

ARMED FORCES TRIBUNAL, CHANDIGARH REGIONAL  
BENCH AT CHANDIMANDIR

T.A No.31 of 2012  
(Arising out of CWP No.7409 of 1992)

**Manjit Singh** ... **Petitioner**  
v.  
**Union of India and another** ... **Respondents**

For the Petitioner : Mr. S.S.Johal, Advocate  
For the Respondents : Mr. Ram Chander, Sr.PC for  
Mr. Vibhor Bansal, CGC

**Coram :** **Justice Vinod Kumar Ahuja, Judicial Member**  
**Lt Gen (Retd) N.S.Brar, Administrative Member**

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**ORDER**  
**21.10.2013**

This Writ Petition filed in the Hon'ble Punjab and Haryana High Court is taken up on transfer to this Tribunal as an appeal against Summary Court Martial (SCM) under Section 15 of the Armed Forces Tribunal Act, 2007.

The facts alleged are that the petitioner had served in the Army for over 10 years and was holding the rank of Naik when on 30.01.1991 while performing some mission, he was allegedly found to have disobeyed lawful command of his superior officer and neglecting to obey regimental orders. He was consequently tried by SCM on 26.03.1991 and was sentenced to be dismissed from service, reduced to the ranks and awarded one year's rigorous imprisonment. The charge sheet reads as under:-

CHARGE SHEET

1<sup>st</sup> charge      The accused No. 3379774 H Naik Manjit Singh  
Army Act        4 SIKH is charged with:-  
Sec 41 (2)

DISOBEYING A LAWFUL COMMAND GIVEN BY HIS  
SUPERIOR OFFICER

in that he

At Field on 30 Jan 91 at 1830 h when ordered  
by SS34351F 2 Lt Rahul Duggal, Offg Coy  
Cdr of the same Regt, to go back to his Coy  
location at Gaurisagar, did not do so.

2<sup>nd</sup> Charge

Army Act

Sec 42 (e)

NEGLECTING TO OBEY REGIMENTAL ORDERS

In that he at Field on 30 Jan 91 between 1830 h to 1945 h neglected to obey Bn Daily Order Part I No 20, dt 09 Sept 80 by entering Amguri village which had been placed Out of Bound by the said order.

Sd/-

(H S Ahluwalia)

Colonel

Commanding Officer

4<sup>th</sup> Bn The SIKH Regt.

On 30.01.1991, at about 1745 hours, he along with Lance Nk Balkar Singh, was detailed to escort 2Lt Rahul Duggal in a One Ton vehicle to Town/Village Amguri (Assam). There they met Regimental Medical Officer (RMO) and Lt Rahul Duggal decided to go with the RMO on a secret mission and told the escorts to go back to the Regiment. They did not find the vehicle where it was parked, hence, they walked back to the Unit reaching there at 1945 hours. On 31.01.1991, the petitioner was placed under arrest and was not told the reason or purpose by anybody. On 10.03.1991, Summary of Evidence (SOE) was ordered by an Officer other than his CO (Annexure P-1). It was recorded by an Officer who had appeared as a prosecution witness before the CO. None of the witnesses deposed anything against the petitioner. Lt Rahul Duggal neither made any complaint nor appeared as a witness in the said SOE or trial (Annexure P-15). The SOE is at Annexure P-2 to P-4. On 20.03.1991, the petitioner was given charge sheet stating that he will be tried by SCM (Annexure P-5). Thereafter no trial was held but on 26.03.1991, a letter was written to the next of kin of the petitioner stating that he had been tried by SCM and sentenced to one year imprisonment along with reduced to rank and dismissed from service (Annexure P-6). The petitioner was sent to Civil Jail on the same day. He was released after undergoing one year's imprisonment. The petitioner had also been held in custody for 54 days before his committal to Civil Jail in violation of Regulations of the Army, 1987 Para 401. No investigation was carried out by the Company Commander.

The petitioner is said to have left Company location after 1745 along with Lance Naik Balkar Singh and 2Lt Rahul Duggal. It took 45 minutes to reach the location of the RMO and thereafter they would have spent some time before they were told to go back to the Company. They did not find the vehicle where it was parked and then walked back to the Company location and reached there at about 1945 hours. Thus, there was no absence or dereliction or disobedience.

The second charge regarding neglecting to obey order dated 09.09.1980 on 30.01.1991 is untenable and absurd. The charge was under Section 42 of the Army Act. No CO can place out of bounds any place for all times. The standing orders means orders continuously in operation over a period of time and applicable to all persons subject to Army Act.

Even if the offence allegedly committed by the petitioner is taken into account, then the prescribed punishment is two years which can be awarded by District/General Court Martial only. The petitioner should have been tried by such a Court Martial where he would have had the benefit of qualitatively better right of defence. Similarly, the charge of disobeying lawful command should not have been tried by Summary Court Martial. Then the punishment awarded to the petitioner is said to be not in conformity with the law, is violative of Section 71 of the Army Act and is vindictive or disproportionate, irrational, perverse and shocking to the conscious.

