

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

O.A NO. 599 OF 2010

EX SEP/HOUSE KEEPER SATWANT SINGH ...APPLICANT

VERSUS

UNION OF INDIA AND OTHERS ...RESPONDENTS

ADVOCATES

**M/S. MOHAN KUMAR & RASHMI SINGH FOR THE APPLICANT
MR. AJAI BHALLA FOR THE RESPONDENTS**

CORAM

**HON'BLE MR. JUSTICE S.S.KULSHRESTHA, MEMBER
HON'BLE LT. GEN. Z.U SHAH, MEMBER**

**J U D G M E N T
01.03.2011**

1. The applicant, by this Original Application, is seeking quashing of the findings and sentence awarded by the Summary Court Martial (SCM), whereby the applicant was found guilty of having committed the offences under Army Act Sections 38(1) and 54(b) and sentenced to be dismissed from service.

2. The facts of the case in a nutshell are: The applicant joined the Army as a Sepoy/House Keeper in the Army Medical Corps (AMC) on 19.8.2005. On 5.7.2008, he was granted 15 days leave from 5.7.2008 to 20.7.2008, while he was posted with 168 Military Hospital. He voluntarily joined duty at Army Medical Corps Centre and School, Lucknow on 15.6.2010. On 22.6.2010, he was attached with the Administrative Battalion, AMC Centre and College, Lucknow for the purpose of disciplinary action. The applicant was arraigned on two charges, firstly under Army Act Section 38(1) for “deserting the service” and secondly under Army Act Section 54(b) for “losing by neglect personnel clothing property of the Government issued to him for his use”. The applicant pleaded “guilty” to both the charges. The SCM found him guilty and sentenced him to be dismissed from service.

3. Counsel for the applicant stated that the applicant was tried on illegal and unsustainable charges. The applicant was not afforded opportunity to defend himself by making any statement or to call witnesses in his defence nor was he allowed to cross examine any of the witnesses, thereby violating the principles of Army Rule 180. Further, Army Rules 22 and 24 were not complied with before putting

the applicant to trial by SCM. The applicant was illegally attached to Administrative Battalion, AMC Centre & School, Lucknow. As per Para 381 of Regulation for the Army (Revised) 1987, a person subject to Army Act can be attached to other unit only for trial of offence of desertion and not for any other offence. The applicant was tried by Adm Bn Commander. He should have been tried by the Commanding Officer, whereby Army Order No. 17 of 2000 was also violated. The applicant did not plead guilty to the charges. However, the SCM proceeded as if he had pleaded guilty. Furthermore, the second charge is contradictory to the first charge and there was no evidence to prove that the applicant was given any opportunity to explain the deficiency in his personal kit. Nothing has come out in evidence to support the prosecution version. At the end, it was submitted that the punishment awarded to the applicant is very harsh and disproportionate.

4. The respondents have resisted the O.A contending, inter alia, that the applicant, while serving with 168 Military Hospital, having been granted leave from 5.7.2008 to 20.7.2008, failed without sufficient reason to rejoin duty and remained absent till he voluntarily surrendered at Administrative Battalion, AMC Centre & College on

15.6.2010. Further, he caused loss to the Government to the tune of Rs.4537/- by losing by neglect the clothing and equipment issued to him. It was stated that the appellant reported back to duty after about 695 days, when he was notified as a deserter. In the case of the applicant, all the procedural formalities were complied with, before putting him to trial by SCM. The applicant pleaded guilty to both the charges. Further, the SCM arrived at the findings based on evidence.

5. The first and foremost point canvassed by learned counsel for the appellant is that the SCM proceeded by wrongly construing the applicant to be a deserter. In fact, the applicant voluntarily joined duty at Army Medical Corps Centre and School, Lucknow on 15.6.2010. So far as the first point is concerned, the applicant was declared as a deserter and was placed for trial under Army Act Section 38(1). It is the admitted position that the applicant while in field area remained absent for about 695 days when he surrendered before the AMC Centre & School at Lucknow on 15.6.2010. From such long absence, the intention of the appellant can be construed as a deserter. The meaning of the word “deserter” needs to be quoted to find out the substance of the allegation. According to **Collins Cobuild English Dictionary**, a “deserter”

is **someone who leaves his job in the armed forces without permission**. Chambers 21st Century Dictionary (Revised Edition) defines the word “deserter” as **someone who deserts from military service**. There is nothing on record to show that the applicant was absent on account of any compelling unavoidable reasons nor had he intimated the authorities the reason for his absence, whatsoever. This is also a relevant aspect for ascertaining the intention of the appellant.

