

## ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

**Reserved**  
(Court No. 3)

**Original Application No. 138 of 2011**

**Tuesday** the 4<sup>th</sup> day of August, 2015

“Hon’ble Mr. Justice Abdul Mateen, Member (J)  
Hon’ble Lt. Gen. A.M. Verma, Member (A)”

Ex. No.6485435W Sepoy/Musician V.K. Rai, age about 35 years , Son of Sri Dukku Rai, Resident of Village & Post Office-Suhawal, Tehsil-Zamania, District Ghazipur.

..... Applicant.

By Shri P.K. Shukla, Counsel for the Applicant.

Versus

1. The Union of India through the Secretary, Ministry of Defence (D.H.Q.), Post Office-South Block, New Delhi.
2. The Chief of the Army Staff, Army Head Quarters, D.H.Q. Post Office South, Block, New Delhi.
3. The Commanding Officer, Head Quarter Wings A,S.C. Centre (North), Paharpur, Gaya.
4. The Record Officer/Officer Incharge Record A.S.C. Records (A.T.) Pin 908763, C/O 56 A.P.O.

..... Respondents.

By Shri. Dileep Singh along with Capt. Ridhishri Sharma, Departmental Representative.

**ORDER**

1. The petitioner seeks the following reliefs :-  

*“(a) issue a suitable order or direction calling for the records of the case and quash the proceedings of the summary court martial and the sentence dated 2<sup>nd</sup> August, 2003 and the rejection order dated 13<sup>th</sup> October 2010 passed by the Chief of the Army Staff (Annexure Nos. 2 and 7 respectively).*

(b) *Issue a suitable order or direction directing the respondents to reinstate the applicant in service with all consequential benefits of seniority, promotion, pay etc.*

(c) *Issue any other and further order or direction, which this Hon'ble Tribunal may fit and proper under the facts and circumstances of the case.*

(d) *Award cost of this application in favour of the applicant."*

2. Facts of the case are that the petitioner was enrolled on 22.02.1994 in A.S.C. He was working as a Musician and was posted to A.S.C. Centre Gaya. He absented himself without leave from 04.06.2003 to 17.07.2003 i.e. period of 44 days and on return from leave, disciplinary proceedings were initiated against him and he was tried by Summary Court Martial on 02.8.2003 on the following charges:-

"CHARGE SHEET

*The accused No 6485435-W Sep Musician Vinod Kumar Rai of HQ Wing ASC Centre (North), Paharpur, Gaya-5 is charged with:-*

FIRST CHARGE  
AA SEC 39(b)

ABSENTING HIMSELF WITHOUT LEAVE,

*in that he,*

*at Paharpur, Gaya absented himself without leave from the married accommodation wef 04 Jun 03 at about 0600h till 17 Jul 03.*

SECOND CHARGE  
ARMY ACT SEC 54(b)

LOSING BY NEGLIGENCE CLOTHING AND EQUIPMENT THE PROPERTY OF THE GOVERNMENT ISSUED TO HIM FOR HIS USE

*in that he,*

*at Paharpur, Gaya on 17 Jul 03 at about 0800hrs was deficient of the following personal clothing amounting to Rs 577.00 (Rupees five hundred seventy seven only) the property of the Government issued to him for his use:-*

<u>S/No.</u>	<u>Item</u>	<u>Qty</u>	<u>PV Rate</u>	<u>Amount</u>
1.	Towel hand	01	44.50	35.52
2.	Mug Steel	01	68.40	67.30
3.	Belt web waist	01	51.00	46.20
4.	Jersey woolen	01	560.00	427.80

Total = 576.82

Say Rs. 577.00

(Rupees five hundred seventy seven only)

THIRD CHARGE

AA SEC 63

VOILATION OF GOOD ORDER AND

MILITARY DISCIPLINE

*In that he,*

*at Paharpur, Gaya on 03 Jun 2003, borrowed a sum of Rs 500 - (Rupees five hundred only from No 6483358-N Nk ASH Janardan Modi contrary to the instructions contained in para 337 of Regulations for the Army Revised Edition 1987.*

