

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No. 29 of 2013

Thursday, the 31st day of October 2013

THE HONOURABLE JUSTICE V. PERIYA KARUPPIAH
(MEMBER-JUDICIAL)

AND

THE HONOURABLE LT GEN ANAND MOHAN VERMA
(MEMBER – ADMINISTRATIVE)

A. Murugan
(Dismissed from Service)
Sepoy No.6387833F
Door No.115, Silvarpatti Post
Periyakulam Taluk
Theni District.

... Applicant

By Legal Practitioner:
M/s. M.Venkadeshan
A. Ansar & R.Nilavazhagan

vs.

1. Union of India
Rep. by Chief of Army Staff
Ministry of Defence
New Delhi-110 011.

2. The General Officer
Commanding-in-Chief
Head Quarters
Southern Command
Pune-1.

3. The Commanding Officer
Head Quarters Wing
ACs Centre South
Bangalore.

...Respondents

By B. Shanthakumar, SPC

ORDER

(Order of the Tribunal made by
Hon'ble Lt Gen Anand Mohan Verma,
Member-Administrative)

1. This application has been filed seeking relief of quashing first respondent's letter No.C/07564/DV-3(B), dated 3.5.2003 and to direct the respondents to treat the order of dismissal as one of compulsory retirement to enable the petitioner to get pension and other terminal benefits.

2. The facts of the case are that the petitioner, who was enrolled in Aug 1989, was granted leave from 3.8.1999 to 14.8.1999, but he failed to rejoin Unit on expiry of the leave and rejoined on 10.3.2000. Thereafter, he again absented himself without leave with effect from 30.4.2000 and rejoined on 19.8.2000, whereafter Summary of Evidence was recorded following which he was tried by a Summary Court Martial on 30.9.2000 in which a sentence was inflicted on the applicant as "dismissed from service". He filed a petition against the dismissal order which was rejected by the then Chief of Army Staff on 3.5.2003. The petitioner filed O.A.No.36 of 2012 along with M.A.No.21 of 2012 for condoning delay in filing before this Tribunal in which the order passed on 14th February 2013 is under:

"The learned counsel of the applicant while arguing the case finally submitted before us that the applicant may be reinstated in

service with all monetary and attendant benefits. When this tribunal has put forth a question before the learned counsel for the applicant as to how the applicant will be fit to join duty after a lapse of 10 years, the Counsel of applicant came forward to amend the prayer. Further there is a delay of 3036 days in filing this Original Application. The learned counsel for the applicant therefore requested us to permit him withdraw the Miscellaneous Application and the Original Application with liberty to file a fresh miscellaneous application and the Original Application. Necessary endorsement was made in the Original Application by the counsel for applicant to that effect.

In fine, the miscellaneous application and the original application is dismissed as withdrawn with a liberty to file a fresh application. Time granted is one month."

The petitioner thereafter filed this O.A. seeking relief as mentioned above.

3. The petitioner in his application and through the pleadings of his learned counsel Mr.M. Venkadeshnan would submit that the petitioner was enrolled in August 1989. He was granted 12 days leave from 3rd August 1999 to 14th August 1999 in which he stated that he was to take care of his wife who according to him was in the initial stage of pregnancy. During the said leave, he was taken ill and was treated by a Government Doctor for which he would produce a medical certificate. He claimed that

his parents did not take due care of his wife who was at the initial stage of pregnancy. In support of his wife's health condition, he would produce a medical certificate from a doctor who had treated her. One of the reasons stated by the petitioner for not rejoining on expiry of 12 days leave was also the health of his father who too was unwell and to support this claim, the petitioner would submit a medical certificate. He would state that he rejoined the Unit on 10th March 2000 thus overstaying leave by 206 days. While he was on duty, his wife delivered a baby on 13.4.2000. His neighbours at his home informed him by telephone that his wife had been beaten up by his brother. Hearing this on 30.4.2000, he again rushed home to take care of his wife after intimating his superior officers. He rejoined on 19th August 2000 along with his wife and three daughters aged 5 years, 3 years and 6 months. On arrival in the unit, he would claim that he was beaten up and was sent to prison. Two charges were levelled against him, one of, desertion and another being absent without leave. In defence of his first charge, he submitted the medical certificates, however those were not considered by the authorities. In defence of his second charge, he explained that his wife's life was in danger which too was not considered. He was tried by a Summary Court Martial on 30th September, 2000 and was dismissed from service. All his appeals were rejected. He would plead that the authorities did not consider the vital fact that the leave requisition submitted by him was for

