

**FORM NO. 21**  
**(SEE RULE 102(1))**  
**ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA**  
**APPLICATION NO: T. A NO. 23 OF 2012 (WP(S) 3092/2004)**

**ON THIS 9TH TH DAY OF SEPTEMBER, 2014**

**CORAM:** **HON'BLE JUSTICE RAGHUNATH RAY, MEMBER (JUDICIAL)**  
**HON'BLE LT GEN KPD SAMANTA, MEMBER (ADMINISTRATIVE)**

Arvind Kumar @ Arvind Kumar Mishra  
(689432-A-CPL Kumar-A Photo Fit)  
S/o Sri Ram Kumar Mishra,  
R/o 439-A Road No. 5, Ashok Nagar,  
PO Ashok Nagar, PS-Argora, Town and district Ranchi

.....Appellant

-VS-

1. Union of India through  
The Secretary,  
Ministry of Defence,  
South Block, New Delhi.
2. The Chief of Air Staff,  
Air HQ, Vayu Bhavan,  
Rafi Marg, New Delhi-110 011
3. The Air Officer Commanding in Chief,  
Head Quarters, Maintenance Command,  
Vayusena Nagar, Nagpur-7 (Maharashtra)
4. Air Officer Commanding,  
25 ED, air Force, Devlali South  
Nashik, 422501 (Maharashtra)
5. Commanding Officer,  
No. 2, Jharkhand Air Squadron,  
National Cadet Core (NCC),  
Road No. 4, Ashok Nagar, Ranchi
6. The Wing Commander, S.K.Sindey0cum-  
Defending Officer, 24 ED, air Force, Manauri,  
Allahabad,

7. The Birla Institute of Technology,  
A Deemed University, Mesra,  
PO Mesra, Town & Dist. Ranchi  
PIN 835215

.... .... Respondents

For the petitioner: Mr. Manoj Tandon, Advocate

For the respondents: Mr. D.K.Mukherjee, Advocate.

### **ORDER**

#### **PER HON'BLE LT GEN KPD SAMANTA, MEMBER (ADMINISTRATIVE)**

This matter was originally filed before the Hon'ble Jharkhand High Court at Ranchi in its writ jurisdiction being WP (S) No.3092 of 2004 in which the petitioner, Ex Corporal Arvind Kumar Mishra of Indian Air Force, had challenged his dismissal from service consequent to a verdict of District Court Martial (DCM). The said DCM was held against him for an offence of 'absence without leave' under the Air Force Act. After establishment of Armed Forces Tribunal, the writ application has been transferred to this Bench under operation of Section 34 of AFT Act, 2007 and has been renumbered as TA 23 of 2012. By consent of both the parties the writ petition is treated as an appeal under Section 15 of the AFT Act.

2. The appellant was enrolled in the Air Force as Airman (Photo-Fit) on 1-6-1990. By dint of his meritorious service, he was promoted to different ranks and ultimately came to be promoted as Corporal. Despite being in the Air Force service, the appellant wanted to prosecute his academic studies; and therefore, during the course of his service, he completed B.Sc Degree Course. In order to make further progress in educational field, he applied for admission in the MCA Course (Master in Computer Application) at Birla Institute of Technology (BIT), Mesra, Ranchi. The appellant, duly qualified in the said admission test

in August, 1998, was asked to take admission in the MCA Course on part time basis. According to the appellant, there is a policy letter dated 23-2-1995 regarding posting, which provides that Airmen desirous of acquiring higher education may apply for posting to a particular place and they could be given tenure posting during the duration of the course. Accordingly, the appellant applied for a posting to Ranchi so that he could prosecute his MCA course in the said Institute. Initially, however, his request for posting to Ranchi was not granted, for which the appellant had to withdraw from first two semesters. Ultimately, the appellant was given posting at Ranchi vide order dated 19-3-1999 (Annexure 4) and accordingly he joined 2, Bihar NCC at Ranchi. Apart from discharging his Air Force duties, he was also undergoing MCA course on part time basis. The appellant completed four semesters.

