

ARMED FORCES TRIBUNAL REGIONAL BENCH, LUCKNOW

Original Application No. 135 of 2012

Thursday the 27th day of August, 2015

Reserved
(Court No. 2)

Ex. No. 15351726W, Naik Parikhan Pal, son of late Shri Sumeshwar Pal, aged about 42 years, resident of village Gareriya Ka Pura, Post Mohammadabad, District Ghazipur, U.P.

..... Applicant

By Shri K.C.Ghildiyal, Counsel for the Applicant.

Versus

1. Union of India through the Secretary, Ministry of Defence, Government of India, New Delhi
2. Chief of Army Staff, Army Headquarters, DHQ, Post Office New Delhi.
3. The Officer-in-Charge, Signals Records, Jabalpur (MP)
4. The Commanding Officer, Corps of Signal, Depot Regiment, Jabalpur (M.P.)

.....Respondents.

By Shri Ashutosh Kumar Srivastava, Counsel for the respondents alongwith Capt. Ridhishri Sharma, Departmental Representative.

ORDER

1. This O.A has been filed seeking reliefs of setting aside Summary Court Martial proceedings against the applicant dated 04.08.2010 and to treat the applicant in service till his normal age of retirement and grant

him all consequential benefits including arrears of salaries and continuity in service.

2. Facts of the case are that the applicant was enrolled in the Army on 30.01.1986. In 2007, he was serving in 28 Infantry Divisional Signal Regiment. He was granted leave from 23.03.2007 to 11.04.2007. On termination of leave, he did not report back to the Unit until he voluntarily rejoined Signal Training Centre (S.T.C.), Jabalpur on 19.12.2009. He was to have retired from service on 01.02.2008. On surrendering to S.T.C, the applicant was tried by Summary Court Martial on the following charges:

**“(B-2)
The Court
(IC-44469W Lt Col RS Samar)**

CHARGE SHEET

The accused No 15351726W Nk (Lmn) Parikhan Pal of 28 Infantry Divisional Signal Regiment, c/o 56 APO attached to Depot Regiment (Corps of Signal) is charged with :-

*First Charge
Army Act
Sec 38 (1)*

DESERTING THE SERVICE,

in that he,

at field, on active service, 12 April 2007, having been granted leave of absence from 23 March 2007 to 11 April 2007 to proceed to his home, failed without sufficient cause to rejoin his unit i.e. 28 Infantry Divisional Signal Regiment on 12 April 2007 at 0001 hours. On the expiry of said the said leave³ untill surrendered voluntarily to Depot Regiment (Corps of Signals) on 19 Dec 2009 at 1000 hours.

Second Charge *LOSING BY NEGLIGENCE CLOTHING AND*
Army Act *EQUIPMENT THE PROPERTY OF*
Section 54 (b) *GOVERNMENT ISSUED TO HIM FOR HIS USE*

In that he,

at field on 13 April 2007 when his kit was finally checked by a Court of Inquiry held at 28 Infantry Divisional Signal Regiment, was found deficient of the items as mentioned in the list annexed as annexure-1 to his charge sheet, the property of the government issued to him for his use valued Rupees 1992.00 (Rupees one thousand nine hundred ninety two only).

Station : Jabalpur (MP)

Sd./-

Lt Col

Commanding Officer

Dated : 24 Jul 2010

Depot Regt (Corps of Sigs)''

The punishment awarded to the applicant was reduction to ranks and dismissal from service.

3. The applicant was represented by the learned counsel Shri K.C.Ghildiyal. He claims that while returning from leave, he lost his mental balance because of which he was unable to rejoin duty on termination of leave. Once he recovered, he joined the S.T.C.Jabalpur, where he was told that in view of his date of retirement, the offence of overstaying the leave had been condoned, but to his surprise, he received a charge-sheet on 24.07.2010 and thereafter he was tried by Summary Court Martial on 04.08.2010 where he was not given any opportunity of hearing or defending his case. The applicant claims that the Summary Court Martial was without jurisdiction. It, according to the applicant, should have been conducted by the Commanding Officer of 28 Infantry

Divisional Signal Regiment, whereas, in the instant case, it was conducted by the Commanding Officer of Depot Regiment of S.T.C. Jabalpur. Since the applicant's date of retirement was 01.02.2008, he could not be tried by Summary Court Martial, since the provisions of Army Act, Section 123 were not invoked. He further pleads that he could have been attached to 1 Signal Training Centre under the provisions of Regulations for Army, Para 381. However, he could not be attached to Depot Regiment of S.T.C. The Attachment Order signed by the Commandant, S.T.C is not valid and it should have been signed by the Commander of the Formation of his parent unit. The charge under Section 38(1) of the Army Act is not valid since he had voluntarily joined and, therefore, he cannot be tried for desertion. He claims that there was no hearing under Army Rule 22. The applicant states that he is still suffering from same mental problem which he had suffered in 2007 and for which he is undergoing treatment. He has produced some medical documents to establish this point. The applicant pleads that he had reached the pensionary service; he had voluntarily joined, but his entire service was washed off. The punishment, the applicant pleads, is too harsh and disproportionate to the offence. He pleads that he is jobless and prays that the reliefs sought by him be granted.

