

**RESERVED**  
(Court No 2)

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

**Original Application (Appeal) No. 197 of 2015**

Monday, this the 20<sup>th</sup> day of November, 2023

**"Hon'ble Mr. Justice Anil Kumar, Member (J)  
Hon'ble Lt Gen Anil Puri, Member (A)"**

Shubham Yadav (No. 944240 Ex LAC) son of Shri Shivnath Singh, R/o House No 24, Gyan Vihar Colony, Bijnor, State-Uttar Pradesh.

.....Appellant

Ld. Counsel for the: **Shri KKS Bisht**, Advocate  
Appellant

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi.
2. The Chief of the Air Staff, Air Headquarters (Vayu Bhawan), Rafi Marg, New Delhi-110011.
3. Officer-in-Charge, Air Force Records, Subroto Park, Delhi Cantt-110010.
4. The Air Force Commanding, Air Force Station Chabua (Assam), 14 Wing AF.

..... Respondents

Ld. Counsel for the: **Mrs Deepti P Bajpai**,  
Respondents Central Govt. Counsel.

**ORDER**

1. This O.A. (A) has been filed on behalf of the appellant under Section 15 of the Armed Forces Tribunal Act, 2007 by which he has sought the following reliefs:-

- (I) Call the District Court Martial proceedings dated 19.06.2014 from the custody of respondents and be quashed and further the order dated 08.08.2014 (Annexure No A-1) passed by the respondents be quashed.*
- (II) To direct the respondents to re-instate the appellant in the service w.e.f. date of dismissal with all consequential benefits including arrears of salary with the interest of 18% per annum and continuity in service.*
- (III) Any other appropriate order or direction which the Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case.*

2. Facts giving rise to the litigation are that the appellant was enrolled in the Indian Air Force (IAF) on 29.12.2010 in the trade of Logistic Assistant. While posted with 14 Wing Air Force, he was attached to 412 Air Force Station, New Delhi for Republic Day Parade-2013. While being returned after completion of attachment period, he was granted 25 days Annual Leave for the period 12.02.2013 to 08.03.2013 alongwith 03 days journey period with permission to suffix 09.03.2013 and 10.03.2013. He was to report

for duty at 14 Wing Air Force on 11.03.2013, but he did not report. Accordingly, he was declared absent without leave (AWL) w.e.f. 11.03.2013 and descriptive roll dated 17.04.2013 was issued to concerned authorities. As the appellant continued to be absent without leave beyond 30 days, a Court of Inquiry (C of I) dated 22.04.2013 was conducted under Section 107 of Air Force Act, 1950 which declared him a deserter w.e.f. 11.03.2013. After an absence period of 269 days, he reported to 14 Wing Air Force on 05.12.2013 where on query about his identity, it was disclosed that he despatched his Identity Card to Air HQ, New Delhi vide Speed Post No EU4477981641N.

3. On reporting, he was charge sheeted on 16.01.2014 and offence report [IAFF(P) 24] was raised against the appellant and his trial commenced. Summary of Evidence (S of E) was ordered to be recorded on 16.01.2014 under Section 39 (b) of Air Force Act, 1950. During recording of S of E appellant produced an affidavit signed by his mother mentioning therein that due to her ailment, her son was required at home to take care of her and hence he may be released

from service. Considering the gravity of offence committed by the appellant, a case was taken up with higher authorities on 25.04.2014 and after getting sanction, appellant was tried by DCM on 19.06.2014. On arraignment, the appellant pleaded 'guilty' to the charge. During the Court Martial Proceedings, appellant submitted a written plea of 'guilty'. Thereafter, after following due procedure and considering the facts and circumstances of the case, the DCM found him guilty of the charge and awarded him two months detention and dismissal from service.

4. A pre-confirmation petition dated 14.07.2014 was preferred under Section 161 (1) of the AF Act, 1950 wherein the appellant mainly re-iterated the issues of his mother's illness and requested for reduction in period of detention. His petition was rejected by Air Officer Commanding in Chief (AOC-in-C), Eastern Air Command vide order dated 07.08.2014, hence this O.A has been filed.

5. Learned counsel for the appellant submitted that on account of illness of his mother, appellant was granted 25 days leave excluding 03 days journey period

for the period from 11.02.2013 to 09.03.2013 with permission to suffix 09 and 10.03.2013. It was further submitted that while appellant reached at home, his mother's condition was very critical in a hospital at NOIDA. After expiry of leave, keeping in view of denial of 03 days extension of leave in the year 2011, he did not ask for extension of leave.

