

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Court No 3
JUDGMENT RESERVED

Transferred Application No. 924 of 2010

Wednesday the 22nd day of April, 2015

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

Shinde S.M. (Ex. No. 15668311 W OCCC-III Signalman) S/o Shri Shinde M.P., aged about 32 years R/o Village and Post Sap, Tah. Koregaon, Distt. Satara (Maharashtra).

..... Applicant.

By R. Chandra, Counsel for the Applicant.

Versus

1. Union of India through the Secretary Ministry of Defence, Govt. of India, New Delhi.
2. The Chief of Army Staff, Army Headquarters, DHQ Post Office, New Delhi.
3. The General Officer Commanding -in-Chief, Central Command, Lucknow (U.P.).
4. The Officer Incharge, Signal Records, Jabalpur Cantt., Jabalpur (M.P.)
5. The Commanding Officer, 8 Mountain Division, Signal Regiment, C/o 56 APO.
6. The Commanding Officer, Depot regiment, Corps of Signal, Jabalpur Cantt., Jabalpur (M.P.)

..... Respondents.

By Shri Ratnesh Lal, counsel for the respondents, along with Capt. Ridhishri Sharma, Departmental Representative.

ORDER

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

“(I) A writ, order or direction in the nature of certiorari quashing the proceedings of the summary court martial held by respondent No.6 on 30/7/2004 (Annexure-P/2) and the order issued by respondent No.3 rejecting the appeal submitted by the petitioner, copy of which has not been supplied to the petitioner.

(II) A writ, order or direction in the nature of mandamus thereby directing the respondents to reinstate the petitioner in service w.e.f. 30/7/2004 with all consequential benefits including the salary, continuity of service and other consequential benefits.

(III) any other appropriate writ, order or direction which the Hon’ble court may deem just and proper in the nature and circumstances of the case including the cost of petition.”

2. The facts of the case, in brief, are that the petitioner was enrolled in the Army in Corps of Signal on 01.11.1997 and in the year 2001 he was posted to 8 Mountain Division Signal

Regiment, C/O 56 APO. The petitioner was granted one month annual leave wef. 07.4.2001 to 10.05.2001 and he failed to report to the unit on 11.05.2001 after expiry of aforesaid leave period but surrendered voluntarily to Depot Regt (Corps of Signals) on 13.08.2003 at 1330hrs having absented himself for more than 2 years. He was again granted leave wef. 26.10.2003 to 31.10.2003 and again failed to report on 01.11.2003 after expiry of the leave and surrendered voluntarily to Depot Regt (Corps of Signals) on 26.11.2003 after absenting himself for 26 days without sufficient cause while serving in active service, The petitioner was tried by Summary Court Martial on 30.07.2004 on two charges leveled against him, which are as follows :

"First Charge DESERTING THE SERVICE
Army Act
Sect 38(1)

in that he,

at Field on active service on 11 May 2001 at 0001h having been granted leave of absence from 07 Apr 2001 to 10 May 2001 to proceed to his home, failed without sufficient cause to rejoin his unit (i.e 8 Mtn Div Sig Regt, c/o 56 APO) at 0001h on 11 May 2001 on expiry of said leave till surrendered voluntarily to Depot Regt (Corps of Signals) on 13 Aug 2003 at 1330 hrs.

Second Charge
Army Act
Sect 39(b)

WITHOUT SUFFICIENT CAUSE VERSTAYING
LEAVE GRANTED TO HIM

in that he,

at Jabalpur on 01 Nov 2003 at 0001h having been granted leave of absence from 26 Oct 2003 to 31 Oct 2003 to proceed to his home, failed without sufficient cause to rejoin his unit (i.e. Depot Regt (Corps of Signals) at 0001h on 01 Nov 2003 on expiry of said leave till surrendered voluntarily to Depot Regt (Corps of Signals) on 26 Nov 2003 at 1800hrs.”

3. The Court found him guilty on the above mentioned two charges leveled against him and he was dismissed from his service.

