

RESERVED
Court No.1

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

O.A. (A) No. 311 of 2017

Friday, this the 11th day of January, 2019

Hon'ble Mr. Justice SVS Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

Smt Alka Mishra wife of Ex Nk Vimal Kumar Mishra, Pairokar
and as power of attorney of her husband No.13999356K, Ex Hav
Vimal Kumar Mishra son of Shri Shiv Shanker Mishra, R/o
Village- Puredosn, PO- Dih, District Sultanpur, U.P.

.... Appellant

Ld. Counsel for the: **Shri V.P. Pandey, Advocate.**
Appellant

Versus

1. Union of India through the Secretary, Ministry of Defence,
101 South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters Ministry
of Defence, South Block, New Delhi- 110001.
3. Commanding Officer 322 Field Hospital, PIN- 903, C/o 56
APO.
4. General Officer Commanding 22 Infantry Division C/o 56
APO.

....Respondents

Ld. Counsel for the: **Shri Bhanu Pratap Singh, Advocate.**
Respondents.

ORDER

“(Per Hon’ble Mr Justice SVS Rathore, Member (J))”

1. By means of this appeal preferred under Section 15 of the Armed Forces Tribunal Act, 2007, the appellant has made the following prayers:

“(I) To set aside/ quash the impugned order of punishment annexed as Annexure A-1 of dismissal from service and imprisonment of one year in Civil Jail.

(II) Issue/ pass any other order or direction to the respondent to reinstate the appellant in service with all consequential benefit.

(III) Allow this application with exemplary cost.”

2. In brief the facts giving rise to the instant appeal may be summarised as under:-

The appellant was enrolled in the Army on 19.06.2000. He had completed the qualifying service entitling him to get pension but thereafter on 30.07.2015 the appellant is alleged to have withdrawn money from the ATM cards of one Hav/ Chef Chilla Govinda Raju and Sepoy Manoj Kumar Semilia. For the said offence the applicant was charged as under:-

“ **CHARGE SHEET** ”

The accused **No 13999356K** NK/CHEF (COM) VIMAL KUMAR MISHRA of 327 Fd Hosp with 322 Fd Hosp c/o 56 APO, is charged with:-

First Charge

Army Act Section 52(a) COMMITTING THEFT OF PROPERTY BELONGING TO A PERSON SUBJECT TO ARMY ACT

In that he,

at Meerut Cantt on 30 Jul 2015, committed theft in respect of Automatic Teller Machine Card Number 6220180441900103504 of State Bank of India, issued for the Saving Bank Account Number 20046819234, the property of Number 13987024N Hav/Chef (Hosp) Chilla Gonda Raju of 322 Field Hospital.

Second Charge

Army Act Section 52(f)

SUCH AN OFFENCE AS IS MENTIONED IN CLAUSE (f) OF SECTION 52 OF THE ARMY ACT WITH INTENT TO DEFRAUD

In that he,

at Meerut Cantt, on 30 Jul 2015, with intent to cause wrongful loss to Number 13987024N Hav/Chef (Hosp) Chilla Govinda Raju of 322 Field Hospital, withdrew a sum of Rs. 10,000/- (Rupees ten thousand only) from the State Bank of India Saving Bank Account Number 20046819234, of the said Hav/Chef Chilla Govind Raju by using Automatic Teller Machine Card No 6220180441900103504 of the said Bank.

Third Charge

Army Act Section 52(f)

SUCH AN OFFENCE AS IS MENTIONED IN CLAUSE (f) OF SECTION 52 OF THE ARMY ACT WITH INTENT TO DEFRAUD

In that he,

at Meerut Cantt, on 30 Jul 2015, with intent to cause wrongful loss to Number 13987024N Hav/Chef (Hosp) Chilla Govinda Raju of 322 Field Hospital, withdrew a sum of Rs. 6,500/- (Rupees six thousand and five hundred only) from the State Bank of India Saving Bank Account Number and by using Automatic Teller Machine Card Number, whose details are mentioned in the second charge.

Fourth Charge

Army Act Section 52(f)

SUCH AN OFFENCE AS IS MENTIONED IN CLAUSE (f) OF SECTION 52 OF THE ARMY ACT WITH INTENT TO DEFRAUD

In that he,

at Faizabad, on 31 Jul 2015, with intent to cause wrongful loss to Number 13987024N Hav/Chef (Hosp) Chilla Govinda Raju of 322 Field Hospital, withdrew a sum of Rs. 10,000/- (Rupees ten thousand only) from the State Bank of India Saving Bank Account Number and by using Automatic Teller Machine Card Number, whose details are mentioned in the second charge.

Fifth Charge

Army Act Section 52(f)

SUCH AN OFFENCE AS IS MENTIONED IN CLAUSE (f) OF SECTION 52 OF THE ARMY ACT WITH INTENT TO DEFRAUD

In that he,

at Faizabad, on 31 Jul 2015, with intent to cause wrongful loss to Number 13987024N Hav/Chef (Hosp) Chilla Govinda Raju of 322 Field Hospital, withdrew a sum of Rs. 5,000/- (Rupees five thousand only) from the State Bank of India Saving Bank Account Number and by using Automatic Teller Machine Card Number, whose details are mentioned in the second charge.

Sixth Charge

Army Act Section 52(f)

SUCH AN OFFENCE AS IS MENTIONED IN CLAUSE (f) OF SECTION 52 OF THE ARMY ACT WITH INTENT TO DEFRAUD

In that he,

at Faizabad, on 31 Jul 2015, with intent to cause wrongful loss to Number 13987024N Hav/Chef (Hosp) Chilla Govinda Raju of 322 Field Hospital, withdrew a sum of Rs. 5,022/- (Rupees five thousand and twenty two only) from the State Bank of India Saving Bank Account Number and by using Automatic Teller Machine Card Number, whose details are mentioned in the second charge.

