

FORM NO – 21
(See Rule 102 (1))

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

APPLICATION NO: O.A. 92 OF 2011

THIS 20TH DAY OF AUGUST, 2013

CORAM : Hon'ble Mr. Justice Raghunath Ray, Member (Judicial)
Hon'ble Lt. Gen. K.P.D.Samanta, Member (Administrative)

15157846F Ex-GNR(DMT) Pravina Bidyanuragi
Indian Army/Artillery, 244 Field Regiment,
Vill/PO Indipur, P.S.Sadar, Dist. Dhenkanal,
State Orissa,

..... Applicant

- Versus -

1. Union of India
Service through the Secretary, Ministry of Defence,
New Delhi – 110 011
2. Chief of the Army Staff, Sena Bhawan,
New Delhi – 110 011
3. GOC-in-C, Southern command, Pune-1.
4. OIC Records, Topkhana Abhilekh,
Artillery Records, Nasik Road Camp-433102
5. Commanding Officer, 3 Trg & MT Regt.
Artillery Centre, Hyderabad

..... Respondents

For the appellant: Mr. Bisikesan Pradhan, Advocate

For the respondents: Mr. S.K.Bhattacharyya, Advocate

ORDER

Per Lt. Gen. K.P.D.Samanta, Member(A) :

This is an appeal under Section 15 of the Armed Forces Tribunal Act, 2007 filed by the appellant challenging the decision of the Court Martial authorities dated 28.09.2011 by which he was dismissed from service as a measure of punishment.

2. The appellant was enrolled in the Indian Army on 27.01.2002 as a Gunner. At the relevant point of time, he was posted in 244 Field Regiment. He was granted part annual leave for 35 days with effect from 09.03.2009 to 12.04.2009 and for availing such leave the appellant proceeded to his home town in the district of Dhenkanal in the State of Orissa. The appellant was scheduled to report back, on expiry of his sanctioned leave, on 13.04.2009, but he did not join. According to the appellant, he could not re-join his duties on the scheduled date because in the meanwhile he was suffering from 'Poly Arthritis' for which he was undergoing treatment in the district hospital at Dhenkanal as an outdoor patient. After his treatment for the period from 02.04.2009 to 02.01.2010, he was declared fit by the attending doctor of the hospital and accordingly, the appellant reported voluntarily at the Artillery Centre, Nasik Road Camp on 04.01.2010. However, he was advised to report to 3 Trg. & MT Regt., Hyderabad and accordingly he reported there on 09.01.2010. He produced medical certificate before the authorities in support of his absence beyond the sanctioned leave.

3. However, the authorities were not convinced and a tentative charge-sheet was drawn against the appellant under Section 39(b) of the Army Act, 1950 for his failure to rejoin his duties on expiry of sanctioned leave without sufficient cause. Summary of evidence was recorded on the basis of the aforesaid charge-sheet. He was tried by a Summary Court Martial (SCM) on the basis of the charge-sheet dated 14.06.2010. Summary Court Martial was convened and was held on 28.09.2010. According to the appellant, he was made to sign a number of blank forms. Ultimately, he was found guilty by the SCM and by way of punishment, he was dismissed from service by an order dated 28.09.2010 vide Annexure A-6 passed by the Commanding Officer, 3 Trg. & MT Regt., Hyderabad. The appellant was advised to prefer an appeal against the said punishment, which the appellant did vide his appeal dated 18.11.2010 before the Chief of the Army Staff. In the meantime, it appears that the Reviewing Authority by exercising his reviewing power directed vide communication dated 14.01.2011 (Annex. A-9) to modify the finding of the charge to the effect that in place of "till he voluntarily rejoined at HQ Artillery Centre, Hyderabad on 09.01.2010 at about 12.00 hrs", it should be read as "till he voluntarily rejoined at Artillery Centre, Nasik Road Camp on 04.01.2010". The grievance of the appellant is that such alteration of findings on the sentence is neither appropriate nor as per law. His further contention is that he was suffering from 'Poly Arthritis' for which he could not rejoin his duties on

the scheduled date and in support of his illness he had produced necessary medical certificate from his nearest Govt. hospital but the authorities did not consider the same and dismissed him from service without giving him an opportunity to defend the charge. He has also alleged that although he had preferred an appeal before the Chief of the Army Staff against the punishment but no decision was communicated to him till the filing of the instant appeal.

4. The respondents have filed a reply affidavit contesting the appeal. They have stated that the appellant was enrolled on 27.06.2002 and was dismissed by a court martial on 28.09.2010. He had rendered in all 7 years 8 months 15 days of service. It is further stated that on an earlier occasion, the appellant had earned one red-ink entry for similar offence of over-staying leave.

