

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
COURT NO. 2

O.A. No. 500 of 2012

Tuesday, this the 25th day of October, 2016

"Hon'ble Mr. Justice D.P.Singh, Judicial Member
Hon'ble Air Marshal Anil Chopra, Administrative Member"

No. 4473183 W Sep (Chef Community) Manjit Mishra Son of O.P Mishra resident of village Jiraulia Post Office Jaithra Tehsil Aliganj District Etach U.P. 207249
.... **Applicant**

Versus

1. Union of India through its Secretary Ministry of Defence (D.H.Q) P.O. South Block, New Delhi.
2. Chief of the Army Staff A.H.Q. DHQ. P.O. South Block, New Delhi.
3. The Commanding Officer 2 Sikh LI Regiment, C/O 56 APO PIN 900927
4. O.I.C Records, the Sikh LI C/O 56 APO Pin 900927.

....Respondents

Ld. Counsel appeared for the Applicant - **V.P. Pandey, Advocate**

Ld. Counsel appeared for the Respondents - **Dr. Shailendra Sharma Atal, Sr. C.G.S.C**

Order (Oral)

1. Present Original Application has been preferred under section 14 of the Armed Forces Tribunal Act, 2007 being aggrieved by the impugned order dated 03.12.2010 passed by respondent no 3 as contained in Annexure 1 whereby the services of the Applicant were dismissed in pursuance of summary court martial proceeding.
2. We have heard learned counsel for the Applicant as also learned counsel for the respondents, who was ably assisted by OIC Legal Cell.
3. The abridged version of the case is that the Applicant was enrolled in the Indian Armed on 28.09.1994. When the Applicant was in field on Line of Control in Jammu & Kashmir, he was granted 60 days leave for the period between 03.03.2008 to 01.05.2008. At his native place, the Applicant got embroiled in a quarrel with one of his relatives in which he suffered gun-shot injury and he was admitted in Military Hospital, Fatehgarh. In the course of treatment, the Applicant was placed in low medical category and was declared unfit for further active duties being in low medical category. On discharge from Military Hospital at Fatehgarh, the Applicant was attached to Sikh Light Infantry Regimental Centre at Fatehgarh wherefrom he was dispatched to his Unit on 28.11.2008 with 14 days casual leave. He was

required to report to the Unit on 13.12.2008 but he failed to do so. He or his family members gave no intimation to his unit nor sought extension of leave. According to the averments made in the O.A, since the Applicant was yet to fully convalesce, he got himself admitted in some Private hospital where he was reportedly treated between 13.12.2008 to 8.06.2010. After the Applicant had fully recovered, it is submitted, he voluntarily reported for duty at Sikh Light Infantry Regiment Centre after an efflux of 542 days on 07.06.2010 wherefrom he was dispatched to 2nd Sikh Light Infantry Unit where he joined on 17.06.2010. In the meantime, after being absent for 30 days, a Court of Inquiry was held on 25.01.2009 and Applicant was declared a deserter. It was thereafter that the Applicant was subjected to Summary Court Martial and was dismissed from service.

4. The precise submission of learned counsel for the Applicant in the instant case is that the non compliance with Rule 33 (7) and Rule 34 (1) of the Army Rule is writ large. To be specific he submits that the charge sheet dated 03.12.2010 was served on the Applicant for offence under section 39 (b) of the Army Act, a copy of which has been annexed as Annexure 3 to the O.A. and on the same very day, he was subjected to Summary Court Martial which

lasted and concluded within 20 minutes. Thus he was deprived of the right of the accused to prepare defence to the allegations contained in the charge-sheet, The further submission of learned counsel for the Applicant is that the plea of being guilty was recorded for the offence though he categorically stated that he never made any statement confessing to the guilt. To sum up, learned counsel for the Applicant submits that the impugned order of dismissal is vitiated for want of compliance with Rules 33 (7) and 34 (1) of the Army Rules.

5. Per contra, learned counsel for the respondents did not repudiate the above submissions excepting that the Applicant was served with two charge sheets. The first charge sheet was served to him on 26.10.2010 while the second charge sheet was given to him on 03.12.2010.