The obligatory and statutory provisions of military law under Army Rules, 22, 23, and 34 were not complied with.

The petitioner made various representations (Annexure P-8). He was provided with a copy of SCM proceedings after he had sent his petition under Section 164 (2) to the Chief of the Army Staff.

As per the proceedings (Annexure P-12), trial started at 0700 hours on 26.03.1991 and concluded at 0720 hours. The plea of guilty was recorded. However, the statutory provisions before recording the plea of guilty were not complied with.

The petitioner was alleged to have been involved in a case of rape along with Lance Naik Balkar Singh but they were not tried for the same. After due investigation, the said rape case against the petitioner and Lance Naik Balkar Singh was not proved and both of them were released by the Chief Judicial Magistrate (Annexure A-16).

The Offg. GOC 2 Mountain Division had remitted four months' imprisonment which was not conveyed to the Jail Authorities and the petitioner was made to undergo one full year of imprisonment (Annexure P-7). The petitioner throughout was made to sign some documents. Representations and petitions submitted under the Army Act, Section 164 (2) were rejected by the Authority, not competent to do so. However, based on his petition dated 10.04.1991 and vide letter dated 19.03.1993, the Competent Authority remitted the sentence of dismissal to one of discharge from the date his dismissal became effective. This discharge from service with retrospective effect is said to be illegal as the same cannot be done retrospectively. Hence the petitioner continues to be in service legally after remission of his sentence of dismissal (Annexure P-19).

With the above alleged facts, the petitioner seeks directions for setting aside all punishments with consequential benefits of pay and allowances, seniority and pension with other due benefits.

Written statement has been filed by the respondents and it is stated that on 30.01.1991, the petitioner along with Lance Naik Balkar Singh, was detailed as escort for Officiating Company Commander, 2Lt Rahul Duggal when he was required to go to Support Company when the Unit was deployed in sensitive counter insurgency Operation BAJRANG. On reaching the location, the petitioner along with Lance Naik Balkar Singh were ordered to return to the Unit and although the vehicle was available, the petitioner went to Amguri Town in violation of lawful command given by the Superior Officer for which he was tried.

Annexure P-1 is the administrative order of the Unit Adjutant. The order for recording SOE was passed by the CO on 10.03.1991 after complying with Army Rule 22 (Annexure R-1). It is clear from the SOE that the petitioner along with Balkar Singh had gone to Amguri Town in violation of orders to return to the Unit. At the recording of SOE, the petitioner did not ask for 2Lt Rahul Duggal to be cross-examined. The petitioner was provided a copy of the Charge Sheet and SOE on 20.03.1991. He was tried in the presence of Capt Dinkar Chaturvedi and Sub Harbhajan Singh. The petitioner pleaded guilty to both the charges. The plea of guilty was recorded after complying with the provisions of Army Rule 115 (2). The petitioner was tried on charges of disobedience of lawful command and neglecting to obey the local orders. Therefore, length of absence from the Unit was irrelevant. Orders of permanent nature are published in Battalion Orders and when the Unit was deploy in counter insurgency operation, all villages and towns were placed out of bound. The petitioner was tried for offences committed under Section 42 and Section 41 of the Army Act, both of which can be tried by SCM and no reference needs to be made to an officer empowered to convene District Court Martial or General Court Martial. The Unit Part II Order No. 20 of 09.09.1980 is of permanent nature stating that all surrounding villages around the Battalion are placed out of bounds. Statement of 2Lt Rahul Duggal was not recorded at SOE as he was out on official duty. He was available to be examined as a witness by the petitioner at the trial by the SCM. However, the petitioner pleaded guilty and the same was not required to be done. The petitioner was asked to apply for a copy of the SCM proceedings but had declined (Annexure R-2). Subsequently, when a request was received, he was provided complete SCM proceedings through the Superintendent of District Jail, Sibsagar on 18.08.1991. Remission of four months' rigorous imprisonment was granted by the Officiating GOC, 2 Mountain Division, on 28.12.1991. This order was communicated to the Superintendent, District Jail, Sibsagar vide 311 Mountain Brigade letter dated 21.01.1991. The petition under Section 164 (2) dated 10.04.1991 was considered by the Vice Chief of the Army Staff on merits and was rejected vide order dated 03.03.1993 (Annexure R-3). However, on humanitarian

grounds, the sentence of dismissal awarded by the SCM was directed to be deemed to be, discharge from the same date. When the sentence of dismissal was remitted and the petitioner was deemed to have been discharged from the date he was dismissed, there was no order with retrospective effect. In fact, the petitioner was treated to be discharged instead of being dismissed. Such order can be passed in terms of Army Act, Section 164 (2). The petitioner was provided the services of Major Jagdish Chander as friend of the accused at his trial by the SCM but the petitioner did not raise any objection at that time. There is no provision of a defence counsel at the trial by the SCM.

