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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 6th November, 2013.

Date of Decision: 12th December, 2013

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WP(C) No. 6317/2012

NAIK MANIKANDAN R Petitioner
Through: Major K. Ramesh, Adv.

versus

UNION OF INDIA AND ORS. Respondents
Through: Dr. Ashwani Bhardwaj,
Adv.

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MS. JUSTICE DEEPA SHARMA

DEEPA SHARMA, J.

1. The petitioner vide this petition has challenged the findings and sentence of the Summary Court Martial dated 15th November, 2010, whereby, the petitioner was sentenced rigorous imprisonment for twenty eight days in military custody and to be reduced to ranks from Havildar to sepoy. The petitioner has also challenged the order dated 14th February, 2012 passed by General Officer Commanding in Chief on his statutory petition dated 23rd

July, 2011 whereby the punishment was commuted from reduction in rank and 28 days rigorous imprisonment in military custody to severe reprimand. His petition dated 23 July 2011 was disposed off accordingly.

2. The brief facts of the case are that the petitioner had joined the respondents and was enrolled as “***Signalman***” with the corps of Signal on 27th December, 1994. The petitioner got promoted to rank of Havildar on 1st January, 2002.

3. When the petitioner was serving 53 Rashtriya Rifles Battalion and was posted at Jammu and Kashmir, he availed sanctioned casual leaves of 28 days w.e.f 13th April, 2010 to 10th May, 2010 and went to his home town. During the period of leave, he requested his Unit for extension of leave and his leave was extended upto 5th June, 2010 which included the balance of annual leave of the year 2010 and 20 days’ advance leave of annual leave for the year 2011. The petitioner was required to join his duties on 6th June, 2010 but he continued to remain absent from duty. By the order of Commanding Officer of 53 Rashtriya Rifles Battalion dt

5.7.10 the court of inquiry was initiated against the petitioner wherein the statements of witnesses namely Platoon Havildar M. Bashir Ahmed, Havildar Manoj Kumar and of Subedar Kawaljit Singh, all posted in 53, Rashtriya Rifles Battalion (Punjab) were recorded. On the basis of evidence on record, the findings were given by the court that since the petitioner had not contacted the Unit since 6th June, 2010 nor had sent any request for extension of leave and even after being informed by Platoon Havildar to rejoin from leave, he had not rejoined duty after termination of leave, the petitioner be declared as “deserter” with effect from 6th June, 2010. The Commanding Officer had declared on 2nd August, 2010, based on the findings of the court of inquiry, the petitioner a deserter on account of overstay of his leave w.e.f. 6.06.2010 without sufficient cause. Even thereafter there was no response from the petitioner.

4. The petitioner surrendered on 15th August, 2010.

5. A summary of evidence was directed to be prepared against these actions of the petitioner which was recorded on 4th November, 2010, in which the petitioner had fully participated. He

did not cross-examine any witness. The statement of petitioner was recorded wherein he had given reasons of his overstay stating that overstay was due to unavoidable circumstances at home. He had stated that his son was born on 25th May, 2006 and his wife underwent sterilization operation on 12th May, 2007. Due to demise of his son in January, 2008, his wife had undergone de-sterilisation on 23rd June, 2009 from Kasturba Hospital Gandhigram. Despite the fact that the petitioner availed leave two times from 53 Rashtriya Rifles Battalion, his wife could not conceive during this leave period. He was sanctioned 28 days' casual leave w.e.f. 13th April, 2010. During his leave period, he requested his unit for extension of leave and got the same extended upto 5th June, 2010. During the leave period, he got his wife fully checked up and the Doctor advised him to stay with his wife for two months and therefore he stayed at home. After realising his mistake, he voluntarily surrendered to Depot Regiment on 15th August, 2010 after overstaying leave for 71 days.

