

ARMED FORCES TRIBUNAL REGIONAL BENCH, LUCKNOW

Transfer Application No. 1299 of 2010

Friday, the 5th of February, 2016

**(Reserved)
Court No. 2**

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

No. 14534752-P Ex Nk/Dvr (MT) V.N.Shukla, Ex 508-ABW, son of Shri B.L.Shukla, Village Gokulpur, P.O. Kasarwa via Hathgaon, District Fatehpur.

..... Petitioner/Applicant

By Shri Rohit Kumar, Counsel for the Applicant.

Versus

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. Chief of the Army Staff, New Delhi.
3. The Commandant-cum-CRO, EME Centre & Records, Secunderabad.
4. IC-33976-K Col K.K.Malviya (Retd.), 7/A, ADA Scheme, Dhoomanganj, Sulem Sarai, Allahabad.

.....Respondents.

By Dr. Chet Narain Singh, Counsel for the Respondents alongwith Capt Ridhishri Sharma, Departmental Representative.

ORDER

1. Civil Misc. Writ Petition No. 54089 of 2003 was received by this Tribunal from High Court of Judicature at Allahabad on 17.8.2010 and was renumbered as above.
2. The petitioner seeks the reliefs of quashing the local discharge order dated 31.7.2002 and to quash the rejection order of the Chief of the Army Staff dated 7.10.2003.
3. Facts of the case are that the petitioner was enrolled in the Army on 30.6.1979 and was posted to 508 Army Base Workshop in 1998. On 27.10.2001, the petitioner was asked to report to the Commandant with Staff Car at 1945 hrs which he did not do. After due investigation, he was tried by Summary Court Martial (SCM) on the following charge:

AA Sec 41(2)

DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER

*in that he,
at Allahabad, on 27 Oct 2001, at 1600 h when
order of Comdt & MD passed on by No 14536411H
Hav/Dvr (MT) SK Pal to him, of the same unit to
report to Comdt & MD at 1945 h alongwith Staff
Car to perform duty, refused to report on duty.*

Total period under custody - Nil

Total period of absence - Nil

4. The punishment awarded was reduction to ranks, which was reviewed by the competent authority and was modified as reduction to the rank of Naik. The Chief of the Army Staff rejected the petition vide his order dated 7.10.2003 and the petitioner was discharged from service with effect from 1.8.2002.

5. The petitioner was represented by Shri Rohit Kumar, his learned counsel. The petitioner states that on 29.10.2001 he alongwith Hav Safer Alam and HMT Mahesh Babu was engaged in loading the luggage of Major S.B.Singh around 1630 hrs when Hav S.K.Pal told the petitioner that he should with the Staff Car report to the Commandant. The petitioner says he asked Hav S.K.Pal as to why Hav T.V.Murthy had not conveyed this message to him and the petitioner also said that he was going for special sick report. The keys of Staff Car were then handed over by Hav S.K.Pal to Hav T.V.Murthy. Based on this alone, a tentative charge-sheet was served upon the petitioner; thereafter Summary of Evidence was recorded on 12.11.2001 and he was tried by SCM. The petitioner says that usually it was the regular Staff Car driver Hav T.V.Murthy who used to tell him to report for duty. In this case, it was Hav S.K.Pal, who was the senior most NCO and that is why the petitioner was questioning as to why he had not been told by Hav T.V.Murthy. As regards the allegation of throwing the car keys, the petitioner says, he did not throw the car keys but while accepting the car keys from Hav S.K.Pal, the same may have fallen down. The petitioner

claims that there were infirmities in hearing of the charge under Rule 22 as also the provisions of Army Rule 34 had not been complied with. The petitioner further says that the SCM was over in a matter of 45 minutes, which is not possible in view of the fact that several forms are to be filled. The petitioner requests that the reliefs sought for by him be granted.

