

**IN THE ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

**TA/193/10  
WRIT PETITION (CIVIL) NO.3851/2005**

**SEPOY ASHOK KUMAR  
NO.3184638M  
S/O SH. SULTAN SINGH  
R/O. VILL & P.O. KILOI  
DISTT. ROHTAK (HARYANA)**

**THROUGH : SH.D.S.KAUNTAE, ADVOCATE**

**...PETITIONER**

**VERSUS**

- 1. UNION OF INDIA  
THROUGH ITS SECRETARY  
GOVT OF INDIA  
MINISTRY OF DEFENCE  
SOUTH BLOCK  
NEW DELHI-110 011.**
- 2. THE CHIEF OF ARMY STAFF  
ARMY HEADQUARTERS  
SOUTH BLOCK  
NEW DELHI.**
- 3. COMMANDING OFFICER  
9 JAT REGIMENT  
C/O 56 APO**
- 4. OFFICER INCHARGE RECORDS  
THE JAT REGIMENT  
BAREILLY**

**THROUGH : MS. BARKHA BABBAR, ADVOCATE  
LT COL NAVEEN SHARMA**

**...RESPONDENTS**

**CORAM :**

**HON'BLE SH. S.S.KULSHRESTHA, MEMBER**

**HON'BLE SH. S.S.DHILLON, MEMBER**

**J U D G M E N T**

**Dated : 05<sup>th</sup> May, 2010**

1. The petitioner is aggrieved by the Summary Court Martial (hereinafter referred to as SCM) award of 27.12.1997 given to him by his Commanding Officer wherein he was dismissed from service. He also seeks quashing of the impugned order of 19.10.2004 passed by the Chief of the Army Staff, rejecting his statutory petition under section 164 (2). The petitioner also seeks to be reinstated in service with all consequential benefits.

2. The background of the case is that the petitioner absented himself without leave for a period of 42 days and was charged for this offence under section 39(a) of Army Act and dismissed from service.

3. The primary facts pleaded by the petitioner were that during the Court Martial proceedings, he has not signed on the plea of guilty and

that the SCM was conducted with undue haste and completed within a period of a little over one hour. The fact that he has not pleaded guilty vitiates the complete SCM proceedings. Furthermore, completing the SCM in a matter of one hour indicates bias on the part of his Commanding Officer as well as non application of mind for such an important proceedings which has affected his life so adversely. It was also argued that during the recording of Summary of Evidence, none of the witnesses have identified the accused which is a mandatory requirement and furthermore he was not given any opportunity to cross examine the witnesses. In accordance with Army Rule 23, the Summary of Evidence is to be recorded "*in the presence and hearing of the accused.*" This has not been done in his case and his signatures were forcibly obtained without him being present during the proceedings of the Summary of Evidence. This aspect was responded to by the learned counsel for the respondents by clarifying that during the SCM the petitioner pleaded guilty for the one and only charge preferred against him. Before recording such plea of guilt, the Commanding Officer explained the implications of such plea of guilt in accordance with Army Rule 115(2) and only thereafter proceeded with the trial after obtaining the signatures of the petitioner on the proceedings. The original proceedings were examined and the signatures of the accused appear

alongside that of his Commanding Officer with regard to the provisions of Army Rule 115(2) wherein the plea of guilt was preferred by him. The respondents also argued that baseless allegations of non identification of the accused during the recording of evidence are being made which are totally contrary to the facts of the case. In this case there were four witnesses, all four of whom identified the accused before commencing their testimony. At the end of each statement, the petitioner was asked as to whether he wishes to cross examine the witness and the signatures of the witness, the petitioner, the independent witness (2 Lt Mehar Singh) and the officer recording the Summary of Evidence (Maj Harjinder Singh) appear. These four signatures appear after the testimony of all four witnesses. Therefore, for the petitioner now to state that he was not present at the time of Summary of Evidence is absolutely baseless and unsubstantiated. It is also on record that on conclusion of the testimony of the four witnesses, the petitioner was asked whether he wishes to make any statement to which he has made the following statement *“I accept that I absented from 216 Tansit Camp on 28 Oct.97 and absented without leave with effect from 28 Ict.97. I admit that I have again made an mistake by going home without leave, although I was sent for my Release medical board from unit on 22 Oct.97. I reported back to in Rear on 09 Dec.97 and to Bh Hq on 11 Dec 97. I request that I be left as I am very*

*poor.*” After making this statement the petitioner has signed in acknowledgement, of his having made this statement voluntarily and after due caution. Under these circumstances, wherein the petitioner has pleaded guilty it is not unusual for the SCM proceedings to be concluded within one hour. In any case, notwithstanding whatever time was taken for its completion, there were no legal infirmities in the SCM proceedings.

