

(2011) 01 GAU CK 0029**Gauhati High Court****Case No:** W.P (C) No. 6148 of 2002

Shri Jhirmal Singh

APPELLANT

Vs

The Union of India (UOI)

RESPONDENT

Date of Decision: Jan. 5, 2011**Acts Referred:**

- Army Act, 1950 - Section 39, 4(1)

Hon'ble Judges: B.K. Sharma, J**Bench:** Single Bench**Advocate:** P. Saha, for the Appellant; None appears, for the Respondent**Final Decision:** Dismissed

Judgement

B.K. Sharma, J.

Heard Ms P. Saha, learned Counsel for the Petitioner. None appears for the Respondents.

2. By means of this writ petition, the Petitioner, who was a Rifleman in the Assam Rifles, has challenged the order dated 29.11.2000, by which he was discharged from service pursuant to the Summary Court Martial. The charge against the Petitioner was as follows:

Charge Sheet The accused No. 114829F Rifleman General Duty Jhirmal Singh of 11th Battalion The Assam Rifles, a person subject to the Army Act as Rifleman u/s 4(1) thereof read with SRO 117 of 28 Mar 60 and 318 of 06 Dec 62 as amended by SRO 325 of 31 Aug 77, is charged with the following charge:

Charge without Sufficient Cause Section overstaying Leave Granted 39(b) To Him.

In that he, being on active service, having granted 30 days Earned Leave with 10 days journey period w.e.f. 15 Jul 99 to 23 Aug 99 failed to rejoin duty on expiry of said leave, till he voluntarily rejoined on 24 Sep 2000, thus absented himself for 397 days.

3. According to the Petitioner, he could not have been subjected to the Army Act, he being a member of the Assam Rifles under the Ministry of Home Affairs, Government of India. According to the Petitioner, there are procedural irregularity in conducting the proceeding.

4. In the counter affidavit filed by the Respondents, the contentions raised in the writ petition have been denied. It has been stated that at the relevant period of time, the battalion, in which the Petitioner was serving, was deployed under the operational control of 5-Mountain Brigade and accordingly, the Summary Court Martial against the Petitioner was initiated under Assam Act, 1950. It has been stated that the Assam Rifles is a central Paramilitary Force and that when its personnel are operationally deployed with the army in active service area, they are governed by the Army Act, 1950. The application of the Army Act is extended in terms of Section 4(1) of the Army Act and read with conjunction with SRO 117 of 28.3.1960 and 318 of 6.12.2002, amended vide SRO 325 of 31.8.1977 issued by the Government of India.

5. It appears that the Petitioner was granted leave for 30 days with 10 days journey period with effect from 15.7.1999 to 23.8.1999 but he overstayed the leave for 397 days. The Petitioner was supposed to resume his duties on expiry of the leave but he remained absent from duty unauthorisedly for 397 days.

6. During the course of the Summary Court Martial, the Petitioner admitted the charge levelled against him and in fact, also stated that he had joined the State Government service as a Home Guard during the period of absence from Assam Rifles duty. As regards the detention of the Petitioner on resumption of duty after overstaying the leave, the counter affidavit filed by the Respondents states that the same was taken recourse to u/s 39(b) of the Army Act, 1950. The allegation of physical and mental torture made in the writ petition has been denied. From the materials on record, it appears that the Petitioner himself admitted the charge and also the fact that he had joined the State Government service as a Home Guard with no intention to return to the services of the Assam Rifles.

7. The summary of evidence was recorded on 11.10.2000 and the Summary Court Martial was held on 29.11.2000.

8. As has been held by the Apex Court in Channabasappa Basappa Happali Vs. The State of Mysore, an admission of fact relating to the charge amounts to admission of guilt. In the instant case, the Petitioner himself admitted the charge with further revelation that during the period of overstay, he has joined the State Government service as a Home Guard. That being the situation, the authority, who had conducted the Summary Court Martial, returned the finding of guilt against the Petitioner and consequently, imposed the impugned penalty of discharge from service.

9. In *Union of India v. Mithilesh Singh*, reported in (2000) 3 GLT 62 , the Division Bench of this Court held in that case the unauthorized absence from duty by a member of the disciplined force may entail removal from service. The said decision has been affirmed by the Apex Court by its judgment reported in [Mithilesh Singh Vs. Union of India \(UOI\) and Others,](#)

10. In the instant case, admittedly, the Petitioner belonged to Assam Rifles and thus, he was a member of disciplined force. It is an admitted position that the Petitioner remained absent from duty unauthorizedly for more than one year, to be precise for 397 days, without any intimation to the authority whatsoever. It was in such circumstances the Summary Court Martial was conducted against him in which he admitted his guilt.

11. Above being the position, the untenable pleas raised by the Petitioner relating the procedural irregularity in conducting the enquiry cannot be accepted. Although such indefinite vague pleas have been raised, the Petitioner has not been able to point out as to how his defence was prejudiced. He himself having admitted the charge, it does not lie on his mouth that there is procedural irregularity in conducting the Summary Court Martial. As in the instant case, in the case of Channabasappa Basappa Happali (supra), the delinquent was a police officer and he admitted the charge relating to unauthorized absence. It was in such circumstances, the Apex Court held that the admission of fact amounts to admission of guilt.

12. For all the aforesaid reasons, I do not find any merit in the writ petition and accordingly, it is dismissed.

MC 3194 of 2010 IN

WP(C)6148 of 2002

In view of the final order passed in WP(C) No. 6148 of 2002, the Misc. Case stands disposed of on 05.01.2011.