a justifiable cause and he had no intention to desert the service or remain absent without permission. The material ingredients of Army Act Section 39 were not considered thus the authorities had committed a serious error as on both occasions, he had surrendered voluntarily. The authorities also did not consider Army Act Section 72 and the provision of alternative punishment and that the punishment awarded for the offence is highly disproportionate to the offence. The petitioner would submit that he has been subjected to double jeopardy because he was imprisoned and thereafter dismissed from service for the same offence. In view of the facts mentioned above, the petitioner would request that his dismissal be converted into discharge from service and he be given the benefit of pension and all other terminal benefits. In support of his pleadings, the learned counsel would cite the following cases:

1) 2012 (2) AFLJ 436 (S. Moovendan vs. The Presiding Officer, SCM & Ors.)- AFT/RB Chennai;

2) 2012 (2) AFLJ 491 (Baljit Singh vs. Govt. of India)-AFT/RB Lucknow;

3) 2012 (2) AFLJ 598 (Ex.Spr V.Subramani vs. Chief of the Army Staff and Ors.)-AFT/RB Chennai ; &

4) Order O.A.No.22 of 2012, dt. 13.3.2013(Vallivedu Bhaskar v. UOI and ors.)-AFT/RB Chennai.

4. The respondents would submit that the petitioner had been tried and punished for overstaying of leave under Army Act Section 39(b) on three earlier occasions; on 9th August 1991 for overstaying leave for 25 days, on 27th January 1993 for overstaying leave for 218 days and on 10th December 1996 for overstaying leave for 17 days. They would submit that these lenient punishments did not bring any reformatory change in the attitude of the petitioner, but on the contrary he became bold enough to take law into his own hands. He was tried by Summary Court Martial and was dismissed from service. His petition against the Court Martial's sentence was considered by the Chief of the Army Staff who rejected it vide his Order No.C/07564/DV 3(B), dated 3rd May 2003 in which he quoted,

" the contentions of the petitioner as mentioned in his petition are misconceived, misleading and devoid of merit and substance. The findings of the Summary Court Martial are supported by cogent and reliable evidence on record, which inspires confidence. The sentence awarded is commensurate with the gravity of the offence for which he stands convicted. "

5. During the pleadings, Major Suchithra Chellappan, the learned JAG Officer would state that the petitioner has made five points in support of his case. According to her, the petitioner stated that he was not a deserter. The JAG Officer would state that the petitioner did not report

back from leave on due date and as per procedure, a Court of Inquiry was held 30 days after his due date of reporting which declared him a 'deserter'. The charges were framed in accordance with the illustrations given in MIML Part-II. Thus the petitioner's claim that he was not a 'deserter' is not sustainable, according to the learned JAG Officer. The second issue raised by the petitioner according to the JAG Officer is that he was sent out on 30.4.2000 by the Unit authorities. This is not only wholly untrue but is also contrary to the petitioner's statement during the Summary of Evidence recorded on 8th September 2000 in which he stated that under immense mental pressure and unrest, he absented himself without leave. The petitioner in this application has contradicted his own earlier statement. The third point raised by the petitioner according to the learned JAG Officer is the medical certificate in respect of the petitioner's wife. She would state that this certificate is signed on 26.9.1999 by a Civil Assistant Surgeon of Government Primary Health Centre, Theni according to which the petitioner's wife was under this doctor's treatment for "HT/Anaemia complicating pregnancy (8 months.....) with severe low back pain from 10.8.1999 to 25.9.1999(46 days)". The petitioner's wife delivered a baby on 13th April 2000 which indicates that the pregnancy started in August 1999 and the petitioner's wife would have come to know of her pregnancy only towards the latter half of September 1999. A certificate dated 26.9.1999 from a doctor produced to say that she was 8

months pregnant on 26.09.99 casts doubts about the authenticity of the medical certificate. The fourth point raised by the petitioner according to the JAG Officer is the illness of his father. This fact has not been mentioned, according to the JAG Officer, by the petitioner in the Summary of Evidence as a mitigating circumstance for being absent without leave. Lastly, the 5th point is that the petitioner claimed that the punishment was disproportionate. According to the JAG Officer this claim is not sustainable since the total period of absence for which he was charged was 320 days. Coupled with his earlier record of overstaying leave, it is a fit case for dismissal. The learned JAG Officer would request that the petition be dismissed being devoid of merit.

