

**COURT NO. 2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
O.A. No. 248 of 2011**

IN THE MATTER OF:

Sub/Clk Bodh Raj Sharma

....Applicant

Through: Mr. Shantanu Kumar, counsel for the Applicant .

Versus

Union of India & Ors.

.....Respondents

Through: Mr. Anil Gautam, counsel for the Respondents.

CORAM:

**HON'BLE MR JUSTICE MANAK MOHTA, JUDICIAL MEMBER.
HON'BLE LT GEN Z.U.SHAH, ADMINISTRATIVE MEMBER.**

JUDGMENT

Date: 09.05.2012

1. The applicant has filed O.A. No. 248/2011 before this Tribunal praying for quashing of order dated 8 Dec 2010 by which he was awarded "severe displeasure" and order dated 24 Feb 2011 by which his extension has been revoked and he was discharged with all consequential benefits.

2. Brief facts of the case are that the applicant was enrolled in the Army on 5 July 1982. He claims that he was awarded Commendation Card by GOC, in C in 1993 and during his service rose to the rank of Subedar.

3. The applicant, while posted at 126MC/MF Detachment at Kanpur, was granted 10 days casual leave from 16 April 2007 to 25 April 2007. The applicant claims that whilst on leave at Jammu he learned that his cousin had expired on 24 April 2007 at Doda. The applicant claims that he tried to contact his unit for extension of leave but was unsuccessful in making telephonic contact. The applicant however claims that his wife had contacted his unit and requested for grant of extension of leave.

4. The applicant reported back to his unit at Kanpur on 29 April 2007 where he was charged for indiscipline (overstayal of leave) under Army Act Section 39 B. A Court of Inquiry was held on 30 April 2007. The same was convened by Station HQ Kanpur. The applicant was tried summarily and awarded a sentence of "severe reprimand" by Dy Comdt COD, Kanpur on – June 2007.

5. The applicant moved a petition against the summary punishment. GOC, UB Area on 26 May 2010 set aside the summary award (Annx A-

1) due to non-compliance of Army Rule 22 but directed that “accused be re-tried in accordance with law-----”. The applicant states that no trial was ordered as the same became time barred. Later on administrative action was proposed and notice was issued in this respect.

6. The applicant states that he was granted two years extension of service from 31 Jul 2010 to 31 July 2012. During the period of extended service he was served with show cause notice dated 27 Sep 2010 (Annx A2). The applicant states that he gave valid reason for overstaying leave vide his reply at Annx A3.

7. The applicant states that subsequently he was awarded a sentence of “severe displeasure” by GOC, UB Area on 8 Dec 2010 (Annx A4) for the earlier offence.

8. On 4 Jan 2011 his CO, (2 Ladhakh Scouts) issued a show cause Notice (Annx A5) asking him as to why he should not be discharged as “severe displeasure” had been administered to him on 08 Dec 2010. The applicant avers that he replied to show cause notice on 14 Feb 2011 (Annx A6) giving detailed reasons for reporting back late from leave.

9. The applicant maintains that the “Censure” of “Severe Displeasure” awarded to him on 8 Dec 2010 by GOC, UB Area was in violation of Article 20 of the Constitution which states that a person can not be prosecuted and punished for the same offence more than once. Further, during extension period he should not have discharged on the incident which took place in regular service.

10. In their counter affidavit the respondents have stated that the applicant was enrolled in the Army as a clerk on 5 July 1982 and subsequently rose to the rank of Sub.

11. The applicant was posted to 126 MC/MF Detachment on 11 Dec 2004. He was granted 10 days casual leave from 16 April 2007 to 25 April 2007. The applicant failed to rejoin duty on expiry of his leave on 25 April 2007 and made no attempt to contact his unit for grant of extension of leave. The applicant rejoined duty voluntarily on 29 April 2007, after a period of absence of 4 days.

