

COURT NO. 3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA (A) 1596/2019

Ex Sep Datar Prasannajit Ashok Applicant
Versus
Union of India and Ors. Respondents

For Applicant : Mr. Rajesh Nandal, Advocate
For Respondents : Mr. Waize Ali Noor, Advocate

CORAM

HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal under Section 22 of the Armed Forces Tribunal Act, 2007, the applicant has filed the OA with following prayers: -

a) Set aside the impugned order dated 12.11.2018 passed by Commanding Officer 20 Battalion the Mahar Regiment in 4580127/DPA/A1;

Or in the alternative, if this Hon'ble Tribunal deems it fit in the facts of the case:

(b) Hold the applicant was punished excessively and that the punished be modified to the extent that the applicant be reinstated in the services, with consequential service reliefs;

(c) Pass any such further order at this Hon'ble court may deem fit and proper in the facts of the present case.

Facts of the Case

2. In brief, the facts of the case are that the applicant was enrolled in the Indian Army in the Mahar Regiment on 15.06.2007. Upon completion of his Extra Regimental

Employment tenure at the Officers Training Academy, Chennai, he was repatriated to his parent unit, 20 MAHAR, and posted to 'A' Company on 26.11.2017. On 13.12.2017, it was alleged that the applicant committed theft of a box belonging to Sepoy Firoz Khan, which was subsequently found placed next to the bed of the applicant. Further, on the morning of 14.12.2017, while proceeding for physical training, the applicant was reported to be unwell and vomited blood, it having transpired that he had consumed acid during the night of 13.12.2017 and again in the morning of 14.12.2017.

3. Consequent to the aforesaid incident, the competent authority ordered a Court of Inquiry (CoI) into the matter of consumption of acid by the applicant. Based on the findings of the inquiry, a charge sheet was filed against the applicant under Section 52(a) of the Army Act (committing theft of property belonging to a person subject to military law) and under Section 64(c) of the Army Act (attempt to commit suicide). Thereafter, a Summary Court Martial (SCM) was convened. Upon trial, the applicant was held guilty of the aforesaid charges and was awarded the punishment of dismissal from service vide order dated 12.11.2018 passed by the Commanding Officer, 20 MAHAR. Aggrieved by the imposition of such harsh punishment, the applicant has preferred the present Original Application

before this Tribunal challenging the impugned order dated 12.11.2018.

Submissions on behalf of the Applicant

4. Learned counsel for the applicant submitted that while posted at 'A' Company, New Delhi, on 13.12.2017, the applicant was alleged to have committed theft of a box belonging to Sepoy Feroz Khan, which was later found next to the bed of the applicant. On the following day, i.e., 14.12.2017, while proceeding for his routine physical training, the applicant collapsed and vomited blood as a result of consumption of acid during the night of 13.12.2017 and again on the morning of 14.12.2017. It is contended that on inspection of the applicant's personal belongings by his colleagues, no item relating to acid or any chemical substance was recovered. The applicant was thereafter admitted to the Base Hospital, Delhi, for medical and surgical treatment, where he remained under care until 02.07.2018, when he was discharged.

5. Learned counsel further submitted that, consequent to the aforesaid incident, the respondents ordered an inquiry into the matter of acid consumption and related circumstances on 15.12.2017. Thereafter, the applicant was served with a letter informing him that a charge sheet had been filed against him under Section 52(a) of the Army Act (committing theft of property

belonging to a person subject to military law) and Section 64(c) of the Army Act (attempt to commit suicide). A Summary Court Martial was convened, and by order dated 12.11.2018, the applicant was dismissed from service.

6. Adverting to the details of punishment, learned counsel submitted that the mandatory requirement under Rule 116(3) of the Army Rules had not been complied with. It is urged that the applicant, when asked whether he wished to make a statement in reference to the charge or in mitigation of punishment, *stated only that he had committed a mistake and prayed for one more chance, assuring that he would not repeat such mistake again.* This response, according to learned counsel, clearly reflects that the applicant did not fully comprehend the question put to him and therefore failed to make a meaningful statement in mitigation of punishment.