6. Learned counsel for the appellant further submitted that appellant had to stay with his mother up to 04.12.2013 as his elder brother was abroad and there was no one to look after her. It was further submitted that on receipt of communication from his office, he despatched his Identity Card to Air Force authorities. Thereafter, appellant surrendered on 05.12.2013 and in the unit he was tried by DCM and punishment of 02 months detention and dismissal from service was awarded.

7. Learned counsel for the appellant further submitted that appellant's DCM commended on 19.06.2014 and concluded on the same day which creates suspicion on the respondents. The punishment to undergo detention for two months and dismissal from

service has been awarded to the appellant in gross violation of mandatory provisions of Air Force Act and Air Force Rules. No proper opportunity of defence was provided to the appellant during the trial and the trial was conducted in a casual and illegal manner. The basic principles of natural justice were completely ignored and appellant has been held guilty of charge in violation of mandatory provisions of Air Force Rule 60 (2). It was further submitted that the punishment awarded to the appellant is totally disproportionate to the alleged misconduct and mandatory requirement of proving the charge was not followed, and without there being any evidence on record to prove charge, the appellant has been held guilty and dismissed from service. It was also submitted that his petition dated 14.07.2014 has also been rejected vide order dated 08.08.2014 without going into merits of the case which needs to be quashed.

8. On the other hand, learned counsel for the respondents submitted that appellant, after completion of attachment period with 412 Air Force Station, New Delhi, was despatched to his parent unit i.e. 14 Wing

Air Force with 25 days annual leave and after completion of leave, he was to report to his unit on 11.03.2013 which he failed to report. He further submitted that on surrender after 269 days, his DCM was conducted in accordance with rules on the subject on 19.06.2014 in which he was awarded punishment of detention for two months and dismissal from service. It was further submitted that during the course of DCM proceedings, appellant produced an affidavit from his mother mentioning therein that he be released from Air Force Service on the ground that no one was at home to look after her mother.

9. Learned counsel for the respondents further submitted that on arraignment, appellant pleaded guilty to the charge and he submitted a written plea of guilty to the charge. It was further submitted that appellant's pre-confirmation petition dated 14.07.2014 was examined by AOC-in-C, Eastern Air Command and it was rejected vide order dated 08.08.2014. He pleaded for dismissal of O.A. on two grounds i.e. (i) appellant has not availed statutory remedy under Section 161 (2) of Air Force Act, 1950 i.e. post confirmation petition as

provided in Section 21 (1) of the AFT, Act, 2007 and (ii) DCM was conducted in a fair manner in which appellant gave written 'plea of guilty'.

10. Heard Shri KKS Bisht, learned counsel for the appellant and Mrs Deepti P Bajpai, learned counsel for the respondents and perused the original record produced in the Court.

11. No. 944240 Ex LAC Shubham Yadav (appellant) was enrolled in the IAF on 29.12.2010. While posted with 14 Wing Air Force, he was despatched on attachment to 412 Air Force Station, New Delhi for Republic Day Parade-2013. On completion of attachment, the appellant was routed back to 14 Wing Air Force with 25 days annual leave commencing from 12.02.2013. On expiry of leave, he was required to report to his unit on 11.03.2013, which he failed to report. Accordingly, apprehension roll was issued followed by C of I, which declared him as a deserter w.e.f. 11.03.2013. He surrendered voluntarily on 05.12.2013 after an absence period of 269 days. On reporting he was tried by DCM and punishment of 02 months detention and dismissal from service was

passed on 19.06.2014.

12. Appellant's contention for overstayal of leave is that he could not rejoin the unit after expiry of leave due to unavoidable compulsions as his mother was seriously ill and was undergoing treatment in civil hospital at NOIDA and when his mother's condition improved, he rejoined voluntarily on 05.12.2013. In regard to this, during course of hearing, respondents contention is that appellant being a service personnel could have brought his mother to Army/Air Force hospital where better medical facilities are available. We find weightage in contention of the respondents.

13. In this O.A., appellant has contended that his punishment is disproportionate keeping in view of minor offence which he committed on account of overstayal of leave. Reliance has also been made of order dated 10.09.2015 passed by this Tribunal in the case of ***Ex-Corporal Praveen Kumar vs Union of India & Ors.*** On perusal of order, we find that in the above said case appellant was dismissed from service on account of 12 days absence but in the instant case appellant had surrendered after an absence of 269 days, therefore,

there being no parity, order dated 10.09.2015 has no help to the appellant.

