

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

T.A NO. 605 OF 2009
(Writ Petition (C) No.2610 of 1997)

T.N Dwivedi

... Petitioner

Versus

Union of India and others

... Respondents

For petitioner

: Mr. Piyush Sharma

For respondents

: Ms. Barkha Babbar

CORAM

HON'BLE MR. JUSTICE A.K MATHUR, CHAIRPERSON
HON'BLE LT GEN S.S DHILLON, MEMBER

J U D G M E N T

11.11.2011

S.S Dhillon, Member:

1. This appeal has been filed by the appellant who seeks setting aside of the order of his discharge from service and imprisonment of three months as conveyed by the Commanding Officer, INS

VENDURUTHY on 20.3.1996, and also setting aside of the order of 17.3.1997 of Respondent No. 4 rejecting his representation.

2. The facts as enumerated by the appellant are that, he was enrolled on 30.12.1988 as a Sailor and his post was confirmed on 30.12.1989, after which he was posted to INS GARUD. On 22.10.1991, he developed some psychiatric problems while sailing and on 22.10.1991 and 8.11.1991, he was referred to the Psychiatrist. But unfortunately since the Psychiatrist was not available, he could not be examined by him. Thereafter, on 19.11.1991, the appellant proceeded on ten days of casual leave from 20.11.1991 to 30.11.1991. On 28.11.1991, when he was travelling to rejoin his unit, he met with an accident at Allahabad and was admitted to Military Hospital, Allahabad. Thereafter the appellant lost his memory and was found wandering on the streets of Allahabad on 6.12.1991 by his wife. He was taken to Military Hospital again, but the authorities there refused to admit him. The wife of the appellant took the appellant home and informed CO, INS GARUD about the condition of her husband, vide letter of 23.12.1991. Thereafter, when she saw that the condition of her husband was not improving, the wife of the appellant wrote another letter to the CO INS GARUD on

6.2.1992 informing him about the condition of her husband. In reply, on 3.3.1992, CO, INS GARUD informed her that she should take her husband to the nearest Military or Government Hospital for treatment. Consequently, in accordance with this advise, the appellant was taken to the Primary Health Centre of the village and some other private doctors, wherein he remained under treatment till 5.1.1996 i.e. for a period of approximately four years. On 5.1.1996, the Medical Officer In-charge, Primary Health Centre, Mandata (Pratap Garh) found the appellant fit for duty and asked him to report back. It was argued that during the entire period of his treatment, the appellant's wife kept informing CO, INS GARUD about the progress of treatment of her husband. Also, true copies of the certificates issued by the doctors were also forwarded to the CO.

3. On 13.11.1995, the wife of the appellant wrote to CO, INS GARUD and in response, on 28.12.1995, the CO informed her that since it was a case of desertion, the case of her husband had been transferred to CO, INS VENDURUTHY, and, therefore, she should direct all her queries to that CO. It was argued that CO, INS GARUD had no authority to declare the appellant as a deserter or to transfer him to any other ship

because Naval Regulation 132(4) specifies that if a person is required to answer charges then he should not be transferred to any other ship without approval of the Chief of Naval Staff. Since this was not done in the case of the appellant, such transfer to INS VENDURUTHY was illegal and arbitrary. It was also argued that the twin conditions for declaring a Sailor as deserter under Naval Act Section 49(2)(b) are that he should have been absent from the ship without any authority and that he should have no intention of returning to service. In the case of the appellant, he had been granted official leave of absence and, therefore, was not absent from the ship unauthorisedly. Secondly, as evident from the letters written by the wife of the appellant, especially the letter of 6.2.1992, it was evident that the appellant had full intention of returning to service and, therefore, he could not be presumed to be a deserter.

4. On rejoining duty on 15.1.1996, the authorities sent the appellant for treatment to INHS SANJEEVNI, where he was admitted and kept under treatment, but he was not given proper treatment in that before the Psychiatrist could examine him, he was discharged from the hospital and subjected to trial, although he was medically and psychologically unfit to be tried by a court martial. It was also argued

that on 12.9.1996, the appellant was sent for medical examination, wherein his case was referred to a Medical Board, which awarded him 30% disability attributable to naval service. It was alleged that the appellant has been sent to jail and suffered three months imprisonment by an arbitrary action of the authorities, wherein no credence was given to the various certificates that he had produced and the appellant, aggrieved by the conduct of the authorities, made a statutory representation to the Chief of Naval Staff on 13.6.1996 explaining the illegalities committed by the authorities. However, the Chief of Naval Staff rejected the statutory representation of the appellant on 21.2.1997.

