

## ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

**RESERVED**  
(Court No. 3)**Transferred Application No. 119 of 2010**Friday the 24<sup>th</sup> day of April, 2015**“Hon’ble Mr. Justice Abdul Mateen, Member (J)  
Hon’ble Lt. Gen. A.M. Verma, Member (A)”**No. 14821915-Ex Sepoy Ravindra Kumar, son of Shri Nand Lal Prasad,  
Ex-530 ASC Battalion, No. BH-II/216, T.B. Sapru Hospital, Allahabad.

..... Applicant.

By Shri R. Chandra, counsel for the applicant.

Versus

1. The Chief of Army Staff through OIC Legal Cell (Army), MH Compound, Allahabad.
2. Commandant-cum-CRO, ASC Centre(S) and Records through Commanding Officer, 503 ASC Battalion, C/o 56 APO.
3. Chief Controller of Defence Accounts(P), Draupadi Ghat, Allahabad.

..... Respondents.

By Shri Bhanu Pratap Singh Chauhan along with Capt. Ridhishri Sharma,  
Departmental Representative.**ORDER**

1. This Transferred Application has been filed by the petitioner seeking the following reliefs :

*“(i) issue a writ, order or direction to Respondent no. 1 to examine in detail the WOES of the petitioner brought out in Annexure-2 filed with this writ petition keeping in view the*

*laws reported on this subject and treat the petitioner as having continued in service.*

*(ii) issue a writ of certiorari, summoning the records of SCM and all its connected documents anterior to SCM and posterior to the verdict and quash the same with all the consequential benefits to the petitioner.*

*(III) issue any other writ, order or direction considered expedient and in the interest of justice and equity.*

*(IV) To award cost.”*

2. The facts of the case, in brief, are that the petitioner was enrolled in the Indian Army on 22.12.1994. On 12.11.1999 he was tried under Section 39(b) of the Army Act by SCM for overstaying leave by 95 days and was dismissed from service. He then sent a petition before the COAS under Section 164 of the Army Act. However, since this petition was not responded to by the respondent, he filed Writ Petition No. 23407 of 2000 before the Hon'ble Allahabad High Court, in which the Hon'ble High Court, while disposing of the writ petition, directed the respondents to decide the petition as expeditiously as possible, preferably within a period of two months from the date of production of a certified copy of the order. Thereafter the COAS passed his order dated 20.9.2000 rejecting the petition of the petitioner. The petitioner, aggrieved against the aforesaid order dated 20.9.2000, passed by the COAS, again filed Writ Petition No. 15639 of 2001 before the Hon'ble Allahabad High Court and ultimately this petition has been transferred before this Tribunal by the Hon'ble Allahabad High Court, vide order dated 15.3.2010, and registered as Transferred Application No. 119 of 2010.

3. Shri R. Chandra, learned counsel for the petitioner, has argued the case of the petitioner. The petitioner was granted leave from 1.5.1999 to 3.6.1999. During the leave period, according to the petitioner, his son, aged about 2 years, died on 20.5.1999. The petitioner sent a communication to his Unit for extension of leave, on which no action was taken by the respondents. The petitioner claims that he reported to 258 Transit Camp at New Delhi and he was allowed to travel from New Delhi to Leh by a chartered Indian Air Lines Flight after 20 days. On reaching Leh he reported to the Unit where he was kept for 8 days and thereafter he was sent back to Chandigarh under his own arrangement. Thereafter he went to ASC Centre Bangalore where he reported on 5.11.1999. The petitioner claims that since he had reported in time in the Transit Camp the charge under Section 39(b) of the Army Act is bad in law. The petitioner stated that at Bangalore he spent 20 days at the Railway Station and visited Centre each day. Thereafter he was finally allowed to rejoin only on 5.11.1999.

4. According to the petitioner, Rule 22 of the Army Rules was not complied with and Summary of Evidence was in English language which he does not understand. The charge states that he overstayed leave without sufficient cause, whereas the overstay was due to the death of his son, which is sufficient cause and, therefore, the charge is bad in law. He was made to shunt from Leh to Bangalore at his own cost. He further claims that the officers attending the trial were serving under the Commanding Officer and, therefore, could not have been impartial. The Friend of the Accused

provided to the petitioner, according to him, had no law degree and, therefore, could not render any legal assistance. The Trial was held from 1030 hours to 1130 hours during which only documentation was done and no prosecution witness or defence witness were examined. The petitioner also claims that no medical fitness record, prior to the SCM, is available. The petitioner in the rejoinder affidavit makes frivolous allegations against the top echelons of Northern Command and HQ 121 Brigade.

5. Shri Bhanu Pratap Singh Chauhan dully assisted by Capt. Ridhishri Sharma, Deptntmental Representative, argued the case of the respondents. According to the respondents the petitioner had 4 years, 10 months and 7 days of service till 5.11.1999. He was granted 34 days' leave till 3.6.1999. Without sufficient cause the petitioner overstayed leave knowing fully well that the Unit was heavily engaged in OP Vijay and the service of the petitioner was urgently required. After absence of 30 days the petitioner was declared 'deserter'. The respondents state that after 56 days the petitioner went to Leh and instead of rejoining the Unit he left for home when he learnt that the Unit, at that time, was heavily committed in OP Vijay. The petitioner surrendered at ASC Centre Bangalore after absence of 95 days. The respondents also pointed out that in the short span of 4 years, 10 months and 7 days the petitioner had been tried earlier too for an offence under Section 39(b) of the Army Act and had been awarded punishment of 28 days' R.I.