7. It was next argued by the learned counsel for the applicant that the punishment of dismissal from service is not prescribed under Section 52(a) or Section 64(c) of the Army Act. Both provisions contemplate imprisonment for a term extending up to ten years or a lesser term under Section 52(a), and imprisonment for a term extending up to seven years or a lesser term under Section 64(c). It is thus contended that dismissal from service, particularly for a Sepoy, amounts to a disproportionately

harsh punishment, since it not only terminates service but also deprives the applicant of financial security and livelihood.

8. On the strength of the above submissions, learned counsel prayed that the impugned order dated 12.11.2018 passed by the Commanding Officer, 20 Battalion, the Mahar Regiment, be set aside and the punishment suitably modified, with a further direction to reinstate the applicant in service with all consequential benefits.

Submissions on behalf of the Respondents

9. Per contra, learned counsel for the respondents submitted that the applicant was enrolled in the Army (Mahar Regiment) on 15.06.2007 and, upon return from Extra Regimental Employment tenure at the Officers Training Academy, Chennai, was posted to 'A' Company, 20 MAHAR. On 13.12.2017, the applicant, after having reported sick and being placed on bed rest ('C' category) for 24 hours, allegedly purchased paint thinner and committed theft of a steel box belonging to Sepoy Md. Firoz Khan of Headquarters Company. The applicant then painted the box in an attempt to obliterate the name and Army number of its owner. He was apprehended by the Regimental Police along with Sepoy Md. Firoz Khan, who were searching for the missing property in the company lines. It is contended that the applicant admitted his

guilt in the presence of the Adjutant and the Second-in-Command of the unit. Upon being exposed in the act of theft, the applicant attempted to commit suicide by consuming toilet-cleaning acid. On the following morning, i.e., 14.12.2017, while proceeding for physical training, he collapsed, vomited blood and was found to be unwell.

10. It was further submitted that the applicant was evacuated to Base Hospital, Delhi Cantt, where he was diagnosed with “corrosive poisoning with Grade IIB injury to the esophagus and Grade IIIA injury to the stomach and duodenum”, and was discharged on 15.01.2018 with 28 days sick leave from 19.01.2018 to 15.02.2018. During the sick leave he underwent surgery for grafting of his esophagus at INHS Ashwini (Mumbai) and thereafter consequent to treatment at Base Hospital Delhi Cantonment he was finally discharged on 30.06.2018. A Court of Inquiry was convened by Headquarters 60 Infantry Brigade on 15.12.2017 to investigate the incident. Upon completion, the report was forwarded to Headquarters 22 Infantry Division, where the General Officer Commanding noted that the applicant was incorrigible. Consequent thereto, the applicant was marched up before the Commanding Officer, 20 MAHAR, and, after consideration of the material including the statement of the applicant, the Commanding Officer directed recording of Summary of Evidence. The applicant was thereafter

tried by Summary Court Martial under Sections 52(a) and 64(c) of the Army Act and awarded the punishment of dismissal from service.

11. Learned counsel contended that the applicant failed to avail statutory remedies under Sections 162 and 164 of the Army Act and has directly approached this Tribunal. On this ground alone, it is submitted, the Original Application is liable to be dismissed in terms of Section 21 of the Armed Forces Tribunal Act, 2007.

12. It was further submitted that under Section 162 of the Army Act, read with Rule 133 of the Army Rules, proceedings of a Summary Court Martial, immediately upon promulgation, are required to be forwarded to the Officer Commanding the Division or Brigade within whose jurisdiction the trial was held, or such prescribed authority, for statutory review through the Deputy Judge Advocate General of the Command/Corps concerned. Such proceedings are, thereafter, subject to statutory review by the authority specified in Section 162, who may grant appropriate redress based on merits. In the instant case, the applicant, without awaiting completion of statutory review under Section 162 or seeking redress by way of petition under Section 164 of the Army Act, has directly invoked the jurisdiction of this Tribunal. It is therefore urged that the present Original Application is not maintainable.

