

**RESERVED**  
**Court No.1**

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

**Transferred Application No. 1091 of 2010**

Tuesday, this the 10<sup>th</sup> day of January 2017

**Hon'ble Mr. Justice D.P. Singh, Member (J)**  
**Hon'ble Air Marshal Anil Chopra, Member (A)**

No 15462440W Ex ALD Shiv Bahadur Singh (18 CAV/Armoured Corps) S/O Shri Tilak Dev Singh vill & PO: Dhaturi Tola District-Balia.

.....Petitioner

Ld. Counsel for the : **Col (Retd) Ashok Kumar, Advocate**  
Petitioner

Versus

1. Chief of the Army Staff, New Delhi.
2. Commandant-cum-CRO Armoured Corps Regiment Centre and Records, Ahmednagar.
3. IC 38407A Col Jaideep Singh, CO 18, Cavalry, C/O 56 APO.
4. IC 47274W Maj B.S. Handa, 18 Cavalry, C/O 56 APO.
5. IC 50126W Maj S.A. Kalekar, 18 Cavalry, C/O 56 APO.
6. SS 37601 H Capt D Ghosh, 18 Cavalry, C/O 56 APO

...Respondents

Ld. Counsel for the : **Shri D.K. Pandey, Central**  
Respondents. **Govt Counsel assisted by**  
**Maj Soma John, OIC, Legal Cell.**

**ORDER****“Per Air Marshal Anil Chopra, Member (A)”**

1. Being aggrieved with the impugned order of rigorous imprisonment for one month in civil prison and dismissal from service by the Summary Court Martial (SCM) dated 13.10.2001 the petitioner preferred Writ Petition No 30671 of 2002 in the High Court of Judicature at Allahabad. On establishment of this Tribunal the petition has been transferred to this Tribunal under Section 34 of the Armed Forces Tribunal Act, 2007 and re-numbered as T.A. No. 1091 of 2010.

2. We have heard Col (Retd) Ashok Kumar, Ld. Counsel for the petitioner and Shri D.K. Pandey, Ld. Counsel for the respondents assisted by Maj Soma John, OIC Legal Cell and perused the records.

3. In brevity, the facts of the case are that the petitioner was enrolled in the Indian Army on 28.06.1993 in the Armoured Corps. After due training the petitioner was posted as Sepoy in 18 Cavalry in Western Sector and was subsequently inducted in 14 Rashtriya Rifles (RR) located in Jammu and Kashmir (J&K). While serving in 14 RR in J&K the petitioner was punished under Section 63 of the Army Act, 1950 for visiting area 'out of bound' and not keeping good order and discipline. Again in the year 1999 while the petitioner was posted as guard duty on ammunition dump, one round of ammunition was found deficient for which punishment of 20 days in military custody and 14 days pay fine was inflicted upon the petitioner. Similarly, while being

attached to 512 ASC Bn, the petitioner was inflicted with punishment under Section 40 of the Army Act, 1950 for using insubordinate language to his superior officer.

4. So far as facts of the case on hand are concerned, tentative charge sheet dated 03.10.2001 was drawn against the petitioner.

5. A summary of evidence was recorded, copy of which has been filed as Annexure A-2 to the supplementary affidavit. Subsequently additional summary of evidence was ordered to be recorded wherein five prosecution witnesses were produced. Copy of the additional summary of evidence has been filed as Annexure SA-3 to the supplementary affidavit. Based on the additional summary of evidence, charge sheet dated 08.10.2001 was drawn and served upon the petitioner on 08.10.2001 itself containing the following charges:

First Charge  
Army Act  
Sec 39(a)

ABSENTING HIMSELF WITHOUT LEAVE

In that he,

At approximately 0830 hrs on 02 Oct 2011 absented himself without leave from the unit lines from 0830 hrs to 1445 hrs till apprehended by Military Hospital, Jodhpur.

Total period of absence: approximately 06 hours

Second Charge  
Army Act\_  
Sec 63

AN ACT PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE

in that he,

At approximately 1445 hrs on 02 October 2001 was found at Military Hospital Jodhpur in improper possession of a bicycle, the property of the Regiment, issued to No. 1079981K Lance Dafadar Arvind Singh, Officiating Regimental Transport NCO.

Third Charge  
Army Act  
Sec 63

AN ACT PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE

in that he,

at approximately 1340 hrs on 02 October, 2001 entered the family ward of Military Hospital, Jodhpur without valid reason and caused a disturbance in the ward.