FOURTH CHARGE

AA SEC 63

AN ACT PREJUDICIAL TO GOOD ORDER

AND MILITARY DISCIPLINE

*In that he,*

*at Paharpur, Gaya on 03 Jun 2003 AT 1230 HRS FAILED TO REPORT TO HIS SUPERIORS, WHEN HIS IDENTITY CARD, THE PROPERTY OF Govt. given to him for his use and safe custody, was taken by No 6483358-N ASH Janardan Modi and kept with himself for a duration of 44 days against borrowed by him on 07 Apr 03.*

FIFTH CHARGE

AA SEC 63

AN ACT PREJUDICIAL TO GOOD ORDER

AND MILITARY DISCIPLINE

*In that he,*

*at Paharpur, Gaya on 17 Jul 2003, when enquired about the whereabouts of his identity card after his rejoining from desertion, lied to his superiors, firstly, by saying that it is kept at his house, and then subsequently, changing his statement and saying, that it has been given for lamination in the civil marked till it was finally revealed through an investigation that it was taken and kept by No 6483358-N NK ASH Janardan Modi.”*

3. Punishment awarded to him was Dismissal from Service. He filed a petition dated 23.05.2009 to the COAS which was rejected vide the order of the COAS dated 13.10.2010. Before this petition, the petitioner had filed case No. 744 of 2005 in CAT which was finally disposed off as dismissed as withdrawn with liberty to seek remedy.

4. The Petitioner represented by Learned Counsel Shri P.K. Shukla states that he was in Band Platoon in which there are one or two JCOs and forty other ranks. He claims that he was granted Annul Leave with effect from 04.06.2003 to 17.07.2003 alongwith a few other men of the Band Platoon. When he proceeded on leave he was assured by Jai Prakash Giri of the same Band Platoon that the leave certificate would be sent to him, which was not done due to some personal difficulties of Sepoy Jai Prakash Giri. When he returned from leave, he was given a copy of the Charge Sheet which had five charges. The petitioner claims that Charge One is totally false and that he had been granted leave. According to him Charge Two also is false as he had brought the items to the Unit and deposited them and he further claims that Rs 577 was deducted from his pay. As regards Charges Three, Four and Five, petitioner claims these are false. He never lost his Identity Card nor pawned for obtaining a loan from Janardan Modi. The petitioner also

claims that Janardan Modi never deposed before the Commanding Officer. The petitioner says that a Court of Inquiry was held of which he had no knowledge. The provisions of Army Rule 22 were not complied with. He was never marched up to the Commanding Officer for hearing the charge and he was not allowed to cross-examine any witness. The provisions of Army Rule 33(7) and Army Rule 34 were violated as he was not given copy of the charge sheet 96 hours in advance. The petitioner also states that probably no Summary of Evidence was recorded and if it was recorded it was behind his back. The Friend of Accused Captain H.C. Joshi was detailed by the CO the petitioner had never asked for him. He was not given any option to appoint a Friend of Accused. Petitioner claims he does not understand English and vernacular translation was not provided to him, therefore he was unable to prepare his defence. Petitioner also cites Regulations of the Army Para 448 in support of his case on the punishment earlier awarded to him. The petitioner says that he had been punished only three times earlier. He prays that reliefs as asked for by him be granted. The Respondents were represented by Shri Prakhar Kankan assisted by Capt. Ridhishri Sharma. The Respondents state that the petitioner in his nine years of service had been punished five times that is on 26.01.1998 for an offence under Army Act Section 63, on 22.08.1998 for an offences under Army Act Sections 48 and 63. This was in confirmation of SCM which were awarded him punishment of three months Rigorous Imprisonment. On 6.09.1999 he was punished for an offence under Army Act Section 63, and 26.09.19 for an offence under Army Act Section 63 and 22.12.2002 for an offences under Section 39(a) and 39 (b). In the instant case he was absent from 4<sup>th</sup> June to 17<sup>th</sup> July 2003. After one month of this absence a Court of Inquiry under the provisions of Army Act Section 106 was held. Thereafter, the petitioner

