

ARMED FORCES TRIBUNAL REGIONAL BENCH, LUCKNOW

Original Application No. 149 of 2012

Friday, the 12th day of February, 2016

**(Reserved)
Court No. 2**

**“Hon’ble Mr. Justice Abdul Mateen, Member (J)
Hon’ble Lt. Gen. A.M. Verma, Member (A)”**

Army No. 3191967L Ex Sep Harish Kumar, 9 JAT Battalion (The JAT Regiment, resident of Vill & P.O.Hodal, Distt-Palwal (Har)

..... Petitioner/Applicant

By Shri Ashok Kumar, Counsel for the Applicant.

Versus

1. Union of India, through Secretary, Ministry of Defence, Government of India, New Delhi.
2. Chief of The Army Staff, Army Headquarters, Integrated Headquarters, New Delhi-110 011.
3. Commanding Officer, 9 JAT Battalion, Pin-911209, C/o 56 APO.
4. Chief Record Officer, Records the JAT Regiment, C/o 56 APO.

.....Respondents.

By Shri Asheesh Agnihotri, Counsel for the Respondents alongwith Capt Ridhishri Sharma, Departmental Representative.

ORDER

1. This O.A seeks the reliefs of quashing the Summary Court Martial proceedings dated 2.12.2012 and to reinstate the petitioner in service.
2. Facts of the case are that the petitioner was enrolled in the Army on 14.11.1998. On 6.1.2007, the petitioner was sent on posting to 34 RR where he was due to report on 30.1.2007 which he did not do; instead he reported to 9 JAT on 25.3.2011. After due process of investigation, he was tried by a Summary Court Martial (SCM) on 2.12.2011 the following charge:

“EXIHBIT-B-2

CHARGE-SHEET

Sd. Illegible
(Maneesh Kukrety)
Col
The Court

The accused No 3191967L Rank Sep Name Harish Kumar of C Coy, 9th Battalion The JAT Regiment a person subject to Army Act is charged with :-

AA SEC 38 (1)

DESERTING THE SERVICE

in that he,

At fd, on 31 Jan 2007, having placed under order for active service and having been granted leave of absence from 07 Jan 2007 to 22 Jan 2007 and prep lve wef 23 Jan 2007 to 30 Jan 2007 to proceed to 34 RR, did not rejoin 34 RR at fd, on the expiry of the said leave, but absented

himself with intent to avoid such active service. Until he voluntarily surrendered to the Bn at peace on 25 Mar 2011 at 0830h.

Sd/-Illegible

Station : Peace (Meerut)

(Maneesh Kukrety)

Col

Dated : 22 Nov 11

CO”

3. During the trial, the petitioner pleaded not guilty and the punishment awarded was to be dismissed from service. It was reviewed by Major General Subrata Saha, General Officer Commanding, 22 Infantry Division, who vide his order dated 23.6.2012, did not find any reason for reduction in the sentence awarded to the petitioner.

4. The petitioner was represented by Shri Ashok Kumar, his learned counsel. The petitioner has challenged the process and the decision of the SCM on more than one ground. The petitioner says that he had started journey from his home to go to 34 RR on 28.1.2007, but enroute he became a victim of ZAHAR KHURANI and thereafter he did not know where he was. He was handed over to his relatives by a person called Mahesh. He was taken to a civil doctor in Agra named Dr. Anil Gaur. The petitioner claims he remained under treatment of Dr. Anil Gaur till 23.1.2011. According to the petitioner, the provisions of Army Rule 34 were not complied with. In that, the charge-sheet handed over to him is dated 2.12.2011, whereas the Court Martial also took place on 2.12.2011, which is legally not sustainable. The petitioner says that the charge-sheet dated 2.12.2011 was handed over to him on 3.12.2011. The

next point of challenge is that the provisions of Army Act Section 106 as also the provisions of Army Rule 125 have not been complied with. After recording of evidence, the petitioner claims, the provisions of Army Rule 120 have been violated. He claims that no Apprehension Roll was issued to him and a false Apprehension Roll was issued by the respondents in order to hide their own mistakes, on wrong address, in which the district shown was Faridabad whereas he is a resident of district Palwal. The petitioner says that he was treated medically at Agra after he was found in Faridabad market by some people in March 2007. His treatment, according to the petitioner, started at Agra w.e.f 18.3.2007 and it was only after he was fully cured of the disease that he reported to his Unit. The petitioner says that his wife had written to the Chief of the Army Staff on 26.8.2011 and the said complaint is still pending.