5. The appellant also argued that when he reported for duty on 15.1.1996 to INS VENDURUTHY, he had submitted his medical certificates with the authorities who then sent him for medical check up and psychiatric evaluation. However, receipt of such documents was denied by the authorities and these documents were destroyed by the authorities. It was also argued that the appellant never pleaded guilty during his trial and his signatures on the plea of guilt were obtained by the authorities by adopting coercive methods.

6. In reply, respondents argued that the appellant was given leave from 20.11.1991 to 30.11.1991. Thereafter, on 4.12.1991, they received a telegram from Military Hospital, Allahabad that the appellant had been admitted on 30.11.1991 and that the appellant had illegally left the hospital on 2.12.1991 without permission and he was being struck off the hospital strength. Accordingly, the naval authorities sent a warning telegram to the appellant on 5.12.1991 informing him that he had overstayed his leave and that he should rejoin forthwith. Later, on 10.12.1991, he was marked as "run" and a stigma letter was written on 19.12.1991 to the next of kin of the appellant, who in this case was his father, informing him about the absence of his son. Thereafter, an arrest warrant was sent to the district authorities and police on 20.12.1991 requesting them to apprehend the appellant after which he was declared a deserter and transferred to the books of INS VENDURUTHY on 9.3.1992 in accordance with Naval Regulation 134(2).

7. The appellant surrendered at INS VENDURUTHY at 2330h on 15.1.1996 after an absence of 4 years, 1 month and 15 days. Immediately on surrendering, he was sent for medical examination and was admitted in INHS Sanjeevani from 16.1.1996 to 19.1.1996, during

which he was medically examined including evaluation by a graded Psychiatric Specialist and assessed as fit to stand trial and sent back to the unit. On 2.2.1996, the appellant was charged under Navy Act Section 49(2)(b) for desertion and under Naval Act Section 74 for loss of identity card. The hearing of charge took place on 8.2.1996, in which he was remanded and on 14.2.1996, summary of evidence was sent to the higher authorities. On 20.3.1996, after approval of the Chief of Naval Staff, the appellant was sent to Prison at Thiruvananthapuram for undergoing three months imprisonment.

8. The respondents pointed out that the appellant was a habitual liar and in order to substantiate this, indicated that INS GARUD is a shore establishment and not a sea going ship. Therefore, there was no way in which he could have suffered disorder on account of any sailing. Also, he was admitted to Military Hospital, Allahabad on 30.11.1991 and not on 28.11.1991, as intimated by Military Hospital, Allahabad. Furthermore, he was not admitted for any injuries resulting from an accident, but because of "intestinal Amoebiasis (ICD006A)", which is a stomach disorder. It was also pointed out that there is no medical evidence, whatsoever, that the appellant was a patient of any

psychiatric disorder and the only reference which is there is that the General Duty Medical Officer had opined that he had a "adjustment disorder" and there is no certificate by any medical authority to say that he was a psychiatric patient. It was also strongly denied by respondents that any documents or certificates were given to CO, INS VENDURUTHY when he surrendered on 15.1.1996 and neither were any certificates from Primary Health Centre sent to the CO during this period of 4 years absence. Another deceit which came to notice was that on rejoining when he was put through medical examination in February 1996, the appellant produced a CT Scan with the name and age of another person showing meningioma and claimed that it was his CT Scan and that he had a brain tumour, which had now been dissolved by homeopathy! A fresh CT Scan was done by INHS Sanjeevni, which detected nothing abnormal and the appellant's claim was a total lie and fabrication of facts. Another instance of lying was about the appellant having been granted 30% disability by a Medical Board, which is a figment of his imagination.