**4.** It was also put across by the petitioner that despite the fact that he was a low medical category for psychiatric reasons he has been tried without his being in a fit state of body and mind. He was under psychiatric treatment at Military Hospital and there was no such urgency to proceed in the disciplinary matter and it could have waited till he was fully cured. The respondents brought out that while the petitioner had been placed in low medical category BEE (Psy) permanent with effect from 06.11.1996, the Medical Board had also indicated that he is mildly symptomatic and need no medication and has been adequately counselled. It was also stated that in accordance with the procedures for SCM, he was medically examined by the Unit Medical Officer, Capt Rakshith, who declared him to be in “sound state of mind” and fit to undergo trial by SCM. Nowhere does it specify that individual placed in

medical category cannot be tried by SCM, and these are just lame excuses to delay the inevitable.

5. It was also urged by the learned counsel for the petitioner that the mandatory warning period of 96 hours under Army Rule 34 was not given to him so as to prepare his defence. This has handicapped him and he was caught totally by surprise on the date of his Court Martial. The counsel went on to state that in accordance with Army Rule 129 it is the duty of the Commanding Officer to provide legally qualified officer to defend the petitioner during the trial. However, in this case the junior commissioned officer i.e. Sub Ranbir Singh was detailed as friend of the accused. This JCO belongs to 9 JAT, the same unit as the Commanding Officer who was carrying out the trial. Therefore being under command influence this JCO could not be expected to perform the functions of accused. The respondents urged that due mandatory notice, as required by Army Rule 34, had been given to the petitioner and he was given a copy of Summary of Evidence, charge sheet and the Battalion Routine Order part-I, serial no.18/97 on 23.12.1997 and his signatures obtained in receipt. His trial was only conducted on 27.12.97 after the mandatory period of 96 hours has expired. The original certificate was produced

before the court and also shown to counsel for the petitioner. Nomination of the friend of the accused is required to be done within the Unit of the accused itself. Army Rule 129 specifically states that “*the accused person may have a person to assist him during the trial, whether a legal advisor or any other person.*” It was for the petitioner to get any body who he deemed appropriate and he has never put any request for any legal advisor. In accordance with the norms, JCO was detailed to assist him during these proceedings which were in accordance with the Rule position of Army Rule 129. In fact he was given a letter on 23.12.1997 asking him to give the name of the person who he wished to nominate as friend of the accused. No such name has been given by the petitioner and Commanding Officer detailed Sub Ranbir Singh. There was no representation during the trial about detailment of such friend of accused. Therefore to take up this plea at this belated stage serves no useful purpose. Learned counsel for the petitioner also argued that SCM had not given any finding as required by Army Rule 161. However, it was brought to his notice that Army Rule 161 is only applicable for SGCM and not for SCM.

6. With regard to the appropriateness or adequacy/inadequacy of the punishment it was highlighted by the counsel for the respondents

that in his short service of approximately six years, the petitioner has already been summarily tried on eight different occasions for the same offence i.e. over staying leave and absenting without leave. Brief record of such earlier punishment is appended here under:

Ser No.	AA Sec	Details of Offence	No of day of AWL/OSL	Punishment awarded
1.	39(a)	AWL-10 Dec.94 19 Jun 96	41 days	7 days RI
2.	39(b)	OSL – 01 Jun 95 30 Jun 95	30 days	21 days RI and 14 days detention
3.	39(b)	OSL - 09 Sept 95 14 Oct 95	36 days	7 days RI
4.	39(a)	AWL-24 Oct 95 30 Jun 95	04 days	7 days RI
5.	39(a)	AWL-12 Nov.95 5 Dec 95	24 days	7 days RI
6.	39(b)	OSL – 03 Sep 96	01 day	14 days RI
7.	39(a)	AWL-13 Oct 96 15 Dec 96	34 days	28 days RI
8.	39(a)	OSL – 14 Sept 97 19 Sept 97	16 days	14 days RI

7. Keeping the above facts in view, it appears that the punishment given to him is not disproportionately shocking keeping in view his past record of eight disciplinary entries in a short period of six years.



**8. All in all we find no reason to intervene in the findings and sentence of the SCM. Accordingly the petition is dismissed.**

**S.S.DHILLON  
(Member)**

**S.S.KULSHRESTHA  
(Member)**

**PRONOUNCED IN THE OPEN COURT  
TODAY ON 05<sup>th</sup> MAY, 2010**