

ARMED FORCES TRIBUNAL REGIONAL BENCH, LUCKNOW**Original Application No. 159 of 2011**Saturday, the 31st day of October, 2015**Reserved**
(Court No. 2)**“Hon’ble Mr. Justice Abdul Mateen, Member (J)
Hon’ble Lt. Gen. A.M. Verma, Member (A)”**

Ex Sep Dev Pal Singh, son of Sri Banbari Singh, resident of village Naurangabad, P.O. Khakhunda, Tehsil Khurja, District Bulandshahr, U.P.

..... Applicant/petitioner

By Shri K.K.Mishra, Counsel for the Applicant.

Versus

1. Union of India through its Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, South Block New Delhi.
3. Officer Incharge, Records, The JAT Regiment. Pin-900496 C/O 56 APO.
4. Commanding Officer, 16 JAT Pin – 911216 C/o 56 APO.

.....Respondents.

By Shri D.S.Tiwari, Counsel for the respondents along with Capt Soma John, Departmental Representative.

ORDER

1. The petitioner has sought the reliefs of quashing the sentence of dismissal awarded by the Summary Court Martial (SCM) held on 26.9.2002 by the Commanding Officer, 16 Jat Regiment; to quash the letter dated 18.5.2010, vide which his appeal dated 28.8.2009 was

rejected by the Chief of Army Staff vide his order dated 10.5.2009 and to reinstate the petitioner.

2. The petitioner was serving in Gurez Sector, a high intensity operational area, in August 2002. He was tried by a SCM on 26.9.2002 on the following charge:

“B-2

CHARGE SHEET

The accused 3187775W Sep Devpal Singh of 16th Battalion The JAT Regiment is charged with :-

AA Sec
41(1)

DISOBEYING IN SUCH MANNER AS SHOW A WILLFUL DEFIANCE OF AUTHORITY, A LAWFUL COMMAND GIVEN PERSONALLY BY HIS SUPERIOR OFFICER IN THE EXECUTION OF HIS OFFICE

In that he,

At field on 17 Sep 2002 at 1130h when ordered by Adjutant IC-61741N Lt HS Manchanda to proceed to D Coy loc for operational duties said “I shall not go, do what you feel like”, or words to that effect and did not proceed to the ‘D’ Coy loc from the Bn HQ location.

Location: Field
Dated: 25 Sep 2002

Sd/-
(Rajesh Anand)
Col
CO, 16 Jat”

3. On conclusion of the trial, the petitioner was awarded punishment of dismissal. He preferred an appeal in August, 2009, which was rejected by the Chief of Army Staff (COAS).

4. The petitioner was represented by Shri K.K.Mishra, his learned counsel. The petitioner states that he was with his Company at a post called Cheel Tekri, from where he was asked to come down to Battalion Headquarters for a task outside the Battalion. He was interviewed by the Commanding Officer (CO) on 12.9.2002, but was not selected for the job. The petitioner claims that he had knee pain due to which he reported sick on 13.9.2002, whereafter he was interviewed alongwith all other personnel who had reported sick by the Commanding Officer on 14.9.2002. On 17.9.2002 he still had pain in his legs but despite the pain he was ordered to go to his Unit which he had declined. The petitioner claims that he was given copy of charge-sheet on 26.9.2002 and was tried by a SCM the same day and was dismissed from service. The petitioner claims that the background to this punishment is that when he was serving with 34 Rashtriya Rifle, he was awarded Commendation Card on 15.9.1998 because of which JCOs and NCOs in the Unit were jealous of him and they deliberately tried to do him down. The petitioner claims that the charge-sheet was handed over to him the same day, on which he was tried, as such the provisions of Army Rule 24(1) have not been complied with and on this ground alone, the learned counsel for the petitioner says, the proceedings are held to be vitiated

and deserve to be quashed. The learned counsel for the petitioner further said that the punishment is too harsh for the alleged offence and that the petitioner was being asked to go back to his Company for operational duty whereas there was no operational duty of any kind. The petitioner claims that the friend of accused provided to him knew nothing about the case. He further claims that he was not even aware that he was being tried for disobedience. The learned counsel for the petitioner said that being an awardee of COAS Commendation Card, the petitioner deserves relief.

