

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

TA NO. 452/2009
WRIT PETITION (C) NO. 2194/1999

NARESH CHAND

VERSUS

.APPELLANT

UNION OF INDIA & ORS.

.RESPONDENTS

ADVOCATES

Mr. V.K RAWAT FOR APPELLANT
LT. COL. NAVEEN SHARMA FOR RESPONDENTS

CORAM

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

J U D G M E N T
15.09.2010

1. This writ petition has been filed against the order and sentence of the Summary Court Martial of 4-3-1998 whereby the petitioner was dismissed from service and sentenced to six months Rigorous Imprisonment. On formation of this Tribunal, the above writ petition has been transferred for disposal. Under Section 15 of the Armed Forces Tribunal Act 2007, appeal lies against any order, decision, finding or sentence passed by a Court Martial or any matter connected therewith or incidental thereto. Since, in this case, the petitioner (the appellant, hereafter) challenged the conviction by Court Martial by filing a writ petition, which has been remitted to this Tribunal, the same has been converted into an appeal under Section 15.

2. The appellant urged that in his case the Summary Court Martial was arbitrary and hasty in coming to its conclusion and that the procedure established by law had not been followed. The appellant joined the Army on 22nd October, 1993 and after training was posted to 100 field regiment in high altitude area along the line of control in Jammu and Kashmir. In September, 1995 because of extreme cold the appellant suffered great pain and swelling on the right side of his face and jaw, and despite his repeated requests to be provided medical attention he was only relieved from duty after 18-20

days after which he was treated at 168 Military Hospital. The appellant was most unhappy with the medical treatment given to him in this Military Hospital because without any proper diagnosis one of his molar teeth was extracted but the pain and swelling in his jaw did not subside. He got himself admitted again to 168 Military Hospital from he was sent to 92 Base Hospital at Srinagar, and in the course of this deficient medical attention one more molar tooth was extracted, however, there was no medical relief to the appellant who continued to suffer. In fact, despite him being in ill health, he was discharged from the hospital and told to report back to his unit for full scale duties. The constant medical complaints of the appellant were taken by the authorities' as shirking his duties and without any investigation they initiated report AFMS-10, which is generally initiated only for people found to be mentally imbalanced.

3. The appellant stated that the authorities sanctioned him leave upto 4th February 1996 with instructions to get himself treated at home from Civil Authorities. In compliance with these instructions he got himself treated by the Neurologist of Babu Banarsi Dass District Hospital at Bulandshahar and reported back for duty on 4th February 1996 without over staying his leave. However, the appellant continued to suffer from the same ailment and could not work. Accordingly, he was interviewed by the Commanding Officer on 6th February 1996 during which, according to the appellant, the CO

permitted him to go back home, treat himself by the Civil Authorities and come back after he was fully cured. The appellant urged that being a young semi-illiterate man he heeded the directions of the Commanding Officer and left the unit for his home town wherein at his own costs and expenses he got himself treated for 10 months. The appellant contents that he kept his Commanding Officer informed of the progress of the medical treatment. He was treated at Kailawati Hospital, Bulandshahar by Dr. Bijender Kumar who thereafter referred him to the All India Institute of Medical Science, New Delhi. At AIIMS he was operated upon on 26th December, 1996 and he continued to be under treatment till 28th January 1998 when he was declared fit. He sent a registered letter on 8th February 1998 to his commanding officer along with all the medical documents of his treatment at various hospitals and thereafter he rejoined the unit voluntarily on 23rd February, 1998. To his dismay he was immediately put under arrest and Court Martial proceedings under offence 39 (a) Army Act i.e. absenting himself without leave commenced. The charge against the appellant is as appended below :

CHARGE SHEET

*The Accused Number 15119076W Rank Gunner
(Technical Assistant) Name Naresh Chand of 100 Field
Regiment is charged with*

Army Act
Section 39 (a)

ABSENTING HIMSELF WITHOUT LEAVE

*in that he at DHRANGADHARA
(Previous location) on 07 Feb 96, at*

about 2300h, absented himself without leave by proceeding to his home station till he rejoined the unit voluntarily at 1155hrs on 23 Feb 98.

4. The petition was responded to by learned counsel stating that the petitioner was telling lies and was attempting to play fraud with the Court. The fact of the matter is that he received the best possible medical treatment in 168 Field Hospital and 92 Base Hospital at Srinagar which is renowned for the expertise of its Doctors and the availability of all necessary life saving medical equipment. Therefore for him to contend that he was the son of a poor farmer, it was amazing that he could continue to be treated in Civil Hospital for almost 2 years while the best medical treatment was available to him within the Army hospitals. In fact, the so called documentation produced by the appellant only refers to the fact that he went to Kailawati Hospital on 6-11-1996, and was referred to AIIMS on 25-11-1996 and the diagnosis was "mental neuralgia", from where his treatment finished on 24-12-1996. The only recommendation which is there in the documents is that on 3-1-1997 he was advised rest for 15 days w.e.f. 24-12-1996. This does not explain why he continued to so absent till 23-2-1998. The fact of the matter is that the soldier was shirking his bona fide duties of serving on the frontier of the Nations for which he had been enrolled in the Army. The appellant was scared of snow and the cold conditions and was unable to cope with the harsh climatic conditions. The entire story of visits to various

third grade hospitals (other than AIIMS) was nothing but a sham by which he attempted to avoid serving on the border of the Country. In any case being a soldier, the appellant would be aware that the Army does not accept medical treatment, certificates from any hospital other than military hospitals.

5. Counsel for the respondents stated that no Commanding Officer is authorized to advise the appellant to go home and treat himself in civil hospitals! The Commanding Officer did not any stage advise the appellant to do so. It was also urged that the Commanding Officer in any case does not deal directly with soldiers and this is done through the chain of command through Subordinate Commanders i.e. Company, Platoon and Section Commanders. It was also vehemently denied that the appellant keep his Commanding Officer informed about the so called medical treatment in civil hospitals. It was also stated most categorically that AFMS-10 was never initiated on the appellant and he has failed to produce any evidence to substantiate such baseless statement.

6. It was also pointed out that the appellant joined the Army in the trade of "technical assistant", which implied that he was one of the most highly educated soldiers in his unit, therefore his claim that he was semi-illiterate in false and misleading. The appellant was

earlier also absent without leave for 57 days from 8-12-1995 to 4-2-1996.

7. During the Summary Court Martial the appellant pleaded guilty and signed in acknowledgement of such plea. Even at the summary of evidence he has categorically stated that he does not wish to serve in Army. There have been no inconsistencies in the conduct of the Summary Court Martial which was held in accordance with rules and regulations.

8. Keeping the above in view we do not find any reason to interfere with the find and sentence of the Summary Court Martial. The appeal is dismissed.

S.S.DHILLON
(MEMBER)

S.S.KULSHRESTHA
(MEMBER)