6. The respondents were represented by Dr. Chet Narain Singh, learned Standing Counsel, duly assisted by Capt Ridhishri Sharma, Departmental Representative. The respondents state that the petitioner disobeyed the lawful command on 27.10.2001 when he was required to report to the Commandant with Staff Car. The respondents state that on the said date, the petitioner intentionally and deliberately refused to perform the duties of Staff Car Driver for the Commandant detailed by the competent authority. The petitioner had been given sufficient time to prepare his defence and the proceedings were conducted as provided by law. The punishment awarded by the SCM of reduction to ranks was subsequently modified to reduction to the rank of Naik by the reviewing authority and accordingly, the petitioner was discharged from service on completion of his term of engagement. The rejection of petitioner's appeal following the order of the High Court in Civil Misc. Writ Petition No. 44354 of 2003 was after due application of mind.

7. Heard both sides and examined the documents.

8. In the summary of Evidence Hav S.K.Pal, who was the senior most NCO of MT Platoon, has stated that he was informed by Hav T.V. Murthy, the Staff Car Driver of the Commandant, that the Commandant had asked Hav V.N.Shukla, the petitioner, to report to him at 1954 hrs with the Staff Car. The extract of his statement is given below:

“...I told Hav V.N.Shukla that the Commandant had passed a message through Hav TV Murthy that he was required to report for duty along with the Staff Car at 1945 hrs. I also handed over the keys to the Staff Car. Hav VN Shukla took the car keys and threw it on the ground saying that he would not go for the duty. HMT Mahesh Babu, Hav Safeer Alam and myself tried to explain to him that these were the orders of the Commandant and he as a Senior NCO should not behave in this manner. Hav VN Shukla then picked up the keys from the ground and then I started to go back to the unit lines. Hav VN Shukla also came along with me saying that he would first speak to the OC military wing Maj B Banerjee before he reported for duty.

On reaching the unit area, Hav V.N.Shukla tried to contact Maj B Banerjee on the telephone but he could not get through. Both of us were then moving towards the roll call ground when Hav V.N.Shukla threw the car keys on the ground and told me that he was not going to report for duty and he was reporting special sick. I then picked up the keys to the staff car and told Hav TV Murthy what had happened.”

9. Hav TV Murthi testified that he had been told by the Commandant to ask the petitioner to report with Staff Car at 1945 hrs, a message that he gave to Hav S.K.Pal. Later Hav S.K.Pal came to his home and told him that Hav V.N.Shukla had refused to go on the duty and said that he was going on special sick report. Hav T.V.Murthy then took the keys of the Staff Car from S.K.Pal and told him that he would go with the Staff Car for the duty. Hav Safer Alam, who was working with the petitioner in loading the luggage of Maj S.B.Singh, has stated that the petitioner was told by Hav S.K.Pal about the duty to the Commandant with the Staff Car. Hav Safer Alam says that the petitioner threw the car keys that were handed over by Hav S.K.Pal. HMT Mahesh Babu, who too was present when the car keys were handed over to the petitioner by Hav S.K.Pal, said that the car keys were thrown down on the ground by the petitioner. From the above, it is apparent that the petitioner had deliberately and arrogantly declined to perform the duties which he had been assigned.

10. The records indicate that the charge under Army Rule 22 was heard on 29.10.2001, during which two witnesses had been examined viz. Hav T.V.Murthy and Hav S.K.Pal and that the OC Troops had ordered Summary of Evidence to be recorded. We find no infirmity in this. The Summary of Evidence was recorded as provided in the statute book. Copies of the charge-sheet and the SCM were handed over to the petitioner on 6.11.2001 and thus there was no violation of Army Rule

34(1) since the trial took place on 12.11.2001. The petitioner pleaded guilty during the trial. He was accordingly found guilty and the punishment was awarded to him. We find no infirmity in this procedure. The petitioner had submitted a statutory petition under Army Rule 164(2), which when not responded to, he filed a writ petition bearing No. 44354 of 2003, on which the Hon'ble High Court had directed that the statutory petition be disposed of, following which the Chief of the Army Staff rejected the statutory petition by his order dated 7.10.2003. Since the petitioner had been reduced to the rank of Naik, he was rightly discharged from service on completion of his term of engagement.

11. Accordingly, we find no merit in the T.A, which is hereby dismissed. No order as to costs.

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

(Justice Abdul Mateen)
Member (J)

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