

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.(Appeal) No.149 of 2013

Monday, the 15th day of September, 2014

The Honourable Justice V.Periya Karuppiah
(Member-Judicial)
and
The Honourable Lt Gen K Surendra Nath
(Member-Administrative)

P.Velmurugan
No.15672038K Naik / Clerk GD
S/o M.Poonusamy
Earaikodi (Village), Seduvalai (Post)
Vrinchipuram (Via), Vellore, Tamil Nadu
By Legal Practitioner:
Mr.S.Mahesh

...Applicant

vs.

1. The Army Commander (GOC-in-C)
Headquarters Western Command
Chandimandir PIN: 908543
C/o 56 APO

*2. Union of India
Rep. by the Secretary to the Government of India
Ministry of Defence
South Block, New Delhi

*3. Chief of Army Staff
Army Head Quarters (AHQ)
Defence Head Quarters
Integrated Head Quarters (IHQ)
New Delhi – 110011

...Respondents

*(RR.2 & 3 impleaded as per order dt. 12.3.2014 in MA 43 of 2014 in OA (A) 149 of 2013)

Mr. B.Shanthakumar, SPC

ORDER

[Order of the Tribunal made by
Hon'ble Lt Gen K Surendra Nath, Member (Administrative)]

The applicant, Naik/Clerk (General Duties) P.Velmurugan, in his O.A. requests for the production of Summary Court Martial proceedings dated 18 April 2011 and quash the same and consequently reinstate him in the Army with all consequential benefits.

2. The applicant was enrolled in the Indian Army on 25 January 2002 as Sigmn (Clk/GD) and submits that after completion of training, he had served in Signal Records at Jabalpur, Jammu & Kashmir and, thereafter, was posted to Western Command Headquarters, Chandimandir. The applicant submits that he received a message on 07 January 2009 that his mother was critically ill and was admitted in a private hospital at Vellore and since the applicant was taking care of his parents prior to joining military service, he had asked for leave. Unfortunately, before the leave could be granted, he proceeded to Vellore from Chandigarh in a disturbed state of mind and thereby absenting himself without leave. Though a communication was sent to District Collector and the Superintendent of Police, Vellore for his apprehension by the Western Command Headquarters, he continued to absent himself from duty in order to enable him to look after his mother who was suffering from acute Ulcer in the stomach and also Depression. He would also claim that his father had also developed Hypertension and was advised treatment at Government hospital at Poigai.

3. After the recovery of his mother from said illness and after realizing his mistake, the applicant voluntarily reported for duty at Chandigarh on 21 March 2009. However, he was not permitted to enter the campus and was refused permission to join duty. As

he had no money and was facing severe financial constraints and mental hardship, he was forced to return back to Vellore. He would further claim that on returning to his native village, he repeatedly made requests to join duty. However no action was taken by respondents and that he finally rejoined duty at Chandimandir on 30 September 2010 whereupon he was allowed to join duty. He would claim that he was served with two charges for being absent without leave, i.e., for the period 09 January 2009 to 21 March 2009, and, from 25 March 2009 to 30 September 2010. He would claim that he would not have absented himself from duty but for the fact that the respondents did not permit him to rejoin duty on 21 March 2009 when he reported at Chandigarh. The applicant submits that a Summary Court Martial (SCM) was conducted on 18 April 2011 and, at the end of the proceedings, he was awarded sentence of "Dismissal". He would submit that the proceedings of the SCM were conducted in haste and the sentence was passed without application of mind. He also claims that he could not defend himself properly as he was in a state of shock. He would further submit that for the past seven years prior to this punishment, there were no charges against him and his service was unblemished and to the entire satisfaction of his seniors. Taking into consideration his otherwise clean record, and the fact that the SCM proceedings were rushed through and the punishment awarded was without any application of mind, the applicant requests that the entire proceedings of the SCM be quashed and he be reinstated in service with all consequential benefits.

