

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

**T.A NO.515 OF 2009
(WRIT PETITION (C) NO.4640 OF 1999)**

**SATYAVEER SINGH
(NO.14391055-K, EX GUNNER)
SON OF SH. CHATAR SINGH
R/O. VILLAGE BHAGANA
P.O. BHAGANA
TEH. & DISTT. HISSAR
(HARYANA)**

THROUGH: MR. RAVI VERMA, ADVOCATE

...APPELLANT

VERSUS

- 1. UNION OF INDIA
THROUGH ITS SECRETARY
MINISTRY OF DEFENCE, SOUTH BLOCK
NEW DELHI.**
- 2. THE CHIEF OF ARMY STAFF
ARMY HEADQUARTERS
SENA BHAWAN
DHQ-P.O.,NEW DELHI.**
- 3. THE COMMANDING OFFICER
100 FIELD REGIMENT
C/O 56 APO**

**THROUGH : MR. AJAI BHALLA, ADVOCATE
WITH LT COL NAVEEN SHARMA**

... RESPONDENTS

CORAM :

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

JUDGMENT
21.07.2010

1. This appeal has been preferred against the Summary Court Martial (SCM) proceedings of 14.11.1994, wherein the appellant was sentenced to be dismissed from service. The appellant seeks to be reinstated in service with all consequential benefits.

2. The appellant states that in his nine years of service, he has performed to the best of his abilities and has even been awarded a High Altitude medal and a Sainya Sewa medal. He has a good service record. He has been posted at various stations under different Commanding Officers (CO) and has performed his duties to the best of his abilities. In 1994, when he had approximately nine years service and was serving in 100 Field Regiment, he was granted leave for 32 days from 5.8.1994 to 6.9.1994. Although he was entitled to sixty days of annual leave, he was sanctioned only 32 days. At the time of expiry of his leave, his mother,

who was approximately sixty years of age, fell sick and the appellant initially treated her in the village and subsequently took her to General Hospital, Hissar for better medical facilities and treatment. The condition of his mother continued to deteriorate and it was only by around mid October that the condition of his mother improved. Accordingly the appellant rejoined duty on 17.10.1994 after having over-stayed leave for 40 days. During the period of over-stayal of leave, he had sent a telegram on 10.9.1994 to the CO requesting for an extension of leave. Since he received no reply from his CO to this telegram, he construed it to be a case neither of rejection of his request nor of extension of leave. On rejoining his unit, the appellant requested the CO to adjust his 40 days over-stayal of leave by granting him the balance of annual leave of 28 days which he was entitled to and to give him an additional 12 days leave against advance of annual leave for the next year i.e. 1995. The CO refused to consider the request of the appellant and disciplinary proceedings were initiated against him.

3. During the recording of summary of evidence on 26.10.1994, the statements of only two witnesses were recorded. The evidence given by them was scanty and did not prove the allegations against the

appellant. None of the witnesses produced any document in support of their statements and both the witnesses confirmed that the appellant had rejoined the unit voluntarily on 17.10.1994. On conclusion of the sketchy summary of evidence, a charge sheet under Army Act Section 39 was issued against the appellant on 12.11.1994, which reads as follows:

Army Act
Section 39(b)

WITHOUT SUFFICIENT CAUSE OVER STAYING LEAVE GRANTED
TO HIM

IN THAT HE,

at field having been granted leave of absence from 05 Aug 1994 to 06 Sept. 1994 to proceed to his home town, failed without sufficient cause to rejoin at unit location on expiry of said leave till he voluntarily rejoined on 17 Oct. 1994 (RN).

(Total period of absence 40 days).

A convening order for SCM was also issued on 12.11.1994 for holding the SCM at 1200 hours on 14.11.1994. However, the SCM was held at 0945 hours thereby giving him inadequate time to prepare his defence and caught him off guard and ill prepared.

4. The appellant is agitated at the fact that while the convening order stated that the SCM was to be held at 1200 hours on 14.11.1994, it should not have been pre-poned to 0945 hrs. without due intimation to everybody, including him. It was also argued that the entire SCM proceedings were completed in a very brief span of ten minutes, i.e. the trial commenced at 0945 hrs. and terminated at 0955 hrs. This obviously indicated that it was all a mockery wherein the ritual of obtaining signatures everywhere was conducted and no trial per se was held. It was contended that in this brief period of ten minutes, it was not possible for the Court to go through the entire requirements of a Summary Court Martial which included oath taking, calling of witnesses, reading of summary of evidence, hearing statement of the accused, calling for his character records and thereafter sentencing the accused to whatever punishment was contemplated. It was a pre-determined and pre-meditated action whereby the CO was determined that the appellant should plead guilty and converted the SCM proceedings into a sham and empty formality. The appellant also argued that he only learned of the fact that the second Lt. Adarsh Verma had been detailed as his "friend of

the accused". The appellant neither gave the name of this officer nor he chose him to be the "friend of the accused" and neither was he ever informed that this officer would be performing the functions of the "friend of the accused". Furthermore, Lt. Adarsh Verma could not perform the functions as expected from a friend of the accused and offered no assistance to the appellant nor any advice. His detailment was a mere formality. It was also stated that the SCM proceedings itself showed that the appellant had not pleaded guilty which amounted to his pleading not guilty and the Court should not have proceeded to sentence him on the basis of his plea of "guilty". In fact, his plea of "guilty" should have been converted to "not guilty" and the SCM conducted thereafter.

