

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

O.A. No. 33 of 2010
Wednesday, the 22nd day of Apr 2015

“Hon’ble Mr. Justice Virendra Kumar DIXIT, Judicial Member
Hon’ble Lt Gen Anand Mohan Verma, Administrative Member”

1. Smt Kalindi Dwivedi
 2. Master Priyam
 3. Ms Swati
 4. Master Satyam
 5. Ms Pallavi
- All resident of Village & Post : Papour
Tehsil : Sakaldiha, Dist : Chandauli
(Minors under guardianship of Applicant No.1)

..... **Applicant**

Versus

1. Chief of the Army Staff, Army HQ, DHQ PO,
New Delhi-110011
2. Commandant-Cum-Chief Records Officer, ASC Centre (S) &
Records, Bangalore
3. Commanding Officer, Adm Battalion, ASC Centre and
College, Bangalore
4. Union of India through Secretary, Ministry of Defence, New
Delhi-110011

....Respondents

**Ld. Counsel appeared
for the applicant**

- **Col Ashok Kumar &
Shri Rohit Kumar
Advocate**

**Ld. Counsel appeared
for the respondents**

- **Shri D K Pandey,
Central Govt. Counsel**

ORDER

“Per Justice Virendra Kumar DIXIT, Judicial Member”

1. This Original Application (O.A.) has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, claiming for the following reliefs:

(a) Dismissal Order dated 26 Mar 2009 (Annexure-A-1 refers) together with all connected documents relied upon may kindly be set-aside.

AND

(b) Also quash the Cryptic rejection order of Chief of the Army Staff dated 04 Nov 2009 (Annexure-A-2 refers) with all the consequential benefits to the applicant.

2. The factual matrix of the case is that the applicant's husband was enrolled in the Army on 27.06.1992 in Army Service Corps. While serving in 5131 ASC Battalion, he was granted leave from 24.01.2008 to 24.02.2008. He did not join the unit after expiry of leave. Accordingly his unit, 5131 ASC Battalion declared him deserter with effect from 25.02.2008. After an absence of 156 days, husband of the applicant surrendered at Adm. Bn., ASC Centre & College, Bangalore on 29th July 2008 at 1110 hours. While his desertion documents were being obtained from 5131 ASC Bn, the husband of the applicant was again granted 32 days of Balance of Annual Leave for the year 2008 from 24.10.2008 to 24.11.2008. Here too, the applicant's husband did not report back after expiry of said leave. However, he voluntarily surrendered at Depot Coy, Adm. Bn. ASC Centre & College on 14.12.2008 at 1100 hours after having been absent for 20 days. Since his unit 5131 ASC Bn was deployed in field, the applicant's husband was tried under the

provisions of AO 7/2000 and Para 381 of Regulations for the Army, 1987 towards finalization of the disciplinary case. On 20.01.2009, hearing of charge in accordance with AR 22 (1) took place and Summary of Evidence was recorded in terms of AR 23(1),(2),(3)&(4). Thereafter, the husband of the applicant was tried by Summary Court Martial on 26.03.2009 for committing an offence under Army Act Section 38 (1) and Army Act Section 39(b). The Court found the accused 'Guilty' on both the charges and awarded the punishment 'To be dismissed from service'. Against the dismissal, the husband of the applicant submitted a Statutory Complaint dated 25 May 2009 to the Chief of the Army Staff but the same was rejected on 04 Nov 2009. Aggrieved by this punishment, the husband of the applicant filed this O.A. on 22.03.2010. However, he died on 22.03.2011 and now his widow Smt. Kalindi Dwivedi is contesting this case.

3. Heard Ld. Counsels for the applicant and Ld. Central Government Counsel at length and perused the relevant documents available on record.

4. Ld. Counsel for the applicant Submitted that the husband of the applicant over stayed the leave due to compelling circumstances and voluntarily rejoined duty on 29.07.2008 as such no charge could be leveled under section 38(1) of the Army Act 1950. Yet a Tentative Charge Sheet was raised leveling the charge under section 38(1) of the Army Act 1950. Based on aforesaid undated 'Tentative Charge Sheet, Appendix 'A' to AO 24/94 was filled in by Colonel P.K. Pundir on 20.01.2009, wherein in column 4,

three Prosecution Witnesses were shown namely Subedar Taga Ram, Havildar R.P. Banerjee and Sepoy A.K. Maity. In Column 8 of the Appendix 'A' to AO 24/94, Major Rahman Hussain and Subedar Bastwad have been shown as Independent Witnesses. Ld. Counsel for the applicant Submitted that once late husband of the applicant had surrendered after overstayal of leave before Major Rahman Hussain and this officer has signed 'Surrender Certificate' at 1110 hours on 29.07.2008, he became an essential prosecution witness and as such he could not be inducted as 'Independent Witness'. Ld. Counsel for the applicant further submitted that based on the impugned investigation a Summary of Evidence was ordered to be recorded wherein the 'Independent Witness' was Subedar (MT) SB Singh, however, later he became the Second Member of the Summary Court Martial which was against the principles of natural justice.

