

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Reserved
(Court No. 3)

Original Application No. 279 of 2012

Thursday the 30th day of July, 2015

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

Shiv Kumar Sharma aged about 29 years Son of Sri Shyam
Behari Sharma R/O V. & P- Bajhai, Distt.- Bhind (M.P.)
..... Applicant

By Shri Dharmesh Sinha, counsel for the applicant.

Versus

1. Union of India through the Secretary, Ministry of Defence,
New Delhi.
2. Commanding Officer, Corps of Signals, Depot Regiment,
Jabalpur (M.P.)
..... Respondents.

By Shri. D. S. Tiwari along with Capt. Ridhishri Sharma,
Departmental Representative.

ORDER

1. This Original Application has been filed by the applicant
seeking the following reliefs :

*“(i) The Hon’ble Tribunal may kindly be pleased to issue
an order or direction quashing/setting aside the order
dated 18.12.2008 contained in Annexure No. A-1 to the
O.A. dismissing the applicant from service.*

(ii) The Hon'ble Tribunal may kindly be pleased to issue an order or direction quashing /setting aside the Court Martial Proceedings dated 18.12.2008 contained in Annexure No. A-1 to the O.A.

(iii) The Hon'ble Tribunal may kindly be pleased to issue an order or direction commanding upon the Respondents to allow the applicant to work on the post of Signalman(TER) as he was working prior to issuance of the impugned order.

(iv) The Hon'ble Tribunal may kindly be pleased to issue any other order or direction deemed to be just and proper under the circumstances of the case.

(v) The Hon'ble Tribunal may kindly be pleased to direct the respondents to pay cost of the O.A.”

2. Facts of the case are that the petitioner was enrolled on 22.03.2002. After initial training, he was posted to Counter Insurgency Force (ROMEO), Signal Regiment and was directed to report there on 12.05.2008. He did not report on the due date and voluntarily reported to Signal Training Centre, Jabalpur on 28.08.2008. Disciplinary proceedings were initiated against him and he was tried by Summary Court Martial on 18.12.2008 on the following Charges :-

“CHARGE SHEET

The accused No 15684647A Signalmán (TER) Shiv Kumar Sharma of Counter Insurgency Force Headquarters (Romeo) Signal Regiment attached to Depot Regiment (Corps of Signals) is charged with :-

*First Charge DESERTING THE SERVICE,
Army Act
Sec 38 (1)*

In that he,

At field, while on active service on 13 May 2008 while proceeding on permanent posting to Counter Insurgency Force Headquarters (Romeo) Signal Regiment from 14 Rapid Signal Regiment (AREN) absented himself without leave until surrendered voluntarily to Depot Regiment (Corps of Signals) on 28 Aug 2008 at 1730 hours.

*Second LOSING BY NEGLECT CLOTHING AND
Charge EQUIPMENT THE PROPERTY OF THE
Army Act GOVERNMENT ISSUED TOHIM FOR HIS
Section 54 (b) USE,*

In that he,

At field on 25 Jun 2008 when his kit was finally checked by a Court of Inquiry held at Counter Insurgency Force Headquarters (Romeo)Signal Regiment was found deficient of the items as mentioned in the list annexed as annexure-1 to this charge sheet, the property of the government issued to him for his use valued Rupees 1355.00 (Rupees one thousand three hundred fifty five only).”

3. He pleaded guilty to both the charges and the punishment awarded was Dismissal from Service.

4. The Petitioner represented by Learned Counsel Shri Dharmesh Sinha stated that no witness in the Summary of Evidence testified that he had deserted service and also the fact that he rejoined the service voluntarily means that he should have been tried under Army Act Section 39 (a) and not for desertion under Army Act Section 38(1). Therefore, this charge is incorrect and deserves to be quashed. During the recording of the Summary of Evidence, the petitioner claims that he was not allowed to cross-examine any witness. No witness testified with regard to Charge No. 2 and therefore that charge also is legally not sustainable. The Petitioner claimed that under the provisions of Army Rules 33 and 34 had not complied with and he was not informed by the order passed by the Summary Court Martial. He was not given any document and a copy of a Summary Court Martial was given to him vide the letter dated 23.02.2012 when he repeatedly asked for it. The petitioner claims that the SCM was conducted in one day in a very cursory manner. He did not have any intention to desert which is demonstrated by the fact that he rejoined voluntarily and therefore requests that the reliefs asked for by him be granted.

