

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION NO (A) 254 of 2015

Friday, this the 16th day of September 2016

Hon'ble Mr. Justice D.P. Singh, Member (J)
Hon'ble Air Marshal Anil Chopra, Member (A)

Bhagwat Prasad Mishra (658442-S Ex-JWO B.P. Mishra) S/O Late
Sri Jageshwar Prasad Mishra, R/O-House No 135/48-A, Shakuntala
Kunj, (Near Ponghat Bridge), Mundera, P/S-Dhoomangani, District-
Allahabad.

.....Applicant

Ld. Counsel for the: **Shri T.N. Tiwari, Advocate**
Applicant

Versus

1. The Union of India Ministry of Defence through its Secretary South Block Central Secretariat, New Delhi-110001.
2. The Chief of Air Staff, Indian Air Force, Air Headquarters (Vayu Bhawan) New Delhi-110011.
3. Air Officer Commanding-in-Chief, Western Air Command, Subroto Park, New Delhi-110010.
4. Station Commander, Air Force Station, Suratgarh (Rajasthan).
5. Presiding Officer, General Court Marshal, Assembled at Air Force Station, Suratgarh on 8.1.2002 & Subsequent days to try 658442-S Sgt. (Acting JWO Paid) B.P. Mishra AF/Fitter.
6. Commanding Officer, 23 Squadron, Air Force, C/O 56 APO.
7. Senior Technical Officer, 23 Squadron Air Force, C/O 56 APO.

... Respondents

Ld. Counsel for the : **Shri Amit Sharma, Central**
Respondents. **Govt Counsel.**

ORDER (ORAL)

1. This appeal under Section 15 of the Armed Forces Tribunal Act, 2007 being aggrieved with the impugned order of reduction in rank dated 21.01.2002.
2. We have heard Ld. Counsel for the parties and perused the record.
3. It is not disputed that the appellant was enrolled in Indian Air Force on 20.05.1976 and after due training the appellant was posted in various units as Corporal and later on promoted to the rank of Sergeant. From the record it appears that the appellant was given rank of Paid Acting Junior Warrant Officer (JWO) on 05.09.1998. However later on by notification dated 31.12.2001 he was given the substantive rank of JWO with effect from 05.09.1998.
4. It appears that the appellant was charged on 24.09.2001 for absenting without leave (AWL) from 25.06.2001 to 07.07.2001. The Charge sheet as framed against the appellant has been annexed as Annexure-12 to the Appeal which for convenience sake is reproduced as under:-

"CHARGE SHEET

*The accused, 658442-S Sgt (Actg) JWO Paid) Mishra
BP AF/fit of 23 Sqn Air Force, an airman of the regular air force is
charged with:-*

Section 39 (a)
AF Act, 1950

ABSENTING HIMSELF WITHOUT LEAVE

in that he,
at 23 Sqn AF, absented himself without leave
from 0700 hrs on 25 Jun 01 to 07 Jul 01.

Place: 23 Squadron AF
Date : 24 Sep 2001

sd/- x x x x x x
(S Rajshekhhar)
Wing Commander
Commanding Officer
23 Squadron AF"

5. A plain reading of the aforesaid charge sheet as well as the charges framed against the appellants show that the appellants were charged being absent without sanctioned leave for the period in question. After due trial the appellants were punished with reduction in rank i.e. to the rank of Corporal as well as severe reprimand. The punishment awarded by the General Court Martial (GCM) is reproduced as under :-

"SENTENCE

The Court sentences the accused, 658442-S SGT
(Actg JWO Paid) BP Mishra AF Fit of 23 Sqn, Air Force:-

REDUCTION (a) To be reduced to the rank of
Corporal.

SEVERE (b) To be severely reprimanded.

REPRIMAND

The Court is opened and the above sentence is pronounced to the accused as subject to confirmation.

Signed at 35 Wing, Air Forces on this twenty first day
of January 2002.

Sd/- x x x x x
(Vineet Sharma)
Flight Lieutenant
Judge Advocate

sd/- x x x x x
(A Shankar)
Group Captain
Presiding Officer

"CONFIRMATION"

6. The factual matrix of the case shows that charges were framed against the appellant on 24.09.2001 but he was placed in substantive rank of JWO on 31.12.2001 meaning thereby after framing of charges he was given the substantive rank of JWO with effect from 05.09.1998. Thus on the date of framing of charges the appellant was Sergeant but working as JWO (Paid) but before pronouncement of order of punishment he was promoted to the rank of substantive JWO. After the framing of charge on 11.07.2001 and convening order passed by Air Commodore and before passing of the convening order dated 04.01.2002 the appellant was promoted to the substantive rank of Paid JWO on 31.12.2001 with effect from 05.09.1998.

7. Ld. Counsel for the appellant raised two fold arguments; firstly, the appellant was not permitted to engage counsel hence the GCM suffers from violation of principles of natural justice, and secondly, since the appellant was promoted on substantive rank of JWO on 31.12.2001 with effect from 05.09.1998, the whole trial by the GCM vitiates and it was incumbent upon the respondents to frame the charges against the appellant treating him to be substantive JWO.