13. Learned counsel for the respondents further submitted that the applicant's misconduct in the present case is not his first act of indiscipline. In the year 2011, he was punished with a fine of seven days' pay for using insubordinate language with a superior officer. Similarly, during his tenure at the Officers Training Academy, he was involved in theft of a bicycle belonging to a Gentleman Cadet, which was subsequently compromised by payment. These facts, it is argued, demonstrate a continuing streak of indiscipline and kleptomaniac tendencies.

14. In elaboration, learned counsel submitted that the theft committed by the applicant reflects a premeditated act, the circumstances of which were as follows:

(a) **Choosing the victim:** The stolen box belonged to Sepoy Md. Firoz Khan, who had joined the Battalion only 11 days earlier after completing his basic training at the Regimental Centre. Being the youngest and least connected soldier in the unit, he was an easy target.

(b) **Choosing the time and covering tracks:** The applicant reported sick on 11.12.2017 and again on 13.12.2017, and during such periods of absence from normal duty, planned and executed the theft when the barracks were empty. He thereafter painted the stolen box with the intention of obliterating identification markings.

15. Learned counsel further submitted that before awarding the sentence of dismissal, the Commanding Officer took into consideration the following factors:

(a) Infantry is a fighting arm of the Army that functions in buddy pairs, where mutual trust is the cornerstone of operational effectiveness. A soldier places his life at risk with complete reliance on his comrade. Any act that breaches this trust renders the unit ineffective in combat. Theft within the unit, particularly targeting a newly joined soldier, is a grave breach of such trust. Reference is drawn to Para 6(b) of the Notes to Section 52 of the Army Act, which categorises theft from a person subject to military law as conduct of a particularly disgraceful nature.

(b) The applicant's act of consuming acid in an attempt to commit suicide is a demonstration of cowardice and mental weakness, incompatible with the requirements of a combatant soldier. Moreover, he consumed the acid thrice within a span of 24 hours.

(c) The applicant has a prior record of indiscipline and kleptomaniac tendencies, as detailed above.

(d) Post consumption of acid, the applicant was downgraded in medical category, and on several occasions

expressed his inability to stand or carry weight, rendering him unfit to serve as a combatant.

(e) As regards the punishment of dismissal, it is submitted that under Section 72 of the Army Act, dismissal from service is a valid alternative punishment, being lower in scale than imprisonment prescribed under Section 71. Hence, the punishment awarded suffers from no illegality.

(f) In view of the applicant's medical condition, he was spared rigorous imprisonment, which otherwise could have been imposed.

Analysis

16. We have heard learned counsel for the parties at length and carefully perused the pleadings as well as documents placed on record. The facts of the case are largely undisputed. The applicant, a Sepoy of 20 MAHAR, was alleged to have committed theft of a steel box belonging to Sepoy Md. Firoz Khan on 13.12.2017, and, upon being apprehended, consumed acid in an attempt to commit suicide, leading to his evacuation and prolonged treatment in Base Hospital, Delhi Cantt and INHS, Ashwini (Mumbai). Consequent thereto, a Court of Inquiry was convened, followed by recording of Summary of Evidence, and eventually a Summary Court Martial was held in which the

applicant was convicted under Sections 52(a) and 64(c) of the Army Act and awarded the punishment of dismissal from service.

17. The primary contentions raised on behalf of the applicant are three fold:

(a) that the mandatory provision under Rule 116(3) of the Army Rules, requiring an opportunity to make a statement in reference to the charge or in mitigation of punishment, was not properly complied with;

(b) that the punishment of dismissal from service is disproportionate and unduly harsh, as Sections 52(a) and 64(c) of the Army Act envisage imprisonment and not dismissal as punishment; and

(c) that the applicant, being a young Sepoy, deserves a chance of rehabilitation rather than termination of service, which has far-reaching consequences on his livelihood and financial security.