9. Counsel for the respondents argued that the fact was that the appellant got admitted to Military Hospital, Allahabad on 30.11.1991 and not on 28.11.1991 as alleged by the appellant and that the cause of

admission was not injury sustained in any accident, but "intestinal amboebiasis". The respondents went on to argue that Military Hospital, Allahabad was in close proximity of the residence of the appellant and modern medical facilities, including psychiatric evaluation were available in this hospital and, therefore, it was not understood as to why the appellant preferred to get himself treated from a primary health centre where very elementary medical treatment is available and not get admitted to Military Hospital, Allahabad. Primary health centres have poor medical facilities meant for first aid injury and there is no psychiatric treatment or evaluation facilities, whatsoever, available at these centres. Therefore, it is inexplicable that while the appellant preferred to get himself admitted in Military Hospital, Allahabad for "intestinal amboebiasis" he did not have the time and patience to get himself shown to the psychiatrist at Military Hospital, Allahabad even once in a period of more than four years. This showed that the entire story of the appellant is based on lies and fabrication. Counsel strongly argued that the only letter received by CO, INS GARUD from the wife of the appellant was dated 6.2.1992, which was replied on 3.3.1992 and no other letter, or communication has been received by the authorities and

neither has any medical certificate been received. Counsel also indicated that there is gross mismatch between the dates of letter supposedly written by the wife of the appellant and the postal receipts produced by the appellant. These dates are at gross variance and bear no relationship to each other.

10. Counsel for the respondents drew our attention to Naval Regulation 132(4), which is as appended below:

“When a sailor has been absent from his duty without leave for more than three months, the Commanding Officer may authorise his discharge from the ship’s books, but no such authority for discharge from ship’s books shall be given if there is reason to suspect that he may be required to answer charges **other than desertion** and if it is possible that he may be required to answer other charges, the circumstances shall be reported to the Chief of the Naval Staff and the absentee shall remain on the ship’s books until the approval of the Chief of the Naval Staff is obtained for his discharge therefrom.”

It is clarified therein that in cases of desertion a sailor can be discharged from the ship’s book and there was no ambiguity in this. The respondents also pointed out that the twin condition for declaring him deserter, as required by Naval Act Section 49(2)(b) had been fulfilled

because he had absented himself from leave, in that although his leave expired on 30.11.1991, he did not rejoin for duty and in accordance with the procedure given in Naval Order No. 13/90 the authorities declared him a deserter. Naval Order No. 13/90 is appended below:

“When a sailor has been absent from his duty without leave for more than three months he is to be transferred to the books of the base establishment of the command to which he belongs viz. INS Angre for Western Naval Command, INS Circars for Eastern Naval Command and INS Venduruthy for Southern Naval Command, in accordance with Regulation 132(4) of Regulations for the Navy Part II.”

Regarding intention of deserting, counsel for the respondents indicated that mere writing of a letter by the wife of the appellant does not display intention to return. In fact, during the entire period of over four years not even one letter has been written by the appellant himself and the only letter received from his wife is dated 6.2.1991, which was written more than two months after his absence from leave. In any case, Naval Order No.13/90 and Naval Regulation 132(4) are abundantly clear as to the procedure to be followed for declaring a sailor to be a deserter. It

was also argued by respondents that during the trial, the appellant was asked as to whether he understood the charges, to which he has replied in the affirmative and has similarly pleaded guilty and signed in acknowledgment of such plea. These are documented facts, which cannot be denied at this stage by mere verbal insinuations.

11. The respondents also stated that a proper and thorough medical examination, including psychiatric evaluation was done between 16 and 19.1.1996, prior to the trial of the appellant. This included examination by a graded Psychiatric Specialist, who had opined that "presently the medical examination revealed no abnormality requiring psychiatric intervention". Based on this, the medical authorities found him "fit to be placed under close custody" and it was only thereafter that the individual was remanded on 2.2.1996.

12. Respondents also pointed out that in his brief service of two years, the appellant had been absent without leave on three earlier occasions and that this was the fourth offence (red ink entries) earned by him. The earlier three entries are also for absent without leave in September 1989, July 1990 and June 1991. In addition to this, the appellant has stated in writing on 24.9.1991 to his CO that "he does not

wish to serve". Keeping in view the blemished career of the appellant and the fact that he absented himself without leave for a period of over 4 years, the appellant has got a very lenient sentence of three months imprisonment because for an offence under Naval Act Sec. 49(2)(b), he could be given imprisonment extending upto 14 years. The respondents also argued that full opportunity was given during the trial to the appellant for his defence and there has been a fair, impartial and transparent trial.

13. Considering the above, we do not find any need to interfere with the matter. There is no substance in the petition. Accordingly it is dismissed, with no order as to costs.

A.K MATHUR
(Chairperson)

S.S DHILLON
(Member)

Pronounced in open Court
on 11th November 2011