

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

RESERVED.
(Court No. 2)

Transferred Application No. 115 of 2011

Tuesday the 6th day of October, 2015

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

No. 13997139P Ex Sep(Amb Asst) Hyder Shah, S/O Babu Shah, aged about 25 years, Village – Peer Kararia (Shipra), Tehsil- Sanwer, Post-Barlai Jahangeer, District – Indore (M.P.).

.....Petitioner

By Shri P.N. Chaturvedi, learned counsel for the applicant.

Versus

1. Commanding Officer, Adm. Battalion, AMC Centre and School, Lucknow (U.P.)
2. Lt Colonel, Headquarters Central Command, Lucknow (U.P.).
3. Chief of Army Staff, R.K. Puram, New Delhi.

.....Respondents

By Shri Mukund Tewari, learned counsel for the respondents, along with Capt. Soma John, Departmental Representative.

ORDER

1. Writ Petition No. 432 of 2003 was received from High Court, Madhya Pradesh, Jabalpur on 12.10.2011 and was re-numbered as above. The petitioner has sought reliefs of quashing order dated 24.4.2003, reinstatement and the consequential benefits thereof and cost of the petition.

2. The petitioner was enrolled in the Army on 25.04.1997 and had service of 5 years 11 months 29 days on 24.04.2003. He was tried on the following charge:-

“Army Act
Sec- 39(b)

WITHOUT SUFFICIENT CAUSE OVERSTAYING
LEAVE GRANTED TO HIM

in that he,

at Field on 23 Sep 2002, having been gtd leave of absence from 03 Sep 2002 to 22 Sep 2002 (20 days Casual Leave) failed without sufficient cause to rejoin duty and remained so absent till surrendered voluntarily at Adm Bn, AMC Centre & School, Lucknow on 21 Nov 2002 at 1230 hrs.”

and the punishment awarded was 2 months R.I. in civil prison and dismissal from service.

3. The petitioner was represented by Shri P.N. Chatuvedi. The petitioner would state that he was granted 20 days leave on 03.09.2002 but he was unable to join the unit on termination of this leave as he had very recently been married and his wife stopped him from joining the unit after termination of his leave. The petitioner further claims that he was not allowed any civil counsel during the trial. Also the punishment is too harsh and that he wanted to continue to serve in the Army.

4. The respondents were represented by Shri Mukund Tewari along with Capt. Soma John, Departmental Representative. Petitioner’s original unit was 428 Field Ambulance but he rejoined after overstaying the leave granted to him, at AMC Centre, Lucknow.

5. Respondent stated, when he did not report on 22.09.2002, following the laid down procedure a Court of Inquiry was held and he was declared as absconder. On 21.10.2002, a telegram was sent by the unit at the petitioner's home address asking him to rejoin. On 21.11.2002, the petitioner rejoined at AMC Centre Lucknow and gave it in writing that he was unable to rejoin the unit as he had been married only recently. The charge under Army Rule Section 22 was heard on 29.03.2003 and thereafter Summary of Evidence was recorded on 15.04.2003. His pre-trial procedure and the trial by SCM was conducted as prescribed by law and punishment awarded is just and legal.

6. Heard both sides and examined the documents.

7. The documents disclose that the procedure of investigation as also trial were as provided in law and there is no infirmity in them.

8. The petitioner had candidly admitted that he had recently been married and his wife had stopped him from returning after leave, thus the overstay. He had indicated that he wanted to continue to serve in the Army. As such, on receipt of telegram sent by the unit at applicant's home address, he joined his duty voluntarily. Considering his young age, the fact of his recent marriage and truthfulness alongwith his willingness to join voluntarily, we are of the view that he deserved to be treated leniently.

9. Accordingly, this Transferred Application is partly allowed. Holding the procedure of investigation and summary court martial legally valid, we quash the punishment awarded by the SCM. The punishment of 2 months

civil imprisonment cannot be undon at this stage. We direct the respondents to re-instate the petitioner within 3 months from today. We make it clear that the petitioner shall not be paid any salary for the period between 25.04.2003 and today. After the re-instatement, we direct that the petitioner be allowed to serve atleast for a period which entitles him to full pension. In the event he get promoted, he will be allowed to serve longer as applicable. No order as to costs.

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

(Justice Abdul Mateen)
Member (J)

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