8. Coming to the first limb of argument advanced by Ld. Counsel for the appellant it was submitted that since the appellant was not permitted to engage a civil lawyer, it amounts to violation of principles of natural justice. On the other hand Ld.

Counsel for the respondents submitted that the appellant was given assistance of an officer i.e. Flight Lieutenant V.S. Suhag.

9. We have perused the original record which falsifies the arguments advanced by Ld. Counsel for the appellant. A perusal of the record shows that the Judge Advocate General himself advised that the appellant has right to engage a civil lawyer under Rule 103 of Air Force Rules 1969. Accordingly opportunity was given to the appellant to engage a civil lawyer but from the order it appears that the appellant had himself not engaged a lawyer to assist him. In default thereof in pursuance to provision contained in Rule 102 (2) of the Air Force Rules 1969, the convening officer detailed defending officer for the appellant (supra) and the appellant was permitted to seek assistance from the defending officer.

10. The order sheet further reveals that from time to time adjournments were taken by the appellant which were granted by the GCM. The GCM proceedings further shows that the appellant himself made a request that his civil lawyer from Delhi shall be available on 14/15 January 2002 and in consequence thereof with a warning to him the GCM proceedings were adjourned for 15.01.2002 but even the civil lawyer did not appear on said date. In consequence thereof the assistance of defending officer was provided to the appellant. The record further shows that during the course of framing of charges a question was posed to the appellant as to whether he is guilty of

not of the charges to which he submitted that he wishes to make a plea with regard to jurisdiction of the GCM. The plea of jurisdiction was also considered by the GCM. In such situation keeping in view the fact that the appellant participated in the GCM proceedings and he himself failed to seek assistance of any civil lawyer, rather full fledged opportunity was granted to him with liberty to cross examine the witnesses, and assistance of defending officer was also provided to him, the first limb of argument advanced by Ld. Counsel for the appellant fails.

11. Now coming to the second limb of arguments of Ld. Counsel for the appellant as to whether the punishment awarded to the appellant vitates keeping in view the fact that at the time of framing of the charges the appellant was treated as Paid acting JWO. From the record as well as pleading there appears no room of doubt that on the date when charges were framed against the appellant, he was posted as acting JWO (Paid). Whatever changes took place, they took place before 31.12.2001. In such situation the respondents may not be faulted by proceeding with the trial on the basis of charges framed before 31.12.2001. In any case it does not cause any prejudice since the order of punishment shows that the appellant was reverted back to the post of Corporal. So far as submission of Ld. Counsel for the appellant that in case charges would have framed treating the appellant as substantive JWO the reversal could have been made on the post of Sergeant, seems to be misconceived. The punishment of reduction of rank is to the

rank of Corporal and not one stage below. While awarding punishment it is always open to the punishing authority to award appropriate punishment which may be reduction to rank once step or two steps below keeping in view the magnitude of the offence. Ofcourse, in case the punishing authority would have made observation punishing the appellant with reduction of rank one step below then the argument advanced by Ld. Counsel for the appellant would have some merit. In the present case reduction in rank is to the post of Corporal. Even if it is two steps below it shall not cause any prejudice to the fair trial of the appellant.

12. In criminal jurisdiction punishment may be awarded to the satisfaction of the authority concerned. By reverting the appellant to the post of Corporal, i.e. two steps below, there appears no fault on the part of the punishing authority, even if charges were framed treating the appellant as substantive JWO. It may further be noted that charges are framed at particular point of time. Post, rank and status of the delinquent is to be looked into on the date of framing of charges. Any subsequent change in the post, rank or status shall not vitiate the trial only because at a later stage he was promoted. The trial co-relates with the time and date when charges are framed. Subsequent change in the status of rank of the officer or employee shall not vitiate the trial. In case arguments advanced by Ld. Counsel for the appellant is accepted, then it shall be mockery of judicial system if it is held that in case a delinquent is promoted to a

higher rank then no trial shall proceed in case he has committed offence while being posted on a lower rank.

13. In the present case the appellant was absent without leave for twelve days, that too while serving the Indian Air Force. Absence without leave is a serious offence. In some cases Hon'ble Supreme Court has held that absence without leave even for a week is serious enough to dismiss or discharge an employee. In the present case the respondents have taken a lenient view while reverting the appellant to the post of Corporal keeping in view his past services.

14. It may be noticed that on 18.01.2002 during course of criminal proceeding the appellant had himself signed documents treating him as Sergeant/Acting JWO (Paid). This fact itself indicates that the appellant himself was not aware even on 18.01.2002 that he was made substantive JWO retrospectively from the year 1998.

15. It has been vehemently argued by Ld. Counsel for the appellant that status or rank shall be seen on the date final order is signed by the authority concerned. The argument is wholly untenable. Service of charge sheet and framing of charges against the accused is the relevant date when the post and rank is to be seen. All subsequent proceedings relating back to the time and date when the incumbent was charged for offence or misconduct would have no relevance.

16. - No other ground has been raised by Ld. Counsel for the appellant.

17. Subject to above we do not find any merit in the appeal. It is accordingly **dismissed**. However it is directed that all service benefits including pay and allowances and pensionary benefits shall be paid to the appellant forthwith.

No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

and

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