IN THE ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

TA/432/2009
IN
WRIT PETITION (C) NO.3545/1998

SEPOY NO.14603518M CFN (ELECT)
ROOR SINGH OF HQ 70 INF BDE CAMP
S/O. SHRI BABU SINGH
VILL. RAMSARA, P.O. RAMAN
TEH. TALWANDI SABO
DISTT. BATHINDA

THROUGH : SH.M.G.KAPOOR, ADVOCATE

...APPELLANT

VERSUS

1. **UNION OF INDIA**
   THROUGH THE SECRETARY
   MINISTRY OF DEFENCE
   NEW DELHI-110 011.

2. **CHIEF OF THE ARMY STAFF**
   ARMY HEADQUARTER
   NEW DELHI.

THROUGH : SH. ANIL GAUTAM, ADVOCATE
LT COL NAVEEN SHARMA

...RESPONDENTS

CORAM :

HON'BLE MR. JUSTICE S.S.KULSHRESTHA, MEMBER
HON'BLE LT. GENL. S.S.DHILLON, MEMBER

J U D G M E N T
Dated : 20.07.2010

1. The appellant is aggrieved by the Summary Court Martial held on 30.11.1997 whereby he was sentenced to be dismissed from service. The appellant had completed approximately 11 years of service which was totally nullified by this dismissal. He therefore, seeks reinstatement in service with all consequential benefits.

2. The appellant was serving in HQ 70 Infantry Brigade in Jammu & Kashmir in 1997 at the time of occurrence of this incident. He was granted casual leave from 28.08.1997 to 03.09.1997 but due to unavoidable family circumstances, the appellant overstayed leave and joined at 213 Transit Camp on 09.10.1997. The Officer Commanding Troops of HQ 70 Inf Bde Camp had a indifferent attitude towards the appellant and instead of charging him only under Section 39 (b) of Army Act for the offence of overstaying leave, purposely and wilfully falsely implicated the appellant in three other charges under Sections 41(I), 39(a) and 63 of the Army Act, thereby increasing the offences that the appellant had supposedly committed resulting in the appellant being given unduly harsh punishment in the SCM. It was also argued that the offences supposedly committed by the appellant were committed on different dates

and the appellant was innocent of these offences. He contends that he never committed any of these offences i.e. under sections 41(I), 39(a) and 63 of Army Act and had only committed the offence under Section 39(b) of the Army Act i.e. overstaying leave from 04.09.1997 to 09.10.1997. Counsel for the appellant urged that the appellant had never disobeyed any lawful command as was purported to have been committed under Section 41(I) of the Army Act. In this instance when he was ordered by his Hav Maj to report for duty the appellant replied that he had not been issued with the Coat Parka (for protection from the cold weather) and therefore, was unable to perform the duty as was required from him. The CHM instead of issuing the Coat Parka reported the matter to superior officer construing it to be disobedience of order. This was done by the CHM with a malafide intention of increasing his culpability and consequent punishment. Immediately after he was issued the Coat Parka, appellant got ready and even withdrew his weapon and bullet proof jacket but by then the Quick Reaction Team to which he had been detailed had already left the Unit lines. It was this delay in issuing the Coat Parka which caused the individual to miss out the duty that he was detailed for and not his wilful intention to disobey any lawful command. Similarly Charge No.3 of his being absent from the Unit lines on 23.10.1997 is wrong. The appellant had never left the Unit lines and was present

throughout the day and has been illegally punished under Section 39(a) of the Army Act for the offence which he had never committed. Charge No.4 under Section 63 of the Army Act wherein he had supposedly visited the out of bound Village is totally false and he had never visited the Village. These four charges had been combined together with trumped up and false allegations with malafide intention ensuring his dismissal from service because merely overstaying leave would not have been adequate ground for dismissal.

3. Before getting into the merits of the case, it would be appropriate to list out the charges:

<u>First Charge</u> AA Sec 39(b)	**WITHOUT SUFFICIENT CAUSE OVER STAYING LEAVE GRANTED TO HIM** **In that, he,** **at field on having been granted leave of absence from 20 Aug 97 to 03 Sep 97 to his home stn, without sufficient cause, failed to rejoin at 213 Transit Camp on 04 Sep 97 , on the expiry of said leave, till he voluntarily rejoined 213 Transit Camp on 09 Oct 97.**
<u>Second Charge</u> AA Sec 41(I)	**DISOBEYING IN SUCH MANNER AS TO SHOW WILLFUL DEFIANCE OF AUTHORITY A LAWFUL COMMAND GIVEN PERSONNALY BY HIS SUPSERIOR OFFICER IN THE EXECUTION OF HIS OFFICE DURING ACTIVE SERVICE** **In that, he,** **At 0630 h, on 20 Oct 97, when ordered by No.9086868p Nk Rashpal Dass, to proceed with "Quick Reaction Team to Srinagar said I shall not go, you can do nothing to**