12. A Court of Inquiry was held on 3 May 2007. Subsequently the applicant was awarded “severe reprimand” by his CO Col R S Chillar, Dy Codt COD Kanpur on 19 June 2007. This punishment was subsequently set aside by GOC, UB Area on 26 May 2010 because of non-compliance of Army Rule 22. The GOC, UB Area in his orders also

directed re-trial of the applicant. Since trial was time barred GOC, UB Area subsequently directed administrative action against the applicant. A show cause notice was served on the individual on 27 Sep 2010 (Annx A2). No reply was received from the applicant for the period of 30 days. GOC, UB Area awarded "severe reprimand" to the applicant on 8 Dec 2010 during the period of extended tenure of the applicant which had been granted to him from 31 Jul 2010 to 31 July 2012.

13. The respondents state that as per para 1 (I) of Appendix B 2 IHQ (MoD) (Army) letter No. Bravo 33098/AG (P-2C) dated 21 Sep 1998 JCO awarded "recordable censure", during extended service, is to be discharged within a period of 6 months after show cause notice is served. In view of these instructions, the Show Cause Notice was served by Sub Cdr Meerut Sub Area under whose jurisdiction the applicant's unit was. In order to support this fact the respondents during the period of arguments produced CVD, Delhi Cant Letter No. 1837/Disp/SC/EST/ME dated 19 July 90 which clearly indicates that VSD Meerut would be under HQ Meerut Sub Area for administration including discipline.

14. The discharge of the applicant was ordered by Cdr Meerut Sub Area on 31 July 2011 under Army Rule 13 (3) 1 (I).

15. We have heard the arguments and perused the records. The applicant was enrolled in the Army as Clk on 5 July 1982 and subsequently rose to the rank of Subedar.

16. The applicant was granted 10 days casual leave from 16 April 2007 to 25 April 2007 by his unit 126 MC/MF Detachment at Kanpur. The individual reported back late to his unit on 29 April 2007. There is no record of the applicant having contacted his unit for grant of his extension of leave.

17. A Court of Inquiry was held on 13 April 2007 and the applicant was tried summarily by Dy Cdt COD Kanpur on June 2007 and awarded a sentence of "severe reprimand". This sentence was subsequently set aside by GOC, UB Area for non-compliance of Army Rule 22 vide order dated 26 May 2010 (Annx P-1). In the same order the GOC, UB Area also directed that "accused be retried in accordance with law---".

18. No re-trial could be held since the case has become time barred. During this period the applicant was granted two years of extension of service form 31 July 2010 to 31 July 2012.

19. In view of the directions of GOC, UB Area a show cause notice was served on the individual on 27 Sep 2010 (Annx A2) and subsequently GOC,UB area awarded the applicant a sentence of “severe displeasure” on 8 Dec 2010 (Annx A4), whilst the applicant was on extended service with 2 Ladhakh Scouts.

20. In accordance with Para (1) of Appx B 2 IHQ (Army) Letter no. B/33098/AG(PS2C) dated 21 Sep 1998 a JCO awarded recordable “Censure” during extended tenure, is to be discharged within a maximum period of 6 months after service of show cause notice. CO 2 Ladhakh Scouts ordered the discharge of the applicant during his period of extended service w.e.f. 31 July 2011 in terms of Army Rule 13 (3) 1 (I). For ready reference Appx B annexed to Policy Letter dated 21 Sep 1998 is reproduced as under :

“(ii) Discipline The individual should not earn any red ink entry in case recordable Censure in case of JCOs only during the extended period.”

In the light of above mentioned provision he could be discharged on getting punishment of aforementioned recordable displeasure. The contentions raised in this respect thus not having any force of law.

21. It is seen that there was no illegality in the award of “severe reprimand” dated 8 Dec 2010 by GOC, UB Area as the sub unit of the applicant was under Meerut Sub Area. It was also not a case of double jeopardy as the earlier summary trial proceedings had been set aside and directions for re-trial had been issued (Annx A-1). Discharge order dated 24 Feb 2011 is also in order. The respondents had authority to terminate the extended service of the applicant within 6 months of the issue of show cause notice. This was done and the applicant is not entitled to any relief. Application is dismissed. No costs.

Z. U. SHAH
(Administrative Member)

MANAK MOHTA
(Judicial Member)

Announced in the open Court
on the 9th day of May, 2012

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