Seventh Charge

Army Act Section 52(f)

SUCH AN OFFENCE AS IS MENTIONED IN CLAUSE (f) OF SECTION 52 OF THE ARMY ACT WITH INTENT TO DEFRAUD

In that he,

at Faizabad, on 31 Jul 2015, with intent to cause wrongful loss to Number 13987024N Hav/Chef (Hosp) Chilla Govinda Raju of 322 Field Hospital, withdrew a sum of Rs. 4,022/- (Rupees four thousand and twenty two only) from the State Bank of India Saving Bank Account Number and by using Automatic Teller Machine Card Number, whose details are mentioned in the second charge.

Eighth Charge

Army Act Section 52(f)

COMMITTING THEFT OF PROPERTY BELONGING TO A PERSON SUBJECT TO ARMY ACT

In that he,

at Sultanpur, between the period from 21 Jul 2015 to 01 Aug 2015 committed theft in respect of Automatic Teller Machine Card Number 4591510100011936 of State Bank of India, issued for the Saving Bank Account Number 30897262983, the property of Number 15425989M Sep/Chef (Com) Manoj Kumar Semilia of 322 Field Hospital. ”

3. The appellant was tried by the Summary Court Martial, hereinafter referred to as SCM. During the course of SCM three witnesses were examined and the same were duly cross-examined on behalf of the appellant. After conclusion of the evidence the SCM held the appellant guilty and he was awarded the punishment and he was punished with sentence of one year rigorous imprisonment alongwith dismissal from service.

4. Feeling aggrieved by the said punishment order the appellant has preferred this appeal. The submission of the learned counsel for the appellant is that he does not intend to challenge the finding of the SCM on merits and he has restricted his argument only on the point of disproportionate sentence. It is submitted that the appellant had served in Army for 17 years and it is asserted that during his entire period of service there is not even a single red ink or blank ink entry against him and, therefore, it was the first mistake on the part of the appellant, hence keeping in view this fact a lenient view ought to have been taken by the

competent authority while imposing punishment. The order of dismissal of the appellant from service is very harsh as it will bring the family of the appellant on road because he shall have no means of survival for the livelihood of his family. It has also been argued by the learned counsel for the appellant that the appellant was in custody and after filing this appeal vide order dated 17.11.2017 he was granted bail by this Tribunal and till that time he had remained in custody and had served almost half of the sentence inflicted on him but all these facts were not considered by the respondents while inflicting punishment.

5. Learned counsel for the respondents has opposed this prayer on the ground that the Army is a disciplined force and therefore the punishment inflicted on him needs no interference as highest degree of honesty is expected from the members of Armed forces. It has also been argued that a person of such a dishonest nature cannot be retained in the forces.

6. Law is well settled on the point that the power to impose appropriate punishment vests in the competent authority and it is not for the Court or Tribunal to interfere with the punishment inflicted by the authorities but where the Court is of the view that the punishment inflicted by the competent authority is shocking to the conscience and it is disproportionate to the offence committed then the Court can certainly interfere in such matters. Section 15 of the Armed Forces Tribunals Act deals with the power of the Tribunal to modify the sentence. Section 15(6)(b) reads as under:-

“15 (6) (b) if sentence is found to be excessive, illegal or unjust, the Tribunal may—

(i) remit the whole or any part of the sentence, with or without conditions;

(ii) mitigate the punishment awarded;

(iii) commute such punishment to any lesser punishment or punishments mentioned in the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950), as the case may be;”

7. The findings of the SCM have not been challenged. The allegation against the appellant is that he had withdrawn money at different occasions from the account of other account holders through the ATM card. The case of the appellant is that those persons whose money is alleged to have been withdrawn by the appellant had taken money on loan from him and they had given their ATM cards to him to withdraw the money and therefore under their authority he had withdrawn the same. It is true that the appellant's conduct when he has admitted the act of guilt amounts to his dishonest behaviour, which is not acceptable in Army service, therefore he ought to have been removed from service but the order of dismissal from service has given an additional punishment of disentitling him from getting pension. This will be a punishment to be suffered by his entire family. Had there been no such punishment against the appellant then the appellant would have continued in service for some more years but due to this punishment the period of his service has also been reduced. The appellant has already served about half of the sentence inflicted on him.

8. Learned counsel for the appellant has placed reliance on the pronouncement of Hon'ble Apex Court in the case of **S. Muthu Kumaran vs. Union of India & others** [Civil Appeal No.352 of 2017] decided on 17.01.2017. In the facts of that case, the applicant was involved in the recruitment racket in Jammu and the gravity of offence in that case was more serious than this case and in that case order of dismissal was converted into discharge. Therefore, in our considered opinion the sentence inflicted on the appellant is excessive and therefore in exercise of the power provided under Section 15(6)(b) we consider it appropriate to modify the sentence inflicted by the SCM to the appellant.

9. Thus, this O.A. deserves to be partly allowed and is hereby **partly allowed**. The findings of the SCM are hereby confirmed. The sentence of one year rigorous imprisonment inflicted on the appellant is hereby reduced to the period already undergone by him. Apart it, his dismissal order is modified into discharge from service. The appellant shall be entitled to post retiral/ pensionary benefits. The respondents are directed to ensure payment of post retiral/ pensionary benefits to the appellant within a period of four months from the date of receipt of a certified copy of this order.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

Dated: January 11, 2019

(Justice SVS Rathore)
Member (J)

JPT