	me" and did not proceed with the Quick Reaction Team to Srinagar.
<u>Third Charge</u> **AA SEC 39(a)**	**ABSENTING HIMSELF WITHOUT LEAVE** **In that, he,** **At field absented himself without leave from the unit lines from 1600h to 2100h on 23 Oct.97.**
<u>Fourth Charge</u> **AA Sec 63**	**AN ACT PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE** **In that, he,** **At field on 23 Oct 97 went to Village CHAKH an out of bound area, as per Special BRO No.800/1/Camp dt.21 Jul 97.**

The appellant admits that he overstayed leave from 03.09.1997 to 09.10.1997 but is not guilty of the other three charges.

4. The first and foremost argument on behalf of the appellant was the issue of mis-joinder of charges wherein the learned counsel for the appellant contended that the four charges were independent in nature but were clubbed together by the SCM without understanding its non permissibility and legal fallibility and implications, that in all the charges separate evidence and witnesses would be required and therefore, these charges should not be joined in this manner. It was also pleaded that the appellant was to be afforded full opportunity to cross examine all the witnesses with regard to these four charges and clubbing them together in this manner deprived him of that opportunity. This issue was pleaded at length by learned counsel for the appellant and the respondents on

04.02.2010 and in a separate order of that date, it was ordered that no prejudice appeared to have been caused to the appellant and that the respondents had correctly framed the four charges under Army Rule 28(3). The relevant portion of the order is appended below:

> ***This appeal has been brought against the finding and sentence recorded by Summary Court Martial (SCM) sentencing the petitioner on four charges and dismissing him from service. It is said that all the four charges were independent in nature but clubbed together by the SCM without understanding the non permissibility and legal fallibility implication that in all the charges separate evidence and the witnesses were to be examined and full opportunity to cross examine the witnesses was to be afforded to the petitioner. It is also said that the petitioner was prejudiced because of such mis joinder of charges. However, from the side of Union of India it is argued that as per Army Rule 28 all the charges could be taken together at the time of the trial of the petitioner and it was also in the interest of the petitioner to avoid multifarious proceedings. In that regard much thrust has been laid that the provisions as contained in Army Rule 28 are self contained and arrangement to the contrary made in Cr.P.C. would not have any effect.***

It is strenuously argued by the learned counsel for the petitioner that once the charges are found to be not interlinked, there cannot be joint trial otherwise it would vitiate the entire proceedings including conviction of the petitioner. In that regard reliance has been placed on Army Rule 30(1)(2)(5). For appropriating the points raised by learned counsel for petitioner, it shall be useful to quote Rule 30:

Contents of Charge: (1) Each charge shall state one offence only and in no case shall an offence be described in the alternative in the same charge.

(2) Each charge shall be divided into two parts-

(a) statement of the offence; and

(b) statement of the particulars of the act, neglect or omission constituting the offence.

(3) The offence shall be stated, if not a civil offence, as nearly as practicable in the words of the Act, and if a civil offence, in such words as sufficiently describe in technical words.

(4) The particulars shall stated such circumstances respecting the alleged offence as will enable the accused to know what act, neglect or omission is intended to be proved against him as constituting the offence.

(5) The particulars in one charge may be framed wholly or partly by a reference to the particulars in another charge, and in that case so much of the

latter particulars as are so referred to, shall be deemed to form part of the first mentioned charge as well as of the other charge.

(6) Where it is intended to prove any facts in respect of which any deduction from pay and allowances can be awarded as a consequence of the offence charged, the particulars shall state those facts and the sum of the loss or damage it is intended to charge.

In the context of arrangement made under Army Rule 30(1) it has been submitted that each charge shall state one offence. We do not find any irregularity in the framing of the charges and all the four charges were separately framed. In as much joinder of the charges is also permissible under Army Rule 28 (3). It is next submitted by the learned counsel for the appellant that appellant was prejudiced because of mis joinder of the charges or appellant was not in apposition to understand that what type of evidence was adduced. In the present case, appellant pleaded guilty for all the charges and there appears no prejudice to the appellant in the joinder of charges. He was afforded opportunity to cross examine the witnesses. No prejudice appears to have been suffered by the appellant. Question of joinder of charges figured for discussion in Kamalnathan Vs. State of Tamil Naidu (2005) 5 SCC 19 wherein it

was held "to be curable irregularity and would not vitiate the trial". Moreover prejudice has not been demonstrated, consequently we are of the view that the trial was not illegal or irregular on account of joinder of all the four charges.