was declared a deserter. On his rejoining the unit on 18.07.2003, charges were heard under the provisions of Army Rule 22 on 19.07.2003 and Summary of Evidence was completed on 27.07.2003. Copies of the charge sheet and Summary of Evidence were handed over to the petitioner on 28.07.2003 and the Summary Court Martial was conducted on 02.08.2003. Thus, the Respondents would state that all provisions of law were strictly followed and there was no violation of the relevant Act and Rules. The petitioners' belated appeal was received and it was rejected by the COAS being devoid of merit.

5. The Respondent emphatically state that the petitioner had not been granted any leave and the loss of property of government in prospect to him was proved. The statements of witnesses during the Summary of Evidence are sufficient were established charges 3, 4, and 5. The petitioner had been provided full opportunity to defend his case as provided in law. He was also asked to select a Friend of Accused of his choice vide letter dated 29.07.2003 to which the petitioner failed to respond. The charges were translated and petitioner had fully understood the charges and the proceedings. The punishment awarded to the petitioner was just and legal and therefore the respondents prayed that the petition be dismissed.

6. Head both sides and scrutinized the documents.

7. The Respondents produced copies of the Charge Sheets of his earlier punishments awarded. Punishments included punishment of three months Rigorous Imprisonment in Military custody by a Summary Court Martial held on 23.09.1998 for offences under Army Act Section 63 and Army Act Section 48 which is for intoxication.

8. The Court of Inquiry was held in the absence of the petitioner where in three witnesses testified that he was missing from the unit and

accordingly he was declared a deserter. After hearing of the charge under Army Rule 22, Summary of Evidence was recorded in which seven witnesses were examined. Witness No. 1 was Janardhan Modi, who testified that he had the Identity Card of the petitioner with him. He was also cross examined by the petitioner. The relevant extracts of his statement and cross-examination are as follows :-

“3. On 03 Jun 2003 (A/N) he handed over his identity card to me bearing machine No C/651998 issued by Comdt ASC Centre ASC Centre (North), on 07 Sep 94, and asked me to get it laminated and return after doing so. On 04 Jun 2003, I came to know that he has absented himself without leave (AWL). His identity card was with me. Since he was AWL. I did not get the identity card laminated, nor did I deposit it in the office and kept it with me, thinking that he will rejoin duty sooner or later and then I will return the identity card to him.

4. On 18 Jul 2003 at about 1200 hrs, I saw him in the office and came to know that he has surrendered voluntarily to HQ Wing, ASC Centre (North), on 17 Jul 2003 at about 0800 hrs i.e. after being AWL for 44 days. He then asked for the identity card, which I handed over to him without lamination. I also came to know that he had been declared deserter wef 04 Jun 03.

Sd/x x x x x x  
 (No 6483358-M Nk/ASH  
 Janardan Modi  
 27 Jul 03

Cross Examination by the Accused

5. The accused, No 6485435-W Sep/Msn VK Rai, having given the opportunity to cross examine the witness, wishes to cross examine. The accused desires that the cross examination be recorded in questions and answers forms and therefore, the same is recorded in verbatim as under:-

(a) Question by the Accused. When did I hand over my identity card for lamination to you? Was n't it snatched by you for Rs 500/- (Rupees Five hundred only) which I had borrowed from you and was not able to return to you?.

Ans by the Witness. No, you yourself gave it for lamination and I never snatched/took as a guarantee against Rs 500/- (Rupees five hundred only) which you were to return to me.

(b) Question by the Accused. Did n't borrow Rs 500/- (Rupees five hundred only) from you on 07 Apr 03 at the rate of 10% per month?

Ans by the Witness. Yes, you borrowed Rs 500/- (Rupees five hundred only) but without interest and on 07 May 03, not on 07 Apr 03.

(c) Question by the Accused . Did n't you ask for money with interest on 03 Jun 2003 at about 1230 hrs near married accn complex?