Heard the learned counsel for the parties and perused the records.

Perusal of records and from the statements of witnesses it appeared that two persons, namely the petitioner and Balkar Singh, were involved in the case. It was accordingly ordered on 23.05.2012 to place on record the proceedings against Balkar Singh. The proceedings against Balkar Singh and the writ petition in the Hon'ble Punjab and Haryana High Court, which was transferred to this Tribunal as TA No 220 of 2011, were produced and were ordered to be tagged with this case on 05.10.2012.

At the outset we may observe that the copies of documents and proceedings before and during the trial produced by the petitioner in the petition are neither complete nor reliable or correct in as much as they are incomplete typed copies or partial extracts. The original or correct version not being available and the learned counsel flatly declining to be in possession of the original wherefrom these copies or extracts were made, we are constrained to proceed with what is on record.

Annexure P15 is the proceedings before the Commanding Officer under Army Rule 22. The petitioner had declined to cross examine any witness or produce any witness in his defence. Thereafter the CO had ordered the evidence to be reduced to writing to record SOE.

Annexure P1 is the administrative order of the Adjutant detailing the officer and independent witness for recording the SOE consequent to hearing of the charge by the CO and the order of the CO to record the SOE. The SOE cannot be said to have been ordered to be recorded by the Adjutant.

Annexure P2 is the extract of SOE wherein the petitioner had declined to cross examine the witnesses. Obviously the petitioner was present at the recording of the SOE. Annexure P12 is the copy of proceedings of SCM wherein the petitioner had unequivocally pleaded guilty to both the charges. Before recording the plea of guilty the petitioner was explained the nature of charges on which he had pleaded guilty and the plea was thereafter recorded in accordance with Army Rule 115(2). In the petition under Section 164(2) of the Army Act and at any time prior to filing of the writ petition the petitioner has not disclosed or contended anything wrong in recording that plea or the

SCM proceedings not having been held and the proceedings being a farce. Such claims at a belated stage cannot be allowed to impinge upon the proceedings.

Annexure P16 is the radiogram intimating that the petitioner and Balkar Singh, arrested from Amguri, had been released from the case pending against them by CJM, Sibsagar vide order dated 17.05.1991. The petitioner had been discharged from any case of rape or otherwise pending with the civil authorities. He had been tried under Section 41 and 42 of the Army Act. He was not handed over to the military authorities under Section 125 of the Army Act for trial on any charge pending before the civil courts.

Annexure P18 is the certificate signed by the petitioner that he does not wish to apply for copy of the SCM proceedings. The copy was subsequently provided when he applied for the same.

Vide order dated 28.12.1991 the sentence of one year rigorous imprisonment awarded on 26.03.1991 was remitted by four months (Annexure P17). The same was conveyed to the Superintendent, District Jail, Sibsagar vide 311 Mountain Brigade letter dated 21.01.1991. He was thereafter released on 06.02.1992 (Annexure P7). The competent authority vide order dated 19.03.1993 remitted the sentence of dismissal from service and the petitioner was deemed to have been discharged from service on the date he was dismissed (Annexure P19). The dismissal had been converted into discharge. It cannot be said that he was discharged from service with retrospective effect. He was dismissed from service on 26.03.1991 and the same was deemed to be discharge from service from the same date. This would have enabled the petitioner to certain consequential benefits and facilitated civil employment which he was otherwise not entitled to having been dismissed from service. No illegality or prejudice can be ascribed to the remitting of the sentence. Nothing has been shown as to how the Vice Chief of the Army Staff was not competent to decide the petition under Section 164(2) of the Army Act. If the remitting of the sentence were to be illegal it is liable to be set aside and the dismissal of the petitioner restored. The competent authority had interfered with the sentence of dismissal on humanitarian grounds and in so far as the other part was concerned had clearly held 'However, I reject the petition for all other purposes'. The petitioner has already served the sentence, we do not find any ground to interfere in that.

Army Act Section 41 and 42 provide for maximum punishment of 14 years imprisonment on active service and two years imprisonment respectively. The offences can be tried by SCM. The trial and sentence by the SCM was valid and legal.

Similar grounds and pleas were taken in the case of the other accused, Balkar Singh (TA No 220 of 2011) which was dismissed on 09.12.2011.

Having considered all aspects of the matter we find no reason to interfere with the finding and sentence of the SCM as it stands after the petition under Section 164(2) of the Army Act was decided. This petition is accordingly dismissed.

**[ Justice Vinod Kumar Ahuja ]**

**[ Lt Gen (Retd) N.S.Brar ]**

21.10.2013

RS

Whether the judgment for reference is  
to be put on internet?

Yes/No