

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW
COURT NO. 2**

O.A. No. 285 of 2014

Monday, this the 28th day of November, 2016

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

No. 13947406P Sepoy (Ambulance Assistant) B.B.Chaudhari, son of Bhola Chaudhari C/O M.Bhattacharya, LIG 206, ADA Awas Yojna Sulem Sarai Allahabad. **Applicant**

Versus

1. Chief of Army Staff New Delhi.
2. Commandant cum Chief Records Officer, Army Medical Corps Centre and College Lucknow.
3. Union of India, through Secretary, Ministry of Defence, New Delhi.

.....**Respondents**

**Ld. Counsel appeared
for the Applicant**

**- Shri Rohit Kumar,
Advocate**

**Ld. Counsel appeared
for the Respondents**

**- Dr. Chet Narain Singh,
Sr. C.G.S.C**

OIC, Legal Cell

- Maj Soma John

Order (Oral)

1. Present Original Application has been preferred under section 15 of the Armed Forces Tribunal Act, 2007 being aggrieved by the impugned SCM proceeding held on 01.08.1996 in consequence of which the services of the Applicant were dismissed and also the order dated 08.11.2014 whereby the statutory appeal filed by the Applicant was rejected.

2. Shorn of unnecessary details, the facts of the case are that the Applicant was enrolled in the Indian Army on 15.01.1979. It is alleged that the Applicant was sanctioned leave for the period from 21.10.1995 to 06.11.1995. However, the Applicant absented himself from duty for a period spanning 233 days and reported for duty voluntarily on 26.06 1996. Thereafter invoking Section 123 of Army Act, 1950, the Applicant was tried by Summary Court Martial which awarded the punishment of dismissal from service on 01.08.1996. The Applicant then preferred a statutory petition under section 164 (2) of the Army Act 1950 on 31.12.2012 after a gap of 16 years with the prayer to set aside the SCM proceedings. It would appear from the record that the Applicant then preferred O.A No 114 of 2014 with the prayer for direction to decide the statutory petition

by a reasoned order. The said O.A was disposed of in terms of the prayer. In terms of the order of the Tribunal, Chief of the Army Staff rejected the statutory petition of the Applicant vide order dated 08.11.2014. It is in the above backdrop that the present O.A has been filed and has come up before us for adjudication.

3. We have heard learned counsel for the Applicant as also learned counsel for the respondents. We have also perused the materials on record.

4. The submissions of the learned counsel for the Applicant are two- fold; firstly that Rule 115 (2) of the Army Rules 1954 has not been observed in compliance and secondly that it being a case of overstayal and also regard being had to the fact that the Applicant had put in 17 years of service, the order of dismissal ought to have been converted to order of discharge taking a lenient view of the compelling circumstances under which the Applicant had to absent himself from duty.

5. **Per contra**, learned counsel for the respondents contended that the Applicant has got a chequered history inasmuch as he was punished for overstaying the leave on as many as nine occasions in the entire service in the Indian Army excepting the one punishment which pertained to falsifying of record. He further contends that the total period the Applicant has

absented from the Army comes to six years six months and 29 days out of 17 years.

6. In connection with the above contentions, our attention has been drawn to page 2 of the counter affidavit wherein a chart containing details of punishments awarded has been drawn. The same being relevant is reproduced below.

<i>Ser No</i>	<i>Date of award</i>	<i>Under Army Act 1950 Sec</i>	<i>Punishment awarded</i>	<i>Total illegal absence/N on qualifying service</i>	<i>Remarks</i>
(a)	17 Jul 1984 (Tried by SCM)	Sec 38 (i) and 54 (b)	03 months Rigorous imprisonment in military custody	5 yrs and 9 months	As per rule 123 (a) & (b) of pension regulations for the Army (Part-i), the petitioner will forfeit the whole period of prior service towards pension upto 14 Oct 1984.
(b)	06 Jan 1986	Sec 39 (b)	Confinement to lines for 07 days (Photocopy attached as Exhibit- I)	02 days	Overstayal of leave for 02 days.
(c)	17 Dec 1986	Sec 39 (b)	14 days Rigorous Imprisonment in military custody (Photocopy attached as Exhibit R-2)	13 days	Overstayal of leave for 13 days

(d)	21 Jun 1989	Sec 63	14 days Pay Fine (Photocopy attached as Ex-habit R-2)	--	Prejudicial to good order and military discipline
(e)	14 Jul 1990	Sec 39 (b) & 63	14 days Rigorous Imprisonment in military custody (Photocopy attached as Exhibit R-4)	36	(i)Overstayal of leave for 36 days. (ii)Prejudicial to good order and military discipline
(f)	07 Nov 1990	Sec 39 (b)	14 days Pay Fine (Photocopy attached as Exhibit R-5)	09	Overstayal of leave for 09 days
(g)	04 Nov 1994	Sec 57 & 63	Severe Reprimand (Photocopy attached as Exhibit R-6)	--	(i) Falsifying official documents and false declaration. (ii) Prejudicial to good order and military discipline.
(h)	11 Oct 1995 (Tried by SCM)	39 (a)	To be reduced to the rank (Tried by SCM)	04	Absence without leave for 64 days.
(i)	01 Aug 1996 (Tried by SCM)	39 (b)	To be dismissed from service (Tried by SCM)	175 days	Overstayal of leave 233 days (Invoked Army Act Section 123 & tried by SCM)
Total Non qualifying service 6 yrs, 6 months and 29 days.					