5. Ld. Counsel for the applicant submitted that Major Rahman Hussain who had taken surrender of the husband of the applicant at 1110 hours on 29.07.2008 was misused as 'Independent Witness' in column 8 of Appendix A to AO 24/94 which raises certain questions like 'can this officer testify against his own deposition?', and also as a 'Trozen Horse' by way of thrusting him as the 'Friend of the Accused' to the late husband of the applicant being impermissible in the eyes of law. Major Rahman Hussain, carrying out promulgation of the sentence at 1405 hours on 26.05.2009, (without promulgation verdict of the summary court martial does not reach finality as per paragraph 473 of the Defence Services

Regulations for the Army 1987). Thus Major Rahman Hussain had performed four in one functions in judicial proceedings. Ld. Counsel for the applicant further submitted that on page 'B' of the Summary Court Martial proceedings, the word 'Guilty' has been inserted before both the charges does not bear the signatures of the accused, as such the same is against the law, as well as various judgements on this subject. He submitted that even section 281 of the Cr.P.C. has catered for that the confession of an accused must have signatures so as to lend authenticity to such a confession. He further submitted that the endorsement made on page B of the Summary Court Martial Proceedings that "The accused have pleaded guilty to the said charge(s), the provision of AR-115 (2) are hereby complied with" is against the provisions of note 5 below Rule 111(2) of the Army Rules 1950 read with Rule 121(1) of the Army Rules 1950.

6. Learned counsel for the applicant submitted that late husband of the applicant was entitled to be defended by a counsel of his choice in the Summary Court Martial which was denied, instead a disqualified person was thrust upon as the so called 'Friend of the Accused', who was supposed to be an essential prosecution witness against the applicant based on surrender certificate dated 29.07.2008. Ld. Counsel further submitted that there is nothing on record to show compliance of Rule 34 (1) of the Army Rules 1950.

7. Ld. Counsel for the applicant submitted that dismissal order together with all the connected documents be set aside and the applicant be given all consequential benefits. To put forth his

contention, Ld. Counsel for the applicant has relied upon the law laid down by Hon'ble The Apex Court and judgement of AFT, Principal, New Delhi in the cases of :--

(a) Hon'ble The Apex Court judgement in Capt. Virendra Kumar v. Chief of the Army Staff reported in AIR 1986 SC 1060.

(b) Chairman cum Managing Director, Coal India Limited & Anr v. Mukul Kumar Choudhuri & **Ors** in Civil Appeal Nos. 5762-5763 of 2009, decided on 24 Aug 2009.

(c) Armed Forces Tribunal, Principal Bench, New Delhi in T.A. No. 545 of 2009, Pradeep Kumar Singh v. Chief of the Army Staff decided on 03 Apr 2012 and Signalman Ram Kumar Mourya v. Chief of the Army Staff in T.A. No. 207 of 2009, decided on 04 Jun 2010

8. On the other hand Ld. Counsel for the respondents submitted that the husband of the applicant was granted 32 days Part of Annual leave for the year 2008 from 24.01.2008 to 24.02.2008 but he did not report back to his unit located in Field/Counter Insurgency Operational area. Accordingly the unit declared him deserter with effect from 25.02.2008. After an absence of 156 days, the husband of the applicant voluntarily surrendered at Adm. Bn., ASC Centre & College, Bangalore on 29.07.2008 at 1110 hours. While at Bangalore, he was again granted 32 days Balance of Annual Leave for the year 2008 from 24.10.2008 to 24.11.2008 but he did not report back again after expiry of said leave. He voluntarily surrendered on 14.12.2008 at Depot Coy (MT) Adm Bn, ASC Centre & College, Bangalore after having been absent for 20 days. Since, his unit was located in field area and was involved in Operation Rakshak in J&K, his volunteer surrender was accepted