Fourth charge  
Army Act  
Sec 48

INTOXICATION

in that he,  
at approximately 1445 hrs on 02 October 01 was found intoxicated at MH Jodhpur.

6. SCM proceedings proceeded against the petitioner on 13.10.2001 which, as per averments of the petitioner, were started at 1230 hrs and concluded at 1415 hrs whereby impugned order of imprisonment and dismissal from service (supra) were slapped on the petitioner.

7. Feeling aggrieved the petitioner preferred Writ Petition No 9960 of 2001 in the High Court of Judicature at Allahabad. It seems that in compliance of orders passed in said Writ Petition the petitioner was provided with the requisite documents enabling him to prefer statutory complaint under Section 164 of the Army Act, 1950 before Chief of the Army Staff. Consequently the petitioner filed statutory complaint dated 31.05.2002 running in 13 pages along with relevant documents. It appears that since the statutory complaint (supra) preferred by the petitioner was kept pending without being disposed of, the petitioner preferred Writ Petition No 30671 of 2002 which has been transferred to this Tribunal. During pendency of the petition, Chief of the Army Staff by order dated 06.01.2003 rejected the statutory complaint of the petitioner.

8. The petitioner moved amendment application which was allowed by this Tribunal on 08.08.2012 and while deleting prayer (i), incorporated the following prayer:

“Issue a writ, order or direction in the nature of certiorari summoning the records of the impugned summary

court martial, illegal documented in a matter of 1 hour 45 minutes (between 1230H to 1415H) on 13 October 2001 and quashing the same including its end result, as well as quash the cryptic rejection order of the respondent no. 1 dated 06 Jan 2003, with all the consequential benefits to the petitioner.”

Substantial prayer (ii) as originally made in the petition requires mention, to quote:

“(ii) issue a writ, order or direction in the nature of Mandamus commanding the respondents to refund the Contributory Dues of the petitioner within a period of not exceeding 15 days”.

9. Apposite to mention that since the petitioner has not challenged the summary of evidence, additional summary of evidence and summary court martial bringing on the record of the petition necessary pleadings, and has simply filed a supplementary affidavit, we need not go into the merits of the pleadings.

10. However, Ld. Counsel for the petitioner strenuously argued that Statutory Complaint preferred by the petitioner has been rejected by Chief of the Army by a cryptic order.

11. The plain reading of the impugned order shows that the ground of challenge was not considered by the authority while deciding the statutory complaint. For convenience sake, order dated 06.01.2003 of Chief of the Army Staff is reproduced below:

“ORDERS OF THE CHIEF OF THE ARMY STAFF ON  
THE PETITION DATED 31 MAY 2002 SUBMITTED BY  
NO 15462440W EX ALD SHIV BAHADUR SINGH OF 18  
CAVALRY

1. *In exercise of the powers conferred on me vide Army Act Section 164 (2), I have examined the petition dated 31 May 2002 submitted by No 15462440W ex ALD Shiv Bahadur Singh of 18 CAVALRY against the findings and sentence of Summary Court Martial, in the light of the proceedings of the said court martial and available documents on record.*

2. *The petitioner was arraigned on four charges, first charge under Army Act Section 39 (a) for, "ABSENTING HIMSELF WITHOUT LEAVE", second and third charges under Army Act Section 63 for, 'AN ACT PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE'. And fourth charge under Army Act Section 48 for 'INTOXICATION'. The particulars of the first charge averred that, 'he at approximately 0830 hours on 02 October 2001, absented himself without leave from the unit lines from 0830 hours to 1445 hours till apprehended at Military Hospital Jodhpur. The particulars of the second charge averred that, 'he at approximately 1445 hours on 02 October 2001 was found at Military Jodhpur in improper possession of a bicycle, the property of the Regiment, issued to No 1079981L Lance Dafadar Arvind Singh, Officiating Regimental Transport NCO'. The third charge averred that, 'he at approximately 1340 hours on 02 October 2001 entered the family ward of Military Hospital Jodhpur without valid reason and caused a disturbance in the ward'. The particulars of the fourth charge averred that, 'he approximately at 1445 hours on 02 October 2001, was found intoxicated at Military Hospital Jodhpur'. The accused pleaded 'Guilty' to all the charges. After due compliance of provisions of Army Rule 115 (2) and 2A the court found him accordingly and sentenced him 'to suffer one month rigorous imprisonment in civil prison and to be dismissed from the service'.*

3. *The contentions of the petitioner are baseless and are devoid of merit and substance. The findings of the court are based on cogent and reliable evidence on record, which inspires confidence. The sentence is commensurate with the gravity of the offence for which he stands convicted.*