14. The argument of the appellant regarding his absence was that since he was morally and socially bound to look after his mother, he could not join his duties timely. The court advised him to withdraw his plea of 'guilty' on this ground and plead 'not guilty', however, the appellant continued to maintain 'guilty' and he gave this in writing also. For convenience sake, his plea of guilty is reproduced as under:-

**PLEA OF GUILTY**

"1. I, the above named accused, have been arraigned on the charge u/s 39 (b) of the AF Act, 1950 as the first and the only charge and whereas I have pleaded guilty to the above charge.

2. I have pleaded guilty to the charge on the basis of facts and my conscience. Further, I submit the following:-

(i) That, I have understood the meaning, nature and ingredient of the charge against me,

(ii) That, I have pleaded 'guilty' to the charge after understanding the full facts of the case.

(iii) That, I am aware of the difference in procedure which will be followed by the Court on my pleading 'Guilty' to the charge as compared to a situation in which I have pleaded 'Not Guilty'.

(iv) That, I have pleaded 'Guilty' to the charge without any kind of inducement, threat or promise.

(v) That, I, after having fully understood the caution of the Court in term of Rule 60 (2) AF Rule, 1969, I do not wish to rely on any line defence, whatsoever, in respect of the charge and wish to continue with my plea of 'Guilty' to the said charge as per the charge sheet.

(vi) That, I have conferred with the Defending Officer, who has explained the above legal and factual position to me and has endorsed my decision to plead 'Guilty' to the above charge."

15. During the course of trial, appellant produced an affidavit from his mother in which it is stated that appellant be released from Air Force service so that he could look after her. This affidavit also shows that on account of illness of his mother appellant intended to leave the Air Force service as during the period of absence without leave he despatched his Identity Card to Air Force authorities by speed post. For convenience sake, copy of affidavit is reproduced as under:-

"अभिज्ञान प्रमाणिका"

"अभिज्ञान प्रमाणिका प्रमाणित करून देण्यात येणाऱ्या व्यक्तीच्या नावाचा उल्लेख खालीलप्रमाणे आहे:-

अभिज्ञान प्रमाणिका प्रमाणित करून देणाऱ्या व्यक्तीचे नाव /

अभिज्ञान प्रमाणिका प्रमाणित करून देणाऱ्या व्यक्तीचे पत्ता /

अभिज्ञान प्रमाणिका प्रमाणित करून देणाऱ्या व्यक्तीचे पत्ता /

अभिज्ञान प्रमाणिका प्रमाणित करून देणाऱ्या व्यक्तीचे पत्ता /



*the DCM had found you 'Guilty' of the charge and sentenced you follows:-*

*(a) To undergo detention for two months; and*

*(b) To be dismissed from the service.*

*5. AND WHEREAS, you have submitted a 'Pre-Confirmation Petition' under Section 161 (1) of the Air Force Act, 1950 wherein, you have mainly reiterated the issues of your mother illness and critically on this account and there is no one to look after her, therefore, the period of detention may be reduced.*

*6. AND WHEREAS, I have duly considered your abovesaid submissions vis-à-vis proceedings of the DCM and arrive at the following conclusions:-*

*(a) The proceedings of the DCM are in order and you were provided with every possible opportunity as per the Air Force Law to present your case before the DCM.*

*(b) You have voluntarily pleaded 'Guilty' to the charge in clear terms. You were provided due opportunities during the trial to withdraw your plea of 'Guilty' and plead 'Not Guilty'. However, you persisted with the plea of 'Guilty'.*

*(c) The facts, circumstances of the case and evidence on record reveals that the reasons advanced by you to justify your prolong absence are not convincing and do not inspire confidence. Further, you too have accepted the factum of your illegal absence.*

*(d) The sentence awarded by the DCM is just, fair, reasonable and proportionate to the gravity of offence committed by you.*

*7. AND WHEREAS, while confirming the finding and sentence awarded by the DCM, I have considered the said pre-confirmation petition submitted by you under Section 161 (1) of Air Force Act, 1950, and I am of the opinion that reasons advanced by you in your defence do not warrant any*

*interference with the 'sentence' awarded by the DCM on merits.*

*8. NOW THEREFORE, in exercise of the power vested in me under Section 161 (1) AF Act, 1950, I dispose of your above said petition dated 14 July 2014, being devoid of merit. The finding and sentence of the DCM have been confirmed accordingly."*

17. Appellant has produced little evidence related to his mother's illness and treatment. It appears that he absented without leave due to illness of his mother, but the fact remains that had his mother was not well, he could have requested his immediate Air Force authorities to enable her treatment in Army/Air Force hospital.