5. The Respondents, through the Government Counsel Shri D.S. Tiwari assisted by the Departmental Representative Capt Ridhishri Sharma, states that the petitioner had no valid grounds for the absence of 108 days. The Respondents state that the petitioner mentioned more than once that he did not want to continue in service. He went on to say that in the short span of service of 5 years and 6 months, he had earlier been punished for an offence under Army Act Section 39(a) and therefore the Respondent says that he was a misfit in the Army and his retention in the larger interest of the organization was not considered prudent. The punishment awarded to the petitioner was just and legal. All provisions of Law in conducting investigations and in Summary Court Martial were followed during which the petitioner had been given full opportunity to defend himself. The petitioner had declined to call in his defence witness. Copy of Summary of Evidence and Charge-Sheet were handed over to him on 12.12.2008 and SCM was conducted on 18.12.2008. Thus provisions of Army Rule 34 were fully complied with. The First Charge i.e. **Desertion under Army Act Section 38** is legally valid because the Unit to which the petitioner was required to join was in an Operational Area and by not joining the said Unit, the petitioner deliberately avoided operational deployment. As regard to second charge,

the costs of the lost was based on Court of Inquiry that had been conducted by the Unit. The Respondents state that petitioners' case lacks merit and requested that it be dismissed.

6. Heard both sides and scrutinized the documents.

7. We find that the petitioner has not given any valid reason justifying his absence of 108 days. On the day of the SCM i.e. 18.12.2008, he had 5 years and 270 days of service which he had spent at the Signal Training Centre, Jabalpur. In this short span of service, he had been punished earlier for an offence under Section 39(a). The Unit to which he was posted i.e. Counter Insurgency Force (ROMEO), Signal Regiment is in a very active Counter Insurgency Area. It is quite apparent that he did not wish to be deployed on operational tasks and in order to avoid such a task he over stayed leave without valid reason. We are of the view the charge under Army Act Section 38 is legally valid. The second charge is based on costing of the items were issued to him and there is no legal infirmities in second charge too.

8. In his statement, when the Summary of Evidence was being recorded, he admitted to the fact that he had committed the mistake and he also states that he does not want to serve in the Army. The relevant extract of the statements are as follows :-

“On 04 May 2008 I went to my native place Bhind. Thereafter I did not want to continue in the Army. So I stayed at my native place only i.e. Bajhai Distt. Bhind. I wanted to carry out certain experiment for which I required time and money. I reported to Depot Regiment (Corps of Signals) on 28 August 2008 at 1730 hours to deposit my identity card and other documents. My statement written in my own handwriting handed over to the office summary of statement is produced herewith.

(The statement is received, perused and attached as EXHIBIT ‘4’ to the summary of Evidence)

I understand that I have committed a grave mistake by absenting myself for 108 days and I do not want to serve in the Army. I hereby request you to consider my case sympathetically.

The above statement was read over to me in the language (in Hindi). I understand and sign it as correct.”

9. It is evident, thus, that he had no desire to continue to serve in the Army. Further, during the Trial by Summary Court Martial after he had pleaded guilty, he gave a statement in which he not only apologized and stated that he did not want to continue in the service, he also said that he has several projects in his mind for the development of the country to which he

wishes to devote his time. The statement during the Summary Court Martial is as follows:-

“I realize that I have committed a mistake by being deserter. For this I apologies. I have some projects in my mind for the development of the country and therefore I do not want to continue in the service. I sincerely request you that I may not be given any imprisonment in the civil so that I could devote my time for my innovations.”

10. Considering the above, we are of the view that the petitioner was correctly tried under the two offences under Section 38 (1) and Section 54 (b) of the Army Act. There is no legal infirmity in the investigation and the Summary Court Martial Proceedings. The punishment awarded to the petitioner by the Summary Court Martial is considered to be just and legal. Accordingly, the petition is dismissed. No order as to costs.

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

(Justice Abdul Mateen)
Member (J)

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