5. The respondents were represented by Shri D.S.Tiwari, duly assisted by Capt Soma John, Departmental Representative. The respondents say that there was a requirement of sending a Quick Reaction Team (QRT) for ammunition duties, for which five persons from petitioner's Company were called for interview by the CO. The petitioner was one of them, and he was known to be a perpetual disciplinary case and, therefore, he was not selected. Further submission is that the petitioner had a lethargic attitude towards his job and his allegation that his colleagues were jealous of him is entirely incorrect and misconceived. The respondents state that the petitioner reported sick on 13.9.2002 to avoid going back to his Company. When he reported sick, he was given some medicines and not advised any rest. He was allowed to stay in the Battalion Headquarters for two more days. On 17.9.2002 when he was asked to go back to his Company, he

misbehaved with the Subedar Adjutant and the Adjutant and said, "*I will not go, do what you feel like.*" Disobeying orders in an operational area is not a minor mistake; it is a serious matter. The respondents state that such acts of indiscipline and disobedience cannot be allowed to go unpunished. The charge-sheet and the copy of Summary of Evidence were handed over to the petitioner on 25.9.2002 as per provisions of Army Rule 34(1) which provides that interval between the trial by SCM and the handing over of charge-sheet should not be less than 24 hours when on active service; thus, the provisions of Army Rule 34(1) have been complied with. Additionally, the respondents claim that the charge was fully explained to the petitioner and copies of charge-sheet both in English and Hindi were handed over to him on 25.9.2002. The petitioner was informed vide letter dated 25.9.2002 that he has right to be defended by a civil lawyer which he declined in writing. The petitioner did not want a copy of SCM. The respondents state that the award of COAS's Commendation Card and the act of indiscipline are two separate issues and the award has no bearing on discipline.

6. Heard both sides and scrutinized the original documents.
7. From the statements of the witnesses during the Summary of Evidence, it emerges that the Unit was required to send a QRT for Ammunition duty. The petitioner was part of the group of personnel sent by his Company. Knowing him to be a discipline case, the CO did not select him as part of aforesaid QRT. The petitioner was asked to go

back to his Company, on which he requested that since he had pain in his knee, he may be allowed to remain in Headquarters. On reporting sick on 13.9.2002, he was given some medicines. We have seen the medical prescription given to the petitioner on 13.9.2002 and find that he was prescribed tab PCM, tab Disprin and Tab Polibion. The doctor had not advised him rest of any kind. On 14.9.2002 he was interviewed by the CO who was told by the petitioner that he had knee pain, whereupon he was allowed to stay in Battalion Headquarters for two more days. Thereafter on 17.9.2002 he was ordered by the Subedar Adjutant Dharmvir Singh to go back to his Company, to which he replied, "*I will not go, do whatever you want*". The petitioner was then produced before the Adjutant Lt H.S.Manchanda at about 1130 hrs on 17.9.2002. The Adjutant ordered him to go back to his Unit, to which he replied, "*I shall not go.*" Thereafter the Adjutant sent the petitioner out of his office. When the petitioner had gone out, the Adjutant heard some noise outside and when he went out, he saw that the petitioner was misbehaving with the Subedar Adjutant and had declined to be arrested.

8. The charge under Army Rule 22 was heard by the CO on 18.9.2002, during which two witnesses were produced. The petitioner did not cross-examine them. Thereafter Summary of Evidence was recorded in which the Subedar Adjutant and the Adjutant gave the statements recounting the incident of 17.9.2002. During the Summary of Evidence, Major S. Rawat, the Officer Commanding D. Company

also gave his statement, in which he stated that he had been getting constant feedback on the poor discipline and utter disregard to the authorities on the part of the petitioner. He also stated that on earlier occasions the petitioner had been absent for 31 days without any valid cause, for which he was awarded 28 days R.I and 14 days' detention. Maj. Rawat also recounted another incident in which the petitioner had been found drunk in a local Bar. Subedar Ishwar Singh, Platoon Commander of D. Company also gave the statement during the Summary of Evidence, wherein he deposed that he knew the petitioner since the time he joined the Battalion in December, 1995. He further stated that the petitioner had exhibited poor discipline and disregard to the authorities ever since then, for which he had been counselled constantly.

