

ARMED FORCES TRIBUNAL REGIONAL BENCH, LUCKNOW

Transfer Application No. 10 of 2013 (Navy)

Monday, the 1st 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)”**

Ramjeet Maurya, son of Girja Prasad Maurya, resident of village and Post Amsin, Police Station Gosainganj, District Faizabad.

..... Petitioner/Applicant

By Shri S.K.Singh, Counsel for the Applicant.

Versus

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. Chief of Naval Staff, Naval Head Quarter, New Delhi.
3. The Commanding Officer, Indian Naval Ship Angre, Shaheed Bhagat Singh Road, Mumbai-23
4. Flag Officer Commanding-in-Chief, Head Quarter Western Naval Command, Shaheed Bhagat Singh Road, Mumbai-23
5. Regulating Officer for Commanding Officer INS ANGRE, Shaheed Bhagat Singh Road, Mumbai-400023.

.....Respondents.

By Shri G.S.Sikarwar, Counsel for the Respondents alongwith Commander U.M.Chand, Departmental Representative.

ORDER

1. Civil Misc. Writ Petition No. 4273 (S/S) of 2000 was received by this Tribunal from High Court of Judicature at Allahabad, Lucknow Bench and was renumbered as above.
2. The petitioner seeks the reliefs of quashing the impugned order dated 21.4.1999 Annexure No. 1; to reinstate the petitioner in service; to pay the salary to the petitioner each and every month including arrears of salary for the period he was out of service and any other order.
3. Facts of the case are that the petitioner was enrolled in Navy on 6.5.1987 and in 1997 he was posted to INS ANGRE. Following an incident on 10.3.1998 in the residential colony, Navy Nagar, Mumbai where the petitioner was staying, he was arrested by the police with the allegation that he was involved in the murder of his wife and a ten-month old child. He was kept in police custody. He was released on bail on 30.10.1998. He reported to his Ship on 16.1.1999, thus absenting himself for 79 days. For this, a Summary Trial was held on the following charge:

“DID REMAIN ABSENT WITHOUT LEAVE FOR 1005 HOURS AND 30 MINUTES, NAMELY, FROM 0001 HOURS ON 30TH OCTOBER 1998 TO 1330 HOURS ON 16TH JANUARY 1999. THIS BEING AN AGGRAVATED OFFENCE OF LEAVE BREAKING AND THEREBY COMMITTED AN OFFENCE PUNISHABLE UNDER SECTION 51 OF THE NAVY ACT 1957.”

Sentence awarded was dismissal from Naval service on 21.4.1999.

4. The petitioner was represented by Shri S.K.Singh, his learned counsel. The petitioner states that the police arrested him on 11.3.1998 at about 7-30 a.m and registered a case viz. C.C.No. 278/1/98 in C.R.No. 73/98 under Section 302 read with Section 34 IPC and Section 37(1) read with Section 133 of Bombay Police Act against him. He was granted bail subject to his furnishing surety of Rs.10000/- on 29.10.1998. The petitioner states that vide a judgment and order by the Court of Sessions for Greater Mumbai dated 7.3.2006 passed in Sessions Case No. 691 of 1998, he has been acquitted. Reverting to the petitioner's arrest, the petitioner states that he went to the Ship on 5.11.1998 alongwith his Advocate to join, but he was asked to bring some papers regarding his release. Eventually the papers were made available to him on 15.1.1999 and accordingly, he reported on 16.1.1999. The petitioner states that he was suffering from infective hepatitis and had been advised rest from work. On reporting to the Unit, he was kept in open custody on 18.1.1999 without going through the proceedings as prescribed by law. He was dismissed from service on 21.4.1999. The petitioner states that the documents demanded by him were supplied by the respondents vide their letter dated 21.1.2000. The petitioner states that he did not plead guilty during the Summary Trial and had stated that he was unable to attend duty due to his ailment, for which he had submitted a medical certificate also. The petitioner states that the punishment awarded to him is excessive and disproportionate to the charge levelled against him. He

had rendered 12 years of service and throughout his career, nothing adverse was found against him. The petitioner prays that the reliefs asked for by him be granted.

5. The respondents were represented by Shri G.S.Sikarwar, learned Standing Counsel, duly assisted by Commander U.M.Chand, Departmental Representative. The respondents state that the order of dismissal from service dated 21.4.1999 is valid and fully justified. The respondents deny that they had any role in the arrest of the petitioner in the alleged case of murder of his wife and son and state that the petitioner was arrested by the police. As regards sickness of the petitioner, the respondents state that he did not submit any document to support his case that he was medically unfit. In any case, had he been ill, the Naval Hospital was well equipped to take care of any kind of disease and there was no reason for the petitioner to get himself treated by a civil doctor. The respondents state that when the petitioner reported to the Ship, he did not disclose that he had been granted bail and that he remained on a prolonged unauthorized absence without leave for 79 days. The actions of his close arrest were strictly in accordance with law. The case was investigated as laid down in law and thereafter he was subjected to a Summary Trial as provided by law. The respondents stated that a criminal case was pending against the petitioner in the Court of Sessions, Greater Mumbai for allegedly murdering his wife and son. No documents were possibly got signed by the petitioner. The punishment

awarded is appropriate. The maximum punishment that can be awarded under Section 51 of the Navy Act is imprisonment for two years, whereas the petitioner has been only dismissed from service. Throughout the proceedings, the respondents stated that due process of law was followed. The respondents pray that the petition be dismissed lacking in merit.

