

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI**

O.A. (Appeal) No. 64 of 2014

Thursday, the 05<sup>th</sup> day of March, 2015

The Honourable Justice V.Periya Karuppiah  
(Member-Judicial)  
and  
The Honourable Lt Gen K Surendra Nath  
(Member-Administrative)

Ex-Sepoy Sankar Rao Raghumandala  
Service No.2605006-P  
Son of Mr.G.Gurumurthy Raghumandala  
Aged about 35 years  
House No.3-148, Naidy Street  
Village, Post & Tehshil – Makkuva  
District – Vizianagaram (A.P), PIN: 535 547

...Applicant

By Legal Practitioners:  
M/s M.K.Sikdar and S.Biju

vs

1. Union of India  
Through The Secretary, Govt.of India  
Ministry of Defence, New Delhi – 110 011
2. The Chief of Army Staff  
Integrated HQs of MOD (Army)  
Post – DHO, New Delhi – 110 011
3. The Officer in-Charge Record  
The Madras Regiment Centre  
PIN-900 458, C/o 56 APO
4. The Commanding Officer  
No.19 MADRAS  
PIN – 911 419, C/o 99 APO

...Respondents

Mr.M.Dhamodharan, SCGSC

**ORDER**

[Order of the Tribunal made by  
Hon'ble Lt Gen K Surendra Nath, Member (Administrative)]

The applicant, Ex-Sepoy Sankar Rao Raghumandala has filed this OA challenging the sentence of dismissal passed in the Summary Court Martial by the 4<sup>th</sup> respondent on 23.05.2012 with the request to reinstate him with effect from 23.05.2012 with seniority and all consequential benefits.

2. Briefly, the applicant states that he was enrolled in the Indian Army as Sepoy on 28 September 1999 and would state that he was performing his duties with full devotion, dedication and with integrity as a loyal soldier and to the entire satisfaction of his superiors and was having only one Red Ink entry in his records till 2012. He submits that he wanted to go on leave and the same was under consideration with the Officer in-Charge of the 4<sup>th</sup> respondent, Maj B,.S.Choudhary. The applicant states that on 0-1.04.2012 one Hav Maj Ramesh pushed him under the influence of liquor and in contra the applicant was arrested. He would submit that he was later sent on 20 days leave on 03.04.2012 and was threatened that he will be discharged from service on return from leave and hence he should bring the discharge documents from home. The applicant submits that due to this, he suffered mental agony and shared his problem with his wife and parents. His wife also took up the case with Army authorities through her counsel. The applicant further submits that he returned to the Unit after completion of leave on 24.04.2012 and despite the fact that no incident occurred, he was framed, charge-sheeted and tried by a Summary Court Martial. The

Summary Court Martial was conducted on 23.05.2012 and he was asked no questions by the Presiding Officer but was only told that he was dismissed from service. He was sent home through Army escorts and was handed over to the applicant's wife on 25.05.2012. Though, he had represented under Section 164 of the Army Act 1950 against the order passed in the Summary Court Martial, his representations were not replied to and is pending before the respondents. The applicant would state that prior to the Summary Court Martial proceedings, he had put in 12 years 7 months and 26 days of service and when he was about to get pension, he was dismissed from service for no fault of his. He would further claim that his Unit was recommended to go on a UN Mission and he was expecting the opportunity to go on this Mission. Instead, he was unjustly dismissed from service. In view of the foregoing, the applicant would request that the proceedings of the SCM dated 23.05.2012 be quashed and he be reinstated in service with all consequential benefits.