Ans by the Witness. Yes, I did ask for money but there was no talk of interest.

(d) Question by the Accused. Did n't I tell you that I have no money at present and I will return you on the day of payment?

Ans by the Witness. Yes, that is true, and I told you that you must give me on the day of payment.

(e) Question by the Accused. \_Did n't you tell me that if you do n't have money at present I can not wait till payment and you snatched my identity card and told to take it back on return of my money?



Ans by the Witness. *No, you are telling a lie. I did not snatch your identity card for money but you only gave it for lamination to me”.*

9. It is evident from the statement that he had borrowed Rs. 500/- from Janardhan Modi as stated in charges No. 3 and 4. PW-3 was Subedar/MT Mahender Singh who had inquired about the petitioners' Identity Card also reported. The relevant extracts are as follows:-

*“14. On being surrendered voluntarily, when he was asked to his Identity card for checking he first told that it is left at his quarter. When escorted to his quarter by Hav/ASH Devendra Singh he told him that it is given in the civil market for lamination. When being escorted to civil market he told that it is with Nk/ASH Janardhan Modi. I then called Nk/ASH Janardhan Modi and asked him about his identity card. Nk/ASH Janardhan Modi handed over the identity card, and said that Sep/Msn VK Rai has not returned Rs 500/- (Rupees five hundred only) which he borrowed from me. A separate Unit C of I has been ordered to find the fact of this case.*

15. *On 18 Jul 03 at about 1000 hrs, a retired Sub(Hony Capt) Chanderma Singh, staying near our Centre, came to me and wanted to meet the CO. I asked him the reason. He said, “ about three months back Sep/Msn VK Rai was known to me, as he frequently used to visit my STD Booth. I felt pity on him on hearing this his wife is seriously ill and since he was prepare to mortgage even his identity card, I have him Rs 500/- without taking his identity card assuming that his needs are genuine. I also advised him not to use your identity card this way. He has not yet returned my money, so I want to made the CO.” He then met the CO and went back.*

16. *The indl is one of the indisciplined Soldiers whose behavior on and off the Parade is unsoldierly. He has no sense of duty*

*toward any one. He has the habit of begging and borrowing money from others including civilians. He has already been awarded 05 Red Ink entries and 01 black ink entry during his 09 years of service.”*

The import of this testimony is that petitioner was attempting to misguide the JCO with regard to location of his Identity Card as also it brings out proclivity of the petitioner to borrow money. Borrow or pawn any personal item or money this witness also brings out that the petitioner is an indisciplined soldier.

10. In the Summary of Evidence, the petitioner made a statement, the relevant extract of which are as follows:-

*“45. I was staying in OR married accn No 25/03. Since my 70 years old mother was suffering from ULCER and her condition was bad, I had requested for AL for the year wef Jun 03 and the same was sanctioned by the Centre Adjt on 05 May 03. But I was told by Sub Maj P S Kumar in-charge Mil Band, that I can proceed on leave only after Centre Adjt moves out on posting i.e. on 05 Jun 03. I had intimated my elder brother at home that I shall arrive on AL on 05/06 Jun 03. I had On 04 Jun 03 at about 0530 hrs, when I was about to come to attend PT Parade, my neighbour Sub SB Gurung, who had tele at his quarter, told me that at about 2200 hrs yesterday, there was a call from your home and your brother wanted to speak to you. I then , imdt ran upto STD Booth which was nearby, spoke to my brother who told that our mother passed away on 01 Jun 03 at about 1230hrs and will be cremated today i.e. 04 Jun 03 (A/N). My brother had tried to contact me several times but was unable.*

*46. After hearing about the death of my Mother I was completely shocked. My wife started weeping. In view of the cremation my*