18. On the other hand, the respondents have asserted that the applicant not only committed theft from a fellow soldier but also attempted suicide by consuming acid, thereby exhibiting cowardice, lack of mental robustness, and unreliability as a combatant soldier. They further emphasized that Infantry, being a fighting arm, depends fundamentally on trust among its members,

which was breached by the applicant's conduct. The respondents have also highlighted the applicant's past record of indiscipline, including insubordination and an earlier act of theft, and argue that he is incorrigible. It has also been urged that the punishment of dismissal is legally sustainable under Section 72 of the Army Act, which allows alternative punishments lower in scale to imprisonment.

19. At the outset, we note that the scope of judicial review in matters relating to court-martial is limited. This Tribunal is not to sit as an appellate court to re-appreciate evidence unless there is perversity, illegality, or violation of procedure going to the root of the matter.

20. The Hon'ble Supreme Court in **Union of India & Ors. vs R.K. Sharma** (CA No. 7052-53 of 2001) has held that:-

Section 72 merely provides that the Court Martial may, on convicting a person, award either the punishment which is provided for the offence or any of the lesser punishments set out in the scale in Section 71. Section 72 does not set out that in all cases, a lesser punishment must be awarded. In other words, merely because a lower punishment is not granted, it would not mean that due punishment was violative of Section 72. (Para 14)

However, dismissal from service provided in item (e) of Section 71 as one of the punishments according to scale is a lesser punishment than imprisonment for either 7 years or 14 years as contemplated under Sections 57 and 63 of the Army Act, 1950. In the present case the charges under Sections 57 and 63 had been held to be proved. The General Court Martial could have imposed a punishment of imprisonment. The General Court Martial has chosen to give a lower punishment of dismissal from service. The court below should not have interfered on the erroneous assumption that provisions of Section 72, of the Army Act, 1950 had been violated (Puras 10 and 14) While exercising power under Article 226/227 or Article 32, the High Court or the Supreme Court should not interfere with the

punishment merely because it considers the punishment to be disproportionate. It is only in extreme cases, which on their face show perversity or irrationality that there can be judicial review. Merely on compassionate grounds a court should not interfere, (Para 13)

Union Ina y., Mejoor A, Hassain, (1998) 1 SCC 537:1998 SCC(Cn) 437, relied on

Even otherwise, both the courts below have erred in coming to the conclusion that the sentence awarded was too harsh considering the nature and degree of the offence established. Not only did the respondent not obey the command from the Headquarters but he falsified records in order to make out a case that he had already gone to two of the forward posts, These are very serious offences. These are offenses for which the General Court Martial would have been justified in awarding imprisonment. The General Court Martial took a lenient view by merely dismissing him from service. There was just no justification for interference by the High Court.

21. The factum of theft and attempt to commit suicide, in the present case, are not seriously disputed, as the applicant himself admitted to his misconduct at various occasions. His statement is extracted as under :

“(STATEMENT OF APPLICANT)”

85. On the morning of 13 Dec 2017. I reported sick to Base Hospital. On returning back from sick report at around 1100 hours, as I was preparing my packs for mobilisation practice, I realized that I was short of some contents. I went to Headquarter Company lines and took a steel box of a Sepoy (not aware of the name), who I thought was on leave, to complete my contents. When I opened the box I found an Identity Card, hence got worried and immediately closed the box and thought of returning it. At around 1230 hours, before I could return the box a representative from Regimental Police (RP) Section alongwith the owner came and caught me with the box. I tried to explain the situation to them, but the RP representative informed the RP CHM, who further informed the Subedar Adjutant. I was taken to Lieutenant Heet Mehta, Adjutant who was there with the Second-in-Command, Lieutenant Colonel M Babu. I was told to give a statement about the incident. Thereafter I was sent back to the company lines. The NCOs and Jawans started taunting me regarding the incident.

86. At around 1630 hours when the others went for games parade, I visited my Alpha company lines bathroom and saw a plastic bottle with yellow liquid which I comprehended was acid. In the spur of the moment at around 1700 hours, I consumed three gulps (around 150-200 ml) of the liquid in order to end my life.