3. The respondents, in their reply, would not dispute the fact of the applicant's enrolment in the army and the fact that he had put in more than 12 years of service. They would state that the applicant had been punished on three different occasions, as per the statement below:

S.No.	Army Act	Offence	Date of offence	Date of award	Punishment awarded
(a)	Sec 63	An act prejudicial to good order and military discipline	12 Nov 08	21 Nov 08	7 days Rigorous Imprisonment (Red Ink)
(b)	Sec 48	Intoxication	26 Dec 09	18 Jan 10	14 days pay fine
(c)	Sec 39 (a)	AWL	31 Jul 11	02 Aug 11	14 days pay fine (Black ink)

The respondents would state that apart from this, the applicant has been a perpetual trouble maker. He has been involved in stealing, intoxication and using abusive and aggressive language with superiors and these were ignored by the respondents hoping that he would improve. He was regularly being counseled by the Religious Teacher JCO, Education JCO, Subedar Major and the Second in Command of the Battalion. The applicant displayed extreme aggressive behavior and assaulted the Regiment Police Havildar Major on two occasions. The applicant was, therefore, tried by the Summary Court Martial under Army Act Sec 40 (a) for using criminal force against his superior officer and was dismissed from service on 23.05.2012. The respondents would further state that due procedures were followed while hearing of the charges, conduct of the Summary of Evidence and the conduct of the Summary Court Martial. The applicant was tried by a Summary Court Martial on 23.05.2012 after giving ample opportunity for his defence and the SCM commenced at 1000 hrs on 23.05.2012 and concluded at 1230 hrs on the same day. They would aver that the contention of the applicant that he was not proved guilty and the sentence of dismissal from service is not borne by facts are not true as the applicant had pleaded guilty to the charges. Since he was given full opportunity to present his defence, the applicant's contention that his dismissal from service was arbitrary is not correct. The respondents would also aver that keeping the applicant's past record, the punishment given is commensurate to the gravity of the offence. In view of the foregoing, the respondents would

pray that the OA be dismissed as the same is devoid of merit and thus render justice.

4. We have heard the arguments of Mr.M.K.Sikdar and Mr.S.Biju learned counsel for the applicant and Mr.M.Dhamodharan, learned SCGSC, assisted by Maj Suchithra Chellappan, learned JAG Officer (Army) appearing for the respondents and perused all the documents made available to us.

5. Flowing from the above arguments, the following points have been framed for discussion:

*(a) Whether due procedures were followed in the conduct of the Summary Court Martial:*

*(b) Whether the punishment awarded is commensurate to the offence committed; and*

*(c) What relief, if any, the applicant is entitled to.*

6. Points (1) and (2) :We have examined the proceedings of the Summary of Evidence, Charge Sheet and the Summary Court Martial proceedings placed before us. The Summary of Evidence was recorded from 29 April 2011 to 01 May 2012 by Maj Navdeep Kumar Malhotra and Lt Vipin Kumar as independent witness. Seven prosecution witnesses were examined and the applicant was given an opportunity to cross-examine the witnesses. However, he had declined to do so. From the records we also observe that the applicant was given an opportunity under Army Rule 23 (3) to make a statement if he wishes to do so and that any statement made by him would be recorded and given as evidence. We note that the applicant had declined to make any statement. The applicant was charged, for using criminal force against a superior officer, i.e., Regiment Police Havildar Major Velankannie

Ramesh P of the same Unit on two separate occasions, on 24.04.2012 at about 1830 hrs and later at 2015 hrs, under Army Act Section 40 (a). The applicant was provided with copies of Summary of Evidence and the charge sheet, translated in Telugu, which is his mother tongue, on 14.05.2012. The Summary Court Martial was conducted on 23.05.2012 and during the proceedings of the Court Martial, the applicant had pleaded guilty to both charges. The applicant, in his defence, was asked if he wished to make any statement in reference to the charge or in mitigation of the punishment and he chose to say that *"I have made mistakes. Please pardon me and give me a chance to serve"*. He declined to call any witness as to his character. We also note that the applicant had 1 Red Ink entry under Army Act Section 63 and 2 Black Ink entries under Army Act Section 48 and Section 39(a). At the end of the Summary Court Martial, he was sentenced to be Dismissed from service. The Commanding Officer, in his Memo has brought out that the individual did not improve himself despite being awarded Rigorous Imprisonment and Pay Fines as well as being verbally warned on a few occasions by his superiors to improve. Considering the gravity of the offence and in the present instance, an exemplary punishment was considered necessary. The respondents have also produced letters written by the Commanding Officer 20 MADRAS where the applicant was posted, regarding his drunken state and use of abusive language against his superiors as well as a report from the Commanding Officer 54 Rashtriya Rifles (MADRAS) giving an account of the conduct of the applicant while serving with them, his habit of intoxication and his unruly behavior while proceeding on leave at Jammu, New Delhi and Agra Railway Station. We find that there has

