

(2025) 11 J&K CK 1782
In the Jammu And Kashmir High Court
Case No : WP(C) No. 1709 Of 2024

Union of India

APPELLANT

Vs

Abdul Rashid War

RESPONDENT

Date of Decision : 03-11-2025

Acts Referred:

Army Act, 1950 — Section 38, 39, 63

Citation : (2025) 11 J&K CK 1782

Hon'ble Judges : Sanjeev Kumar, J; Sanjay Parihar, J

Bench : Division Bench

Advocate : Rohan Nanda, Danish Butt

Final Decision : Disposed Of

Judgement

Sanjay Parihar, J

1. The present writ petition is directed against the order dated 08.05.2023 passed by the Armed Forces Tribunal, Srinagar Bench at Jammu (hereinafter referred to as "the Tribunal") in OA No. 138/2021, whereby the Original Application filed by the respondent was partly allowed. By the said order, the Tribunal modified the punishment of dismissal imposed upon the respondent to one of discharge from service, with consequential benefits. However, such consequential benefits were restricted to a period of three years preceding the filing of the Original Application. The petitioners were further directed to implement the said order accordingly.

2. The brief facts necessary for adjudication are as follows. The respondent was enrolled in the Indian Army on 28.07.1983 and was serving with the Jammu and Kashmir Light Infantry Regiment (JAK LI). He was sanctioned 30 days' leave with effect from 06.07.1998 to 08.08.1998. As he could not rejoin his unit on the expiry of the said leave, he applied for an extension, which was granted from 09.08.1998 to 03.09.1998. Despite the extension, the respondent failed to report back and ultimately rejoined on 19.01.1999, expressing his willingness to

resume duty. It thus transpired that he had overstayed his leave from 04.09.1998 to 19.01.1999, i.e., for a total period of 139 days. Consequently, he was tried by his Commanding Officer on 05.07.1999 under Summary Court Martial (SCM) proceedings and was sentenced to dismissal from service. Aggrieved by the said order of dismissal, the respondent approached the Tribunal by filing OA No. 138/2021, contending that during the period of leave he had met with an accident and was under severe mental stress owing to a failed marriage proposal, which led to depression and loss of mental balance. He claimed that he remained under medical treatment till 31.12.1998. The respondent further stated that he had made attempts to rejoin duty but refrained from doing so due to fear of his Commanding Officer. Later, while celebrating Eid, he met an officer of 24 Rashtriya Rifles, who called him to his camp on 19.01.1999, where he expressed his willingness to rejoin his unit. The respondent submitted before the Tribunal that the punishment of dismissal was excessively harsh and disproportionate, particularly in light of his over 15 years of satisfactory service. He urged that dismissal had rendered him ineligible for pensionary benefits, thereby depriving him of his livelihood. He pleaded that a lesser punishment, such as discharge, would have sufficed. The petitioners, on the other hand, defended the punishment, submitting that the SCM proceedings were conducted strictly in accordance with law and that the respondent's absence, extending to 139 days without authorisation, reflected a grave act of indiscipline. It was further submitted that the respondent was a habitual offender, having overstayed leave on multiple earlier occasions. Despite repeated warnings and disciplinary actions, his conduct did not improve, thereby setting a poor example for others. The punishment of dismissal, therefore, was fully justified and did not warrant interference. Upon consideration of the rival submissions, the Tribunal, by the impugned order, observed that the respondent's overall service record did not reveal any serious misconduct unbecoming of a soldier and that the reasons furnished for overstaying leave appeared genuine. The Tribunal held that the punishment of dismissal was disproportionate to the nature of the offence and accordingly modified it to one of discharge from service, with consequential benefits restricted to three years preceding the filing of the OA.

3. In the present writ petition, learned counsel for the petitioners assails the Tribunal's order as legally unsustainable, contending that it disregards the law laid down in "Ex Sepoy Madan Prasad v. Union of India & others" (Law Finder Doc Id #2275528), wherein dismissal of an Army personnel for repeatedly overstaying leave was upheld. It is urged that there was no procedural irregularity or illegality in the SCM proceedings and that the punishment was commensurate with the gravity of the misconduct. The respondent, having accepted the dismissal, did not challenge the same for over two decades and approached the Tribunal only in 2021, which demonstrates acquiescence and laches.

4. Learned counsel for the petitioners further contends that pensionary benefits are not a matter of right for those dismissed from service. Since the court-

martial proceedings were conducted in strict conformity with law and the respondent had overstayed leave for more than four months, his conduct was prejudicial to the discipline of the Army. Mere length of service cannot, it is argued, be treated as a mitigating factor. It is pointed out that the respondent had earlier been punished with 20 days' imprisonment and 14 days' detention for acts prejudicial to good order and military discipline, and had on another occasion overstayed leave for 139 days. These repeated lapses demonstrate that he was a habitual offender undeserving of leniency.