6. Heard both sides and perused the documents.

7. The points that need to be determined are,

(1) Whether or not the sentence of dismissal from service is liable to be interfered with ?

*(2) If **YES**, is the petitioner entitled to pension benefits?*

8. In the Rejoinder, the learned counsel for the petitioner would deny the factum of being absent without leave for 218 days for which he was tried on 27th January 1993. He would say that he actually overstayed only for 60 days. However, the learned counsel would admit that he indeed was absent for 60 days or so and was tried for overstaying leave under Army

Act Section 39(b). He would also challenge the contention of the respondents that he is not entitled to avail an appeal under Section 15 of Armed Forces Tribunal Act.

9. POINT No.1: We examined the Medical Certificate produced by the petitioner to establish his own ill health which is signed by a Medical Officer of a Primary Health Centre, Theni District, Tamil Nadu. The date on which the certificate was signed has not been mentioned. The certificate says that A. Murugan is suffering from Enteric Fever on account of which the period of absence from duty for 30 days with effect from 10.8.1999 to 20.9.1999 is absolutely necessary. We find a glaring inconsistency in this certificate. The period of "absolutely necessary" absence mentioned is 30 days, yet the dates mentioned amount to 40 days. This inconsistency remains to be reconciled. Also if the petitioner was unwell for so many days, he had the option of getting himself admitted to the nearest Military Hospital and was obliged, indeed required to inform his Unit by fastest means. He failed to do so. The petitioner claims that on account of illness of his father, he was forced to remain at home. The Medical Certificate dated 16th February 2000 produced by him was signed by a doctor who is an Authorised Medical Attendant of State Government, states that A. Arumugam, father of A. Murugan was admitted in the hospital from 8th February 2000 to 16th February 2000. In the month of

February, the petitioner had already over-stayed his leave by nearly five months when his father fell ill.

10. About the Medical Certificate in respect of his wife, the Certificate is signed by Dr. S.Ponraj, Civil Asst. Surgeon of Government Primary Health Centre, Theni on 26.9.1999. It mentions that "Mrs. Laxmi, wife of A.Murugan (6387833-F) was under his treatment from 10.8.1999 to 25.9.1999 (46 days) for HT/ Anaemia complicating pregnancy (8 months) with severe low back pain". It has been stated by the petitioner himself that his wife delivered a baby on 13th April 2000 and therefore, common knowledge would indicate that on 26.9.1999, she could not be 8 months pregnant and she could not be suffering from, "complicating pregnancy" for 8 months. Also, the Medical Certificate appears to have been obtained by the petitioner for the express purpose of supporting his case as it indicates his Service Number. This fact of 8 months' pregnancy is further supported by the statement given by the petitioner during Summary of Evidence extracts of which are,

" 16. I was posted to 898 AT Bn during Feb 99. I proceeded on PAL for 12 days wef 03 Aug 99 to 14 Aug 99 to proceed to home and failed to rejoin duty in my unit in field due to the wife being admitted in the Govt Hospital at Theni (Tamil Nadu). Due to unrest in my family ie. My parents had pushed my wife on the floor who was 08 months pregnant

and she delivered the female child at the Govt Hospital Theni. A Photostat certificate signed by Dr S. Ponraj Civil Asst Surgeon, Govt P.H.C. Medical Officer is hereby submitted as Exhibit 'P'. I rejoined voluntarily at ASC Centre (South), HQ Trg Wing at 1800 hrs on 10 Mar 2000.