7. On being confronted with the above chart, learned counsel did not repudiate the above details and confined

himself by saying that in the instant case, the applicant has come up before this Tribunal vis a vis the punishment awarded to him pursuant to his absence from duty for about 232 days.

8. It is not disputed that the Applicant was sanctioned leave for the period from 21.10.1995 to 06.11.1995. However, he overstayed the leave for about 232 days and thereafter, in pursuance of the Summary Court Martial held on 01.08.1996, the applicant was punished with dismissal from service. The submission of learned counsel for the Applicant quintessentially is that the Applicant has served for 17 years and therefore, the order of dismissal should be altered to discharge from service. From the chart contained in counter affidavit, it would clearly transpire that the total period of non-qualifying service of the Applicant was six years, six months and twenty nine days. This figure rolled out by learned counsel for the respondent has not been disputed by learned counsel for the Applicant either across the bar or in the rejoinder affidavit. Learned counsel for the Applicant submits that the Applicant has already suffered punishments for the delinquencies committed earlier and hence, the Court should limit to the question of overstaying the leave for 232 days which culminated in his dismissal. Be that as it may, the

fact remains that absence from duty for about 232 days has not been disputed and the Applicant has pleaded guilty and has not denied the factum during the course of SCM proceeding. A perusal of the record indicates that out of total period of 17 years of service, the Applicant was absent from duty for six years, six months and twenty nine days. From the materials on record, it transpires that the Applicant has committed misconduct of overstaying the leave granted not once, or twice but on nine occasions of his total service. The total absence from duty works out to about six years, six months and 29 days. Looking to the chequered history of the Applicant, we are of the view that it is not a case which should be dealt with on equitable grounds or lenient view may be taken. We feel called to say that service to the Army is a service to the Nation at large and its members are supposed to be on the qui vive all the time in the service of the Nation. The army is meant for those who are dedicated and committed and not for a person like the Applicant who absented himself from duty on repeated occasions for total period of more than six years. The Applicant falls in the category of habitual offenders and thus, no lenient view is called for in the facts and circumstances of the present case. In this view of the above, the submission does not commend to

us for acceptance that the case calls for a benign view looking to the facts and circumstances overwhelming the Applicant.

9. Yet another circumstance which takes the wind out of the case of the Applicant is the fact that order of dismissal from service was passed on 01.08.1996 and the Applicant preferred the O.A in the year 2014 after an efflux of 18 years. At the very threshold, learned counsel for the respondents contended that there is a presumption that the original record would be weeded out after elapse of 10 years. In respect of instant case, it was contended that the original record including the SCM proceeding had long been weeded out and the same cannot be produced for effective adjudication of the present case. A copy of certificate with regard to weeding of the record has been filed to the counter affidavit as CA 3. It is nobody's case that weeding out of the record was not in conformity with the Rules and Regulations framed by the Army. The assertion of learned counsel for the respondents is that weeding of the record was in pursuance of the Policy framed by the Army which permits weeding of record after elapse of 10 years. Since present O.A has been filed after elapse of 18 years from the date of passing of the order of dismissal, hence respondents may not be questioned

with regard to weeding out of original record. Since original records are not available and also considering that the Applicant has preferred the present O.A after elapse of 18 years, we are hampered in recording a finding pertaining to the submissions of the learned counsel for the Applicant revolving round non compliance of Rule 115 (2) of the Army Rules 1954.

10. In connection with the above submission, we also feel called to refer to Rule 113 of the Pension Regulations for the Army 1961 which postulates that a person who has been dismissed from Army shall not be eligible for pension or gratuity. Hence the prayer for grant of consequential benefits does not hold good.

11. In the above conspectus, we are of the view that since Applicant absented himself from duty and had pleaded guilty to the charges, at this stage, no interference is called for that too after efflux of 18 years from the date of impugned order. No convincing reply was given when confronted why the Applicant woke up to file the O.A in the year 2014 when the order of dismissal was passed in the year 1996. If he was serious and held the view that order of dismissal was erroneously passed, he ought to have approached the appropriate forum within reasonable time and not after elapse of 18 years. Thus no case is made out for

interference with the impugned order even on equitable grounds.

12. At this stage, learned counsel for the Applicant raised the issue of punishment being disproportionate to the delinquency of overstaying regard being had to the fact that the Applicant had already put in 17 years of service. The matter has been dealt with at length in the body of the judgment that and thus it would suffice to say that the submission advanced is misconceived.

13. The other allied submissions advanced across the bar too have no substance and fall short of acceptability.

13. In the result, the O.A lacks merit and is dismissed accordingly.

(Air Marshal Anil Chopra)
Member (A)

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

Date: November, 28 ,2016

MH/-