5. Conversely, learned counsel for the respondent has invoked the doctrine of proportionality, arguing that the punishment of dismissal was unduly harsh and that the maximum punishment permissible under Section 39 of the Army Act, 1950, could only be imprisonment for one year. The respondent, it is contended, was not a habitual offender, and his absence was explained by medical and personal distress. The Tribunal, therefore, rightly exercised its discretion in modifying the punishment to discharge, thereby restoring his eligibility for pensionary benefits.

6. We have given our thoughtful consideration to the rival submissions and perused the record. The respondent had earlier been subjected to the following punishments:

(a) Awarded 28 days Imprisonment and 14 days detention by Commanding Officer, 3 JAK LI on 06 May 1997 for the following offences:-

(i) Army Act Section 63 "AN ACT PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE"

(ii) Army Act Section 39 (b) "WITHOUT SUFFICIENT CAUSE OVERSTAYING LEAVE GRANTED TO HIM".

(b) Deprived of the appointment of Time Scale Lance Naik by Commanding Officer, 3 JAK LI for an offence under Army Act Section 63 "AN ACT PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE" on 19 Jan 1998.

7. Thereafter, the respondent again remained absent for 139 days. Section 39 of the Army Act penalises absence without leave or overstaying leave without sufficient cause, prescribing imprisonment up to three years or a lesser punishment. Section 38, which deals with desertion, is a graver offence attracting higher punishment, including imprisonment up to seven years or death during active service.

8. It is not in dispute that the respondent was not found guilty of desertion. The only act for which he was tried by the SCM was overstaying leave from 04.09.1998 to 19.01.1999, resulting in his dismissal. The petitioners have rightly placed reliance on Madan Prasad (supra) and "Union of India and others v. Ex. No. 6492086 Sep/Ash Kulbeer Singh" (2019) 13 SCC 20, where the punishment of dismissal for overstaying leave was upheld, the Supreme Court emphasising that discipline is the hallmark of the Armed Forces. Conversely, the respondent

relies on "Major G.S. Sodhi v. Union of India", 1991 AIR (SCW) 811, and "S. Muthu Kumaran v. Union of India & others" (Law Finder Doc Id #823825), where the punishment of dismissal was modified to discharge in view of long service, enabling retention of pensionary benefits. Reliance is also placed on the decision of this Court in "Union of India v. Shammi Kumar", LPAOW No. 114/2002, decided on 08.04.2015, adopting a similar approach.

9. It must, however, be borne in mind that in "Union of India & ors. v. Major A. Hussain", 1998 (1) SCC 537, the Supreme Court held that where a court-martial is properly convened, the proceedings are regular, and the findings are supported by evidence, the scope of judicial review is extremely limited. Interference with findings or sentence is justified only in exceptional cases where the punishment is shockingly disproportionate or perverse.

10. The principle of proportionality was elaborated in "Ranjit Thakur v. Union of India & ors.", 1987 (4) SCC 611, where it was held that judicial intervention is permissible only when the punishment is so disproportionate as to shock the conscience of the Court. The said principle was clarified in "Union of India & ors. v. R.K. Sharma", 2001 (9) SCC 592, where the Supreme Court cautioned that courts should not interfere merely because the punishment appears excessive. Compassion alone cannot justify interference. The same principle was reiterated in "Union of India & ors. v. Bodupalli Gopalaswami", (2011) 13 SCC 553, where dismissal was upheld to preserve the discipline vital to military functioning. Likewise, in "B.C. Chaturvedi v. Union of India & ors.", 1995 (6) SCC 749, it was held that courts may intervene only when the punishment is so disproportionate as to defy logic or reason.

11. In the present case, the procedure adopted by the Summary Court Martial has not been assailed. There is no allegation of procedural irregularity or violation of natural justice. The only ground urged is that the punishment is harsh and disproportionate. The respondent sought to justify his overstay on grounds of depression and an accident, but failed to produce substantive evidence before the SCM. Even assuming such circumstances existed, the fact remains that he remained absent for over four months without authorisation. The Tribunal, while modifying the punishment, has not recorded any cogent reasoning to demonstrate why the penalty of dismissal was disproportionate.

12. As a member of the Armed Forces, the respondent was expected to maintain the highest standard of discipline, which is the cornerstone of military service. Absence without leave, even for a single day, undermines discipline and operational efficiency. The respondent's unauthorised absence for more than four months cannot be condoned on sympathetic considerations. Unless the punishment is outrageously disproportionate or actuated by mala fides, judicial interference is unwarranted. The Tribunal, therefore, erred in reversing the order of the Summary Court Martial and in converting the punishment of dismissal into discharge without adequate justification.

13. In view of the foregoing discussion, the writ petition succeeds and is accordingly allowed. The impugned order dated 08.05.2023 passed by the Armed Forces Tribunal, Srinagar Bench at Jammu in OA No. 138/2021 is quashed, and the punishment of dismissal imposed by the Summary Court Martial is upheld. No costs. Pending applications, if any, shall also stand disposed of.