5. The respondents commenced the pleadings by indicating that the appellant was a bad example for the rest of the soldiers in his unit. The appellant's past and the present conduct showed gross dereliction of duty and in the two preceding years, i.e. 1992 and 1993, he had been convicted and sentenced to imprisonment five times under Army Act Section 39. The sentence ranged from 14 days confinement to lines to

imprisonment upto two months. The details are shown below:

	Army Act	Date	Punishment awarded
a)	AA Sec. 39(a)	06/10/1992	14 days Rigorous Imprisonment
b)	AA Sec. 39(a)	03/12/1992	14 days confinement To linement
c)	AA Sec. 39(a)	22/12/1992	14 days rigorous Imprisonment
d)	AA Sec. 39(b)	24/05/1993	2 months rigorous Imprisonment
e)	AA Sec. 39(b)	27/12/1993	28 days rigorous imprisonment

The appellant's record of service shows that he was a habitual deserter. The two medals mentioned by the appellant, i.e. High Altitude medal and the Sainya Sewa medal, are not individual awards for any meritorious or gallantry action, but as recognition for "serving in a particular area" and are "routine medals". The appellant, in fact, had a very dismal record of service and could have been dismissed as an undesirable character by his unit on attaining four red ink entries. It was the magnanimity of the CO that he was permitted to continue to serve even after obtaining four red

ink entries and in fact even after obtaining the fifth red ink entry on 27.2.1993. This attitude not only indicates gross indiscipline, but also the careless attitude and wilful defiance of the advice and instructions given to him while serving in 100 Field Regiment. With regard to the telegram supposedly sent by the appellant during his period of leave the respondents indicated that the leave of the appellant terminated on 6.9.1994 and the telegram was supposedly sent on 10.9.1994. This clearly shows that even if sent, the telegram was clearly sent after he was already absent without leave. In any case, the respondents have not received the so called telegram that was sent by the appellant. In this regard, it was pointed out that the appellant has not even indicated as to how many days additional leave was required by him, which clearly shows that the telegram aspect was a clever fabrication to evade punishment.

6. The fact that the appellant's mother being sick is also a last minute excuse being cleverly fabricated by the appellant at the stage of filing the writ petition in the High Court. On three earlier occasions, i.e.

during the hearing of charge on 25.10.1994, during the recording of summary of evidence on 26.10.1994 and during the SCM trial on 14.11.1994 when the accused was asked whether he wished to give any statement or produce any evidence in his defence, he had categorically refused to making any statement or provided any proof about the so called illness of his mother. Even in the writ petition filed before the High Court, no documents of his mother's illness have been enclosed. The individual being a soldier would have been aware that there is a full-fledged modern and well equipped military hospital at Hissar where he could have treated his mother who was entitled to such free medical treatment. It therefore appeared illogical that even when he comes to Hissar, he takes his mother to some second rate hospital whereas he could have got his mother treated in the best hospital in Hissar without paying a single rupee. All these facts indicate to the one basic assumption that this is merely an excuse being put across to him.

7. With regard to the so called infirmity during the trial, the change of timing for conduct of the SCM from 1200 hrs. to 0945 hrs. was

within the prerogative of the CO and keeping in view his commitments on that date. In any case, the entire Court, witnesses and other necessary staff was available to conduct the trial and it was done in the presence and attendance of everybody as legally required. Therefore, there can be no prejudice caused to the appellant on this count. With regard to the short time it took to conduct the trial i.e. ten minutes it was stated that since the appellant pleaded guilty and the summary of evidence was very brief in that it contained the testimony of only two witnesses, the proceedings could be completed in the period as indicated. In any case, no legal infirmity or short cut have been indicated wherein the rights of the appellant had been infringed. Therefore, on a mere technicality to set aside the proceedings may not be warranted. The detailment of Lt. Verma as a friend of the accused was done by the CO and the officer provided all necessarily assistance to the appellant. In this particular case, since the appellant chose to plead guilty, the role and function of the friend of the accused is diminished. The original SCM proceedings were perused by the Court and on the original Page B, the signatures of the appellant are appended below the statement that “the accused

having pleaded guilty to the said charge, the provisions of Army Rule 115(2) are hereby complied with”.

8. No irregularity or illegality has been indicated which vitiates the trial. Keeping in view the above facts, we do not feel the necessity for any intervention in this regard. Accordingly, the appeal is dismissed.

S.S DHILLON

MEMBER

S.S KULSHRESTHA

MEMBER