we do not find any substance in the submission of learned counsel for the applicant.

13. Accordingly, O.A. lacks merit and deserves to be dismissed and is hereby **dismissed**.

No order as to costs.

**(Air Marshal BBP Sinha)**  
**Member (A)**

Dated: August 23, 2018

JPT

**(Justice SVS Rathore)**  
**Member (J)**