5. The respondents were represented by Shri Asheesh Agnihotri, learned Standing Counsel duly assisted by Capt Ridhishri Sharma, Departmental Representative. The respondents admitted the basic facts with regard to the petitioner's date of enrollment and his posting to 34 RR where he was required to report on 30.1.2007. The respondents state that he did not report on due date and eventually on 2.2.2011 a letter was received from his wife inquiring the whereabouts of her husband. She was advised by the Unit to convey to her husband to report back to 9 JAT or 34 RR. Eventually the petitioner reported back to 9 JAT on 25.3.2011. The respondents state that all actions taken by the Unit were as

prescribed in law and there is no infirmity in them. As regards the handing over of charge-sheet dated 2.12.2007 to the petitioner, the respondents state that it is factually incorrect, as recorded in the proceedings of SCM. The respondents also state that it was the charge-sheet dated 22.11.2011, on which he was tried and the arguments raised by the learned counsel appearing for the petitioner are not based on the documents produced by him. The petitioner did not report to any Military Hospital for treatment. The respondents also state that the Apprehension Roll was issued on 12.5.2007 in which the address mentioned was that which was recorded in the documents of the petitioner. The provisions of Army Rule 106 were fully complied with; in that a Court of Inquiry had been held as prescribed by law.

6. Heard both sides and examined the documents.

7. The issue with regard to non-compliance of Army Rule 34 was very carefully examined by us. In the original documents produced by the respondents, we find that there is a charge-sheet dated 22.11.2011 which was handed over to the petitioner alongwith a copy of Summary of Evidence and Additional Summary of Evidence and BRO Part-I No. 11 dated 22.11.2011. There is no other charge-sheet in the original records. Yet, we find that there is a charge-sheet produced by the petitioner which, he claims, was given to him by the respondents on 3.12.2011, which is dated 2.12.2011. This charge-sheet is reproduced below:

“EXIBIT- ‘B-2’
CHARGE-SHEET

Sd. Illegible
(Maneesh Kukrety)
Col
The Court

The accused No. 3191967L Rank Sepoy Name Harish Kumar of C Company, 0th Battalion the JAT Regiment a person subject to Army Act is charged with:-

Charge

AA SEC 38(1)

:DESERTING THE SERVICE

In that he,

At field, on 31 January 2007, having been placed under order for active service and having been granted leave of absence from 07 January 2007 to 22 January 2007 and preparatory leave with effect from 23 January 2007 to 30 January 2007 to proceed to 34 Rashtriya Rifles, did not rejoin 34 Rashtriya Rifles at field on the expiry of the said leave, but absented himself with intent to avoid such active service. Until he voluntarily surrendered to the Battalion at peace on 25 March 2011 at 0830 hours.

Station: Peace (Meerut)

Dated: 02 December 2011

Sd./- Illegible

(Maneesh Kukrety)

Colonel

Commanding Officer

9th Battalion the JAT Regiment”

8. We have carefully examined this charge-sheet dated 2.12.2011 and have compared it with the charge-sheet dated 22.11.2011 enclosed in the original documents. We find that firstly, there is a difference in the word 'Exhibit'; whereas in charge-sheet enclosed in the original documents, this word has been written as "EXHIBIT", in the copy produced by the petitioner it has been written as "EXIBIT". There is a radical difference in the layout of the two charge-sheets. In the photocopy of the charge-sheet provided by the petitioner, the charge is typed on right side of the page as reproduced above whereas the charge-sheet in the original record is printed from the left margin to the right margin as reproduced in Para 2 above. The date mentioned in the charge-sheet produced by the petitioner is 02 December 2011, in which the word 'December' has been written in complete i.e. no abbreviation has been used but in the charge-sheet in the original documents, the date has been abbreviated as 22 Nov 11. Also, in the original documents the rank and the appointment of the Commanding Officer have been abbreviated whereas in the charge-sheet provided by the petitioner, these have not been abbreviated but have been written in full.

9. In this context, we note that there is a letter dated 3.12.2011 in original documents as Exhibit B-16, which is addressed to the wife of the petitioner i.e. Smt. Sonvati Devi, village Hodal, P.O. Hodal, District Faridabad (Haryana). This letter is reproduced below:

“EXHIBIT -B-16

*Sd./- Illegible
(Maneesh Kukrety)
Colonel
The court*

*9 JAT
Pin 911209
c/o 56 APO*

3191967/A

03 Dec 11

*Smt Sonvati Devi
w/o 3191967L Sep Harish Kumar
Vill - Hodal
Po - Hodal
Distt- Farridabad (Har)*

SUMMARY COURT MARTIAL : NO 3191967L SEPOY HARISH KUMAR

1. your husband No 3191967L Sepoy Harish Kumar has committed an offence under Army Act Section 38 (1) as under :-

AA SEC 38 (1)**DESERTING THE SERVICE**

in that he,

at field, on 31 Jan 2007, having been placed under order for action service and having been granted leave of absence from 07 Jan 2007 to 22 Jan 2007 and preparatory leave with effect from 23 January 2007 to 30 January 2007 to 30 January 2007 to proceed to 34 RR, did not rejoin 34 RR at field on the expiry of the said leave, but absented himself with intent to avoid such active service. Untill he voluntarily surrendered to the Battalion at peace on 25 March 2011 at 0830h.