according to AO 7/2000 and Para 381 of Regulations for the Army 1987 for finalization of disciplinary case. On 20.01.2009, hearing of charge in accordance with Army Rule 22(1) took place. Commanding Officer, Adm. Bn. ASC Centre & College, ordered recording of Summary of Evidence and the same was recorded in terms of Army Rule 23 (1), (2), (3) & (4) by IC-51827Y Lt. Col. Rakesh Kumar in presence of the husband of the applicant and independent witness JC-663496M Subedar/MT SB Singh. While recording the Summary of Evidence, he was given full liberty and adequate time to justify his long absence, but he did not produce any valid document and also declined to give any statement. Thereafter, the applicant was tried by Summary Court Martial at Adm. Bn. ASC Centre & College on 26.03.2009 for committing an offence under Army Act Section 38 (1) and Army Act Section 39 (b) and the applicant after having pleaded "Guilty" to the charges, was awarded the punishment "**To be dismissed from the service**".

9. Ld. Counsel for the respondents submitted that though the husband of the applicant surrendered voluntarily at Bangalore, his long period of absence was a major factor to charge him for desertion under section 38 (1) of the Army Act 1950. Moreover, he absented himself from leave knowing that his unit is located in field area and involved in Operation Rakshak in Jammu & Kashmir. During his service period, the applicant has absented himself number of times. All times he was given minor punishment. However, deserter from a unit which is deployed in field area and involved in operation was a serious offence for which an exemplary punishment was required to be given. After proper enquiry, he was

served Tentative Charge Sheet on 17.12.2008 and the receipt of the same was obtained. The husband of the applicant was informed of every charge before he was arraigned and he did not give name of any witness which he desired to be called in his defence. The interval time was more than ninety six hours between the times of serving of charge sheet and arraignment of accused as required by law as is seen from the date of receipt of tentative charge sheet by the applicant on 17.12.2008 and date of hearing of charge on 20.01.2009. He also submitted that on 18.03.2009, No Objection Certificate in detailing Major Rehman Hussain as friend of the accused was given by the husband of the applicant himself before Summary Court Martial. Since Major Rehman Hussain was custodian of the document, he promulgated the sentence of dismissal.

10. Ld. Counsel for the respondents submitted that the husband of the applicant was a perpetual offender and previously also he has been punished five times and therefore, the punishment awarded for desertion and AWL is fair and just and the Original Application is devoid of merit and be dismissed.

11. We have considered the arguments advanced by Ld. Counsel for the parties and the material available on record. In the instant case the husband of the applicant was enrolled in the Army on 27.06.1992. He was granted leave from 24.01.2008 to 24.02.2008 but did not rejoin duty after expiry of leave. Accordingly, he was declared deserter, but after an absence of 156 days, surrendered voluntarily at Adm. Bn., ASC Centre & College, Bangalore. On his

request, he was again granted 32 days of Balance of Annual Leave for the year 2008 from 24.10.2008 to 24.11.2008 but he did not report back again after expiry of said leave. However, after absence of 20 days, he voluntarily surrendered at Depot Coy, Adm. Bn. ASC Centre & College on 14.12.2008. His unit, 5131 ASC Bn was deployed in field, hence the husband of the applicant was tried under the provisions of AO 7/2000 and Para 381 of Regulations for the Army 1987 by Depot Coy, Adm. Bn. ASC Centre & College. The Summary Court Martial commenced and the husband of the applicant pleaded guilty to the charges and was dismissed from service by a Summary Court Martial on 26.03.2009. Against the dismissal, the husband of the applicant submitted a Statutory Complaint dated 25 May 2009 to the Chief of the Army Staff but the same was rejected on 04 Nov 2009. Following charges were leveled against the husband of the applicant :-

CHARGE I

AA SEC 38 (1)

DESERTING THE SERVICE

In that he,

At field, on 25 Feb 2008, has been granted leave of absence from 24 Feb 2008 to proceed at home, failed without sufficient cause, to rejoin at 213 Transit Camp, on 24 Feb 2008 (AN), on expiry of the said leave till he, voluntarily surrendered at Adm Bn ASC Centre & College, Bangalore-07 on 29 Jul 2008 at 1110 hours.