Since my throat and esophagus started burning I went back to my bed and tried to sleep thinking I will pass away in my sleep. Throughout the time till 1930 hours, I could not sleep as the burning pain was extreme. 1930 hours a soldier tried to take me for dinner, but I refused. At around 1945 hours, I again went to the same bathroom and thinking I had consumed less, this time I took 5-6 gulps of the liquid and again returned to my bed and tried to go to sleep. Throughout the night due to extreme pain I was unable to sleep. At around 0500 hours when I was woken up by Havildar Bhoop Singh of Alpha Company to get ready for PT I realised I was under a guard. I went to the bathroom under the pretext of getting ready. As I was not accompanied by the guard, I consumed the rest of the bottle of acid. When the pain became unbearable I informed the guard commander that I had consumed acid.

87. The Guard Commander did not believe me and I followed his order. when I was crossing the RO plant in front of Alpha Company I fell down, but I was picked up by the guard. While crossing the Sarv Dharm Sihal I fell down again and started vomiting blood and was helped by the guard commander and RT JCO Nb Sub Dawale Milind K. Thereafter, I lost consciousness, however I briefly regained some consciousness in the unit MI room. Thereafter when I regained consciousness I was in the emergency ward of Base Hospital, Delhi Cantt."

22. With respect to the contention regarding Rule 116(3), we find force in the submission of the applicant that the record reflects a mechanical compliance. The statement given by the applicant at the stage of mitigation wherein he merely pleaded for another chance and expressed regret—suggests that he did not fully comprehend the import of the opportunity available to him.

23. However, we are not persuaded to hold that this vitiates the entire trial, as the requirement under Rule 116(3) has been formally complied with, albeit perfunctorily.

24. Coming to the quantum of punishment, while it is true that Sections 52(a) and 64(c) prescribe imprisonment as the statutory maximum, Section 72 of the Army Act expressly empowers the

authority to award, in lieu of imprisonment, any alternative punishment lower in scale, which includes dismissal from service. Thus, dismissal from service cannot be said to be illegal per se. The real question, therefore, is whether the punishment awarded is disproportionate in the facts and circumstances of the case.

25. We have find it essential to refer to the observations of Hon'ble Supreme Court, in the case of **Ex Sepoy Madan Prasad vs. UOI and Ors (2023) 9 SCC 100**, which reproduced as under:-

“ 13. It is apparent from a bare reading of the aforesaid provision which deals with offences relating to absence without leave, that in case of an offence of overstaying leave without sufficient cause, on a conviction by a court martial, punishment by way of imprisonment for a term that may extend to three years or such less punishment as contemplated in the Act can be imposed on the delinquent person. Section 71 that falls under Chapter VII of the Act deals with punishments that may be inflicted for offences on conviction by the court martial, listed in a sliding scale. The punishment of imprisonment finds mention at clause (c) whereas that of dismissal from service is mentioned down below, in clause (e). In other words, the punishment of dismissal from service on conviction by court martial has been treated as a lesser punishment vis-à-vis the punishment of imprisonment for any period below 14 years. That being the position, the appellant cannot be heard to state that the punishment inflicted on him is graver than the one contemplated under the Act.

14. In a case of proportionality of the punishment imposed for unauthorised absence in Union of India v. Kulbeer Singh, this Court had turned down the contention made on behalf of the respondent therein that instead of subjecting him to a term of imprisonment under Section 39, he had been dismissed from the service, which was disproportionate to the offence, it was held thus: (SCC p. 22, para 6).