6. Heard both sides and examined the documents.

7. We find that due process of law as laid down has been followed as regards investigation and Summary Trial and there has been no infirmity in them. At this stage, we take note of the statement given by the petitioner before the Commanding Officer during Summary Trial, which is as follows:

“Yes Sir, I have to state that on 29 Oct 98 I was released from judicial custody but I did not report to INS Angre since I was not feeling well and was undergoing a treatment of a Civil Doctor SV Oswal. On 05 Nov 98 I alongwith my advocate SC Kewat came to INS Angre but I did not disclose the facts that I have been released from judicial custody and my advocate informed the Regulating Staff that he had come alongwith me to see the place of my duty and same time I alongwith my advocate went away though I was also informed by the Regulating Staff that on release from judicial custody I should report to INS Angre immediately thereafter as and when the hearing of the case fixed by the Hon’ble Court I will be produced before the court. The advocate handed over the bail paper to me on 14 Jan 99 and at about 1330 hours on 16 Jan 99 I reported for duty.”

8. The Summary of Evidence signed by Commander AK Sen reads as follows:

1. *Ramjeet Maurya, REAP3, No 167535-N was brought before me on 20 Jan 99 for the offence of remaining absent without leave punishable under Section 51 of the Navy Act 1957 and the accused was warned by me in accordance with Regulations 28 (i) of the Regulations for the Navy Part II (Statutory).*

2. *During investigation, it has been revealed that the accused was involved in a very heinous crime (i.e. murder) of his wife Smt Vandana Maurya and son Subham on 11 Mar 98 at Navy Nagar. The accused was arrested by the Colaba Police Station and was placed in judicial custody by the City Sessions Court, Greater Mumbai. He was released from judicial custody on 29 Oct 98, but he did not report for duty. The accused stated that he fell sick after release from the custody and therefore could not report for duty. However, he could not produce any medical documents. Further it was revealed that he came to INS Angre on 05 Nov 98 alongwith his advocate, but deliberately did not report for duty. The accused came and reported for duty on 16 Jan 99. It was also revealed that the accused having contact with hardcore criminals and with their help he is alleged to have committed the murder of his wife and son. The offence of murder under section 302 and 304 of Indian Penal Code has not been taken over for trial under the Navy Act, 1957.*

3. *The offence of remaining absent without leave punishable under Section 51 of the Navy Act 1957 stands substantiated. The case is beyond my power of punishment and I, therefore put up this case to the Commanding Officer for further investigation and trial.”*

9. It is evident from the statement of the petitioner that he was suffering from some ailment though he did not produce any medical document to support his case of illness. Also, it emerges that at that

stage, he was facing a heinous charge of murder of his wife and son though the said charge had not been proved in any Court of law. The petitioner has attached a medical certificate from a Clinic in Chambur, Bombay dated 15.1.1999, which states that he was under treatment from 31.10.1998 to 15.1.1999. We are inclined to disregard this medical certificate as it appears to have been obtained as an afterthought and also for the fact that the petitioner had 12 years of service very well knowing that Navy Hospital had all facilities to take care of any kind of disease that anyone could be afflicted with.

10. Before discussing the issue of Summary Trial and the punishment, it is worth going through the order of the Court of Sessions for Greater Mumbai passed in Sessions Case No. 691 of 1998 on 7.3.2006. This order has discussed five points, the first two being whether or not the petitioner's wife and son met with a homicidal death and the finding of the Court is that these two points are indeed proved. The points No. 3 and 4 are with regard to whether or not the petitioner did intentionally and/or knowingly assault his wife and son causing their death and the finding of the Court is that these two points have not been proved. Point No. 5 is whether or not the accused i.e. the petitioner was found in possession of weapon knife and the Court finds that this point has also not been proved. Thereafter, the 6th point discussed by the Court is as to what offence, if any, was proved against the petitioner, to which the Court says that no offence has been proved against this accused i.e. the

petitioner. After a detailed examination of aforesaid five points, the Court acquitted the petitioner with benefit of doubt for the offences punishable under Section 302 read with Section 34 of IPC and Section 37(1) read with Section 135 of Bombay Police Act. The bail granted to the petitioner was cancelled and surety was discharged. The petitioner was set at liberty if not required in any other case. Thus, the petitioner stands acquitted of the charge of murdering his wife and son by this order of the Sessions Court passed in March 2006.

11. Reverting back to the events of April, 1999, after investigation the petitioner was subjected to Summary Trial by the Commanding Officer; he was found guilty of the charge and the sentence was pronounced. While the processes of investigation and trial suffer from no infirmity, we are of the view that the punishment awarded to the petitioner was excessive considering the fact that this was a first time offence of being absent without leave and his character at the time of trial had been assessed as very good. Against this perspective, we are inclined to hold that this excessive punishment deserves to be quashed.

12. Accordingly, this T.A is partly allowed. We hereby quash the punishment of dismissal awarded to the petitioner on 21.4.1999 by Summary Trial while holding the processes of investigation and trial valid as per law. The petitioner will be deemed to be notionally in service from 21.4.1999 onwards till he attains the service which enables

him to get pension and thereafter he will be awarded pension and all the pensionary benefits. This order shall be complied with by the respondents within a period of six months from today. No order as to costs.

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

(Justice Abdul Mateen)
Member (J)

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