

**Court No. 1**

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

**Original Application No. 105 of 2015**

Monday, this the 6<sup>th</sup> day of February, 2023

**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Atul Kumar Jain, Member (A)**

No. 4577827X Sep Trilok Dutt  
S/o Sri Narayan Dutt  
R/o Village and Post – Kauli, Via – Jaulgibi,  
Tehsil – Didighat, District – Pithoragarh (Uttarakhand)

**.... Applicant**

Ld. Counsel for the Applicant : **Shri Nishant Verma**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. General Officer Commanding in Chief, New Delhi.
3. Commanding Officer, 20 Mahar, C/o 56 APO.

**... Respondents**

Ld. Counsel for the Respondents : **Shri D.K. Pandey**,  
Central Govt Counsel

**ORDER**

1. The instant Original Application has been filed on behalf of the petitioner under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the petitioner has sought following reliefs:-

- “(a) Issue an order or direction to summon the original records and quash or set aside the Summary Court Martial trial including its finding and sentence awarded to the applicant being illegal and arbitrary, dated 25.11.2013 dismissing the applicant from service and the order of General Officer Commanding in Chief dated 18.11.2014

confirming the above sentence of the Summary General Court martial as contained in Annexure No. 1 and 2 to this original Application.

- (b) Issue a direction to the respondents to reinstate the applicant in service with all consequential benefits and reliefs along with interest.
- (c) Any other order or direction that this Hon'ble Tribunal may deem fit, just and proper in the circumstances of the case may also be passed, favouring the applicant.
- (d) Allow the present application in toto with costs."

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 21.10.2003. On 16.02.2013, the applicant alongwith 7 other personnel of his unit were detailed to proceed to 51 Rashtriya Rifles (RR) through 213 Transit Camp, Jammu. During their stay at Transit Camp on 20.02.2013, the applicant found his companion Sepoy Islam Baris fast asleep and applicant with an intention to teach a lesson to his companion, Sepoy Islam Baris removed all items (2 Mobiles and his wallet containing Rs. 6300/- cash, ATM card, PAN card, Liquor Card and Voter I Card) from his coat which was kept below his pillow. Thereafter, applicant managed to know PIN of ATM card of Sep Islam Baris and withdrawn Rs. 40,000/- through ATM. Later on, an inquiry was done and applicant accepted that he has taken all items of Sep Islam Baris and withdrawn Rs. 40,000/- from ATM only to teach a lesson and not otherwise. The applicant was charge sheeted on 09.04.2013. Thereafter, Summary Court Martial was held and applicant was dismissed from service under the provision of Section 71 of the Army Act 1950 vide order dated 25.11.2013. The applicant being aggrieved with the order of

dismissal has filed present Original Application to quash dismissal order and to reinstate him in service.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Indian Army on 21.10.2003. On 16.02.2013, the applicant alongwith 7 other personnel of his unit, 20 MAHAR were detailed to proceed to 51 Rashtriya Rifles (RR) as reliever through 213 Transit Camp, Jammu. During their stay at Transit Camp on 20.02.2013, the applicant found his companion Sepoy Islam Baris fast asleep without taking care of his belongings kept in his coat, the applicant with an intention to teach a lesson to his companion Sep Islam Baris for being so careless, removed all items (2 Mobiles and his wallet containing Rs. 6300/- cash, ATM card, PAN card, Liquor Card and Voter I Card) from coat of Sep Islam Baris which was kept beside his pillow. Thereafter, news of theft spread out in the Transit Camp and Sep Islam Baris approached the applicant and give him his ATM Pin for blocking his ATM Card from being misused. The applicant made withdrawal of Rs. 40,000/- from his account with intention to make him realise that PIN number should not be communicated to anyone under any circumstances. The applicant with an intention to return all items including money to Sep Islam Baris within one or two days in order to teach a lesson remained silent but when matter of theft was reported to the Commanding Officer of the unit then applicant handed over all items including money through Sep Dharampal Mondhe.

4. Learned counsel for the applicant further submitted that on 09.04.2013, a tentative charge sheet was served to the applicant in which the applicant was charged under Section 52(a) of the Army Act, 1950, "COMMITTING THEFT OF PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW" for a case of theft of mobile, wallet, cash of Rs. 6300/- and ATM card and further making a withdrawal of Rs. 40,000/- using stolen ATM card of Sep Islam Baris. The applicant received a letter dated 08.11.2013 whereby he was informed about the commencement of Court Martial proceedings against him. On 11.11.2013, the applicant received another charge sheet and was charged for two offences both under Section 52(a) of the Army Act, 1950 for committing theft of property belonging to a person Subject to Military Law. The Summary Court Martial was conducted against the applicant on 25.11.2013 without supplying him the relevant documents necessary for his defence. The applicant was also told that if he pleads guilty then minimum punishment may be awarded to him under Section 80 of the Army Act and applicant acted accordingly but instead of punishing him under Section 80, applicant was dismissed from service under Section 52(a) of the Army Act, 1950.

5. Learned counsel for the applicant further submitted that applicant preferred a petition before the General Officer Commanding-in-Chief, Northern Command on 30.04.2014 against his illegal dismissal but the same was rejected without application of mind. The SCM is in violation of Army Rule 111 (2) and Commanding

Officer failed to comply with the mandatory provisions of Army Rules 115(2) and 116(4) of Army Rules, 1954. Therefore, whole of the SCM proceedings are liable to be quashed. He placed reliance on the judgment of this Tribunal in O.A. (A) No. 311 of 2017, **Smt Alka Mishra, W/o Ex Nk Vimal Kumar Mishra vs. Union of India & Others**, decided on 11.01.2019 and pleaded that punishment of dismissal from service awarded by SCM is very disproportionate to the offence committed by the applicant, therefore, punishment of dismissal from service be quashed and applicant be reinstated into service with all consequential benefits.