12. Regulation 448 of the DSR cited by the learned counsel contemplated the scale of punishments awardable by the SCM. The said Regulation states in so many words that these are general instructions issued for the guidance of officers holding SCM for passing a sentence and that nothing contained in the said Regulation would be construed as limiting the discretion of the court to pass any legal sentence, even if there is good reason for doing so. Therefore, citing the table of punishments listed under the Schedule

appended to Regulation 448 to urge that for absence without leave or for overstaying leave, the normal punishment being rigorous imprisonment for three years or less to be undergone in military custody, punishment of dismissal from service could not have been inflicted on the appellant by the SCM, is unacceptable. Sufficient discretion vests in the SCM to inflict a higher punishment in the given facts and circumstances of a case. Same is the position under Sections 72 and 73 of the Act. Both the sections leave it to the discretion of the court martial to award a particular punishment, depending on the nature and degree of the offence. There is no merit in the submission made by the learned counsel for the appellant that the said provisions are not applicable to a SCM.”

26. We are mindful that theft within a unit, particularly from a fellow soldier, strikes at the very root of discipline and mutual trust, which are foundational to the functioning of Infantry units. The act of attempting suicide, in quick succession, further demonstrates instability and lack of robustness required in a combatant. The respondents have also rightly highlighted that the applicant had a prior record of misconduct, which reflects a pattern rather than an isolated lapse.

27. On the other hand, we also cannot lose sight of the fact that the applicant was a Sepoy of relatively young age and that the punishment of dismissal has the effect of stripping him of not only his service but also his means of livelihood. Given his medical condition after corrosive poisoning, he was unlikely to be retained in a combat role. A balance, therefore, is required to be struck between the interest of military discipline and the principles of proportionality.

28. At this moment, we find it pertinent to record the observations of Regional Bench, Guwahati of this Tribunal in **Ex**

vide order dated 11.03.2024 has held as under :-

"23. Submission was considered. It would be appropriate to refer to a Judgment of Principal Bench of Armed Forces Tribunal, New Delhi pronounced in the case of Ex LAC Sunny Vs. Union of India in OA (Appeal) No. 629/2022 dated 04.08.2023. In this judgment, the Hon'ble Tribunal has referred to two judgments of Hon'ble Supreme Court and one another judgment of AFT. The judgments of Supreme Court are those of S. Muthu Kumaran Vs. UoI & Ors., (2017) 4 SCC 609 and UoI & Ors. Vs. Ex LAC Nallam Shiva in Criminal Appeal No. 967/2017 dated 10.08.2017. The judgment of AFT, PB, New Delhi referred to in the judgment is that of Ex Cpl Nitish Kumar Vs. UoI & Ors in OA No. 184/2012 decided on .07.11.2012. The sum and substance of these judgments are that if the discharge results into pension, reinstatement etc, the same would not be allowed, whereas the discharge does not result in grant of pension but only affords the applicant to engage in civil employment, the dismissal may be converted to discharge. The following portion of the final order dated 04.08.2023 in case of Ex LAC Sunny (supra) is excerpted as under: -

"9. In the case of S. Muthu Kumaran (Supra) decided by the Hon'ble Supreme Court, the employee was inducted as a Havildar/Clerk in the Indian Army on 26.04.1994 and was involved in a fraudulent recruitment racket by obtaining illegal gratification. He was served with a show-cause notice on 07.06.2010, based on his confessional statement and the reply to the show-cause notice etc. the services of the appellant were terminated on 18.02.2011 under Section 20 (3) of the Army Act read with Rule 17 of the Army Rules. Challenging the termination, the matter came to this Tribunal and while the matter was so pending, this Tribunal after taking note of the facts of the case, as being devoid of merit, dismissed the application. Aggrieved thereof the jurisdiction of the Hon'ble Supreme Court was invoked under Section 30 of the Armed Forces Tribunal Act, 2007 and while considering the statement made and after taking note of the various provisions in Para 11 the Hon'ble Supreme Court recorded the following finding:

"No doubt, the dismissal order passed against the appellant was within the powers of the authorities concerned. However, as far as the dismissal from service is concerned, it is an extreme punishment imposed against the appellant. The appellant has to thrive in civil life by doing an appropriate job suitable to his qualification. In the facts and circumstances of the present case, we are inclined to modify the punishment of dismissal from service into discharge from service."