Total period of absence : 156 days

(from 25 Feb 2008 to 29 Jul 2008)

CHARGE II

ARMY ACT SEC 39 (b) WITHOUT SUFFICIENT CAUSE
OVERSTAYING LEAVE GRANTED TO HIM

In that he,

At Bangalore, on 25 Nov 2008, having been granted leave of absence from 24 Oct 2008 to 24 Nov 2008, to proceed at home, failed without sufficient cause, to rejoin at Depot Coy, Adm Bn, ASC Centre & College, Bangalore, on 24 Nov 2008 (AN), on expiry of the said leave till he, voluntarily reported at Depot Coy, Adm Bn, ASC Centre & College, Bangalore -07 on 14 Dec 2008 at 1800 hours.

*Total period of absence overstaying : 20 days
(from 25 Nov 2008 to 14 Dec 2008)*

12. For Ready reference, policy laid down in Sections 38 (1), 39, 104, 105 and 106 of the Army Act, 1950, law laid down by Hon'ble The Apex Court and Judgement of AFT Principal Bench, New Delhi are as under :-

(a) 38. ***Desertion and aiding desertion***

(1) Any person subject to this Act who deserts or attempts to desert the service shall, on conviction by Court-Martial, if he commits the offence on active service or when under orders for active service, be liable to suffer death or such less punishment as is in this Act mentioned; and if he commits the offence under any other circumstances, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

NOTES :

1. *General*

(a) An offence under Sub-section (1) of this section when on active service or under orders for active service should not be dealt with summarily under Army Act Section 80,83 or 84.

(b) When a superior officer directs the case of an offender against whom a charge for desertion has been preferred to be summarily disposed of, he should order the offence to be disposed of as one of absence without leave. See notes to Army Action Section 39. See general Army Act Sub Section 104 and 105 and Regs for the Army paras 376 to 381,

(c)

2. *Sub Sec. (1) Desertion is distinguished from absence without leave under Army Act Section 39; in that desertion or attempt to desert the service implies an intention on the part of the accused either (a) never to return to the service or (b) to avoid some important military duty (commonly known as constructive desertion) e.g. service in a forward area, embarkation for foreign service or service in aid of the civil power and not merely some routine duty or duty only applicable to the accused like a fire picquet duty. A charge under this section cannot lie unless it appears from the evidence that once or other such intention existed; further, it is sufficient if the intention in (a) above was formed at the time during the period of absence and not necessarily at the time when the accused first absented himself from unit/duty station.*

3. *A person may be deserter although he re-enrols himself, or although in the first instance his absence was legal (e.g. authorised by leave), the criterion being the same, viz, whether the intention required for desertion can properly be inferred from the evidence viz, whether the intention required for desertion can properly be inferred from the evidence available (the surrounding facts and the circumstances of the case).*

4. *Intention to desert may be inferred from a long absence, wearing of disguise, distance from the duty station and the manner of termination of absence, e.g. apprehension but such facts though relevant are only prima facie, and not conclusive, evidence of such intention. Similarly, the fact that an accused has been declared an absentee under Army Act Section 106 is not by itself a deciding factor if other evidence suggest the contrary.*

- (b) 39. **Absence without leave** – *Any person subject to this Act who commits any of the following offences, that is to say –*
- (a) *Absents himself without leave; or*
 - (b) *Without sufficient cause overstays of leave granted to him; or*
 - (c) *Being on leave of absence and having received information from proper authority that any corps, or any department, to which he belongs, has been*

ordered on active service, fails, without sufficient cause, to rejoin without delay; or

- (d) Without sufficient cause fails to appear at the time fixed at the parade or place appointed for exercise or duty; or*
- (e) When on parade, or on the line of march, without sufficient cause or without leave from his superior officer, quits the parade or line of march; or*
- (f) When in camp or garrison or elsewhere, is found beyond any limits fixed, or in place prohibited, by any general, local or other order, without a pass or written leave from his superior officer; or*
- (g) Without leave from his superior officer or without due course, absent himself from any school when duly ordered to attend there, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to three years or such less punishment as is in this Act mentioned.*

*(c) “104. **Arrest by civil authorities.** Whenever any person subject to this Act, who is accused of any offence under this Act, is within the jurisdiction of any Magistrate or Police Officer, such Magistrate or Police Officer shall aid in the apprehension and delivery to Military Custody of such person upon receipt of a written application to that effect signed by his Commanding Officer.*

*(d) “105. **Capture of deserters.** (1) whenever any person subject to this Act deserts, the Commanding Officer of the Corps, department or detachment to which he belongs, shall give written information of the desertion to such civil authorities as , in his opinion, may be able to afford assistance towards the capture of the said deserter in like manner as if he were a person for whose apprehension a warrant had been issued by a Magistrate, and shall deliver the deserter, when apprehended into military custody.*

(2) Any Police Officer may arrest without warrant any person reasonably believed to be subject to this Act and to be a deserter or to be travelling without authority, and shall bring him without delay before the nearest Magistrate to dealt with according to law.”

