

**COURT NO. 2,
ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
T.A. 209 OF 2010
(WRIT PETITION (CIVIL) NO. 7975 OF 2005)**

IN THE MATTER OF:

Ex. Sep. Shambhu Singh **.....Applicant**

Through : Mr. H. S. Kulshrestha, counsel for the applicant

Versus

The Union of India and others **.....Respondents**

Through : Mr. Anil Srivastava, 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 WPC 7975/2005 in the Hon'ble Delhi High Court. The same was transferred to the AFT on 5 Nov,2009. The appellant has prayed that the findings and sentence of summary court martial (SCM) dt. 19 May, 2000 be quashed and he be reinstated with all consequential benefits.

2. The appellant was enrolled in the Army in Oct,1993. The appellant states that whilst posted at 305 Field Ambulance he was granted leave from 16 Oct,97 to 11 December,1997. While returning back to his unit, after expiry of leave, the appellant states that he fell ill at Rangiya and returned back to his village for Ayurvedic treatment and rejoined voluntarily at AMC Center , Lucknow. From there he was directed to report to MH Jabalpur but on the way got sick again and went back to his village for further ayurvedic treatment. The appellant states that when his health improved he wrote to the Army Authorities enquiring where he should rejoin. He was directed by the Army Authorities to report to MH JabalPur on 6 February, 1999. The appellant was placed in medical category C on 12 February 2000.

3. On 10 March, 2000 Col. R. N. Sharma Sr. Registrar of MH Jabalur "conducted hearing of charge" (Annex.1) and ordered a summary of

evidence. The same was recorded on 11 March,2000 and this was followed by Summary Court Martial on 19 May,2000 presided over by Col. R. N. Sharma, Sr. Registrar, MH Jabalpur.

4. The appellant states that Army Rule 22 and 24 were not complied with in that the hearing of charge and summary court martial was not by the Competent Authority which rested in the Commandant (Brigadier) of MH Jabalpur. The whole proceedings therefore, are void ab-initio.

5. The SCM was held on 19 May,2000 by Col. R. N. Sharma, Sr. Registrar MH Jabalpur, wherein the appellant was charged under Army Act Section 39 A for “absenting himself without leave” and Army Act Section 39 B “without sufficient caused overstaying leave granted to him” (charge sheet at Annx. P-2.) . The appellant pleaded guilty on both charges (Annex. K). The appellant was sentenced to dismissal from service and awarded rigorous imprisonment for one month in military custody.

6. The appellant has further pleaded that a Distt. Court Martial should have been held instead of a Summary Court Martial which is normally conducted in an emergency when a regular trial is not possible. The friend of the accused detailed during the SCM was a mere formality as he did not render any advice to the appellant. The SCM also ignored

the fact that the appellant was in low medical category and was not fit to undergo the SCM.

7. To the contrary, from the side of respondents it is submitted that the appellant while posted at MH Jabalpur remained absent for 251 days till he rejoined voluntarily on 5 Feb,1999. Earlier the appellant had overstayed leave by 167 days while serving at 305 Field Ambulance. The respondents have also pointed out that the appellant had a previous track record of absent without leave/overstayal of leave of 757 days as per the following deatail. :

Sr. No.	Nature of offence	Punishment awarded	Unit
(a)	(i) AA 1950 SEC-39 (b) OSL (8 months 23 days) (08/01/96 to 30/10/96)	Tried a SCM at Adm. Bn AMC C 7 S Lucknow & awarded 3 months RI in Mil. Custody.	Adm. Bn, AMC, C&S Lucknow
(b)	AA 1950 SEC 39 (a) ABSENT WITHOUT LEAVE (30.06.97 TO 10.08.97)	Awarded 28 days RI in Mil. Custody by Commanding Officer 305 Fd. Amb summarily	305 Fd Amb

8. Col. R. N. Sharma was the senior registrar and OC Troops of MH Jabalpur and was thus the Commanding Officer of the appellant and competent to preside over the SCM of the appellant. During the SCM held on 19 May,2000 the appellant had pleaded guilty. The appellant had himself desired that Maj. Suresh Choudhary be detailed

as his friend of the accused vide his letter no. 13987231/pers/SS/2000 dt. 10 May, 2000. The appellant had never raised any objection with regard to the friend of the accused during his SCM. There is also no provision in law where SCM can not be conducted and no mis-use of SCM was done to cut short the procedure. Prior to the SCM a medical examination of the appellant was conducted and he was found fit to undergo trial.

9. In order to appreciate the rival contentions made by learned counsel for the parties, it would be appropriate to reproduce the charge sheet, by which the appellant was tried by the SCM. It reads:

ARMY ACT 1950
SECTION 39(b)

**WITHOUT SUFFICIENT CAUSE OVERSTAYING LEAVE
GRANTED TO HIM**

in that he,

at field on 16 Oct 97 having been granted leave of absence from 17 Oct 97 to 21 Nov 97 to proceed to his native place and extended from 22 Nov 97 to 11 Dec 97 failed without sufficient cause, to rejoin at field on 12 Dec 97 on the expiry of the said leave until voluntarily rejoined at Adm Bn AMC Centre & School Lucknow on 27 May 98 (AN).