6. On 6th November, 2010, the petitioner was given Charge sheet under Section 39(b), Army Act, 1950. The charge reads as under:-

“Army Act WITHOUT SUFFICIENT CAUSE

Sec 39 (b) OVERSTAYING LEAVE GRANTED TO
HIM.

At Field, while on active service, on 06 June 2010, having been granted leave of absence from 13 April 2010 to 05 June 2010 to proceed his home, failed without sufficient cause to rejoin his unit, 53 Rashtriya Rifles Battalion at 0001 hours on 06 June 2010, on expiry of the said leave until surrendered voluntarily to Depot Regiment (Corps of Signals) on 15 August 2010 at 1130 hours.”

7. Thereafter, the petitioner was subjected to a Summary Court Martial (SCM) on 15th November, 2010. During the trial, the petitioner had pleaded guilty to charge. On his plea of guilt, he was sentenced to be reduced to the rank of Sepoy from Havildar with 28 days rigorous imprisonment in the Unit Quarter.

8. A statutory complaint challenging the punishment awarded to the petitioner by Summary Court Martial was made to Chief of

Army staff on 23rd July, 2011 wherein he prayed to set aside the order dated 15th November, 2010 on humanitarian grounds. This statutory complaint was heard by Lieutenant General, GOC in Chief (Intermediary Authority) who partially commuted the sentenced and reduces the punishment of petitioner of reduction in rank from Havildar to Naik with severe reprimand and set aside the sentence of imprisonment.

9. The petitioner has assailed the above order mainly on the following three grounds:-

(i) That since during the period of his leave, he was posted with 53 Rashtriya Rifles Batalion, the Summary Court Martial at Depot Regiment (corps of signals) Jabalpur is without jurisdiction and the entire proceedings of the Summary Court Martial needs to be quashed. The petitioner had relied upon the judgment of this High Court delivered in the *Ex. Lance Naik Vishav Priya Singh v. Union of India and others* 147 (2008) DLT 202.

(ii) The second ground of challenge is that as per rule and procedure, a statutory petition of a Jawan submitted to Chief of Army Staff can be disposed of by Chief of Army Staff alone, and the Intermediary Authority has no right to dispose of and has relied on para 364 of Regulations for Army (1987 Edition).

(iii) The third ground on which the order has been

assailed is that he had sufficient reasons to overstay the period of leave and therefore, it cannot be said that he had overstayed the leave without sufficient reasons.

10. We have given due consideration to the arguments forwarded by learned counsels for the parties as well as the record of the case and the law relied upon by them.

11. The first contention of the petitioner is that his Summary Court Martial by Depot Regiment Jabalpur was without jurisdiction and that he could have been tried only by Commanding Officer of 53, Rashtriya Rifles Battalion.

12. It is argued on behalf of the respondents that when the petitioner did not report back on expiry of his leave period, the court of inquiry in this regard was initiated by Commanding Officer of 53 Rashtriya Rifles Battalion which commenced on 25th July, 2010 and as a result the petitioner was declared deserter. It is argued that since the battalion of the petitioner was posted at High Altitude, therefore, as per the Regulation 381, Defence Services Regulation, 1987, the Commanding Officer of the Depot Regiment (Court of Signals) becomes the Commanding Officer of the

petitioner. It is also argued that findings in the case relied upon by the petitioner *Ex Lance Naik (supra)* has no application to the facts and circumstances of the present case.

13. We have carefully considered the case law relied upon by the petitioner. It is apparent that the findings in the case *Ex Lance Naik (supra)* are not applicable on the facts of the present case since the facts of the instant case are entirely different. In that case the petitioner had not been declared a 'deserter'. The court has clearly distinguished the case of a 'deserter' in the said judgment.

Relevant portion reads as under:-

Para 25:

“None of the petitioners have been charged with the most reprehensible offence conceivable in the Armed Forces that is of Desertion. Even if so charged it would have to have been further established, as a pre- condition for the holding of an SCM by the Commanding Officer of the Unit to which the petitioner was attached, that the Commanding Officer of the Unit to which the accused belonged was serving in a high altitude area, or overseas or engaged in counter- insurgency operations or active hostilities or in Andaman and Nicobar Islands.”