6. The respondents further stated that the petitioner had availed his full quota of leave for 1998 and also had availed part of annual leave for 1999 in 1998 itself. In 1999 he had no leave left which could be granted to him.

7. According to official records, the petitioner's next of kin is his father, which indicates that the petitioner was either not married or no Part II order of his marriage and son was published. The Air Line ticket, produced by the petitioner, is no proof that he had boarded the flight or someone else had boarded the flight as spelling of the name in the flight ticket is different to that of the petitioner. The absence from the Unit when the Unit was actively engaged in operations is tantamount to desertion from operational area.

8. It has further been argued by learned counsel for the respondents that Rule 22 of the Army Rules was fully complied with and the SCM was in accordance with the laid down provisions of law. The punishment awarded to the petitioner is just and legal in view of the seriousness of the offence.

9. Heard both the sides and examined the documents.

10. The remarks made by the petitioner in his rejoinder affidavit about Northern Command and 121 Brigade are in bad test and we advise the petitioner to desist from such tendencies.

11. Admittedly, the petitioner was enrolled on 22.12.1994. He was granted leave till 3.6.1999 and on termination of the leave period he did not join the Unit and instead surrendered at ASC Centre, Bangalore, on 5.11.1999. Also there is no Part II order of marriage or son. The petitioner has produced a certificate from the Village Panchayat, according to which

his son was born on 5.6.1998 and died on 20.5.1999, which means that at the time of his death the child was less than one year old. According to the Marriage Invitation Card the marriage took place on 25.12.2011. Here we find that the petitioner has produced one more death certificate, given by Dr. Ashok Kumar, dated 20.5.1999, according to which the child died on 20.5.1999. In this death certificate the age of the child has been mentioned as 4 years. In the Summary of Evidence the petitioner in his statement stated that his son aged 3 years had died on 20.5.1999 which compelled him to overstay leave. In the application, the petitioner has mentioned that his son aged about 2 years died on 20.5.1999. We, thus, find that there are glaring inconsistencies on the issue of age of his son and we are inclined to believe that the cause for overstay, given by the petitioner, is not valid and we, accordingly, reject this contention.

12. The original proceedings of the SCM show that Rule 22 of the Army Rules was complied with and the charge was heard on 26.10.1999, Summary of Evidence was recorded in accordance with the provisions of law and in the SCM proceedings we find no infirmity. The petitioner pleaded guilty and the provisions of Rule 115(2) of the Army Rules were complied with and the petitioner's signatures were obtained. The Summary of Evidence was read out and thereafter the petitioner was dismissed from service by the Court. There is also a memorandum in terms of Army Order 309 of 1973 by the CO attached with the SCM proceedings in which the CO has stated that in a short span of 4 years and 10 months the petitioner

committed two offences under Section 39(b) of the Army Act, the first one being in June 1998 for which he was awarded 28 days' RI. The CO further says that in the instant case the petitioner had overstayed leave from field/CI Operations in order to avoid active participation in the operations area knowing fully well that the Unit is heavily committed and, therefore, he could not be retained in the Army since it would amount to excusing a traitor. The CO stated that he felt it necessary to award an exemplary punishment.

13. As regards Indian Air Lines ticket, this ticket is in the name of Rabinder Kumar for a travel from New Delhi to Leh on 29.7.1999. We find that the name of the petitioner is Ravindra Kumar in all his documents and, thus, there is difference in spelling of his name in the Air Lines Ticket. On reverse of this ticket in Pen is inscribed "Hav/N.A. R.K. Singh" and thereafter "M.I.R." then "HQ 20 RR C/o 56 APO". Scrutiny of this ticket raises a doubt about the authenticity of this ticket for travel by the petitioner from New Delhi to Leh. Also, if the petitioner did report to 258 Transit Camp as he claims then he would be on the strength of the Army and the Unit which we find is not the case. He claims that he had to wait at the Transit Camp for 20 days, which means that he would have reported to the Transit Camp on 9.7.1999 or thereabouts. There is no mention of this date in the petition of the petitioner. Hence the authenticity and correctness of this statement too is in doubt. Yet the respondents have stated that the petitioner did come to Leh but did not report to the Unit. The petitioner

claims that he was in the Unit whereas the respondents say that he never reported to the Unit. We are of the view that the petitioner's statement with regard to his travel to Leh and staying in the Unit for 8 days lacks credibility. We are inclined to believe that the petitioner did not join the Unit since the Unit was heavily committed in operations. It may be recalled that during that period, i.e. from May to July 1999, Indian Armed Forces, particularly the Army, was heavily engaged in combat in Ladhak Sector where enemy troops were driven back from all the mountain peaks they had occupied. The petitioner's Unit too was contributing to this war effort by the Indian Army and hence services of the petitioner were urgently needed. By avoiding this service, the petitioner indeed had avoided active operations which can be said to be an act of cowardice.

14. The Army is a well disciplined organization which demands total commitment from its soldiers. Training and peacetime activities are aimed at ensuring victory in war in which each man in army uniform contributes. We are of the view that the petitioner failed to live up to this expectation and deliberately avoided active combat for which he was justly and legally awarded punishment of dismissal from service. Accordingly, this Transferred Application is dismissed being devoid of merit. No order as to costs.

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

(Justice Abdul Mateen)  
Member (J)