4. The respondents in their reply statement would state that the applicant was enrolled in the Army (Corps of Signals) as a Clerk on 26 January 2002 and that while

serving at Headquarters Western Command (Signals), he had absented himself without leave from 09 January 2009 to 21 March 2009 and again from 25 March 2009 to 30 September 2010. The total absence of the applicant was 1 year and 190 days. The respondents would further state that the applicant had full balance of leave for the year 2009, i.e., 30 days of casual leave and 60 days of annual leave. Yet, he did not apply for any leave but absented himself without leave. The contention of the applicant, i.e., his mother had fallen sick was also denied by the respondents for want of knowledge and proof as he did not divulge his personal problems to any of his peers, friends or his seniors till he stated to this effect in his averments at the Court of Inquiry held on 11 November 2010. However, he failed to produce any proof of the said illness before the Court. The Court of Inquiry had opined that the applicant was absent without leave and sufficient cause and, therefore, disciplinary action was recommended against him. The respondents would further submit that the case was heard under Rule 22 by Col Kishore Malhotra, Officer Commanding Troops on 09 February 2011 and on conclusion of charges he had ordered that the evidence be reduced to writing. During the recording of the Summary of Evidence, the applicant was given full opportunity to cross-examine the witnesses, produce witnesses in his defence as well as to make any statement he wishes to make at the Summary of Evidence. However, the applicant declined to do so and signed the proceedings of the Summary of Evidence. The SCM was held in accordance with law on 18 April 2011 and the applicant pleaded guilty to both the charges of absence without leave. The applicant was punished twice earlier also, under Section 63 and Section 39 (b) of Army Act, 1950. At the end of the SCM, the applicant was found guilty and considering the long absence from duty without leave on two

separate occasions and his past record of indiscipline, he was given the punishment of 'reduced to ranks and dismissal from service'. In view of the foregoing, the respondents have prayed that this Tribunal be pleased to pass appropriate Order and dismiss the OA as the same is devoid of any merit and render justice.

5. We have heard the arguments of Mr.S.Mahesh, learned counsel for the applicant and Mr.B.Shanthakumar, learned Senior Panel Counsel as well as Maj Suchithra Chellappan, learned JAG Officer (Army) for respondents and also perused all the documents and written arguments that were placed before us.

6. On the pleadings of both, following issues emerge for consideration:

(a) *Point 1: Was the investigation of charges and the SCM against the applicant was conducted as per law and in accordance with the laid down conditions?*

(b) *Point 2: If so, was the punishment given to the applicant commensurate to the gravity of the offence committed?*

(c) *Point 3: What remedy, if any, the applicant is entitled to?*

7. The applicant joined the Indian Army on 25 January 2002 as Sigmn (Clk/GD). We note from the records that while he was posted at Headquarters Western Command, Chandimandir in the Signals branch, he absented himself without leave from 09 January 2009 to 21 March 2009 and voluntarily reported for duty on 21 March 2009. However, after spending 4 days in the Unit, he again absented himself without leave from 25 March 2009 to 30 September 2010 till he again voluntarily reported to duty. On return to the Unit, a Court of Inquiry was held on 11 November 2010 which found the

applicant guilty for unauthorized absence. Thereafter, a Summary of Evidence was recorded and he was tried by SCM on two charges under Army Act Section 39 (a) for absence without leave on two separate occasions, i.e., of 72 days and 554 days. During the proceedings, he pleaded guilty to both the charges and he was given punishment of 'reduced to ranks' and 'dismissal from service'.

8. Points (1) and (2): We have examined the documents relating to the conduct of the SCM on 11 April 2011. These documents include a copy of the Summary of Evidence and the SCM proceedings. The Summary of Evidence was recorded by IC 34293H Col Arjan Singh and JC 842019F Nb.Sub Om Prakash Singh was the independent witness. Three witnesses were produced as prosecution witnesses and on each occasion, the applicant was given an opportunity to cross-examine the prosecution witness in terms of Army Rule 23 (3) and Army Rule 180, which he declined to do so. At the end of the proceedings, he was given an opportunity to produce witnesses in his defence, which he declined. The applicant was also given an opportunity to make any statement, if he wished to. He declined to make any statement. He had signed all the proceedings of the Summary of Evidence and we note that the independent witness was present throughout the recording of Summary of Evidence. In the SCM, the applicant was charged with two separate charges, i.e., (i) under Army Rule Section 39 (a) for absenting himself without leave from 09 January 2009 to 21 March 2009, (total absence 72 days; and (ii) under Army Rule Section 39 (b) for absenting himself from 25 March 2009 to 30 September 2010 (total absence 554 days). During the SCM, Lt Col RK Chowdhary was detailed as 'Friend of the Accused' and two others, Lt Col Arun Kumar