14. In the present case, the petitioner had been declared as

“Deserter”. The Regulation 381 of Regulations for Army deals with the trial of **“Deserter”** which reads as under:-

381 Trial of Deserters.—under normal circumstances trial by Summary Court Martial for desertion will be held by CO of the unit of the deserter. However, when a deserter or an absentee from a Unit shown in column one of the table below surrenders to or is taken over by, the unit shown opposite in Column two and is properly attached to and taken on the strength of the latter unit he may, provided evidence, particularly evidence of identification, is available with the latter unit, be tried by Summary Court Martial by the CO of that unit when the unit shown in column one is serving in high altitude area or overseas or engaged in counter-insurgency operation or active hostilities or Andaman and Nicobar.

In no circumstances will a man be tried by Summary Court Martial held by a CO other than the CO of the unit to which the man properly belong; a unit to which the man may be attached subsequent to commission of the offence by him will also be a unit to which the man properly belongs.

TABLE

Column One	Column Two
A unit of Signals	Signal Training Centre,Jabalpur

15. Since the petitioner was declared a ‘deserter’ his case is

covered under this rule. The unit to which he was attached was an operationally committed Unit deployed in High Altitude Area. So under Regulation 381 of the Regulations for the Army, the HQs 1, the Signal Training Centre, Jabalpur had the jurisdiction to deal with the case of desertion by the petitioner. The HQs 1, Signal Training Centre, Jabalpur attached the petitioner to Depot Regiment, Corps of Signals for purpose of his trial. It therefore cannot be said that the HQ 1, Signal Training Centre Jabalpur had no jurisdiction to hold the trial of petitioner for the offence of desertion.

16. The next argument of the petitioner is that disposal of his statutory complaint addressed to Chief of Army Staff by the Intermediary is violative of regulation 364 of Regulations for Army (1987 Edition).

17. The respondents have countered the argument saying that under Sub Section (j) of Regulation 364, Regulations for the Army (1987 Edition), an Intermediate Authority can examine the grievances set forth by the complainant and can either grant the

redress sought for in the complaint or forward the complaint to the next higher authority along with his comments and recommendations.

18. It is further stated by the respondents that Sub clause (k) of Regulation 364, Regulations for the Army (1987 Edition) confers power upon an Intermediary Authority to grants the redressal asked for and close the case, informing complainant and intimating next higher authority.

19. We have considered the rival contentions and perused the relevant regulation relied upon by both the parties. The regulation 364 (j) & (k) of Regulations for Army (1987 Edition) reads as under:-

“364 xx

(j) An intermediate authority will examine the grievances set forth by the complainant and will either grant the redress sought for in the complaint or forward the complaint to the next higher authority along with his comments and recommendations. The immediate superior authority in chain will in addition also offer his detailed Para wise comments on the complaint. In case of any of the conditions mentioned below is not satisfied he will withhold the complaint

and inform the next superior authority and the complainant the reasons for withholding the complaint:-

i. That the complaint is complete in all respects and is in the correct form.

ii. That the complaint is not couched in a discourteous, disrespectful or improper language.

(k) If an intermediary authority grants the redressal asked for, the complainant will be informed and the case closed under intimation to the next higher authority, the immediate superior authority of the aggrieved individual will endeavour to interview the complainant and make such investigations as he considered necessary. He will then forward the complaint, his detailed Para wise comments and recommendations to the next superior intermediary authority. While forwarding the statutory complaint to the next higher authority, concerned formation headquarters shall invariably inform Army Headquarters about the progress of the case and also inform the complainant through his Commanding Officer. ”

20. In his petition dt. 23.7.2011, the petitioner sought the relief of setting aside the excessive punishment of reduction in the ranks and 28 days of rigorous imprisonment in military custody, on humanitarian grounds. Vide the order dated 14th February, 2012, the petitioner was granted relief asked for. His rank was ordered to be reduced to that of Naik and to be severely reprimanded as

punishment. Thus the punishment of reduction in rank to Sepoy and 28 days of military imprisonment was set aside.