4. *I, therefore, reject the petition.*

*Signed at New Delhi on this Sixth day of January 2003.*

*Sd/- x x  
(NC Vij)  
General  
Chief of the Army Staff"*

12. It is trite law that whether it is quasi judicial or administrative order, it should be reasoned and speaking one. The order of Chief of the Army Staff dated 06.01.2003 is an unreasoned and has been passed without application of mind. While rejecting the statutory complaint, he failed to reply certain points which are obligatory to clarify as to how the grounds raised by the petitioner are not sustainable. The impugned order is unreasonable and non-speaking and seems to suffer from vice of arbitrariness. In case order is not reasoned and speaking, it is hit by Article 14 of Constitution of India. The cryptic order affecting the right of citizen shall be violative of principles of natural justice and the appellate authority or Tribunal shall not be able to understand the ground during course of judicial review.

13. Proposition of law is well settled that every order passed by judicial or quasi judicial or administrative authority, must be speaking and reasoned vide, ***K.R. Deb Vs. The Collector of Central Excise, Shillong***, AIR 1971 SC 1447; ***State of Assam & Anr. Vs. J.N. Roy Biswas***, AIR 1975 SC 2277; ***State of Punjab Vs. Kashmir Singh***, 1997 SCC (L&C) 88; ***Union of India & Ors. Vs. P. Thayagarajan***, AIR 1999 SC 449; and ***Union of India Vs.***

**K.D. Pandey & Anr.**, (2002) 10 SCC 471, **Assistant Commissioner, Commercial, Tax Department, Works, Contract and Leasing, Quota Vs. Shukla and brothers**, (JT 2010 (4) SC 35, **CCT Vs. Shukla and Brothers** 2010 (4) SCC 785.

14. In the case of **Shukla and Brothers** (supra), their Lordships held that the reason is the very life of law. When the reason of a law once ceases, the law itself generally ceases. Such is the significance of reasoning in any rule of law. Giving reasons furthers the cause of justice as well as avoids uncertainty, to quote :-

*“Reasons are the soul of orders. Non-recording of reasons could lead to dual infirmities; firstly, it may cause prejudice to the affected party and secondly, more particularly, hamper the proper administration of justice. These principles are not only applicable to administrative or executive actions, but they apply with equal force and, in fact, with a greater degree of precision to judicial pronouncements”. The concept of reasoned judgment has become an indispensable part of the basic rule of law and, in fact, is a mandatory requirement of the procedural law”.*

15. In another case, reported in **JT (12010) (4) SC 35: Assistant Commissioner, Commercial, Tax Department, Works, Contract and Leasing, Quota. Vs. Shukla and Brothers** their lordships of Hon'ble Supreme Court held that it shall be obligatory on the part of the judicial or quasi judicial



authority to pass a reasoned order while exercising statutory jurisdiction. Relevant portion from the judgment of **Assistant Commissioner** (Supra) is reproduced as under :-

*“The principle of natural justice has twin ingredients; firstly, the person who is likely to be adversely affected by the action of the authorities should be given notice to show cause thereof and granted an opportunity of hearing and secondly, the orders so passed by the authorities should give reason for arriving at any conclusion showing proper application of mind. Violation of either of them could in the given facts and circumstances of the case, vitiate the order itself. Such rule being applicable to the administrative authorities certainly requires that the judgment of the Court should meet with this requirement with high degree of satisfaction. **The order of an administrative authority may not provide reasons like a judgment but the order must be supported by the reasons of rationality.** The distinction between passing of an order by an administrative or quasi-judicial authority has practically extinguished and both are required to pass reasoned orders.*

**(Emphasis Supplied)**

16. No other point was argued by Ld. Counsel for the petitioner, hence we need not go into the merits of the case.

17. Subject to observations made hereinbefore, the O.A. is partly **allowed**. The matter is remitted back to the Statutory Authority to restore the original statutory complaint and decide it afresh expeditiously, say, within two months from the date of

presentation of a certified copy of this order accompanied by a copy of the Statutory Complaint dated 31.05.2002 along with the connected documents by the petitioner by passing a reasoned and speaking order covering all the grounds raised by the petitioner keeping in view the observations made hereinabove and communicate the decision to the petitioner. The petitioner may submit the statutory complaint within fifteen days from today.

No order as to costs.

**(Air Marshal Anil Chopra)**  
**Member (A)**

anb

**(Justice D.P. Singh)**  
**Member (J)**