*(e) “106. **Inquiry into absence without leave.** (1) When any person subject to this Act has been absent from his duty without due authority for a period of 30 days, a Court of Inquiry shall as soon as practicable, be assembled, such Court shall, on oath or affirmation administered in*

the prescribed manner inquire respecting the absence of the person, and the deficiency, if any, in the property of the Government entrusted to his case, or in any arms, ammunition, equipment, instruments, clothing or necessaries; and if satisfied of the fact of such absence without due authority or other sufficient cause, the Court shall declare such absence and the period thereof and the said deficiency, if any, and the Commanding Officer of the Corps or department to which the person belongs shall enter in the Court Martial book of the corps or department a record of the declaration.

(2) If the person declared absent does not afterwards surrender or is not apprehended, he shall, for the purposes of this Act, be deemed to be a deserter.

(f) In the case of **Capt. Virendra Kumar through his wife v. Chief of the Army Staff** reported in **AIR 1986 SC 1060**, in paras 14 and 15 of the judgements, Hon'ble The Apex Court has observed as under :-

"14. As we mentioned earlier, the Army Act makes a pointed distinction between 'Desertion' and 'Absence without leave' simpliciter. 'Absence without leave' may be desertion if accompanied by the necessary 'animus deserendi' or deemed to be desertion if the Court of Inquiry makes the declaration of absence prescribed by S.106 after following the procedure laid down and the person declared absence had neither surrendered nor been arrested.

15. In the present case the Military Authorities appear to have treated the officer as a deserter and did not deem him to be a deserter. The apprehension roll as well as the tentative charge sheet issued to him treats him as a deserter. According to the authorities the officer, when he failed to report as directed, had no intention of rejoining duty, in other words he had the necessary 'animus deserendi'. This is what is said in the counter-affidavit :

" When he failed to report at his new unit also, the army authorities were left with no choice but to issue an apprehension roll for his arrest since by now it was clear to the Army Authorities that Captain Virendra Kumar was not only absent without leave but had no intention to join duty for which he was ordered and thus it was a clear case of desertion".

If the authorities thought that the officer who was absent without leave had even then no intention of coming back to duty, then

there was no question of observing the procedural requirements of S.106 and then deeming him to be a deserter.”

(g) In the case of **Chairman cum Managing Director, Coal India Limited & Anr v. Mukul Kumar Choudhuri & Ors** in Civil Appeal Nos. 5762-5763 of 2009, decided on 24 Aug 2009, in para 26 of the judgement, Hon'ble The Apex Court has observed as under :-

“26. The doctrine of proportionality is, thus, well recognized concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review. One of the tests to be applied while dealing with the question of quantum of punishment would be : would any reasonable employer have imposed such punishment in like circumstances?. Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment. In a case like the present one where the misconduct of delinquent was unauthorized absence from duty for six months but upon being charged of such misconduct, he fairly admitted his guilt and explained the reasons for his absence by stating that he did not have any intention nor desired to disobey the order of higher authority or violate any of the Company's Rules and Regulations but the reasons was purely personal and beyond his control and, as a matter of fact, he sent his resignation which was not accepted, the order of removal cannot be held to be justified, since in our judgement, no reasonable employer would have imposed extreme punishment of removal in like circumstances. The punishment is not only unduly harsh but grossly in excess to the allegations. Ordinarily, we would have sent the matter back to the appropriate authority for reconsideration on the question of punishment but in the facts and circumstances of the present case, this exercise may not be proper. In our view, the demand of justice would be met if the Respondent No. 1 is denied back wages for the entire period by

way of punishment for the proved misconduct of unauthorized absence for six months.”

