

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

T.A NO. 648 OF 2009
(Writ Petition (Civil) No. 6012 of 1998)

KUSHAL KUMAR SINGH,
NO. 8028610 VLNK (TS),
PIONEER COMPANY, 1565,
VILLAGE & P.O: KORRA,
DT. GENAHABAD (BIHAR).

THROUGH: COL. K. DIGAMBER SINGH, ADVOCATE

... PETITIONER

VERSUS

1. GOVERNMENT OF INDIA
MINISTRY OF DEFENCE,
NEW DELHI
THROUGH THE SECRETARY.
2. LT. COL/COMMANDING OFFICER
60 C INC, WESTERN COMMAND,
CHANDIGARH, 1565 PNR COMPANY,
ST. CHANDIMANDIR

3. CHIEF OF ARMY STAFF,
NEW DELHI.

THROUGH: MR. ANKUR CHIBBER, ADVOCATE

... RESPONDENTS

CORAM:

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

JUDGMENT

DATED 29TH JANUARY 2010

1. Aggrieved by the Summary Court Martial proceedings of 15th May 1996, the petitioner challenges the impugned order, under which he was dismissed from service. He seeks to be reinstated with all consequential benefits, including backwages and other miscellaneous benefits.

2. The case is one of over-stayal of leave, wherein while he was given 20 days leave from 29th November to 18th December 1995, the petitioner did not join on the due date and was absent till 10th April 1996 resulting in over-stayal of 124 days. The petitioner contends that when he went on leave, he fell sick and according to experts, his illness was diagnosed as “mental sickness, mental botheration” and that he remained under treatment for the entire period of his absence with one doctor. He had to be admitted in hospital and it was only after he was medically fit that he could undertake the journey and return to his unit on 11th April 1996.

3. The petitioner is agitated that on return to the unit he was arrested, harassed and his signatures obtained on certain papers, which were never explained and he was sent home without telling anything. A copy of the medical certificate dated 12th April 1996 has been filed pertaining to his illness, which was not taken cognizance of. He primarily contends that he was not absent without ‘sufficient cause’,

but had sufficient cause to over-stay leave. He also states that not even a summary of evidence was recorded and the entire proceedings were void and that he was kept under illegal custody. Army Rule 115(2) and various other provisions i.e. Army Act Sections 116, 131, 132, 153, 144, 161, 162, 164 and 169(a) were not complied with. However, he has not indicated what specific non-compliance took place. He has merely quoted the sections.

4. The petitioner also contends that the intimation of his dismissal from service, although supposedly sent to his wife in a letter dated 15.5.1996, was received by her only on 9.11.1996. He is also agitated that the punishment awarded to him is disproportionate and harsh especially since he had completed more than 15 years of service and has explained in his medical certificate that he was not in good mental health even at that point of time.

5. The petitioner's version was vehemently contested by counsel for the respondents by stating that the petitioner had no reason whatsoever for over-staying leave. The medical certificate supposedly given by the petitioner is a fraudulent one and the petitioner is playing fraud again before the Tribunal. The certificate is from Dr. N.S Yadav at Agra, while the petitioner was availing leave at his village in Jehanabad district of Bihar. How an individual in a village in District Jehanabad (Bihar) could be treated, including hospitalisation for months, by a doctor at Agra is inexplicable. Furthermore, the language of the certificate itself indicates that it has been written by an illiterate person let alone a qualified doctor who had done his MBBS. The specific language used in the certificate is:

“Mr K.K Singh my patient, in my consultation medically in 2 months trace up Mental seek mental bothered. Continuously treatment by me about a 180 days, but medically unsecure of join in any responsible job in these circumstances.”

In this certificate, neither has the stamp of the doctor being appended neither has any treatment nor advise being given by the doctor and the date of this so-called certificate is open – ended i.e. 19th December to 10th April 1996, which again is another inexplicable anomaly indicating the fraud nature of the certificate. The fact that the certificate is a fraud is also borne out by the fact that the petitioner has not referred to the certificate at all, not even at the summary of evidence or at the Summary Court Martial. These factors demonstrate the hollowness of his contention of having medical treatment at Agra. In **Vice-Chairman, Kendriya Vidyalaya Sangathan and another v. Girdharilal Yadav** (2004 (6) SCC 325), **Ram Chandra Singh v. Savitri Devi and others** (2003 (8) SCC 319) and **Secretary, A.P SWRE I Society v. J. Prathap and others** (2002 (10) SCC 430), it was observed that misrepresentation by itself would amount to fraud. On such fraud this application is based and so no relief can be granted. It has only been appended at the stage of his filing this petition. All in all, no cognizance of this can be taken.

6. With regard to the so-called legal infirmities, such as Army Rule 115(2) and the other Rules quoted by him, it is on record that during Summary Court Martial the petitioner pleaded guilty and his signatures are appended on such proceedings and that Army Rule 115(2) was complied with. When asked during SCM as to whether he wished to make any statement, he had refrained from making any statement and when called upon to produce any witnesses, he had replied in the negative. A hearing under Army Rule 22 was held followed by recording of summary of evidence and the SCM was conducted as per laid down norms and law. He was given all opportunity to defend himself right from preliminary hearing of the charge as well as during the SCM.

7. Counsel for the respondents has also produced the past disciplinary record of the petitioner. The same is appended below:

(a)	22nd Feb 1982	AA Sec. 60	07 days confinement to line
(b)	22nd Aug 1988	AA Sec. 54 (Loss of Amn.)	14 days Pay Fine
(c)	5th Mar 1991	AA Sec. 63	01 day confinement to line
(d)	31st Mar 1991	AA Sec.39(a)	28 days R.I and 14 days detention.
(e)	10th Oct 1991	AA Sec. 39(b)	28 days R.I and 10 days detention.
(f)	8th Dec 1993	AA Sec. 39(a)	28 days R.I and 14 days detention
(g)	26th Mar 1995	AA Sec. 39(b)	28 days R.I and 14 days Detention.

From above, it is evident that the petitioner has been punished on seven earlier occasions, four of which are for the same purpose of over-staying leave or absence without leave. On all those four occasions, he was awarded 28 days rigorous imprisonment and some days of detention. He is what is called a “habitual offender” in military parlance. In fact, the last such punishment for over-staying leave is on 26th March 1995, which is barely seven months before this offence. It indicates how habitual an offender he is. There is no explanation for such repeated misconduct of absence. It shall be useful to take into

account his past conduct, as was held in **Union of India and others v. Bishamber Das Dogra** (2009 (13) SCC 102) as under:

“18. In *State of Mysore v. Manche Gowda* (AIR 1964 SC 506), this Court held that the disciplinary authority should inform the delinquent employee that it is likely to take into consideration the past conduct of the employee while imposing the punishment unless the proved charge against the delinquent is so grave that it may independently warrant the proposed punishment, though his previous record may not be subject matter of the charge at the first instance.”

Keeping in view the above facts, we do not feel that the punishment awarded is shockingly disproportionate.

8. There is no substance in the appeal. To the contrary, the petitioner appears to be playing fraud by referring to a fake medical certificate! The petition is dismissed.

(LT. GEN. S.S DHILLON)
MEMBER

(S.S KULSHRESHTHA)
MEMBER