

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI
(Court No.2)**

**T.A NO. 317 of 2009
Writ Petition (C) No.3558 of 1997**

IN THE MATTER OF:

Rajbir Singh**APPLICANT**
Through : Mr. K. Ramesh, counsel for the applicant

Vs.

Chief of Army Staff and Others ...**RESPONDENTS**
Through: Mr. Ajai Bhalla counsel for the respondents

CORAM:

**HON'BLE MR. JUSTICE MANAK MOHTA, JUDICIAL MEMBER
HON'BLE LT. GEN. M.L. NAIDU, ADMINISTRATIVE MEMBER**

JUDGMENT

Date: 31.01.2012

1. This case was originally filed in the Hon'ble High Court of Delhi as WP(C) No.3558 of 1997 and after coming into force the Armed Forces Tribunal, it was transferred to this Tribunal on 17.11.2009 and registered as T.A. No.317 of 2009.

2. Vide this OA, the applicant has prayed for reinstatement in service from the date of his dismissal and to grant pecuniary benefits of service. He has also sought quashing of the order of dismissal dated 11.02.1994.

3. Brief facts of the case are that the applicant was enrolled in the Army on 29.03.1988. The applicant has put in 5 years and 319 days of service as on 11.02.1994 when he was dismissed.

4. It has been alleged that the applicant was suffering from severe Asthma and was admitted in MH, Namkum on a number of occasions for treatment. On 24.04.1993, the applicant was referred to Medical Specialist and he was declared medical category 'CEE' on 11.5.1993.

5. The applicant proceeded on leave w.e.f. 26.08.1993 to 24.09.1993. During his leave, he again fell sick in his home town and he was under medical treatment of private medical officer upto 18.01.1994 when he was declared fit by the Medical Officer. He applied for extension of leave to cover his period of absence. The applicant was never informed of the decision of the unit and he was also not called by the unit to rejoin the duty. As such, the applicant reasonably presumed that his leave application for overstayal of leave has been sanctioned by the competent authority. On 19.01.1994 at about 1700 hrs., the applicant reported for duty at his unit at Ranchi. The applicant was informed vide a communication dated 05.02.1994 that he will be tried by Summary Court Martial on 11.02.1994 at 1000 hrs. for committing offence under Section 39(b) of the Army Act being over stayal of leave. Accordingly, applicant was tried and found guilty and sentenced on 11.01.1994. He was sentenced to be dismissed from service.

6. Aggrieved with the order of dismissal, the applicant made an appeal on 07.06.1994 to the Chief of Army Staff. The appeal was rejected vide order dated 12.12.1995.

7. Learned counsel for the applicant argued that the applicant was very sick and therefore, he was not in a position to report back to the unit. On being medically fit, he had returned to the unit and no action was taken by the unit to inform him either to rejoin or to take any other action. It was presumed by the applicant that he was granted the extension of leave. Therefore, the applicant should not have been tried and punished.

8. Learned counsel for the applicant also contended that in the SCM proceedings, the applicant has neither signed at the places where he has shown to be pleaded guilty nor has he signed anywhere when he was asked to make a statement in reference to the charge or in mitigation of the punishment.

9. Learned counsel for the respondents argued that the applicant had overstayed the leave for approximately about four months. He finally reported on his own on 19.01.1994. Since he was absent w.e.f. 24.09.1993 and completion of 30 days of leave, a COI was held on 06.11.1993 which declared him deserter w.e.f. 25.09.1993. He was habitual offender on previous occasions also on 18.02.1993, he overstayed for six days and he was penalised for 14 days' pay fine.

10. On his reporting back to the unit, a summary of evidence was ordered after he was handed over a tentative charge-sheet. In the summary of evidence, the applicant declined to examine any of the witnesses. He also declined to produce any witness in his defence.

11. When the applicant was asked to make a statement in his defence under the provisions of Army Rule 23(ii), he declined to make any statement. The absence because of overstayal of leave has not been disputed. As such, his plea of guilt was accepted by the officer conducting the SCM. The SCM was conducted correctly by his CO Col M.S. Rana. All documents are also in order.

12. We have heard both the parties at length and have also examined the SCM proceedings in original. We have observed that the period of absence of 116 days from 25.09.1993 to 19.01.1994 is not in dispute. The applicant has also made an admission in his affidavit accordingly. We have also noted that in the SCM, he has declined to cross examine the witnesses. He has also declined to cross examine the witnesses during the summary of evidence. The applicant did not opt to bring any evidence in his defence. He declined to make any statement during the summary of evidence as well as during the SCM.

13. Since the period of absence has not been explained by the applicant, the contention of the applicant that he has informed the authority regarding his illness and presumed that the leave has been extended are not tenable. It seems that he has no defence to explain

the overstayal of leave, the absent period is also long, proper opportunity has been given during SCM, due process has been followed and no explanation of any kind was placed before the SCM. Merely by not signing in the appropriate column in the SCM proceedings for the plea of guilt by the applicant, does not absolve him from the charge of the period of absence. In any case, going by the proceedings of the summary of evidence and the conduct of the applicant in the SCM proceedings, it is evident that the charge of overstayal was proved. Mere signature not being found in the appropriate columns of the SCM proceedings cannot vitiate the proceedings. Consequent to the SCM proceedings, he was awarded the sentence of dismissal. Appeal filed against that has also been dismissed.

14. In view of the foregoing, we are not inclined to interfere in the matter and the T.A. is hereby dismissed. No orders as to cost.

(M.L. NAIDU)
(Administrative Member)

(MANAK MOHTA)
(Judicial Member)

**Announced in the open Court
on this 31st day of January, 2012.**