9. The narrative that emerges is that the petitioner was prone to be arrogant and showed utter disregard to the authorities. In the instant case, he had misbehaved with the Subedar Adjutant and spoken arrogantly not only to the Subedar Adjutant but also to the Adjutant for which disciplinary action was initiated against him.

10. From the records it comes out that a copy of the charge-sheet in English, a copy of the charge-sheet in Hindi and a copy of Summary of Evidence were handed over to the petitioner on 25.9.2002. The Unit was in active operational area. According to Army Rule 34(1), copy of charge-sheet has to be handed over within such time that the interval

between the case being informed to the accused and his arraignment should not be less than 24 hours. It would be relevant to quote Army Rule 34(1) and (2), as under:

“34.Warning of accused for trial.- (1) The accused before he is arraigned shall be informed by an officer of every charge for which he is to be tried and also that, on his giving the names of witnesses or whom he desires to call in his defence, reasonable steps will be taken for procuring their attendance, and those steps shall be taken accordingly.

The interval between his being so informed and his arraignment shall not be less than ninety-six hours or where the accused person is on active service less than twenty-four hours.”

(2) The officer at the time of so informing the accused shall give him a copy of the charge-sheet and shall if necessary, read and explain to him the charges brought against him. If the accused desires to have it in a language which he understands, a translation thereof shall also be given to him.”

11. The learned counsel for the petitioner submits that there is no time recorded on the receipt signed by the petitioner and the respondents also did not have any record of the time at which charge-sheet and Summary of Evidence were handed over to the petitioner; therefore, according to the learned counsel for the petitioner, the time of interval may have been less than 24 hours and thus, the SCM proceedings are vitiated. We find that there is a letter signed by Colonel Rajesh Anand, CO, 16 Jat addressed to the petitioner dated 25.9.2002 vide which the petitioner was advised that he can avail of assistance of a local Advocate or any other person during his trial. This letter had been received by the petitioner

and while doing so, the petitioner had stated that he did not wish to appoint any friend for the proceedings. The petitioner received this letter at 1000 hrs on 25.9.2002, which is recorded in the receipt. Though there is no time mentioned in the covering note under which copies of charge-sheet and Summary of Evidence were handed over to the petitioner, it will be logical to infer from the receipt signed by the petitioner on the aforesaid document given to the petitioner the same day i.e on 25.9.2002 that he did receive copies of charge-sheet and Summary of Evidence around 1000 hours on 25.9.2002. Thus, we find that there is no violation of the provisions of Army Rule 34(1) since the SCM commenced at 1700 hrs on 26.9.2002.

12. Here, we wish to make an observation. The petitioner has stated in his petition vide para 4.10 that the charge-sheet had been served to him during the proceedings of SCM itself which was held on 26.9.2002, alleging that the provisions of Army Rule 34(1) had not been complied with. We have before us the receipt signed by the petitioner on 25.9.2002 for the charge-sheet and the Summary of Evidence. The petitioner has thus deliberately tried to misinform the Court about the date on which he received copies of charge-sheet and Summary of Evidence. We consider this act of the petitioner to be deliberately misleading the Court and advise him to desist from doing so in future.

13. The Army functions on the bedrock of discipline. In many operational areas soldiers carry loaded weapons. In such an

environment in an operational area, act of indiscipline is viewed very seriously. The disobedience of orders and arrogance shown by the petitioner on 17.9.2002 was unacceptable and the CO rightly took action to initiate disciplinary action against him. The SCM proceedings are in order as prescribed by law. We find no infirmity in them. The punishment awarded too is just and proper.

14. Accordingly, this O.A lacking in merit is hereby dismissed. No order as to costs.

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

(Justice Abdul Mateen)
Member (J)

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