18. Appellant's other contention is that he was not provided with copy of DCM proceedings. In this regard respondents' contention is that DCM proceedings can only be supplied to the appellant if he submits a written request in terms of Rule 125 of Air Force Rules, 1969 and Para 116 of Air Force Order 03/2008, which appellant did not submit. For convenience sake Para 116 of aforesaid Air Force Order is reproduced as under:-

*"Rule 125 of the Air Force Rules 1969 stipulates*

*that every person tried by a Court Martial shall, after the proceedings have been signed by the Presiding Officer and where applicable, by the Judge-Advocate, and before they are destroyed, on a request made by such person in writing for the supply of a copy of such proceedings, be furnished within a reasonable time and free of cost a copy thereof including the proceedings upon revision, if any."*

19. After considering the facts and circumstances of the case and the gravity of offence committed by the appellant, the DCM had awarded two punishments (i) to undergo detention for two months and (ii) to be dismissed from service. The findings and the sentence of the Court was confirmed by the AOC-in-C, Eastern Air Command on 07.08.2014 and promulgated to the appellant on 14.08.2014.

20. The appellant was well aware of the fact that after completion of leave, in any situation, either he should ask for extension of leave or report back to his unit. In this case, the appellant neither applied for extension of leave nor reported back to his unit on completion of leave. Moreover, he despatched his Pay Book and Identity Card to Air HQ meaning thereby that he intended not to serve further in the Air Force.

21. The appellant was tried according to the mandatory provisions and the laid down procedure established as per the Air Force Rules, 1969 and accordingly, Rules 24, 25, 39 and 60 (2) were duly complied with. Further, the appellant was afforded sufficient opportunities to defend himself during recording of Summary of Evidence and during conduct of DCM, principles of natural justice were duly complied with. He himself pleaded guilty of the charge and gave it in writing. With regard to the point brought by the appellant that though he overstayed the leave granted to him, but it was due to his mother's sickness and this was a sufficient cause for his overstayal, however, the reason that his mother was hospitalized does not constitute to be a sufficient cause of appellant's absence for 269 days and does not absolve him from initiation of disciplinary proceedings for the misconduct committed by him.

22. It is submitted that appellant had no intention to continue in service which is obvious from the following facts:-

“(i) He absented himself without leave even when he

was fully aware of the provisions of leave rules and Air Force Act, 1950.

(ii) He posted his Identity Card and Pay Book to Air HQ which he himself has admitted. This amounts to the intention of deserting the service.

(iii) He produced an affidavit from his mother mentioning therein that he be released from service.

(iv) He pleaded 'guilty' before DCM even while he was cautioned that it may go against him.

(v) In his mercy petition, he requested to reduce his period of detention only and never requested for quashing of dismissal order."

23. In such circumstances, the orders passed by the DCM as well as by the confirming authority are just and proper and do not call for any interference. The appeal sans merits and is accordingly dismissed. No orders as to cost.

24. Miscellaneous application(s), pending if any, stand disposed off.

**(Lt Gen Anil Puri)**  
**Member (A)**

Dated:20.11.2023

*rathore*

**(Justice Anil Kumar)**  
**Member (J)**

RESERVEDCourt No 2

Form No. 4

**{See rule 11(1)}**  
**ORDER SHEET**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW

O.A.(A) No. 197 of 2015

Shubham Yadav

Applicant

By Legal Practitioner for the Applicant

Versus

Union of India &amp; Ors

Respondents

By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	<p data-bbox="505 1728 639 1757"><u>20.11.2023</u></p> <p data-bbox="505 1763 1114 1800"><u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u></p> <p data-bbox="505 1806 1024 1843"><u>Hon'ble Lt Gen Anil Puri, Member (A)</u></p> <p data-bbox="599 1903 875 1935">Judgment pronounced.</p> <p data-bbox="599 1954 1008 1986">O. A. No. <b>197</b> of <b>2015</b> is dismissed.</p> <p data-bbox="599 2007 1398 2040">For orders, see our judgment and order passed on separate sheets.</p> <p data-bbox="505 2150 776 2220">(Lt Gen Anil Puri) Member (A)</p> <p data-bbox="505 2214 574 2239"><i>rathore</i></p> <p data-bbox="1105 2150 1403 2220">(Justice Anil Kumar) Member (J)</p>