ARMY ACT 1950
SECTION 39(a)

ABSENTING HIMSELF WITHOUT LEAVE

in that he,

at Lucknow absented himself without leave from Adm Bn AMC Centre and School Lucknow from 31 May 98 (FN) until voluntarily rejoined at Military Hospital Jabalpur on 05 Feb 99 (AN).

To substantiate its contention with regard to overstayal of leave by the appellant and absenting himself without leave, the prosecution examined Nb Sub S.B Singh, Head Clerk of Military Hospital, Jabalpur, who has stated that Sep/NA Shambhu Singh (the appellant) reported to the unit on 05 Feb 1999 on permanent posting from Adm Bn, AMC Centre & School, Lucknow and before reporting to Adm Bn, the individual was posted str of 305 Amb C/o 99 APO. While posted at 305 Fd Amb, he overstayed on leave granted to him with effect from 12 Dec 1997 to 27 May 1998 (AN) when he voluntarily rejoined at AMC Centre and School, Lucknow. He has produced the following documents before the SCM to corroborate his statement:

- (a) 305 Fd Amb DO Part II No 13/3/98 dt 05 Feb 98 (vide which the accused was declared as deserter wef 12 Dec 97 (Exhibit P).
- (b) 305 Fd Amb DO Part II No 57/1/98 dt 20 Oct 98 regarding voluntarily rejoining from desertion by the accused at Adm Bn. AMC Centre & School, Lucknow on 28 Mar 98 (FN) (Exhibit Q).
- (c) AMC Records Letter No.SR-13987231/DS-II/MH Jabalpur, 99 dated 14 Aug 99 regarding regularisation of the period of absence in respect of accused (Exhibit R).

As regards the second charge, this witness has stated that the appellant was posted to MH Jabalpur vide AMC Records Letter No.341007PT/NUR (CN-1120) dated 25 Apr 98 (Exhibit S). While he was under orders of posting at Lucknow, he absented himself from Adm Bn AMC Centre and School, Lucknow from 31 May 98 (FN) until he voluntarily rejoined at MH Jabalpur on 05 Feb 99 (AN). He has produced the movement order dated 30 May 98 and the letter dated 21 Mar 2000, evidenced by Exts. T and U, to corroborate his statement. However, the appellant chose not to cross examine this witness and, therefore, the testimony of this witness remained intact. That apart, the appellant also pleaded guilty to the charge. No explanation whatsoever had been given by the appellant to absolve him from the charge. Such self-serving statement made by the appellant would lend support to the prosecution version.

10. The next question that needs our consideration is, whether the Senior Registrar of MH Jabalpur is empowered and competent to conduct the SCM? Counsel for the appellant contended that the Senior Registrar was not competent to try the appellant by holding SCM as he did not come within the purview of "Commanding Officer" defined in Army Act Section 3(v). It was contended that the Commanding Officer of the unit, to which the appellant belonged, who alone could try him. This is not an empty formality or pointless *punctilio*. The appellant was not

tried as a “deserter” and so, exception to this rule is not applicable. This was objected to by learned counsel for the respondents stating that the Senior Registrar had already been designated as OC Troops in the “Peace Establishment” of MH Jabalpur and thus would come within the purview of “Commanding Officer” defined in Army Act Section 3(v). Army Act Section 3(v) defines that “the officer whose duty it is under the regulations of the regular Army, or in the absence of any such regulations, by the custom of the service, to discharge with respect to that portion of the regular Army or that department, as the case may be, the functions of a commanding officer in regard to matters of the description referred to in that provision.” Viewed in this light, the Commanding Officer of any corps, department or detachment of the regular Army, to which the delinquent individual belongs, is competent to try him, in accordance with the provisions of Army Act Section 116, and as such, constitution of the Summary Court Martial by the Commanding Officer of the corps cannot be questioned as illegal or incompetent. Reliance may be placed on the decision in **Vidya Prakash v. Union of India and others** (AIR 1988 SC 705). In this context, it is also to be noted that in view of PE VI/127/1956/9, the officer holding the appointment of “Registrar” in Mil/Base Hosp with 400 beds and above and commanded by Maj Gen/Brig would also perform the duties of OC Troops. This position is further clarified by Letter No.CWP-7975/2005

dated 3.3.2007, wherein it was stated that “in exercising the power to order for a summary court martial of a JCO/OR at Military Hospital Jabalpur, no delegation of power to Sr Registrar & OC Troops, MH Jabalpur is deemed to be necessary as ordering of summary court martial is vested within the powers of Senior Registrar & OC Troops conferred to him.” We, therefore, do not find any irregularity in the conduct of the SCM by the Senior Registrar.

11. We do not find any merit in the appeal, consequently it is dismissed.

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

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