*mother, there was not time to follow proper channel to get leave/leave certificate since my home town in Ghazipur district was at 06 hrs travelling distance. I therefore, went home and became AWL. I was able to attend the cremation. I came to know that my mother died at VHU Hospital due to severe abdomen pain on 01 Jun 03 at about 1230 hrs, though I do n't have copy of the death certificate to produce here as an evidence. Thereafter, I stayed at home. No one knew that I have absented myself without leave. When on 13 Jul 03, I received an official letter which was addressed to my father, in order to advise me to rejoin duty imdt, I thought I have done a big mistake of becoming AWL. Everybody came to know about it and told me to rejoin duty forthwith. I then came and surrendered voluntarily on 17 Jul 03 at about 0800 hrs after being absent for 44 days.*

*47. Last year during pregnancy my wife was not keeping well and was under treatment at Asha Nursing Home, at Gaya. The delivery took place on 07 Sep 02 at this Nursing Home. The total expenditure incurred on my wife's treatment and delivery amounts to Rs 40,000/- (Rupees forty thousand only) approx. I hereby produce medical certificate for my wife's treatment, marked as exhibit 'Q' to 'Z'. At the initial stage of pregnancy, she was treated as MH Gaya, but due to the non availability of Gynecologist, she was ref to Anugrah Narayan Magadh Medical College and Hospital, Gaya(ANMCH). Though I do n't have medical certificate of MH Gaya to produce here. The treatment at ANMCH was unsatisfactory, therefore, I took my wife to Asha Nursing Home. I could not prefer medical claim for re-imburement of medical expenditure and after exhausting my saving. I was in critical*

*financial situation. As such I was looking after and getting treatment of old aged mother also I had borrowed Rs 500/- from Nk.ASH Janardhan Modi, Rs 5000/- from Ex Sub & Hony Capt Chandrma Singh, Rs 3000/- from Civ Barber Sarjug Thakur and Rs 3000/- from Civ Messenger Smt. D Pulli, to come out of financial crunch, but there was no question of handing over/mortgaging my identity card to either of the money lender. It was only snatched by Nk/ASH Janardhan Modi on 03 Jun 03, because I was not able to return his money, I thought that within few days I will receive my pay, return his money and get my identity card back, and hence I did not report the matter of snatching my identity card by Nk/ASH Janardhan Modi, to superior auth. Subsequently, it was unfortunate that I became AWL from next day due to reasons given above.*

*47. I was found to be deficient of items for Rs 577.00 (Rupees five hundred seventy seven only) as mentioned in the Kit deficiency list at Appx 'A' to IAFD -931. (Exhibit 'P' produced by PW No. 7).*

*48. The above statement has been read over to me in the language I understand better and sign it as correct in the presence of independent witness."*

In his own statement, he had admitted that he had borrowed money from Janardhan Modi and the fact that he had absented himself without leave for the period mentioned in the instant case.

11. The petitioner had deliberately tried to mislead the Court by stating that probably no Summary of Evidence was held or if it was held it was behind his back. We find not only did he sign the statements given by all the witnesses but he also cross-examined the witnesses and gave a statement during the recording of Summary of Evidence. Therefore, for him to say that the Summary of Evidence was not held or it was held behind his

back is a deliberate attempt to present a false picture before this Court for which the petitioner deserves an admonishment. We accordingly, admonish the petitioner and ask him to always stick to truth.

12. Documents speak for themselves. It has been established that the testimony of the witnesses in Summary of Evidence clearly established that the petitioner had absented himself without leave and had borrowed money. It is also established by his own statement that a sum of Rs 577/- had been deducted from his pay which shows that items cost of which Rs 577/- were lost by the petitioner. As regards the past punishments, the petitioner once again has attempted to misguide the court by stating that he had been punished only three times and not five times.

13. We find no infirmities in investigation and in Court Martial Proceedings. Also, we take into account the factum of the past records wherein he has been in a short span of nine years punished by five times including a trial by Summary Court Martial. We ask him to always stick to truth. The Summary Court Martial in the instant case was conducted in accordance with law and punishment awarded is just and legal. Accordingly, we dismiss this petition. No order as to costs.

(Lt. Gen. A.M. Verma)  
Member (A)

(Justice Abdul Mateen)  
Member (J)

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