4. The respondents were represented by Shri Ahutosh Kumar Srivastava, assisted by Capt. Ridhishri Sharma, Departmental Representative. The respondents say that the applicant was a habitual

offender. In his service, he had incurred five red ink entries under Army Act, Section 39(b) and one red ink entry under Army Act, Section 48(b). In the instant case, the applicant has not produced any evidence to support his claim that he was under any medical treatment because of which he had overstayed the leave by 2 years and 251 days, of which there is no valid reason. Charges were heard under Army Rule 22 and provisions of Army Act Section 123 were invoked. The S.C.M was conducted as provided in law and the punishment awarded is just and legal.

5. Heard both the sides and scrutinized the documents.

6. We have examined the original proceedings of Summary Court Martial produced by the respondents. The charges were heard under the provisions of Army Rule 22 on 19.03.2010, during which two witnesses were examined and the applicant declined to cross-examine them. The provisions of Army Act, Section 123 were invoked on 04.08.2010, which reads as follows:

“CERTIFICATE

It is certified that under the provisions of Army Act Sec. 123(i), No 15351726W Naik (Lmn P1) Parikhan Pal, deserter of 28 Infantry Divisional Signal Regiment attached with Depot Regiment (Corps of Signals) is being retained in service beyond his terms of engagement wef 31 January 2008 till finalization of disciplinary proceedings. The individual will not be eligible for pay and allowances and pensionery benefits for the said period.

Station: Jabalpur (MP)
Dated: 04 Aug 2010

Sd./-
(RS Samar)
Lt Col
Commanding Officer

*Depot Regiment
(Corps of Signals)”*

7. We also find that the attachment of the applicant was in consonance with the Regulations for the Army, Para 381, which reads as follows:

“Para 381. Trial of Deserters:- Under the normal circumstances trial by Summary Court Martial for desertion will be held by the CO of the unit of the deserter. However, when a deserter or an absentee from a unit shown in column 1 of the table below surrenders to, or is taken over by, the unit shown opposite in column two and is properly attached to and is taken on the strength of the latter unit he may, provided evidence, particularly evidence of identification, is available with the latter unit, be tried by Summary Court Martial by the OC of that unit when the unit shown in column one is serving in high altitude area or overseas or engaged in counter insurgency operation or active hostilities or Andaman and Nicobar Islands.

In no circumstances will a man be tried by Summary Court Martial held by a CO other than the CO of the unit to which the man properly belongs; a unit to which the man may be attached subsequent to commission of the offence by him will also be unit to which the man properly belongs.

TABLE

<i>Column One</i>	<i>Colum Two</i>
<i>Armoured Corps Regiments</i>	<i>Armoured Corps Centre and School</i>
<i>A unit of Artillery</i>	<i>Regimental Centre concerned</i>
<i>A unit of Engineers</i>	<i>Headquarters Engineers Group concerned</i>
<i>A unit of Signals</i>	<i>Signal Training Centre Jabalpur</i>
<i>Infantry Battalions</i>	<i>Regimental Centre</i>

	<i>concerned</i>
<i>ASC Unit</i>	<i>ASC Centre concerned</i>
<i>RV Corps</i>	<i>RVC Centre</i>

This rule is not intended to limit the power of any convening officer, who at his discretion may order trial be General, Summary General, or District Court Martial at any place, if such a course appears desirable in the interest of discipline.”

8. We find no infirmity in Summary Court Martial proceedings and the procedure prior to the said proceedings. The applicant has not produced any evidence to support his claim that he was under medical treatment. According to the address, the applicant belongs to district Ghazipur and more than one military hospital is located close to the district to which the applicant belongs. He could have easily reported to any of the military hospitals. Therefore, we are inclined to believe that the reason for overstaying stated by the applicant is not very convincing.

9. The punishment awarded to the applicant does appear to be harsh. Admittedly he had incurred six red ink entries in the past, this being the seventh instance of leave related offence. The applicant did deserve to be dealt with appropriately. Considering the fact that in a matter of just a few months he would have retired from service and earned pension as well as other consequential benefits, which could enable him to live a dignified post-retirement life, we are of the view that the punishment of dismissal has denied him this opportunity. A soldier, who has been in

the Army approximately for 24 years, does deserve to live with dignity after leaving the Army. The Army and the society have to ensure it unless there are very compelling reasons to deny him this opportunity. In the instant case, we feel that the applicant should have been allowed to retire and earn his pension.

10. Accordingly, the O.A is partly allowed. The punishment of dismissal from service is hereby quashed. The applicant shall be deemed to be discharged from service w.e.f 04.08.2010. Thereafter he would be entitled to his pension and all consequential retirement benefits. We are not inclined to impose any costs.

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

(Justice Abdul Mateen)
Member (J)

LN/-