

RESERVED
Court No.1

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

O.A. (A) No. 279 of 2013

Wednesday, this the 17th day of October, 2018

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

Ex-Sepoy/Ambulance Assistant Manoj Kumar Sharma
(Army No. 13998573-N), of 402 Field Hospital, C/o 99 APO, S/o
Shri Bhim Sharma, R/o Pancham Khera, near Charan Bhatta,
SGPGI, Lucknow (U.P.)- 226002.

.... Appellant

Ld. Counsel for the: **K.K.S. Bisht, Advocate.**
Appellant

Versus

1. Union of India, through the Secretary, Ministry of Defence,
New Delhi.
2. Chief of Army Staff, Integrated Headquarters of the
Ministry of Defence (Army), South Block, New Delhi–
110011.
3. Officer-in- Charge, Army Medical Corps Records, Lucknow
Cantt.
4. Commanding Officer, Administrative Battalion, Army
Medical Corps, Centre and College, Lucknow.
5. Commanding Officer, 402 Field Hospital, C/o 99 APO.

....Respondents

Ld. Counsel for the: **Dr Shailendra Sharma Atal, Advocate.**
Respondents.

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

1. This appeal has been preferred under Section 15 of the Armed Forces Tribunal Act, 2007, challenging the punishment of dismissal from service inflicted on the appellant by the Summary Court Martial proceedings, hereinafter referred to as SCM.

2. In brief the facts of the case as mentioned in O.A. are that the appellant was enrolled in the Army Medical Corps on 24.07.1998. In the year 2011 when the appellant was serving with 402 Field Hospital he was granted 34 days balance of annual leave w.e.f. 22.02.2011 to 27.03.2011. He was supposed to report back in the Unit on 27.03.2011(AN). However, he could not do so because of various reasons which were explained by the appellant during SCM. When he was asked to make statement in reference to charge or in mitigation of punishment he has stated that he was the only child of his parents. His father remains sick and he has the liability to support his wife and two children. He had requested that he may be given the opportunity to serve in the Army. It has also been pleaded that his father has purchased a house in Ghoshiyana Lucknow in 1986. After his father’s retirement he has purchased an adjoining plot to the said house in 1997 for Rs. 50, 000.00. This deal was executed by exercising fraud on him because the said land was sold earlier to others. He had reported voluntarily at the Administrative Battalion of Army Medical Corps, Centre and College, Lucknow at 14.30 hrs on

11.03.2013 and thus he had overstayed leave for 715 days with satisfactory explanation. It has also been pleaded that he was tried by SCM for an offence under Section 39(b) of the Army Act for overstaying leave without sufficient cause, till he rejoined at 1430 hrs on 11.03.2013. It has further been pleaded that the appellant without knowing the implications of the plea of guilty and having explained the sufficient cause for his overstaying the leave, pleaded guilty to the charge and his signatures on such plea of guilty were obtained. Appellant has also pleaded that the proceedings were prepared already and without considering his statement, a certificate in terms of Army Rule 115(2) has been given. It has also been pleaded that the trial of the appellant was illegal and without jurisdiction which deserves to be set aside. The case of the appellant is that he had given sufficient explanation for his long absence. After the appellant was taken on strength, after such a long period, he was tried by SCM for the following charges:-

“ **CHARGE SHEET** ”

The accused **No 13998573N** Sepoy/Amb Asst Manoj Kumar Sharma of 402 Field Hospital, attached with Administrative Battalion, Army Medical Corps Centre & College, Lucknow is charged with:-

Army Act-1950 WITHOUT SUFFICIENT CAUSE OVERSTAYING LEAVE GRANTED TO HIM Section 39 (b)

in that he,

at field, on 28 Mar 2011, while serving with 402 Field Hospital, having been granted leave of absence from 22 Feb 2011 to 27 Mar 2011 (34 days Balance of Annual Leave), failed without sufficient cause to rejoin duty on expiry of said leave and remained so absent till surrendered voluntarily at Administrative Battalion, AMC Centre & College, Lucknow on 11 Mar 2013 at 1430 hrs.

Place: Lucknow
Dated: 16 July 2013

(RC Dhulia)
Colonel
Commanding Officer
Administrative Battalion
AMC Centre and College,
Lucknow ”

3. After the charge-sheet, the SCM proceedings were conducted. During the SCM proceedings the appellant has pleaded guilty and has duly signed the same. When he was asked whether he intends to say anything then he said:-

“ मैंने गलती की है। मैं घर में अकेला हूँ और मैं ड्यूटी करना चाहता हूँ पिता जी भी बीमार रहते हैं। तथा मेरे दो बच्चे भी हैं। और कोर्ट से प्रार्थना करता हूँ कि मुझे नौकरी करने दी जाए। ”

This statement has again been signed by the appellant. Thereafter on completion of the SCM proceedings, the appellant was awarded punishment of dismissal from service. Feeling aggrieved thereby, the appellant has preferred this appeal.

