

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

15.

O.A. No. 146 of 2011

Ex Nk (TS) Manoj Kumar Mishra

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. Anil Srivastava, Advocate.

For respondents: Mr. J.S. Yadav, Advocate.

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.

HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER
21.03.2012

1. Petitioner vide this petition has prayed that SCM proceedings be set aside being without jurisdiction and violative of Army Act. It is also prayed that sentence of dismissal be set aside and petitioner may be given benefit of service pension as he completed 16 years of qualifying service for pension.

2. Petitioner was enrolled in the Army (Corps of Signals) on 28.10.1993 after having been found suitable in all respects and was posted to 7 Inf Div Signal Regt. During 1996, he was performing the duties of "Sahayak" to the CO 7 Inf Div Sig Regt, Col P.S. Kandikar. During the end of 1996, petitioner applied for Para Course at 50 Para Brigade Signal Company, Agra which was sanctioned by the Officiating CO. He successfully completed 3 months course at Agra and was granted permission to convert to "Para Signals" but the CO on return from his annual leave got very annoyed and issued orders for reversion of the petitioner from Para Signals to 7 Inf Div Signals Regt. The annoyance of the CO caused him of disciplinary action.

3. During July 1997, petitioner was granted leave to look after his seriously ailing Mausi (Mother's real sister). Unfortunately his Mausi died soon after his arrival, followed by the death of his Mausa who could not bear this shock. Due to this, petitioner could not report for duty on time and he was tried summarily by the CO on his return. He was given red ink entry and he was awarded 7 days RI. During August, 2002 and March, 2004, he was awarded 4-5 days pay fine for some minor offences. He completed his 16 years of service and was promoted to rank of Naik (TS) in 2009.

4. Petitioner was granted 20 days Casual Leave from 12.10.2009 to 31.10.2009 with permission to suffix 01st & 02nd November, 2009 being holidays. On 1st November, 2009 when he was returning from the casual leave, he realized that his I-card has been picked by the some pick-pocket and he perforce had to miss the train and went to police station at Laheriya Sarai but police authority refused to lodge the FIR and instead they wanted an affidavit from petitioner. After he managed to get an affidavit, the FIR was lodged on 07.11.2009.

5. Petitioner's wife Smt. Geeta Mishra @ Gayatri Mishra is a professional singer of classical music and is also chairperson of Geet Foundation, a society for promotion of music, art and culture. She applied and got permission of SDO Muzaffarpur for organizing a musical show at RDS Degree College, Ramddayalu Nagar, Muzaffarpur on 14.11.2009 on "Children Day". Since, petitioner's daughter fell sick and his wife was not in a position to look after her because of her engagement in organizing the show on 14.11.2009, he had to perforce stay at home. Unfortunately, venue of the show was

changed to Pandit Jawahar Lal Nehru Stadium, Sikanderpur at last stage on 14.11.2009. The entire arrangement for the show had to be undertaken at an additional cost of Rs. 5 lacs which was borrowed by the petitioner from his friends and relatives. The show held at Pandit Jawahar Lal Nehru Stadium on 14.11.2009 incurred huge loss on account of change of venue to the organizers. This episode put the petitioner under great mental stress and financial wreck. He had to arrange of this money, therefore, he reported to duty belatedly on 01.07.2010 to the Depot Regt but they did not accept him and asked him to bring a character certificate along with copy of the FIR.

6. Petitioner again in first week of August, 2010 went to the Depot Regt along with the Character Certificate and a copy of FIR lodged for the loss of I-card but they did not accept him and asked him to come again with the original ink signed copy of the FIR. Finally, petitioner went to Depot Regt with the original ink-signed FIR and character certificate on 15.09.2010 when he was accepted by the Depot Regt. He was attached to Depot Regt Jabalpur and was tried by SCM on 26.11.2010 for deserting the service under Section 38(i) of the Army Act and for losing of I-card and clothing and equipment of the Government issued to him for his use under Section 54 (b) of the Army Act. He though pleaded guilty on all the three charges, however he was sentenced to be reduced to the ranks and was dismissed from service vide order dated 26.11.2010. Therefore, petitioner filed the present petition challenging the proceedings of the SCM and punishment awarded therein.

7. A reply has been filed by the respondents and they contested the petition that petitioner deliberately did not report after the expiry of the leave and proceedings were drawn against him for declaring him as deserter on 15.12.2009. An apprehension role was issued to petitioner. He reported back to the duty on 15.09.2010 and he was tried by the SCM. He pleaded guilty, though he was advised not to plead guilty under Section 116(4) of the Army Act but he pleaded guilty. Thereafter he was sentenced to be reduced to ranks and dismissed from service vide order dated 26.11.2010.

8. We have heard both the parties and have gone through the record. Petitioner has put in about 17 years of service. Learned counsel for the petitioner has tried to persuade us that there is a serious violation of the Army Act and Rules in conducting SCM proceedings and submitted that this is not a case of desertion and at best it can be a case of overstayal of leave. We do not wish to deal here with the distinction between desertion or overstayal of leave. The very fact is that petitioner has overstayed leave for more than 300 days. Learned counsel for the petitioner has tried to show us the circumstances which prevented the petitioner to join the duty after availing of casual leave but this is not the first time that petitioner has overstayed leave. He has overstayed leave thrice previously and this is the fourth time he has overstayed leave. We would not have interfered in the matter but the fact is that petitioner has also put in about 17 years of service and as a result of this punishment, he has lost his service as well as pensionary benefit. This is too harsh and not commensurate with the offence. Looking to his long service, he deserves some mercy.

9. Hence, looking to the peculiar facts and circumstances of the case, we modify the sentence of dismissal to reduction of rank granted to the petitioner vide impugned order dated 26.11.2010 so as to enable the petitioner for grant of pensionary benefits. Accordingly, sentence of dismissal stands modified with reduction of rank and petitioner will be entitled for pension. However, petitioner will not be entitled for reinstatement in service.

10. Hence, petition is allowed in part. No order as to costs.

**A.K. MATHUR
(Chairperson)**

**S.S. DHILLON
(Member)**

**New Delhi
March 21, 2012
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