5. On this occasion the appellant was initially granted 27 days part annual leave but the appellant made an appeal for extension of leave and accordingly his leave was extended by 8 days and he was granted total 35 days leave up to 12.04.2009 but he did not rejoin on the scheduled date on 13.04.2009 and remained absent unauthorisedly for 266 days. As per rules, after 30 days of absence, on expiry of leave, he was declared a 'deserter' and apprehension roll was issued to the local police authorities. However, the appellant voluntarily surrendered at Nasik Road Camp on 04.01.2010 after 266 days of absence. He was directed to report at Artillery Centre, Hyderabad which he did on 09.01.2010. It is stated that during the period of his long absence without any authority, he never contacted his superior authority nor submitted any application for extension of leave on medical ground. Accordingly, charge was framed against him under Section 39(b) of the Army Act and Summary Court Martial was convened by the competent authority which tried the appellant on 28.09.2010 and on conclusion of the SCM proceedings, he was dismissed from service. It is, however, clarified by the respondents that the medical certificate as produced by the appellant (Annex. A-1) clearly shows that he was treating himself for the alleged illness as an outdoor patient. Therefore, it is quite evident that his illness was not so serious as to be admitted in the hospital. It is also stated that the appellant admitted during the court martial proceedings that he did not inform the superior authority about his illness nor did he apply for extension of leave. It is further submitted that during the proceedings the appellant was given all opportunity but he did not produce any defence witness nor he did he cross-examine the PWs. Therefore, the SCM authority after considering all relevant evidence on record held him guilty of

the offence/charge and accordingly passed the sentence of dismissal from service. It is further submitted by the respondents that the appeal has no merit and accordingly it should be dismissed.

6. We have heard the Ld. Counsel for both parties. Mr. Bisikesan Pradhan, Ld. Counsel for the appellant has not made any serious attempt to challenge the SCM proceedings. However, he has pointed out that after the proceeding was over and the appellant was dismissed from service, the Reviewing Authority modified the findings on the charge which is not appropriate.

7. Ld. Counsel for the respondents has, however, submitted that there was no illegality or infirmity in such action of the Reviewing Authority in view of the power vested on such authority in terms of Section 163 read with Section 179 of the Army Act. He has also contended that the Court Martial proceeding was held in accordance with the rules and all opportunities were provided to the appellant to defend himself. Therefore, this Tribunal need not interfere into the punishment which is proportionate to the offence committed. Moreover, this was not the first offence but on earlier occasion also, the appellant committed similar offence by remaining absent unauthorisedly.

8. We have considered the matter carefully. The only contention raised by the Ld. Counsel for the appellant is that the Reviewing Authority cannot modify the findings on the charge at late stage when the punishment was already inflicted on the appellant. We, however, find that the modification made by the Reviewing Authority has not prejudiced the appellant in any manner because according to the appellant's own averment, he had reported before the Artillery Centre, Nasik Road Camp on 04.01.2010 wherefrom he was asked to report at Trg & MT Centre, Hyderabad which he did on 09.01.2010. In the charge-sheet (Annex. A-2), the charge was that he remained absent after expiry of sanctioned leave without sufficient cause and failed to rejoin his duty till he voluntarily reported at HQ Artillery Centre, Hyderabad on 09.01.2010 at about 12.00 hrs. The Reviewing Authority has taken the days of total absence till the date he voluntarily reported at Artillery Centre, Nasik Road Camp on 04.01.2010 and not on 09.01.2010 where he ultimately joined after being directed from the Nasik Road Camp. Therefore, actually there was no modification of the charge as such, rather it was in favour of the appellant because the total days of absence was reduced by about 5 days. However, for this modification of date of

joining, the appellant is not in any way prejudiced nor the finding of the SCM was invalidated requiring quashing of the charge itself.

9. We find that the appellant was given all opportunities in the Court Martial proceedings but he did not cite any defence witness nor cross-examined the prosecution witnesses. It is also seen from the medical certificate that he was treated as an outdoor patient and not an indoor patient. Since the appellant was posted at Nasik Road Camp, he could have got himself treated in the military hospital there where medical facility would possibly be better in comparison to a State district level hospital. We also notice that the appellant in his statement at Annex. A-4 clearly stated that he made a mistake by not reporting his overstayal to his superior authority and for not filing any application for extension of leave. He repented for it. He prayed for leniency. However, the Court Martial Authorities considered all such materials on record and passed the sentence. It is well settled that discipline is the main consideration in a disciplined force like Indian Army and if any leniency is shown to undisciplined person, it may affect the moral of others, who have remained faithful to discipline. Since there was no infirmity in procedure nor was there any violation of the principles of natural justice, we find little scope to interfere with the decision of the Court Martial Authority.

10. The appellant in his rejoinder affidavit annexed a copy of the appellate order passed by the Chief of the Army Staff dated 20.11.2011. We find that the COAS in his detailed order considered the appeal of the appellant and discussed all the points raised by him but finally he rejected it as the same was found to be lack of substance and devoid of merit. We do not find any infirmity in this order for which we can interfere.

11. In view of the above, we are of the view that the appellant has not been able to make out a case for intervention by this Tribunal. Accordingly, the appeal stands dismissed being devoid of any merit on contest but without any cost.

12. Let the original records, if any; be returned to the respondents on proper receipt.

13. Let a plain copy of the order, duly countersigned by the Tribunal Officer, be furnished to both sides after observance of usual formalities.

(LT. GEN. K.P.D.SAMANTA)
MEMBER (ADMINISTRATIVE)

(JUSTICE RAGHUNATH RAY)
MEMBER (JUDICIAL)