

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

O.A. 237 OF 2010

IN THE MATTER OF:

Ex. Sep. (MT) Mashru Khoda Lakhman Applicant

Through : Brig M. L. Khatter (Retd), counsel for the applicant

Versus

The Union of India and others Respondents

Through : Wing Cdr Ajai Bhalla (Retd) counsel for the respondents

CORAM:

HON'BLE MR JUSTICE S. S. KULSHRESTHA, MEMBER,

HON'BLE LT GEN Z.U.SHAH, MEMBER

JUDGMENT

Date: 23.03.2011

1. The appellant had filed the petition dt. 16.02.2010 before this Tribunal praying quashing of the order of a Summary Court Martial dt. 22 April 08 and rejection of his Appeal by GoC – in – C dt. 30 September 08. The appellant has also prayed that he be reinstated in service with all consequential benefits.
2. The appellant was tried by Summary Court Martial (SCM) on 22nd April, 2008 and charged with :

Charge – I **WITHOUT SUFFICIENT CAUSE**
OVERSTAYING LEAVE GRANTED TO HIM

In that he,
at field on 03 July 2003, while on active service, having been granted 20 days Casual Leave w.e.f. 13 Jun 2003 to 02 Jul 2003 to proceed to home, failed without sufficient cause to rejoin at his unit on 02 Jul 2003 (AM) on expiry of said leave and continue overstaying leave until he, voluntarily surrendered at Depot Coy (MT), ASC Centre & College, Bangalore on 20 Oct 2003 at 1700hrs.

Total period of absence 110 days

Charge-II **DESERTING THE SERVICE**

In that he,
at Bangalore, on 22 Oct 2003, while proceeding on permanent posting to 5021 ASC

Bn from Adm Bn, ASC Centre (South), absented himself enroute without leave and continued absent until, he voluntarily reported to Depot Coy (MT). ASC Centre & College, Bangalore on 11 Aug 2007 at 1300 hrs.

Total period of absence 1390 days

3. The appellant pleaded guilty of the charges (page 43 of Petition) and was sentenced to be dismissed from service on 22nd April 2008.
4. The back ground of the case leading to the SCM was that the appellant overstayed leave granted to him from 13 June 2003 to 02 July 2003. He was absent for a total period of 110 days. A Court of Inquiry (COI) declared him a deserter.
5. The appellant explained his absence due to mental illness which he had developed while serving in 618 Transport Company from 1998 to 2001. Subsequently the appellant claims that while serving in 5021 ASC Bn he (appellant) was treated at 167 MH for mental illness.
6. The appellant claims that while on 20 days casual leave from 13 June 2003 to 2 July 2003 while serving in 502 AC Bn he again suffered mental illness while at home. The appellant underwent treatment and claims that he rejoined voluntarily at ASC Center and College, Bangalore on 22 Oct 2003. He was subsequently despatched to his parent unit 5021 ASC Bn. While proceeding back the appellant claims

that he again fell ill on 22 Oct 2003 and again went home instead of reporting to his unit – 5021 ASC Bn.

7. The appellant claims that between the period 2004 to 2007 he remained under the treatment of Doctor Kishore P Mavain. After recovery he reported back voluntarily to ASC Center Bangalore on 11 August 2007.

8. The appellant was admitted for Psychiatric evaluation at Command Hospital (AF), Bangalore. He was medically downgraded to category S3 (T24).

9. The appellant claims that prior to his SCM he was medically examined and the respondents obtained a certificate that he was mentally fit to undergo disciplinary action.

10. A summary evidence was held and completed on 30 Jan 2008 and summary court martial was conducted on 22 April 2008. In the proceedings it is reflected that he had pleaded “guilty”. The appellant appealed against the sentence of SCM on 1 July 2008 and the same was rejected by GOC – in C Southern Command on 30 September 08. The appellant claims that he submitted a petition to the COAS on 20 Nov 2008 but has received no reply.

11. In support of his contentions the appellant has cited SAO 9/S/89 pertaining to desertion which mentions that the main ingredient of desertion is the intent to “either to quit the service altogether or to avoid

some particular duty for which he would be required". The appellant has also referred to Annexure – 1 to appendix 'E' of Army order 2003 DGMS which specifies the implication of medical category S3

"Has limited tolerance to stress. Has recently recovered from psychoneurosis or toxic confusional states or acute psychotic reaction of temporary nature as a result of external caused unrelated to alcohol or drug addiction. Please also refer to Fitness Index at Annexure II to Appendix 'E'.

12. We have perused the SCM proceedings pertaining to the case. The appellant overstayed leave by 110 days from the period 3 July 2003 to 20 October 2003. He was also absent without leave for 1390 days from 22 Oct 2003 to 11 Aug 2007 and the applicant was thus charged accordingly (charge sheet at page 44). The appellant pleaded guilty and was explained the implication of plea of guilty. The appellant has accordingly signed on the SCM proceedings.

13. The appellant during the SCM was in low medical category S3. He was however, subjected to a medical examination prior to the SCM on 22 April 2008 wherein the medical officer certified that the appellant was fit to undergo SCM on 22 April 2008. The plea of the appellant

that since he was a low medical category and thus medically unfit to undergo SCM is thus not tenable.

14. We have also perused the previous disciplinary record of the appellant . The appellant was previously punished on 13 Oct 1995 under Army Act 39 A for being absent without leave and on 1 March 2002 under Army Act section 39 B for overstay leave granted to him. The appellant is thus a habitual offender.

15. The SCM proceedings are in order and the appellant is not entitled to any relief. Appeal dismissed.

**Z. U. SHAH
(MEMBER)**

**S. S. KULSHRESTHA
(MEMBER)**