(h) In the case of **Pradeep Kumar Singh v. Chief of the Army Staff** in **T.A. No. 545 of 2009, decided on 03 Apr 2012**, in para 9 of the judgement, Armed Forces Tribunal, Principal Bench, New Delhi, has observed as under :-

“9. In the present case as we have discussed above, the petitioner had a serious problem at the house and, therefore, that forced him to remain absent for some time but he reported back and he was shuttling from one place to another and ultimately he was accepted by the ASC Centre (North) on 25.5.2006 and they ordered for the SCM u/s 38 of the Army Act, 1950. If the authorities, would have properly looked into the case matter then they would have realized that this is a case of over staying of leave rather than desertion. If the petitioner had intended to desert perhaps he would not have reported at all. Therefore, we convert the conviction of the petitioner from Section 38 to Section 39 and reduce the sentence of the petitioner from dismissal from service to reduction to ranks.”

(i) In the case of **Signalman Ram Kumar Mourya v. Chief of the Army Staff** in **T.A. No. 207 of 2009, decided on 04 Jun 2010**, in para 6 of the judgement, Armed Forces Tribunal, Principal Bench, New Delhi, has observed as under :-

“6. Keeping in view the contending view points, what was apparent was the disproportionality of the sentence. Ranjit Thakur v. Union of India reported in (1987) 4 SCC 611 is a similarly placed case wherein the Apex Court had observed that the punishment meted out to the petitioner is strikingly disproportionate and necessitated judicial interference. Consequently, for this reason the appeal is allowed and the Summary Court Martial proceedings, including sentence, are set aside. The petitioner shall be deemed to be in service till the date he reaches pensionable service after which he will be entitled to pension as per law. No order on back wages.

13. In view of the pleadings of both sides, facts and circumstances of the case, policy and law cited above, we have to consider a short question before us for adjudication is that whether

offence under Section 38(1) of the Army Act, 1950 is made out on husband of the applicant as he was absent without leave and surrendered voluntarily and was not a deserter. In this case our attention was invited to note appended to Section 38 of the Army Act, 1950 which elaborates the scope of Section 38 of the Army Act, 1950 for the purposes of administrative convenience which clearly says that intention has to be seen with reference to the evidence laid by the delinquent and the emphasis is on what was the intention of the delinquent. The cases of desertion where a person absent willfully doesn't report back and in such cases detailed procedure is prescribed in the regulations that the incumbent is notified and then police is intimated and other necessary steps are sought to be taken to apprehend the person and bring him before authorities. But when a person reports back, it may be after overstaying leave or after voluntarily leave, then in such cases the proper procedure is to try him by SCM under Section 39 of the Army Act, 1950 rather than under section 38 of the Army Act 1950.

16. In the case of **Chairman cum Managing Director, Coal India Limited & Anr v. Mukul Kumar Choudhuri & Ors (supra)**, Hon'ble The Apex Court has observed that award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review. In the instant case the punishment meted out to applicant's husband was grossly disproportionate to the offence committed by him and necessitated judicial interference.

Accordingly, in view of the facts and circumstances of the case, we are of the considered view and to meet the ends of justice, it would be appropriate to set aside the punishment of dismissal awarded under Sections 39 (b) of the Army Act, 1950

19. In view of the above, we are of the considered view that the punishment of dismissal from service was unjust, illegal and was not in conformity with rules, regulations and law. The punishment of dismissal awarded by Summary Court Martial deserves to be set aside and to meet the end of justice, it would be appropriate to discharge the applicant in the reduced rank. The husband of the Applicant shall be treated as discharged from service on 26.03.2011, date of dismissal, with service pension and other terminal benefits as per rule. Since the husband of the applicant Ex. L/NK K. K. Dwivedi has died on 22 Mar 2011, the applicant shall be entitled for family pension from the date of death of her husband.

20. Thus in the result, the O.A. succeeds and is allowed. The impugned order of dismissal by Summary Court Martial is set aside. The husband of the applicant shall be treated as discharged from service from the date of dismissal, with service pension and other terminal benefits as per rules. Since the husband of the applicant, has died on 23 Feb 2010; the applicant shall be entitled for family pension from the date of death of her husband. The Respondents are directed to pay service pension and other terminal benefits from the date of dismissal of the husband of the applicant, thereafter, family pension to the applicant as per Pension Regulation for the Army, 1961 within four months from the date of production of a

certified copy of this order. In case the order is not complied within the aforesaid period, the applicant shall also be entitled to 9% interest on arrears of payment till the date of actual payment.

21. However, in view of the facts and circumstances of the case the above order passed by us shall not be treated as precedence in any other case.

22. No order as to costs.

(Lt Gen Anand Mohan Verma)
Administrative Member

(Justice Virendra Kumar DIXIT)
Judicial Member

Date : Apr ,2015