5. Counsel for the respondents then touched upon the second charge i.e. disobedience as to show wilful defiance of authority. The counsel referred to the testimony of Witness no.3 in the Summary of Evidence wherein Nk Rishpal Dass who was officiating as the CHM had specifically stated that in reply to the order to proceed with the Quick Reaction Team, he had replied that he did not had the Coat Parka and also said "*I am not coming, you can go and do what you can*." This matter was reported to Witness no.1, Sub Satpal who was the Senior JCO of HQ 70 Inf Bde Camp at that point of time. The witness had testified to the fact that the Clothing Issue Register of the Sub-Unit had been checked up and it was ascertained that the Coat Parka has been issued to the individual and that the officiating CHM, NK Rashpal Dass had reported to him that the appellant had told him "*I will not go, you can do what you can*." Witness no.2 Maj KS Sahrawat, in his testimony has also stated that when the appellant was marched up to him he had given some lame excuses which were not acceptable and untrue. The appellant was scolded by Maj KS Sahrawat and ordered to go on duty immediately with the Quick

Reaction Team. The learned counsel for the respondents contended that it was a clear cut case of showing wilful defiance to the lawful command given by the superior officer. This charge stands substantiated because the appellant had not questioned any of these witnesses during the Summary of Evidence on the facts relating to such disobedience of lawful command. Not even one question had been asked to any of the witnesses and neither had any question been asked about the fact that the appellant was not issued the Coat Parka. During the same Summary of Evidence when the appellant was asked to make any statement he has not touched upon this charge even remotely. Even during the trial the appellant had pleaded guilty to this and the other charges and appended his signatures to such plea. It is therefore, to be presumed that the individual had infact made such wilful disobedience of orders.

6. With regard to Charge No.3 under Section 39(a) of the Army Act i.e. the individual was missing from the Unit lines on 23.10.1997 from approx 1600 to 2100 hours, all the three witnesses i.e. witness no.1, 2 and 3 have testified to the effect that since the appellant was to be detailed for the Quick Reaction Team duty the next day 24.10.1997 a search was made to locate the individual and inform him about such duties. However, they were unable to locate the appellant.

7. With regard to the Charge No.4 under Section 63 of the Army Act i.e. visiting the duty bound area, witness no.2 Maj KS Sahrawat has testified that he saw the appellant coming out of the village and running back to 70 Inf Bde Camp. He chased the appellant but could not catch him. Furthermore when the appellant was asked to make any statement at a conclusion of Summary of Evidence he has stated "*on 23.10.1997 at about 1600 hours I went to Village CHAKH near the Bde Camp, after crossing the bridge on river Sindh."* He has signed this statement in acknowledgement of its correctness.

8. It was contended by the learned counsel for the appellant that although special Battalion Routine Order declaring Village CHAKH to be an out of bound area was referred to in the charge sheet, it was not produced during the SCM and neither has it been taken on record. Therefore, in the absence of this document being placed on record, it is not understandable as to how the appellant could be convicted for this offence. It was also pleaded that the Clothing Issue Register should have been produced before the SCM and it should have been taken as documentary proof. He also argued that the consistent plea of the appellant had been that he did not have the Coat Parka and in the absence of this essential clothing item he could not proceed with the Quick

Reaction Team. It was also contended that the absence from 1600 to 2100 hours on 23.10.1997 as enunciated in the third charge has not been sufficiently proved. Learned counsel for the respondents argued that the testimony of three witnesses was adequate to establish the second charge and that there was no need for the Clothing Issue Register to be produced. In any case, the issue was not of the Coat Parka but of the fact that appellant used defiant language towards his superiors when they had ordered him to perform lawful and legitimate duty. In any case the Coat Parka was issued to him as testified by all three witnesses. Keeping the above facts in view, even if the third and fourth charges have not been proved to the hilt, we find no reason to interfere with the sentence of dismissal as awarded by the Summary Court Martial.

9. Appeal is dismissed.

S.S.DHILLON
(Member)

S.S.KULSHRESTHA
(Member)

PRONOUNCED IN THE OPEN COURT
ODAY ON DATE 20.07.2010