10. In the case of Ex Lac Nallam Shiva (supra), the employee therein was enrolled in the Indian Air Force on

28.03.2006 and was promoted as the Corporal. While serving so, he overstayed the casual leave granted to him from 20.10.2012 to 11.04.2014 on account of his ill health. He was served with a charge-sheet and a District Court Martial was held which finally found him guilty of overstaying the leave. He was sentenced to undergo four months Rigorous Imprisonment and dismissal from service and reduction of rank. However, at the stage of confirmation, the RI was reduced from 4 months to 3 months. The employee challenged the same before the Armed Forces Tribunal, Regional Bench at Chennai. The Tribunal evaluated the submissions of the parties, rejected the plea of the employee that the disciplinary action suffered from legal infirmity but was impressed with the plea that there were compelling circumstances which compelled the employee to over stay the leave and after taking note of the Regulations 754 (c) of the Defence Service Regulations for Air Force held that the punishment awarded was excessive and therefore, interfered with the punishment and directed for reinstatement of the applicant holding the punishment too harsh. Challenging the interference into the punishment, the UoI appealed to the Hon'ble Supreme Court and the Hon'ble Supreme Court in Para 11 dealt with the matter in the following manner and converted the dismissal into discharge.

"Counsel for the respondents made a fervent alternative submission that even if the direction given by the Tribunal to reinstate the respondent in service was to be set aside, this court may take a sympathetic view as the respondent has already suffered the sentence period for the stated offence. He submitted that this Court may modify the order of dismissal from service to one of discharge from service, so that the respondent may not be disqualified from applying for employment elsewhere, considering that he is young and has to support his family. The counsel for the appellants, in all fairness, submits that so long as the respondent is not ordered to be reinstated in the Indian Air Force Service and there is no financial implication for the department, he may leave it to the discretion of this court to pass orders as may be deemed appropriate."

11. In the case of Ex Corporal Nitish Kumar (Supra) decided on 07.11.2012, the punishment awarded by the DCM in the matter of overstaying of leave by an employee of the Air force was interfered with by this Tribunal. The reasons for converting the dismissal into discharge recorded in Para 17 of the order are reproduced herein below:

"Then coming to the aspect of the punishment; and the qualifying service of the petitioner is less than ten years, and therefore, irrespective of whether the petitioner is discharged or dismissed, he does not get any pension. Learned counsel for the petitioner however submitted that dismissal may be converted into discharge so that the dismissal may not come in his way in his seeking other employment anywhere else by

way of rehabilitation, which he is likely to get in view of the professional proficiency possessed by him."

29. Having regard to the totality of the facts, including the nature of offence, past record, and subsequent medical condition of the applicant and the binding observations made herein above by Regional Bench Guwahati in Ex Hav Bhubaneswar Gogoi (Supra), we are of the considered opinion that while the finding of guilt recorded by the Summary Court Martial cannot be interfered with, the punishment of dismissal from service appears disproportionately severe that the ends of justice would be met if the punishment is modified to one of "discharge from service," which would remove the applicant from combat duties but at the same time enable him to retain limited service-related benefits to which a discharged soldier is ordinarily entitled.

30. In view of the foregoing discussion, the Original Application is partly allowed in the following terms:

(a) The findings of guilt recorded by the Summary Court Martial under Sections 52(a) and 64(c) of the Army Act are upheld.

(b) However, the punishment of *dismissal from service* awarded to the applicant is found to be disproportionate to the facts and circumstances of the case. Accordingly, the same is modified to *discharge from service*.

(c) Consequent upon such modification, the applicant shall be entitled to such benefits as are admissible in law to a person discharged from service, but shall not be entitled to reinstatement in service.

(d) The respondents are directed to issue necessary orders within a period of four months from the date of receipt of this order.

31. The Original Application is disposed of in the above terms.
32. No order as to costs.
33. Pending miscellaneous applications, if any, stand closed

Pronounced in the open Court on this 13th day of October, 2025.

(JUSTICE NANDITA DUBEY)
MEMBER (J)

(LT GEN C.P MOHANTY)
MEMBER (A)

PS