3. Thereafter, even before completion of the full course, he was transferred out of Ranchi by an order dated 22-8-2001 (Annexure 5). As per the said transfer order he was required to join 25 Equipment Depot (ED) at Devlali (Maharashtra). The appellant made representations on 12.9.01 before the appropriate authorities requesting for cancellation of the said transfer order, thus enabling him to continue at Ranchi and complete the MCA course at BIT, Mesra that he was midway through. His ibid application was also recommended by the commanding officer. His prayer was however, not acceded to by the competent authority. The applicant, thus being aggrieved, filed a writ petition before the Hon'ble Jharkhand High Court being WP(S) 2809 of 2002 which was disposed of on 16-5-2002 by giving liberty to the applicant to approach higher authorities. The appellant finally joined the new place of posting at Devlali (Maharashtra) on 16.6.02 after his representation was turned down. Since the appellant was determined to complete his MCA course; and his prayer for continuing his posting at Ranchi having been turned down, he submitted another

application on 18-7-2002 requesting for discharge from service on compassionate ground. The said application was however not accepted for certain technical difficulties. The applicant made further prayer on 9-10-2002 for his discharge, but to no effect. Despite all his efforts to continue at Ranchi to facilitate completion of the remaining semesters of MCA course having failed, he had hope that his discharge on compassionate ground would be accepted; he felt shattered when his discharge was also denied.

4. In the meantime, while at his new unit at Devlali, the appellant was deputed for a temporary duty, but he did not rejoin on the scheduled date, thus remaining absent without leave for 14 days from 15 Sep to 29 Sep 2003. He was arrested on 29-9-2003. A tentative charge sheet was issued on 1-10-2003 for an offence punishable under Section 39(a) of Air Force Act. A District Court Martial was convened. According to the appellant he was not given proper opportunity to defend himself inasmuch as he was under close arrest and the Court Martial Proceeding was conducted without affording him proper opportunity to defend by engaging a lawyer. He was ultimately punished by the DCM on 15-12-2003 by way of dismissal from service together with reduction in rank, which was communicated to him and promulgated on 17.12.03. He was released from close arrest on 21<sup>st</sup> Nov 2003; thus, he contends that he remained in custody in an unauthorised manner for 53 days from 29 Sept to 21<sup>st</sup> Nov 2003.

5. The appellant submits that he had already completed more than 13 and ½ years of service and only one year few months were left for him to complete 15 years of qualifying service to be eligible for pension. Due to such punishment award of dismissal together with reduction in rank dated 17-12-2003, the appellant was not only thrown out of service but by implication was deprived of opportunity to complete his pensionable service that would have enabled him pension benefits. Now the appellant is out in the street without even the

status of an ex-serviceman since he is not a pensioner. Despite completing the MCA qualification he is unable to find a job because of the stigma of dismissal through court martial.

6. The respondents have filed a counter affidavit in which it is stated that the appellant was enrolled on 1-6-1990 and was dismissed by a sentence awarded by the District Court Martial on 17-12-2003. He has thus rendered a total of 13 years and 82 days of qualifying service excluding 114 days of AWL. Therefore, he is not entitled to any pension as per provisions of Pension Regulations.

7. It is further stated that the appellant made a representation on 15-9-1998 for posting to Ranchi on higher Educational ground. According to the respondents, before registration for MCA Part-time Course at BIT, Ranchi, the appellant never took any prior permission from the competent authority, which is a mandatory service requirement. Since there was no vacancy at No.2 Bihar NCC, which is the only unit of Air Force located at Ranchi, in order to accommodate the appellant for higher studies, an Air Warrior who was already posted at Ranchi was transferred and the appellant was given a posting at Ranchi with effect from 26-4-1999. The posting at NCC Unit at Ranchi was a tenure posting for two years. However, he was allowed to remain there for three years and thereafter, he was posted out to Devlali on completion of three years tenure with effect from 17-9-2001. The applicant applied for cancellation of the transfer order to 25 ED Air Force on Educational ground, but since the posting at Air NCC Ranchi is a tenure posting, no relaxation was possible. At this stage, the appellant moved the Hon'ble Jharkhand High Court, but could not get any relief. Finally, he reported to the new place of posting on 16-6-2002 after availing 15 days leave. The appellant's application for discharge on compassionate ground was turned down as the same was not according to the rules. However, in the meanwhile, the appellant was taking leave on several occasions which was sanctioned as per his entitlement and in his case the authorities were very lenient. He was even sanctioned leave from next year's entitlement in

advance. He was sent for temporary duty on 5.9.03 for attending GEB examination, but he did not report back on the due date, i.e. on 14-9-2003; he thus remained absent without leave. He finally joined on 29-9-2003. Thus he remained absent without leave for 14 days 7 hours and 24 minutes. Since the appellant was taking leave frequently and was punished on five earlier occasions – either by way of award of ‘severe reprimand’ or ‘admonition’, he was going to be declared a habitual offender. Therefore, he was warned by a letter dated 30-8-2003 to amend himself and improve his discipline. He had already accumulated three red ink entries for his poor discipline and cognisable omissions and commissions.