and Sub Balwinder Singh also attended the trial. During the trial, the applicant pleaded guilty to both the charges. Before recording the plea of guilty, the Court explained to the applicant the meaning of the charges and the effect of pleading guilty under the provisions of Army Rule 52 (2). Thereupon the Summary of Evidence was read and translated and explained by the Court and was attached to the proceedings. We also note that the applicant, for the question, *"Do you wish to make any statement in reference to the charges or in mitigation of punishment?"*, he replied, *"I accept my guilt"* and also when given an opportunity to call any witness in defence as to his character, he replied, *"No, I do not wish to call any witness"*. We note that the applicant had two earlier punishments for an offence under Army Act Section 63 on 11 June 2006 for which he was deprived of the appointment of Lance Naik and was awarded 7 days pay as fine; and under Army Act Section 39 (b), for which he was given the punishment of 'Reprimand'. His general character as assessed at the time of trial was "very good". He was about 27 years old and had a total service of 9 years and 87 days at the time of punishment. The Court pronounced him guilty of both the charges and he was given the punishment of (i) reduced to ranks; and (ii) dismissal from service. In pronouncing the punishment, the Officer Commanding Troops observed that the individual had two earlier punishments and that he had a blemished record though he had only 9 years service. He also noted that the applicant had absented himself twice for lengthy periods. He would also record that:

"Considering that society places a great faith in a soldier and tries to emulate his virtues of obedience, punctuality and dedication to his duty towards the nation, I consider such offences are beyond pardon. A lesser punishment would encourage the recurrence of such acts of indiscipline in the Army".

9. From the available records, and the letter written by the applicant's mother to the respondents would show that she was suffering from Ulcer in the stomach and that her son, i.e., the applicant was very much attached to her. The continued illness of his mother and probable illness of his father could be a factor in favour of the applicant from the point of view of mitigation. Nevertheless, the long absence of the applicant on two separate occasions without communicating to his Unit about his intention to return does not go in his favour. Further, he had already had two Red Ink entries earlier which shows his behavior to be erratic and not inclined to good discipline as expected from a soldier from Clerk trade who is expected to be mature and knowledgeable of the consequences of acts of omission/commission.

10. The applicant, at the time of his dismissal from service had about 9 years service and was aged 27 years. There is no doubt that dismissal from service of an individual not only affects his present employment but also has an adverse effect on his future employment in the civil society. Considering the relatively young age of the applicant at the time of his dismissal and the nature of offences committed, it would be in the interest of justice, if he is provided an opportunity to rehabilitate in the society. Discharge from service is a lesser punishment than the dismissal from service, since the discharge from service will not adversely affect the prospect of the accused person towards his civil employment and rehabilitation in the society. But the result of discharge as well as dismissal from service is one and the same for the accused as in either case he cannot continue in service. Though discharge is not listed as a punishment in Army Act Section 71, in accordance with provisions of Section 15 (6) (b) and (e) of Armed Forces Tribunal Act, 2007, this Tribunal has the power to remit the

whole or any part of the sentence with or without condition if the sentence imposed is found excessive, and to pass any other order as it may think appropriate. In our earlier discussion, we have already concluded that there were some mitigating circumstances and, the punishment is liable to be remitted to an extent. It is therefore the considered opinion of this Tribunal that remission of the punishment of "Dismissal from Service" to "Discharge from Service" would meet the ends of justice as also enable the applicant to rehabilitate himself in the society.

11. In fine, the O.A. is partially allowed. The punishment of 'Dismissal from Service' awarded by the SCM on 18 April 2011 is reduced to 'Discharge from Service'. Accordingly, the applicant is entitled to the benefit of gratuity and any other entitlements as applicable, if otherwise eligible. This order shall be complied with, within three months from the date of receipt of this order. In default, an interest of 9% *per annum* is payable from that date. No order as to costs.

Sd/-
Lt Gen K Surendra Nath
Member (Administrative)

Sd/-
Justice V.Periya Karuppiah
Member (Judicial)

15-09-2014
[True copy]

Member (J) – Index : Yes/No

Internet : Yes/No

Member (A) – Index : Yes/No
ap

Internet : Yes/No

To:

1. 1 The Army Commander (GOC-in-C)
Headquarters Western Command
Chandimandir PIN: 908543
C/o 56 APO
2. Secretary to the Government of India
Ministry of Defence
South Block, New Delhi
3. Chief of Army Staff
Army Head Quarters (AHQ)
Defence Head Quarters
Integrated Head Quarters (IHQ)
New Delhi – 110011
4. Mr.S.Mahesh
Counsel for the applicant.
5. Mr. B. Shanthakumar, SPC
For Respondents.
6. OIC/Legal Cell,
ATNK & K Area,
Chennai-600009.
7. Library, AFT/RB, Chennai.

Hon'ble Justice V.Periya Karuppiah
(Member-Judicial)

and

Hon'ble Lt Gen K Surendra Nath
(Member-Administrative)

O.A. (Appeal) No. 149 of 2013

Dated: 15.09.2014