4. The petitioner has challenged the Court Martial proceeding and prayed for quashing of punishment order awarded to him on 30.07.2004. The grounds raised by Learned Counsel for the Applicant are that:-

(i) The Commanding Officer who conducted the SCM Proceedings was not the Competent Authority to conduct the SCM Proceedings since he was the Commanding Officer of the Depot Regiment, Signal Centre, Jabalpur where applicant was attached after voluntarily surrendering and was not the Commanding Officer of the Unit to which he belonged.

(ii) While the applicant was on sanctioned leave from 07.4.2001 to 10.05.2001 at his home, there was some property dispute with neighbors which led to mental tension and stress and due to this he had not reported on 11.05.2001 and absented himself for 2 years from active service and thereafter he had surrendered voluntarily on 13.08.2003. Again the petitioner was granted leave by competent authority from 26.10.2003 to 31.10.2003 and he again reported back voluntarily on 26.11.2003 after absenting himself for 26 days due to his mental illness, hence charges leveled against him of desertion could not be made.

(iii) The petitioner was denied opportunity to defend himself during Court Martial Proceedings and he was not allowed to represent his case properly.

(iv) The attachment order was not done as per provisions mentioned in Army Order 7 of 2000 which requires to be issued by the Formation Headquarters ie. Headquarters 8 Mountain Division as such Court Martial Proceeding initiated against the petitioner be quashed. Likewise, petition of the petitioner which was rejected under section 164 of the Army Act 1950 by GOC-in-C,

Central Command on 06 February 2008 also be quashed since copy of the said order has not been served on him.

5. On the contrary, Shri Ratnesh Lal and Capt Ridhishri Sharma submitted that no doubt the applicant surrendered voluntarily but he willfully remained absent from Counter Insurgency Operational areas and therefore charge-sheeted under section 38(1) of Army Act was correct and sustainable. Attachment order was issued properly by General Officer Commanding, 8 Mountain Division and sufficient opportunity was also provided to him to defend his case. It is also pointed out that the Rejoinder Affidavit was not solemnly affirmed and oathed; rather the Rejoinder Affidavit was filed by counsel for the applicant. In any case it comes out that the accused applicant was granted sanctioned leave from 7.4.2001 to 10.05.2001 . He therefore deserted and surrendered after absence of more than 2 years. Likewise, again leave granted to him was from 26 October 2003 to 31 October 2003 and again he surrendered voluntarily on 26.11.2003 after absenting himself for about 26 days. It is also on record that he was punished on an earlier occasion too under section 39(a) which shows that the applicant is a habitual offender and property dispute cannot be said to be the main reasons for an Army

Men who was going to report back on duty within time to absent himself. Even for the absence there is no evidence on record about the property dispute and no other valid reason for his prolonged absence which has been put forward by the counsel for the petitioner. As such argument for quashing the SCM Proceeding and order dated 30.7.2004 made by the petitioner has no weight in the eyes of law.

6. We have gone through the pleadings of the parties. Counter and Rejoinder Affidavit have been exchanged between the parties and Annexures therein relating to Summary Court Martial Proceedings.

7. Heard respective parties and we also have gone through the Annexure R-III of the Counter Affidavit and find that the attachment order ordered by the General Officer Commanding, 8 Mountain Division to Depot Regiment (Corps of Signal), Jabalpur on 22 August 2003 through the Commanding Officer of the 8 Mountain Division Signal Regiment is legally valid. Accordingly, Commanding Officer Depot Regiment Signal Centre, Jabalpur is entitled to try the accused by Summary Court Martial. We also find the applicant guilty as he was provided all opportunity to defend his case. The SCM was conducted in accordance with the provision of law. We find no

infirmity in the proceedings. The applicant has failed to provide valid reason for his long absence.

8. In view of the above, we are of the view that the applicant is willful and habitual offender and rightly punishment was awarded by the competent authority and we find no infirmity therein. The petition being devoid of merits and lack of substance, we, accordingly, dismiss the Transfer Application No. 924 of 2010.

9. No order however as to costs.

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

(Justice Abdul Mateen)
Member (J)

rpm.