been no procedural infirmity either in the hearing of the charges, recording Summary of Evidence or in the conduct of the Summary Court Martial. From the Summary of Evidence, we also note that the applicant had used abusive as well as threatening language (*'Mein Tujhe Goli Mardunga'* – *"I will shoot you"*) to his superior officers. Considering the above facts and the overall poor conduct of the soldier, the punishment awarded by the Commanding Officer seems justifiable.

7. Point (3) : The only aspect that needs to be considered at this stage is what type of relief the applicant is entitled to. The applicant had already put in approximately 12 years 7 months and 26 days of service when he was dismissed from service. As pleaded by the applicant in his O.A., he has a family to look after and, therefore, he has pleaded that he should be reinstated in order to complete his pensionable service enabling him to earn his pension. Considering the general behavior of the applicant, his poor record of discipline and the facts brought before us, we are not inclined to reinstate him into service. However, he is a young man and a punishment of dismissal would not enable him to seek employment in civil society with a stigma attached against his name.

8. There is no doubt that dismissal from service of an individual not only affects his present employment but also has an adverse effect on his future employment in the civil society. Considering the relatively young age of the applicant at the time of his dismissal and the nature of offences committed, it would be in the interest of justice, if he is provided an opportunity to rehabilitate himself in the society. Discharge from service is

a lesser punishment than the dismissal from service, since the discharge from service will not adversely affect the prospect of the accused person towards his civil employment and rehabilitation in the society. But the result of discharge as well as dismissal from service is one and the same for the accused as in either case, he cannot continue in service. Though discharge is not listed as a punishment in Army Act Section 71, in accordance with provisions of Section 15 (6) b (ii) and (f) of Armed Forces Tribunal Act, 2007, this Tribunal has the power to mitigate the punishment awarded or to pass any other order reducing the punishment as it may think appropriate. It is, therefore, the considered opinion of this Tribunal that remission of the punishment of “Dismissal from Service” to “Discharge from Service” on the above grounds would meet the ends of justice as also enable the applicant to rehabilitate himself in the society.

9. In fine, the O.A. partially allowed. The punishment of ‘Dismissal from Service’ awarded by the SCM on 23.05.2012 is reduced to “Discharge from Service”. Accordingly, the applicant is entitled to the benefit of gratuity and any other entitlements as applicable, if otherwise eligible. This order shall be complied with, within three months from the date of receipt of this order. In default, an interest of 9% *per annum* is payable from that date. No order as to costs.

Sd/-

Lt Gen K Surendra Nath  
Member (Administrative)

Sd/-

Justice V.Periya Karuppiah  
Member (Judicial)

05.03.2015

**Member (J)** – Index : Yes/No

Internet : Yes/No

**Member (A)** – Index : Yes/No  
*ap*

Internet : Yes/No

*True copy*



To

1. The Secretary, Govt.of India  
Ministry of Defence, New Delhi – 110 011
2. The Chief of Army Staff  
Integrated HQs of MOD (Army)  
Post – DHO, New Delhi – 110 011
3. The Officer in-Charge Record  
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5. Mr.M.K.Sikdar and Mr.S.Biju  
Counsel for the applicant
6. Mr.M.Dhamodharan, SCGSC  
Counsel for the respondents
7. O i C, Legal Cell,  
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Chennai-600009.
8. Library, AFT, RB, Chennai.

Hon'ble Justice V.Periya Karuppiah  
Member-Judicial)

and

Hon'ble Lt Gen K Surendra Nath  
Member-Administrative)

O.A.(Appeal) No.64 of 2014

Dated : 05.03.2015