2. *He was tried by Summary Court Martial on 03 December 2011 and dismissed from service on 03 December 2011.*

Yours faithfully

Sd/- Illegible

(Maneesh Kukrety)

Col

CO”

10. The aforesaid letter informs the lady that her husband had committed an offence under Army Act Section 38(1). It goes on to type the charge towards the second half of the page. The charge-sheet produced by the petitioner too is in the same format i.e. the charge is printed in similar manner. We are of the view, by comparing this letter with the original charge-sheet, that this letter has been manipulated by photocopying it more than once, and removing unwanted paras 1 and 2 from this letter dated 3.12.2011 as also the addressee. These have been substituted with the name of the Commanding Officer alongwith date in a format which is different from the original document. This leads us to the inference that the petitioner has resorted to forgery in order to bring before us a document which is not original . We are of the view that the petitioner has not approached us with clean hands. Under these circumstances, the petitioner does not deserve relief of any kind. For this misconduct, we warn the petitioner to desist from such practices in future.

11. As regards ZAHAR KHURANI, Dr. Anil Gaur has been examined as Defence Witness No. 3 in the Additional Summary of Evidence, in which he has stated that the petitioner was brought to him on 18.3.2007 when he was suffering from increased talk, decrease sleep, abnormal behaviour and irritability for last fifteen days. Dr. Gaur went on to say that he could not say with surety whether the patient was under influence of any poison abuse, namely, Zahar Khurani. Alongwith the SCM proceedings, there are medical prescriptions of Dr. Anil Gaur dated 18.3.2007, 12.8.2007, 21.6.2008, 5.12.2008, 12.8.2009, 2.1.2010 and 20.6.2010. There is also a statement, photocopy of which has been enclosed in the original documents as Exhibit-8, in which Dr. Anil Gaur has stated that the petitioner was under his OPD treatment and observation since 20.12.2010 till last date i.e. 23.1.2011 as a case of “Bipolar ill mood disorder (mental illness)”. There is no evidence to substantiate the contention of the petitioner that he was a victim of Zahar Khurani. The petitioner has also not been able to explain satisfactorily why he was not taken to a Military Hospital close to his home or close to Agra. If his family members could take him to Agra every six months, there was no reason why he was not taken to Military Hospital where the treatment provided would have been of very high quality.

12. There are several other inconsistencies and discrepancies in the statement of the petitioner and the two letters that his wife had written, which have not been explained by the petitioner; such as his wife had

written that the petitioner had reported to a doctor two and a half months after he had left home on January 28, 2007 whereas the doctor's certificate indicates that he had gone to the doctor on 18.3.2007, barely one and a half months after he had left home. The petitioner says that he had left Faridabad Railway Station on 28.1.2007 to proceed to his Unit, whereas his brother stated that he had left the petitioner at Faridabad Railway Station on 29.1.2007. Mahesh, who had found the petitioner at Faridabad, handed him over to his family members but did not give petitioner's identity card and pay-book etc. to his wife. The petitioner, during the trial, in answer to a question by the Court, stated that he had lost his personal belongings including the documents, yet he reported to the Unit on 25.3.2011 and he had his Identity Card with him. These inconsistencies the petitioner was unable to throw light on. The petitioner states that he had gone to the Unit before 25.3.2011, but there is no record of entry of his name in RP Gate Register to substantiate his claim.

13. As regards the Apprehension Roll, we find that the Apprehension Roll at the address of the petitioner as recorded in his documents was sent on 12.5.2007 and that the Court of Inquiry had been held.

14. As regards Army Rule 120, the verdict was pronounced by the Commanding Officer after the trial, in which the sentence was pronounced by the Commanding Officer finding him guilty of the charge.

15. As regards Army Rule 125, this Rule says that the court shall date and sign the sentence and such signature shall authenticate the whole of the proceedings. We find that all the pages of SCM proceedings have been signed by the Commanding Officer. Thus, there is no violation of this Section too.

16. Keeping in view the facts mentioned above, we are of the view that the petitioner does not deserve any relief. The petition is accordingly dismissed lacking in merit. No order as to costs.

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

(Justice Abdul Mateen)
Member (J)

LN/