

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

**T.A NO. 311 OF 2009
(WRIT PETITION (C) NO. 10968 OF 2006)**

LAC VASHISHTHA. M
VILL. BAIRAMGANJ, P.O JALALPUR
DISTT. ALIGARH-202137.

THROUGH: MR. S.M DALAL, ADVOCATE

.. PETITIONER

VS.

1. THE UNION OF INDIA THROUGH SECRETARY,
MINISTRY OF DEFENCE, SOUTH BLOCK,
DHQ P.O., NEW DELHI-110 011.
2. THE CHIEF OF AIR STAFF,
AIR HQ, DHQ P.O.,
NEW DELHI-110 011.
3. COMMANDING OFFICER,
26, WING AIR FORCE
C/O. 56 APO.

THROUGH: SQN. LDR. ASHISH TRIPATHI

.. RESPONDENTS

CORAM

HON'BLE MR. JUSTICE S.S KULSHRESHTHA, MEMBER
HON'BLE LT. GEN. S.S DHILLON, MEMBER

JUDGMENT

26.02.2010

1. The petitioner is distressed by the DCM proceedings of 23.4.2002 in which he was sentenced to be detained for one month, to be dismissed from service and to be reduced to the ranks. He also seeks quashing the order of the Chief of the Area Staff of 15.3.2006 rejecting his post confirmation petition. He also seeks to be reinstated in service with all consequential benefits. The petitioner, who was a Corporal in the Air Force at the time of the offence, was granted leave from 21.4.2001 to 21.5.2001. While at home an accident occurred wherein the petitioner's parents' lives were in danger and he sent a telegram to his CO for extension of leave, but the same was rejected. Keeping in view the critical situation at home, the petitioner over-stayed leave from 22.5.2001 to

11.7.2001 when he voluntarily rejoined. After rejoining, the situation at home again escalated and he proceeded on leave without any sanction from 24.7.2001 to 30.8.2001. On return, he was tried by a DCM for both these offences and was awarded the sentence of detention for one month, dismissal from service and to be reduced to the ranks.

2. The petitioner is aggrieved that his CO did not see the merit in such over-stayal of leave/absent without leave. It was not as if he was absent without sufficient cause as he had more than sufficient cause to over-stay leave/absent without leave because the lives of his parents were in danger. He is also aggrieved by the fact that the trial was not conducted in accordance with the principles of natural justice and the stated law specifically -

(a) Rule 43 of the Air Force Rules 1979 were violated in that the convening authority has not applied his mind on the charge sheet or on the convening order of the GCM both of which have been signed by the Wing Commander M.P

Singh, who was a staff officer and had not been done by the concerned authority i.e. the C-in-C. He is also agitated that the convening order should name the waiting members which has not been done in this case;

(b) Flt. Lt. S. Babu, who conducted the hearing of the charges under Air Force Rule 24 was not the CO of the petitioner. Therefore, such proceedings become null and void. His CO at the time of the offence was Wg. Cdr. S.L Soorway. The hearing of the charge was not in accordance with Rule 24 and it was a mere formality of a short-cut. To this extent, a typed copy of the hearing was produced to support the view that this hearing was not done according to the laid down procedures in the Air Force Rules and no witnesses were called and neither was he given an opportunity to defend himself;

(c) The petitioner was given a choice of officers who could act as his defending officer during trial. Amongst the three officers so indicated by him, none was finally given to him and Flying Officer S.K Jain was thrust upon him as a defending officer. Flying Officer Jain was relatively young

in service and had no experience of dealing with cases under the Air Force Law;

(d) The petitioner is of the view that the DCM failed in complying with the Air Force Rule 62(5). In that, instead of recording his plea of guilty in a stereo type manner, they should have converted it to a plea of not guilty and proceeded accordingly, since there was sufficient cause for him to over-stay leave; and

(e) The petitioner is aggrieved that the punishment as given to him is harsh and disproportionate to the gravity of the offence committed by him.

3. From the DCM proceedings, it appears that the petitioner pleaded guilty to both the charges. On such plea, the Judge Advocate read and explained Air Force Rule 60(2) to the petitioner and explained to him the meaning and ingredients of the charge. He was also informed of the general effect of his plea and the meaning of the charge to which he had pleaded guilty and advised to change his plea to that of not guilty. The Court also confirmed from the accused whether he is pleading guilty to

the charge without any threat, coercion, promise or inducement. The accused submitted that he had pleaded guilty of his own free will and even the defending officer submitted that he had explained to the accused the implication of his plea and that the petitioner was pleading guilty on his own free will without any compulsion. Such plea of guilty is clear and that can be used against the person making it. Admission on the part of the petitioner is substantive evidence by itself, in view of Sections 17 and 21 of the Evidence Act, though they are not conclusive proof of the matter admitted. We are of the opinion that the admission/plea of guilt, which had been explained to the petitioner in the light of Air Force Rule 60(2) and duly proved, is admissible (see **Bharat Singh and another v. Bhagiratha** (AIR 1966 SC 405)). Further, the admission/plea of guilt made by the petitioner also gets corroboration from the summary of evidence or on the other hand, that part of the summary of evidence is not confronted. To the contrary, such admission lends support to the prosecution version (see **Dharam Pal and others v. State of U.P** (AIR 1975 SC 191)). Therefore, it was incorrect to suggest that the DCM erred in not

following the Air Force Rule 62(5). The respondents rubbished the idea of non-application of mind by the C-in-C before approving the charges and the convening order. In accordance with Air Force Rule 43(4), while the authority to convene a DCM vested with the C-in-C, the endorsement on the charge-sheet and the convening order could be signed either by him or on his behalf by a staff officer, which has been done. The petitioner's contention regarding non-application of mind by the convening authority is not tenable.

4. With regard to giving names of the Presiding Officer and all Members of the DCM in the convening order, it was clarified that in accordance with Para 739(A) of the Regulation of the Air Force 1964, only the Presiding Officer of a Court Martial must be named in the convening order, the Members and the waiting Members may be mentioned by name or by the number and ranks and units from which they are to be detailed. In this case, in accordance with the convening order, a special routine order was published by the CO, Air Force Station, Thane on

19.4.2002 detailing the waiting Members by name. Therefore, no irregularity has been committed in this regard.

5. With regard to hearing of the charge, the respondents produced the original proceedings of the hearing from which it is evident that the typed version shown by counsel for the petitioner was incorrect and that the hearing of the charge had been done in accordance with the legal provisions. The evidence of the witness was taken, liberty was given to the petitioner to cross examine them, which he declined and thereafter the petitioner was given liberty to make any statement. During the hearing of the charge, Flt. Lt. S. Babu was the officiating CO in the absence of Wg. Cdr. Soorway, which is perfectly legal. The defending officer, Flying Officer Jain was a suitable legally qualified officer who was detailed to defend the petitioner since the other officers whom the petitioners desired were not available due to exigencies of service. It was pointed out in this case that while the prosecutor was not a legally qualified officer, the respondents had taken special care to ensure that the defending

officer was legally qualified. The petitioner pleaded guilty to both the charges and has never earlier objected to the detailment of Flying Officer Jain as his defending officer. The respondents stated that while awarding punishment, they had also considered the fact that the petitioner had got punishment on four earlier occasions for the same offence of absence without leave/over-stayal of leave. Keeping in view this conduct of the accused and the two charges, for which he was found guilty by the DCM, the sentence awarded was legitimate.

6. There is no substance in the petition and it is dismissed.

Sd/-
(S.S DHILLON)
MEMBER

Sd/-
(S.S KULSHRESHTHA)
MEMBER