21. Regulation 364 of the Regulations for the Army deals with complaints. From a bare reading of Para k of this regulation, it is apparent that it confers power to Intermediary Authority to grant the redressal asked for. In the case of the petitioner, he was granted redressal. The Intermediary Authority therefore had the jurisdiction to close the case under information to the higher authority in chain. The order by Intermediary Authority was in exercise of powers conferred upon him/her under regulation 364 (j) & (k) of Regulations for the Army.

22. The third argument on behalf of the petitioner is that he had a valid reason for remaining absent from duty and therefore, he ought not to have been found guilty under section 39(b) of the Army Act.

23. The respondents have countered this submission pointing out that the petitioner had throughout had participated in summary of evidence. He chose not to cross examine the witnesses. He made a

statement which was duly recorded. On the basis of Summary of Evidence he was issued a charge sheet. He pleaded guilty to the charge and therefore now it is not open to him to plead that he had valid reason to overstay leave.

24. We have given thoughtful consideration to rival arguments. It is clear that the petitioner has not contended any procedural lapse on part of respondent while conducting the Summary Court Martial. It is also apparent that, while recording the Summary of Evidence, the petitioner was given full opportunity to cross examine the witnesses but he did not cross examine any of the witnesses. His explanation was duly recorded in his statement. He opted not to produce any witness in his defence. During the Summary Court Martial, the petitioner had accepted his guilt and been found guilty on his plea of guilt. Even during recording of his Statement in the Summary of Evidence, petitioner has stated that it was his mistake that he had overstayed his leave.

25. During the Summary Court Martial, petitioner had not produced any evidence that he tried to contact his unit for

extension of leave after it was extended till 5th June, 2010. He has only produced some mobile call records from 20.5.10 to 14.8.10 to strengthen his contention that he tried to contact his unit for extension of further leave but even this record in no way supports his contention. This call record shows that his alleged first call between this period was on 8.7.10. It is apparent that upon expiry of his leave on 5.6.10, the petitioner was required to join his unit on 6.6.10. This record does not show that he made any attempt to contact his unit for extension of leave between 5.6.10 to 8.7.10. It is to be noted that during the recording of summary of evidence the petitioner had not put any question to witnesses that he tried to contact his unit. Even in his own statement during summary of evidence, he made no mention of seeking extension of leave after 6.6.10.

26. It is also not shown that the mobile number from which the alleged call has been made belongs to the petitioner or that he had disclosed this mobile number to his unit.

27. We find that the petitioner admits the offence but has setup an

explanation for mitigating the punishment which ought to be avoided. These grounds have already been taken into consideration by the Intermediary Authority, while reducing his punishment to reduction in rank to the rank of Naik and severe reprimand.

28. The army is a disciplined force and discipline is the backbone of this institution. The members of this institution are required to maintain higher standards of discipline. Any violation of discipline is required to be viewed very seriously. In this case, the petitioner had overstayed his leave for 71 days.

29. Since the findings on charge under section 39(b) of the Army Act is based on admission of guilt by the petitioner, we find no merit in the contention of the petitioner that there were no adequate grounds to find him guilty for overstaying his period of leave without sufficient reasons.

30. From the above discussion, it follows that the order of punishment dated 14th February, 2012 and reduction of rank from Havildar to Naik does not suffer from any illegality and infirmity. We find no force in the writ petition, the same is dismissed.

31. No order as to costs.

(DEEPA SHARMA)
JUDGE

(GITA MITTAL)
JUDGE

December 12th, 2013
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