17. On 29 Apr 2000, I realized that my wife has been again beaten up by my brother, parents and grandmother at home town. Hence under the intense mental pressure and unrest I absented myself without leave on 05.45 hrs from unit lines of Depot Coy (Sup) and went down to my home town. I rejoined voluntarily back again on 19 Aug 2000 along with my wife and three daughters of age 5 years, 3 years and of 06 months as we were thrown out of the family home of village Silvapatti, Tamil Nadu. "

11. The statement of the petitioner has indicated that his wife was 8 months' pregnant when she was pushed by his parents. In support of his statement, he would produce the photostat copy of the Medical Certificate issued by Dr. Ponraj which is the Certificate that we have referred to earlier. It is obvious on considering the date of delivery of the child, the petitioner's wife conceived in the month of August 1999, and therefore she could not have been 8 months' pregnant at that stage. Also the petitioner stated in the application that he was granted leave to take care

of his wife who was in the initial stage of pregnancy. The leave commenced on 3.8.1999. Pregnancy could not have started before 3.8.1999 considering the date of delivery, and therefore, the inference we draw is that either he sought leave on false ground or has made a false statement in his application. In his application, he has stated that in the month of April after his wife has delivered a baby, she was beaten up by his brother. He has produced no evidence to support this claim. He has stated in his application that on learning about the ill-treatment to his wife by his brother, he rushed home after intimating his superiors. However, in the Summary of Evidence, he has admitted that he absented himself without leave at 05.45 hours from Unit lines. Thus, we find that there are inconsistencies in the application and in the statements given by the petitioner at the time of Summary of Evidence which have not been reconciled and which lead us to infer that some falsehoods have been stated by the petitioner.

12. We have examined carefully the proceedings of the Summary Court Martial held on 30th September 2000. The petitioner was charged for two offences,

" FIRST CHARGE, ARMY ACT, SECTION 38 (1)

DESERTING THE SERVICE, in that he, at field, on 15 Aug 99, while on active service and having been granted leave of absence

from 03 Aug 99 to 14 Aug 99 to proceed to home did not rejoin at field on the expiry of the said leave but absented himself with intent to avoid such active service.

SECOND CHARGE – ARMY ACT SECTION 39(a) :

ABSENTED HIMSELF WITHOUT LEAVE, in that he, at Bangalore, on 3 Apr 2000, absented himself without leave at 0545 hrs from unit lines and remained absent until voluntarily surrendered at HQ Wing, ASC Cents (South) at 0600 hrs on 19 Aug 2000. "

During the trial, when he was asked as to whether he wished to make any statement, his reply was "I am from a poor background. I have three small children. Kindly show pity on me and let me serve the Army". It is evident thus that the Summary Court Martial Trial was held fairly and all charges had been established and proved beyond doubt. We have scrutinized the citations given by the learned counsel for the petitioner and find that the petitioner cannot seek shelter from any of the mentioned cases. Taking into account the factum of his earlier offences and overstayal/absence of 320 days in this particular instant, we are of the view that the punishment of dismissal awarded by the Summary Court Martial is justified and merits no interference. Point No.1 is answered accordingly.

14. POINT No.2: Since the punishment awarded by the Summary Court Martial is not being interfered with, the petitioner is not entitled to any pension or terminal benefits. Point No.2 is answered accordingly.

15. In fine, the application is dismissed being devoid of any merit. Considering the petitioner's claim that he comes from a poor background, there will be no order as to costs.

Sd/
LT GEN ANAND MOHAN VERMA
MEMBER (ADMINISTRATIVE)

Sd/
JUSTICE V. PERIYA KARUPPIAH
MEMBER (JUDICIAL)

31.10.2013
(True copy)

Member (J) – Index : Yes / No
Member (A) – Index : Yes / No

Internet : Yes / No
Internet : Yes / No

Vs

To:

1. The Chief of Army Staff
Rep. by Chief of Army Staff
New Delhi-110 011.

2. The General Officer
Commanding-in-Chief
Head Quarters
Southern Command
Pune-1.

3. The Commanding Officer
Head Quarters Wing
ACs Centre South
Bangalore.

4. M/s. M.Venkadeshan
A. Ansar & R.Nilavazhagan
Counsel for Petitioner

5. Mr. B. Shanthakumar, SPC
Counsel for respondents

6. OIC, Legal Cell, ATNK & K Area
Chennai.

7. Library, AFT, Chennai

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(MEMBER-JUDICIAL)
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HON'BLE LT GEN ANAND MOHAN VERMA
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