

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

T.A. No. 04 of 2016

Tuesday, this the 08th day of November, 2016

**“Hon’ble Mr. Justice D.P.Singh, Judicial Member
Hon’ble Air Marshal Anil Chopra, Administrative Member”**

Mohanan Pillai V.M. No. 15117109 - X - GNR (Suyr)
S/o Sri K.N. Vasudevan Pillai, R/o Mazhuppayil House.
Village Chunakara, P.O. Komalloor Charrumoodu,
District Alleppey (Kerala)..... **Petitioner**

Versus

1. Union of India through Ministry of Defence, New Delhi.
2. Chief of the Army Staff, New Delhi.
3. General Officer Commanding- in- Chief, Southern Command C/o 56 A.P.O.
4. General Officer Commanding 21 Corps C/o 56 A.P.O.
5. Commanding Officer, HQ 31 Artillery Brigade the then Deployed at Jhansi .

...Respondents

**Ld. Counsel appeared for the
Petitioner**

**- Shri Rajendra Kumar
Advocate**

**Ld. Counsel appeared for the
Respondents
Assisted by OIC Legal Cell**

**- Shri R.K.S. Chauhan
C.G.S.C
Col Kamal Singh**

Order (Oral)

1. This Petition has come up before us by way of transfer under Section 34 of the Armed Forces Tribunal Act, from Hon'ble the High Court at Allahabad and it has been renumbered as Transferred Application No. 04 of 2016.
2. Challenge in this Application is to the order dated 06.03.2000 passed by respondent no 4 whereby the petitioner was dismissed from service by way of holding Summary Court Martial.
3. The facts of the case lie in a very short compass. The Applicant was enrolled in the Indian Army on 03.10.1991. On 03.05.1998, he had proceeded on annual leave for a period of two months in order to solemnize his marriage. After availing of annual leave, the petitioner resumed his duties on 06.07.1998. The case of the Petitioner is that after the marriage, he came to know that his wife was suffering from Epilepsy. On coming to know, the petitioner narrated the facts to his Senior and asked for further leave. It is alleged that on 09.07.1998, Subedar Major advised him to have patience and to wait for grant of leave. However, since the petitioner was distraught on getting information about the illness of his wife, he left the Unit without waiting for grant of leave and thus he absented himself

from duty with effect from 11.07.1998 to 26.8.1998 i.e. for a total period of 46 days.

4. It would appear that summary of evidence was prepared on 09.09.1998 and after due trial, the Applicant was dismissed from service on 21.09.1998. Being aggrieved by the said order, the Petitioner preferred a petition before the General officer Commanding In Chief Southern Command. The said petition was partially allowed whereby sentence of dismissal was converted to discharge vide order dated 06.03.2000. After receipt of communication, the petitioner preferred a writ petition before the High Court at Allahabad being Writ Petition No 29202 of 2000 which as stated supra, stood transferred to this Tribunal and renumbered as T.A.

5. The solitary argument advanced across the bar by learned counsel for the petitioner is that since the petitioner was distraught on account of illness of his wife, he left the unit to take care of his wife and that the absence of the petitioner was limited to 46 days only. Lastly learned counsel for the Petitioner submits that a lenient view may be taken in the matter as the Petitioner had initially made efforts for grant of leave and when he noticed that it would take time, he being distraught left the Unit.

6. Per contra, learned counsel for the respondents contends that the petitioner had left the Unit without sanction of leave and had absented himself from duty for a period of 46 days, it constituted serious misconduct on his part whereby he was proceeded against on the charge of desertion without any prior sanction or permission from the appropriate authority.

7. It brooks no dispute that absence from duty for 46 days at a stretch without sanctioned leave is a very serious misconduct and is unpardonable keeping in view the nature of service rendered by the Indian Army for the cause of Nation.

8. Learned counsel for the Applicant placed credence on a judgment of Apex Court rendered on 27.09.2004 in Appeal (Civil) No 1720 of 2002 Divisional Controller, KSRTC (NWKRTC) Vs A.T Mane. In this case, Hon'ble Supreme Court touching on quantum of punishment, held that the quantum of sentence does not mean that the Court should show generosity or misplaced sympathy. The relevant portion being relevant is quoted below.

"This Court in the case of B.S.Hullikatti (supra) held in a similar circumstances that the act was either dishonest or was so grossly negligent that the respondent therein was not fit to be retained as a conductor. It also held that in such cases, there is no place for generosity or misplaced

sympathy on the part of the judicial forums and thereby interference with the quantum of punishment.

9. It is a case which runs counter to the defence set up by the learned counsel for the Petitioner and is of no avail to the petitioner at all. However, relying upon the said decision, we feel that it is not a fit case where the Tribunal should interfere on the ground of quantum of punishment and it shall be an instance of showing misplaced sympathy in case we interfere with the order whereby the Army personnel who is petitioner has been dismissed on the ground of deserting his Unit without sanctioned leave.

10. Even otherwise also, it is well settled proposition of law that on the ground of quantum of sentence, the Court or Tribunal may interfere only when it shocks its conscience.

11. To cap it all, in the instant case, the ground urged in mitigation is that the petitioner had applied for leave. Learned counsel for the respondents has vehemently denied that any Application for leave was made. Learned counsel on being asked, could not produce any Application made by the petitioner for grant of leave nor has any such Application been brought on record. By this reckoning, it has to be

presumed that no such Application was at all made and that the petitioner left the Unit without prior sanction of leave. Had the petitioner made any Application for grant of leave showing urgency on the ground of ailment of his wife and had the same been rejected by the appropriate authority, this Court would have certainly looked into the reasons for such rejection in order to take a lenient view of the matter. In our considered view, a lenient view has already been taken by altering his punishment from dismissal to discharge. In the circumstances, we have no option except to converge to the view that the petitioner has set up the ground of having made an Application for grant of leave in order to prop up his case in the instant petition.

12. In catena of decisions, we have repeatedly observed that a deserter from Army who absents himself without sanction leave does not deserve any sympathy from the Court, or the Tribunal. If a person deserts his unit in the Army, it would be an act detrimental to the interest of the Nation for which he or she has taken oath to serve with all commitment and dedication.

13. As a result of foregoing discussion, we are of the view that it is not a fit case for interference under section 34 of the Armed Forces Tribunal Act 2007

14. In the result, the T.A lacks merit and is accordingly dismissed.

15. Needless to say that the dismissal of the Petitioner has already been altered to discharge. Thus, option is open for the Petition to seek re-employment elsewhere.

(Air Marshal Anil Chopra)
Member (A)

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

Date: November, ,2016.

MH/-