6. On the other hand, Ld. Counsel for the respondents submitted that applicant alongwith 7 other Army personnel of his unit reached 213 Transit Camp to report to 51 RR Bn and stayed in 213 Transit Camp from 16.02.2013 to 22.02.2013. On the night of 19/20 Feb 2013, Sep Islam Baris kept his wallet and both mobiles inside his coat and kept his coat beside his pillow on the bed. On 20.02.2013, when he woke up in the morning at about 0400 hours, he found missing his PAN Card, Liquor card, Voter ID card, ATM card and Rs. 6300/- cash kept in his wallet. Sep Islam Baris informed Sep Trilok Dutt about the loss of his items and on pretext of blocking the ATM card of Sep Islam Baris, Sep Trilok Dutt managed to know the ATM Pin of the card and withdrawn Rs. 40,000/- from the ATM card of Sep Islam Baris from an ATM placed at 213 Transit Camp. However, realising that investigations are pointing towards him, Sep Trilok Dutt admitted having committed the offence and returned all items/cards including

money to Sep Islam Baris on 23.02.2013. During his 10 years of service, the applicant has been awarded two punishments under Section 63 of Army Act, 1950 on 12.01.2006 and 24.04.2009 for consuming liquor on duty and leaving the premises of Transit Camp with informing competent authority.

7. Learned counsel for the respondents further submitted that a Court of Inquiry was held in the unit in March 2013 and applicant was punished under Section 52(a) of the Army Act 1950 for "COMMITTING THEFT OF PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW". It was followed by a Summary of Evidence and based on the pre-trial advice by DJAG, additional Summary of Evidence was done. Summary Court Martial of the applicant was done by the Commanding Officer on 25.11.2013. He further submitted that in SCM proceedings, provisions of Army Rule 111(2), Rule 115(2) and (4) have been duly complied with. The GOC-in-C, Northern Command in their directions dated 15.11.2014 mentioned in para 5 that, "*Perusal of the documents on record reveal that the intention of Ex Sepoy Trilok Dutt to commit theft of the personal belonging and money of Sepoy Islam Baris is clearly evident from the record. He has accepted his mistake and pleaded **Guilty** to both the charges during trial by Summary Court Martial. The contention of petitioner of playing a prank appears to be an afterthought and not substantiated from available record. The sentence awarded is commensurate to the gravity of charges of which the petitioner was found 'Guilty'. Thus, the punishment awarded by*

SCM was neither disproportionate nor arbitrary. Being a case of theft, provisions of Army Act & Army Rules have been followed and order of dismissal from service passed by the SCM is in accordance the provisions contained in Army Act Section 52, hence, sentence awarded by the SCM is just and legal and is not at all prejudiced. He pleaded that O.A. may be dismissed being devoid of merit.

8. We have heard learned counsel for both sides and perused Court of Inquiry/SCM proceedings and the material placed on record.

9. Before adverting to rival submissions of learned counsel of both sides, it is pertinent to mention that judgment relied upon by the applicant in Para 5 referred to above is not relevant in the present case being based on different facts and circumstances. In that case, husband of the appellant was having pensionable service and he withdrawn money using ATM cards of Hav Chilla Govinda Raju and Sepoy Majoj Kumar Semilia who have taken loan from husband of the appellant and not with an intention of fraud but SCM awarded punishment of one year rigorous imprisonment and dismissal from service. This Tribunal considering all facts, circumstances and gravity of offence, opined that sentence inflicted on husband of the appellant is excessive and therefore, order of dismissal was modified into discharge but in the present case, facts and circumstances of the case are quite different and therefore, applicant cannot be given the benefit of aforesaid judgment.

10. We find that applicant has stolen personal items/cards and cash from the coat of Sep Islam Baris and later on withdrawn Rs. 40,000/-

from ATM card. This act of theft was done intentionally and not otherwise or prank and when the matter was reported to the Commanding Officer of the unit, applicant accepted stealing of wallet containing important cards including cash and returned all items and cash to Sep Islam Baris. The contention of the applicant that he wanted to teach a lesson to Sep Islam Baris for being careless leaving his important belongings/cards unattended is baseless which is an afterthought of the applicant so that he is not punished severely. The applicant has pleaded Guilty of both the charges during trial by SCM. Thus, the sentence of dismissal from service awarded by the SCM is commensurate to his offence as per provisions of Army Act, 1950/Army Rules, 1954.

11. We also find that during 10 years of service, the applicant has also been awarded two punishments under Section 63 of Army Act, 1950 on 12.01.2006 and 24.04.2009 for the offences committed by him, hence, his submission that applicant was having an unblemished service record is false. The provisions of Army Rule 111(2), 115 (2) & (4) have been complied with and sentence of dismissal is commensurate to his offence and not disproportionate or prejudicial as alleged by the applicant. Hence, the applicant is not entitled the relief prayed in Original Application to quash his dismissal order and to reinstate him in service.

12. In view of the above, we do not find any illegality, illogicality or prejudice in dismissing the applicant from service. The punishment of

dismissal is commensurate to his offence and not disproportionate at all. The O.A. deserves to be dismissed and is accordingly **dismissed**.

13. No order as to costs.

14. Pending Misc. Application(s), if any, shall stand disposed off.

**(Vice Admiral Atul Kumar Jain)**

Member (A)

Dated: 6<sup>th</sup> February, 2023

SB

**(Justice Umesh Chandra Srivastava)**

Member (J)