

ARMED FORCES TRIBUNAL REGIONAL BENCH, LUCKNOW

Original Application No. 46 of 2011

..... the day of August, 2015

Reserved
(Court No. 2)

Ex. Sepoy/Chef Community Army No. 4007975H Sunil Singh, son of Sri Ram Pratap Singh, aged about 28 years, resident of village Ganpath Sonhar, Post Kotdih Tehsil Milkipur, District Faizabad, U.P.

..... Applicant

By Shri V.P.Pandey, Counsel for the Applicant.

Versus

1. Union of India through the Secretary, Ministry of Defence New Delhi
2. Chief of Army Staff Integrated Headquarters, Ministry of Defence, South Block New Delhi.
3. Commanding Officer 17 DOGRA, PIN 910617 C/O 56 APO.
4. Officer In charge the DOGRA REGIMENTAL CENTRE, Faizabad.

..... Respondents.

By Ms. Deepti P. Bajpai, Counsel for the respondents alongwith Cap. Ridhishri Sharma, Departmental Representative.

ORDER

This O.A has been filed seeking the relief of quashing the proceedings of Summary Court Martial held on 10.07.2010 and to reinstate the applicant in service.

Facts of the case are that the applicant was enrolled in Army on 11.01.2005 and thereafter he was posted to 12 Dogra. While in 12 Dogra, he was granted 10

days' casual leave from 15.07.2006 to 24.06.2006 but he overstayed the leave by 70 days and on return to the Unit was awarded 28 days' R.I.. He was posted to 17 Dogra on 29.06.2007 and was working there as a cook. He was admitted in 92 Base Hospital twice in March, 2007 and May, 2007 for treatment of allergic bronchitis and respiratory system respectively. Both times after treatment he was found fit and was then discharged. He was granted 30 days' annual leave from 08.06.2007 to 07.07.2007, which was extended till 16.08.2007 on his request. He did not report to the Unit after termination of his leave. A Court of Enquiry by the Unit was held and he was declared 'deserter' with effect from 17.08.2007. He reported to 17 Dogra on 01.12.2009 after overstaying the leave granted to him by 835 days. He was tried by Summary Court Master on the charge as follows:

"CHARGE SHEET"

The accused No : 4007975H Sepoy/Chef Community Sunil Singh of 17 DOGRA is charge with:-

Army Act

"DESERTING THE SERVICE"

Section 38 (l)

in that he,

at field, having been granted 30 days Balance of Annual Leave from 08 Jun 2007 to 07 Jul 2007 and leave extended upto 16 Aug 2007, failed without sufficient cause to rejoin at 213 Transit Camp on 17 Aug 2007, on expiry of said leave till he voluntarily rejoined duty at the Dogra Regimental Centre, Faizabad (Uttar Pradesh) on 01 Dec 2009 at 1000 hours.

(Total period of absence – 835 days)

Station : Meerut

(MK Mathur)

Dated : 30 Jun 2010

Colonel

Commanding Officer

17 DOGRA"

On conclusion of Summary Court Martial, the applicant was dismissed from service.

The applicant was represented by his learned counsel Sri V.P.Pandey. He claims that he had breathing trouble and was unable to perform his duty as a Cook even by standing next to Bukhari. He was admitted in 92 Base Hospital twice in March, 2007 and May, 2007. However, the problem subsisted. According to the doctors at the Base Hospital, his problem was on account of the fact that he had been got stuck in smoke while trying to rescue people in FRP fire when he was posted in Siachin Glacier about one year back. Due to this medical problem, he could not report to 213 Transit Camp. After recuperating he reported to Dogra Regimental Centre, Faizabad on 01.12.2009 and thereafter was sent to 17 Dogra where he was tried by Summary Court Martial. The applicant claims that he had no intention to desert and points out that the provisions of Army Rule 22 were not complied with. He prays that the relief sought for by him be granted.

The respondents, represented by Ms. Deepti P.Bajpai alongwith Capt. Ridhishri Sharma, Departmental Representative, state that in the short span of 2 years and 8 months, the applicant had been absent on two different occasions; one for 70 days and another for 835 days. When he was granted annual leave, 17 Dogra was in operational area. By not reporting to the Unit on termination of his leave, he deliberately avoided the operational deployment. The applicant has not produced any evidence of medical treatment while he was on leave. He belongs to Faizabad and there is a Military Hospital in Faizabad. If the applicant had any medical problem, he could have easily reported to Military Hospital in Faizabad for treatment. It is, thus, apparent that the applicant had deliberately avoided the operational deployment. The Summary Court Martial proceedings were conducted strictly in accordance with law and the punishment awarded is just and legal.

Heard both sides and scrutinized the documents.

The applicant was admitted in 92 Base Hospital in March, 2007 for treatment of allergic bronchitis and was discharged on 28.03.2007 having recovered and found fit for discharge. He had no past history of such a disease and there is no family history either. However, there is no mention of his association in rescue operations in Siachin Glacier, as claimed by the applicant. Second time he was admitted on 05.05.2007 for treatment of his respiratory system and discharged on 24.07.2007 after he had recovered well and was found fit to be discharged. He has produced no evidence to indicate that he was under treatment for breathlessness or any other disease while he was on leave or during the period he overstayed the leave. On rejoining the Unit, we find, he had submitted two different out patient slips dated 07.04.2010 and 08.04.2010 respectively, in which he had been advised some medication. When he was granted annual leave, the unit was engaged in counter insurgency operation. By not reporting to the Unit on termination of his leave, the applicant deliberately avoided operational deployment and, therefore, his discharge on desertion under the Army Act Section 38(1) is valid. We find no infirmity in Summary Court Martial proceedings.

In his short span of service, the applicant has been absent on two different occasions for 70 days and 835 days respectively, which is a serious breach of discipline and not worthy of any lenient consideration.

Accordingly, we dismiss this O.A. No order as to costs.

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

(Justice Abdul Mateen)
Member (J)

LN/-