4. In the counter affidavit it is submitted that the individual was on 34 days of balance annual leave for the year 2011, which was granted w.e.f. 22.02.2011 to 27.03.2011 but he overstayed the leave and reported on 11.03.2013 at 1430 hrs. It has also been pleaded that the appellant was also awarded 14 days rigorous imprisonment in military custody under Section 39(b) of Army Act, 1950 vide 402 Field Hospital DO Part-II order No. 0/0269/001/2009 dated 25.12.2009. The appellant was attached with Administrative Battalion vide HQ AM& College Lucknow attachment order No. 1703/DD dated 23.03.2013 when he had voluntarily reported after 715 days absence. He was heard as per Army Order 06/2009, Summary of Evidence was recorded and fair

chance has been offered to him to put up his defence at every stage. During Summary of Evidence the appellant was also provided with friend of the accused. The appellant pleaded guilty of the charge and requested for lenient punishment. The proceedings for SCM were recorded in the presence of two independent members. The appellant was awarded punishment of dismissal from service.

5. The submission of the learned counsel for the appellant is that due procedure was not followed but we do not find any substance in this submission. Firstly the SCM is conducted on a prescribed proforma and the perusal of the record of SCM, copy of which has been annexed by the appellant himself, shows that the SCM proceedings were properly conducted. The appellant had pleaded guilty for his overstaying the leave for a period of 715 days. Even during the course of argument learned counsel for the appellant has fairly admitted that the appellant remained absent for a period of 715 days. When before the Tribunal the appellant is accepting the charge levelled against him then no illegality or irregularity can be alleged in the plea of guilty. Apart from it the appellant is admitting that in the SCM he had given explanation of his absence which was not considered. Said statement has been signed by the appellant. Thus he is admitting his voluntary signature on such explanation. So signature on plea of guilty cannot be presumed to have been obtained by force when absence of 715 days is admitted to the appellant.

6. Submission of the learned counsel for the appellant that officer conducting SCM had no authority to hold the same, has also no substance. It has been mentioned as a ground in the O.A. while this ground was not pressed into service during course of arguments. On the contrary in the counter affidavit the attachment order of the appellant has been filed. So SCM has been conducted where he was attached.

7. The facts as stated by the appellant in his appeal and the arguments advanced on behalf of the appellant during the course of hearing show that the main grievance of the appellant was that disproportionate punishment was inflicted on the appellant. It is submitted that after dismissal from service the appellant is not in a position to get any civil job and the appellant has liability to maintain his family. The appellant's age on the date of dismissal was 33 years, 05 months and 26 days and he had totally 14 years and 11 months and 28 days of service, including the period of absence of 715 days. Thus the aforesaid period of his absence, if excluded then the pensionable service of the appellant comes to about 12 years. After strict scrutiny of the material brought on record, we do not find any illegality in the SCM proceedings.

8. Now we come to the question of sentence. The appellant has been inflicted the punishment of dismissal from service. It is submitted by the learned counsel for the appellant that the punishment of dismissal from service is disproportionate to the offence committed by the appellant and particularly in view of the

fact that he had pleaded guilty. Learned counsel has also argued that a lenient view should have been taken keeping in view the fact that the applicant has liability to maintain his family. We do not find any substance in this submission. Hon'ble Apex Court in the case of **Union of India and others vs. Narain Singh** (2002) 5 SCC 11, in a case relating to Border Security Force has held in Para-8 as under:-

“8. In the case of Apparel Export Promotion Council v. A.K. Chopra it has been held by this Court that it is within the jurisdiction of the competent authority to decide what punishment is to be imposed and the question of punishment is outside the purview of the High Court's interference unless it is so disproportionate to the proved misconduct as to shock the conscience of the Court. It has been held that reduction of sentence by the High Court would have a demoralising effect and would be a retrograde step. It has been held that repentance/unqualified apology at the last appellate stage does not call for any sympathy or mercy.

9. Apart from it Hon'ble Apex Court in the case of **Union of India and others vs. Dinesh Prasad** (2012) 12 SCC 63 has allowed the appeal filed on behalf of the Union of India and has confirmed the punishment of dismissal from service for absence without leave for 808 days. Admittedly in the facts of the instant case the appellant has remained absent for 715 days. Therefore keeping in view his absence for 715 days from Army duty we do not find substance in the submission that the sentence is not proportionate to the charge. Keeping in view the strict Army discipline, we do not find any substance in this plea. Sentence cannot be reduced only on the ground of mercy or sympathy

because it will have a demoralising effect on the Army and shall adversely affect the strict discipline of the Army. Apart from it a Division Bench of this Tribunal has dismissed O.A. No. 245 of 2011 **Jaswant Singh vs. Union of India** wherein the applicant was dismissed from service by SCM for the charge of over staying leave for 310 days. Said order of this Tribunal has been upheld by Hon'ble Apex Court vide order dated 18.07.2018 in Dy. No. 17392 of 2018.

10. In view of the above, this O.A. deserves to be dismissed and is hereby **dismissed**.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

Dated: October 17, 2018
JPT

(Justice SVS Rathore)
Member (J)