6. The short question that surfaces for consideration is whether Rules 33 (7) and 34 (1) of the Army Rules were observed in compliance or not?

7. The admitted position in the instant case boils down to the fact that charge sheet was served to the Applicant on 03.12.2010 and the same day the trial commenced and was concluded within a span of 20 minutes. The argument of the learned counsel for the Applicant is that the Applicant never made any statement pleading guilty to the charges but the

learned counsel for the respondents relied upon the proceeding of Summary Court Martial in which Applicant is recorded to have pleaded guilty. Learned counsel for the respondents was candid enough to admit that compliance with Rule 33 (7) and 34 (1) of the Army Rules was wanting.

8. Rule 33 (7) of the Army Rules 1954 being relevant is reproduced below.

"As soon as practicable after an accused has been remanded for trial by a general or district court-martial, and in any case not less than ninety-six hours or on active service twenty-four hours before his trial, an officer shall give to him free of charge a copy of the summary of evidence, an abstract of the evidence, and explain to him his rights under these rules as to preparing his defence and being assisted or represented at the trial and shall ask him to state in writing whether or not he wishes to have an officer assigned by the convening officer to represent him at the trial, if a suitable officer should be available. The convening officer shall be informed whether or not the accused so elects."

Rule 34 being also relevant is also reproduced below for ready reference."

"34. Warning of accused for trial.- (1) The accused before he is arraigned shall be informed by an officer of every charge for which he is to be tried and also that, on his giving the names of witnesses or whom he desires to call in his defence, reasonable steps will be

taken for procuring their attendance and those steps shall be taken accordingly.

The interval between his being so informed and his arraignment shall not be less than ninety-six hours or where the accused person is on active service less than twenty-four hours.

(2). The officer at the time of so informing the accused shall give him a copy of the charge-sheet and shall if necessary, read and explain to him the charges brought against him. If the accused desires to have it in a language which he understands, a translation thereof shall also be given to him.

(3). The officer shall also deliver to the accused a list of the names, rank and corps (if any), of the officers who are to form the court, and where officers in waiting are named, also of those officers in courts martial other than summary courts-martial.

(4) If it appears to the court that the accused is liable to be prejudiced at his trial by any non-compliance with this rule, the court shall take steps and, if necessary, adjourn to avoid the accused being so prejudiced."

It would thus transpire that according to Rule 33 (7) and Rule 34 (1) of the Army Rules 1954, minimum 96 hours time was to be granted after service of charge sheet in order to enable him to prepare the case and submit reply. In the present case, the admitted position is that statutory provisions contained in Rules 33 (7) and 34 (1) of the Army Rules have not been observed in compliance.

9. In **Union of India vs A.K.Pandey & others** reported in **2010 SCC 552**, the Apex Court minced no words to hold that the provisions contained in Rule 33 of the Army Rules are mandatory and its non-compliance shall vitiate the trial. Reverting to the present case, it would appear that the impugned proceedings of Summary Court Martial against the Applicant has been held in violation of the mandatory provisions and hence consequential decision of dismissing the Applicant from service shall stand vitiated.

10. Besides the above, in number of cases, the Tribunal has looked into similar matters and recorded finding that even if a person confesses misconduct; the proceedings cannot be completed within 20 minutes which would militate against the procedure prescribed by the Army Rules.

10. In O.A No 317 of 2013 Mukesh Purwanshi Vs Chief of the Army Staff decided on 15.02.2016, exhaustive decision was rendered in which it was in substance held that the trial of the applicant was done in haste which has caused prejudice. The conviction and sentence of the applicant is, therefore not sustainable.

11. As a result of foregoing discussion, the O.A deserves to be allowed and is accordingly allowed. The impugned order dated 03.12.2010 is set aside. The Applicant shall stand notionally reinstated in service with all consequential

benefits except that he shall not be entitled to payment of back-wages regard being had to the fact that he had absented himself for 542 days at a stretch. However, the Applicant shall be deemed to be in continuous service to full period of his rank of 15 years and shall also be entitled to post retiral benefits with all consequences reliefs except back wages. The respondents shall comply with the order within four months.

12. There shall be no order as to costs.

(Air Marshal Anil Chopra)
Member (A)

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

Date: October, ,2016

MH/-