6. PWs 1 to 3 were examined from the side of the prosecution. The applicant chose not to examine any witnesses in defence. Further he declined to cross examine the witnesses. According to PW 1 Sub Maj MH Khan, Adm Bn, AMC Centre & College, Lucknow, the applicant reported to him on 15.6.2010 at about 1300h along with a copy of 168 Mil Hosp Letter No.109/Coy/08 dated 20 Aug 2008 (Apprehension Roll). He was told that the applicant was granted fifteen days casual leave with effect from 5.7.2008 to 19.7.2008 with permission to suffix on 20.7.2008 and was reporting to him after having overstayed leave for 695 days. It has come out through PW 1 that the applicant had reported to him after overstaying leave for 695 days. Similar is the statement of PW 2 Sub/AA Tanbir Ahmed of

Administrative Battalion, AMC Centre and College, Lucknow that the applicant having reported for duty on 15.6.2010 was brought to him and handed over a copy of the Mil Hosp letter dated 20.8.2008. Further, PW 2 is stated to have been told by the applicant that on expiry of the leave granted to him, he did not report back to his unit, but reported voluntarily at Administrative Battalion on 15.6.2010 after having overstayed leave for 695 days. PW 3 Nk/Clk Anil Kumar of Adm Bn, AMC Centre and College, Lucknow has stated that while he was performing the duties of DD Clerk (Depot Coy), the applicant was brought to him by PW 2 Ahmad having reported for duty on 15.6.2010 after overstayal of 695 days. PW 3 produced Exts. 1 to 8 to prove the overstayal of the applicant for 695 days. That apart, the applicant himself had pleaded guilty to the charges. The certificate under Army Rule 115(2) emphasised that the applicant was explained the effect of pleading guilty to the charges. Further, when the applicant was asked to give his statement, it was emphatically stated by him that "I am very sorry, I have committed a mischievous offence of desertion from Army for such a long time. I request you to take a lenient view while awarding punishment being my first offence." The SCM rightly rejected this

statement and sentenced him to be dismissed from service, which cannot be said to be disproportionate when the applicant remained absent for a prolonged period of 695 days.

7. It has next been contended by learned counsel for the applicant that though the applicant was posted to 168 Military Hospital, he was illegally attached to Administrative Battalion, AMC Centre & College, Lucknow for trial, in violation of Para 381 of Regulations for the Army (Revised) 1987. Para 381 of the Regulations reads as under:

“381. Trial of Deserters.—Under normal circumstances trial by summary court martial for desertion will be held by the CO of the unit of the deserter. However, when a deserter or an absentee from a unit shown in column one of the table below surrenders to, or is taken over by, the unit shown opposite in column two and is properly attached to and taken on the strength of the latter unit he may, provided evidence, particularly evidence of identification, is available with the latter unit, be tried by summary court-martial by the OC of that unit when the unit shown in column one is serving in high altitude area or overseas or engaged in counter-insurgency operation or active hostilities or Andaman and Nicobar Islands.

In no circumstances will a man be tried by summary court-martial held by a CO other than the CO of the unit to which the man properly belongs; an unit to which the man may be attached subsequent to commission of the offence

by him will also be a unit to which the man properly belongs.

TABLE

Column One	Column Two
Armoured Corps Regiment	Armoured Corps Centre and School
A unit of Artillery	Regimental Centre concerned
A unit of Engineers	Headquarters Engineers Group, concerned.
A unit of Signals	Signal Training Centre, Jabalpur
Infantry Battalion	Regimental Centre concerned
Gorkha Rifle Battalion	Gorkha Regimental Centre concerned
ASC Unit	ASC Centre concerned
RV Corps	RVC Centre

This rule is not intended to limit the power of any convening officer, who at his discretion may order trial by General, Summary General, or District Court Martial at any place, if such a course appears desirable in the interest of discipline.”

A distinction has been drawn that personnel belonging to Medical Corps are exempted and in their case, such punishment cannot be resorted to.

To substantiate this argument, attention was drawn to the table given in Para 381 of the Regulations. If the persons belonging to the Medical Corps or any other units are not shown in the table, that does not mean that the unit would come within its purview. The attachment, vide the order dated 22.6.2010, invoking Para 381 *ibid* is in no way contrary to the provisions referred to above.

