

**COURT NO. 3,
ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

**T.A. No. 157 of 2009
(Delhi High Court W.P (C) No. 3623 of 1994)**

IN THE MATTER OF:

Gnr. Vijay Singh**Applicant**
Through Mr. Sarvesh Bisaria, counsel for the applicant

Versus

Chief of Army Staff & Another**Respondents**
Through: Mr. Anil Gautam, counsel for respondents

CORAM :

**HON'BLE JUSTICE MANAK MOHTA, JUDICIAL MEMBER,
HON'BLE LT GEN Z.U.SHAH, ADMINISTRATIVE MEMBER**

Order

Date: 29-3-2010

1. The applicant filed a writ petition (civil) No. 3623 of 1994 in the Hon'ble Delhi high Court for quashing and setting aside the order of dismissal from service dated 16.12.1993 (**Annexure P1**) with further

prayer that he be reinstated with all consequential benefits. The same was transferred to the Armed Forces Tribunal on 24.8.2009.

2. The brief relevant facts of the case are that the applicant was enrolled in 1983 and on 2.6.1993 while posted at Ambala in 48 Air Defence Regiment while he was going on duty he fell down from a motor cycle and sustained head and bodily injuries. He was treated at Military Hospital, Ambala and then granted 28 days medical leave from 19.6.1993 to 16.7.1993. On expiry of the same he was transferred to Army Hospital, Delhi Cantonment. He was discharged from Army hospital, Delhi Cantonment on 3.8.1993 and was to report back to Military Hospital, Ambala. While on his way to proceed to Ambala, accompanied by his wife, the applicant fell down on the ground and became unconscious. His wife took the applicant to his village instead of Ambala Cantt where he was medically treated at Sharma Ayurvedic Hospital, Village Jatoh, Distt Gurgaon from 4.8.1993 to 28.10.1993. The concerned Ayurvedic Hospital gave medical certificate of fitness (**Annexure P2**). During this period his wife informed the respondents vide letters dated 4.8.1993 (**Annexure P-3**) and 7.9.1993 (**Annexure P-3A**) about his medical condition and requested for leave on medical

grounds. The applicant contends that on his recovery he reported to Military Hospital, Ambala Cantt on 29.10.1993. Here he was given a discharge slip (**Annexure P-4**). The respondent claims that he reported back to his unit on 1.11.1993.

3. Disciplinary proceedings on grounds of unauthorised absence were initiated against the applicant. A summary of evidence was recorded. A charge sheet was served under Army Act Section 39 (a) charging the applicant for absence without leave from 4.8.1993 to 28.10.1993 – (87 days). A court martial was convened. On 16.12.1993 by the impugned order the applicant was dismissed from service.

4. It was stated that on 22.12.1993 and 30.5.1994 (**Annexure P-6**) the applicant submitted appeals under Army Act 164 (2) against the order of dismissal but did not receive any intimation on outcome of the same. Thereafter, on 24.1.1995 the applicant filed this writ petition before the Hon'ble Delhi High Court.

5. The applicant avers that three other personnel of his unit ie. Kanwar Prasad, Naik Prem Singh and Hav Jag Mal Singh, for the same offence of overstay of leave, were awarded minor punishments, whilst he

has been dismissed from service. This is discriminatory and disproportionate to the nature of offence. The applicant has prayed that the order of his dismissal dated 16.12.1993 be quashed and he be reinstated in service with all consequential benefits.

6. The respondents in their counter affidavit maintained that the applicant over stayed leave from 4.8.1983 to 28.10.1983. He neither intimated his unit nor applied for extension of leave. The respondents have denied receipt of letters from wife of the applicant.

7. It is further contended that the applicant had earlier been punished twice, once for negligent driving in 1987 when he was awarded seven days confinement to lines and secondly in 1993 when he was awarded 28 days rigorous imprisonment and 14 days confinement to lines for overstaying leave on two occasions. The applicant has made a false statement that he had been injured in a motor cycle accident while on duty. It is stated that he had initially been admitted to Military hospital, Ambala on 2.6.1993 for “hypertension”. The applicant having about 11 years service should have been aware that he should have reported to the nearest military hospital instead of getting treatment from a “Vaid”.

8. The respondents maintain that punishment awarded to different persons for the same offence depends on the facts and circumstances of each individual case and the previous record of the person. The extreme punishment of dismissal is not generally resorted to for the first and second offence. The applicant despite earlier punishments showed no signs of improvement therefore the subsequent punishment of dismissal was justified.

9. The applicant maintains that during his period of absence he was under medical treatment with a competent medical authority and he rejoined duty as soon as he became medically fit. Past conduct should not have been considered in awarding a punishment of “dismissal from service”.

10. The respondents in their counter affidavit have also stated that the applicant was a habitual offender and over stayed leave for prolonged periods. The allegation that discriminatory punishment was awarded are false since Kanwar Prasad does not belong to the unit and Hav Jag Mal Singh was never punished for over staying leave. A court martial before

awarding the quantum of punishment has to consider the previous record of an individual.

11. We have perused the records and heard the arguments at length. During the course of arguments learned counsel for the applicant reiterated the grounds stated in the application and further submitted that the orders for dismissal dated 16.12.1993 were extreme. The applicant himself had reported for duty after completion of his medical treatment. The respondents have not considered this favourably. The wife of the applicant had intimated the authorities about his medical problem. The applicant had also filed an appeal against the order of dismissal. The respondents rebutted these facts and no appeal was received after order of dismissal. It is not disputed that the applicant had been punished earlier. It has not been established that intimation of absence was made by any relative of the applicant. No documentary proof was produced to support this contention. Thus during the said period the applicant was absent without authority for which the applicant had pleaded guilty in court martial proceedings. The applicant has been punished with dismissal on his overall record of service. It was stated by the applicant that he had filed an appeal against the order of dismissal on 22.12.1993 but copy of the appeal has not been annexed. A copy of reminder

(**Annexure P-6**) dated 30.5.1994 has been filed. Receipt of the same has been denied by respondents and applicant has failed to establish submission of appeal. Thus it is inferred that no appeal was filed. The applicant has not exhausted statutory remedy available under Army Act Section 164. Therefore the present application is not sustainable. It is also noted that in the present application the Union of India has not been applicant has not been made a party. Applicant has not been able to justify discrimination or malafide intentions. We have perused the court martial proceedings including impugned order. We do not find any infirmities. The application is dismissed. No costs.

MANAK MOHTA
(Judicial Member)

Z.U. SHAH
(Administrative Member)

Announced in the open court
Dated: 29-3-2010