8. Referring to the attachment of service personnel to a different unit for the purpose of criminal/disciplinary/vigilance cases, counsel for the respondents has pointed out that there appears to be no meaning in agitating time and again when this point stands settled in the light of the decision of the Delhi High Court in **Vishav Priya Singh v. Union of India and others** (147(2008) DLT 202 (DB)). So far as the charge of “desertion” is concerned, it is stated that the position was clarified by this Tribunal in the decision in **Nk Rajvir Singh v. Union of India and others** (O.A No. 348 of 2010 dated 23.7.2010). In this context, it would be appropriate to refer to the relevant paragraphs of Army Order No. 7/2000, which read:

1. In a number of cases attachments of personnel subject to the Army Act, other than

officers, are necessitated to process their cases in criminal courts or under the Army Act. The procedure contained in the succeeding Paras would, henceforth, be followed in regard to their attachments away from their units. It hardly needs an emphasis that proper attachment of such personnel particularly for proceeding against them under the Army Act, bestows jurisdiction upon the officer commanding the unit to which attached and the Cdrs in chain. Therefore, there is an imperative need to ensure that there is no default in regard to the attachment, including that the same is ordered by the authority competent to do so as provided hereinunder.

Attachment of Personnel Released on Bail and Awaiting Trial in a Criminal Court.

2.	XX XX	XX XX
	XX XX	XX XX

3. The arrest of a person subject to the Army Act by the civil police is required to be reported to his Commanding Officer by them in accordance with the instructions issued by the Ministry of Home Affairs vide Letter No. F/9/7/60-Judl-II dated 14 Jul 60 (reproduced in AO 409/71). Immediately on receipt of this information, the arrested person will be instructed, telegraphically, that as and when he is

released on bail by the court, he will report for duty to the nearest unit/station HQ or Formation HQ without delay so that he may be able to perform duty, in terms of the provisions of the Regulations quoted above and that non compliance of the orders will be punishable under the Army Act. The unit/station HQ or Formation HQs to which such person reports on release on bail, will intimate the date of his arrival/reporting to his parent unit. To avoid delay, the attachment in such cases shall be got formalised by the immediate Formation HQ of the parent unit, not below Sub Area HQ or equivalent as the case may be, by empowering and authorising the Sub Area HQ (or equivalent HQ) or higher Headquarters concerned, in writing, under whose jurisdiction such attachment is required to be made to attach the said individual w.e.f the date of his joining/reporting. The latter shall, thereupon and accordingly, attach the individuals anywhere under its command keeping in view the administrative convenience also to facilitate the civil investigation/trial. The above notwithstanding no unit/station HQ or Formation HQs shall refuse to allow such person to join on establishing his identity/bona fide. Further, such attachment shall not be denied awaiting written request from the parent unit/Fmn HQs of the individual.

4.	xx xx	xx xx
	xx xx	xx xx

5. XX XX XX XX

6. XX XX XX XX

Attachment of Personnel for Progressing Disciplinary/Vigilance Cases under the Army Act

7. Where attachment is visualised in progressing disciplinary/vigilance cases under the Army Act, including the cases which have been taken over from the Civil (Criminal) Courts for trial under the said Act, the procedure outlined in Para 3 above will be invoked by the competent authorities as specified therein. During attachment the individuals will continue to be held against the strength and appointment of the parent unit and no replacement will be made until completion of the disciplinary proceedings. This power, however, shall not be exercised merely to change the command with a view to secure award of enhanced punishment/penalty e.g. for a trial by Summary Court Martial.

Disposal of Offences Committed by Personnel Away from Their Parent Units

8. Persons subject to Army Act, committing offences while away from their parent units, will not except in the case of offences committed by deserters, be returned to their units for disposal, as it

would involve absence from normal duties of persons required as witnesses and escorts in such cases, the formation commander within whose jurisdiction the offence was committed, will arrange for the individual concerned to be attached to a local unit for disposal of the case in accordance with the procedure outlined above.

Viewed in this light, we do not find any illegality or irregularity in attaching the applicant to Administrative Battalion, AMC Centre & College, Lucknow for the purpose of disciplinary proceedings.

9. So far as the second charge under Army Act Section 54(b) is concerned, the prosecution has not been able to produce any convincing evidence showing deficiency in the items issued to the appellant. The plea of guilt from the side of the appellant would not substantiate the prosecution case. The prosecution case is mainly based on the plea of guilt, which alone would not be sufficient to hold the applicant guilty of the charge under Army Act Section 54(b). The prosecution is required to stand on its legs. The plea of guilt made by the applicant gets significance only when evidence is adduced by the prosecution to prove the charge against him. In the absence of

evidence, we do not find any substance so far as Charge No. 2 is concerned and is only to be set aside.

10. Viewed in this light, the appeal is partly allowed. The conviction of the applicant under Army Act Section 54(b) is set aside and the impugned findings and sentence of the SCM on Charge No.1 under Army Act Section 38(1) are confirmed.

(Z.U SHAH)
MEMBER

(S.S KULSHRESTHA)
MEMBER