8. Despite warning, he did not pay any heed and showed no improvement, and again repeated the same offence. Therefore, he was taken on close arrest on 29-9-2003 and District Court Martial was convened on 18-11-2003 after recording of summary of evidence on 1.10.03 that was completed on 7-10-2003. The charge sheet was issued to him on 10.11.03. The charge against the appellant was for absent without leave, which is an offence under section 39(a) of Air Force Act. After completion of DCM proceeding, the appellant was found guilty of the charge and accordingly, he was awarded the punishment of dismissal from service together with reduction in rank as per Air Force Act.

9. The appellant filed a rejoinder reiterating his contention that he had to remain absent in order to attend his MCA course for which he was not given a posting by the authorities nor his application for discharge on compassionate ground was accepted. Therefore, he had no other alternative but to remain absent so that he could prosecute his studies. There was no other intention or any ill motive behind such absence.

10. We have heard Mr. Manoj Tandon, Id. Adv. for the appellant and Mr. D.K.Mukherjee, Id. Adv. appearing for the respondents. Both sides have argued at length and on conclusion of hearing, they have filed respective written notes of arguments. The respondents have also filed DCM proceedings in original for our perusal.

11. The factual aspects are not in dispute. It is undisputed that a charge sheet was issued against the appellant for an offence punishable u/s 39(a) of Air Force Act for committing offence of remaining absent without leave for 14 days from 15<sup>th</sup> to 29<sup>th</sup> Sept 2003. A District Court Martial (DCM) trial was held against the accused appellant, which ultimately found him guilty and accordingly awarded punishment of dismissal from service together with reduction in rank.

12. Although Mr. Tandon, Id. Adv. for the appellant has not pointed out any procedural defect or irregularity in the conduct of the DCM proceedings, to our satisfaction, we have gone through the original records of DCM. We find that after the appellant voluntarily rejoined on 29<sup>th</sup> Sept 2003, having remained on unauthorised leave for 14 days, a tentative charge-sheet was issued on 1 Oct 2003 and summary of evidence (SOE) was ordered to be recorded, which was held immediately. Three prosecution witnesses were examined. It appears that the accused appellant declined to cross-examine them. The SOE was concluded on 6 Oct 2003 and the accused gave a statement on that date wherein he tried to explain that the absence was not intentional and that he tried his level best to avoid AWL by approaching authorities several times for posting to Ranchi or discharge from service, none of which was accepted by the authorities. He was left with no alternative but to absent himself without leave because he was determined to complete his MCA course at Ranchi. It is, therefore, clear that the accused appellant admitted that he was AWL for the charged period but according to him, it was only for completion of MCA course that he had to attend at the institute at Ranchi during the aforesaid period. Final charge-sheet was issued on 10 Nov 03 and convening order for DCM was issued on 11 Nov 03. DCM trial started on 18 Nov and continued till 21 Nov 03 i.e. for four days. It appears that the DCM followed all the procedures as prescribed in the rules. Three PWs were examined. There was no defence witness. Total 15 exhibits were placed on record and statement of the accused was also obtained. The DCM found the appellant guilty of the charge. Thereafter conviction proceeding was started before awarding sentence. It further appears that past punishment record was also produced as per Exh-Y. Punishment order was pronounced on 21 Nov 03 which was confirmed on 15 Dec 2003 and promulgated on 17 Dec 2003.

13. We, therefore, find no irregularity or infirmity in the procedure adopted by the DCM in awarding the punishment to the appellant. As already stated, the appellant has also not seriously challenged the DCM on procedural lacuna. However, we may consider other contentions as raised on behalf of the appellant to challenge the punishment order.

14. It is contended by Mr. Tandon, Ld. Counsel for the appellant that under Sec. 107 of Air force Act, a court of inquiry into absence without leave beyond 30 days is to be held. In this case, the appellant was absent for only 14 days 7 hours and 24 minutes, that too, for sufficient cause in order to attend his MCA course at Ranchi and the absence being less than 30 days, as per *ibid* Sec 107, no DCM proceeding could be held. He has cited the well known legal maxim that *if a thing is required to be done in a particular manner, the same has to be done in the same manner and in no other manner*. Mr. D.K.Mukherjee, Ld. Adv for the respondents, however, submits that in this case no court of inquiry was held since the absence period is less than 30 days. He has referred to Sec. 107 as also note below Sec. 39 of Air Force Act as appearing in Air Force Regulations which clarifies the distinction between AWL and desertion. Court of inquiry is held when absence is beyond 30 days for the purpose of declaring an individual as a 'deemed deserter', which is not the case here. Here the appellant is not charged for the offence of desertion u/s 38 but for 'absence without leave' which is an offence u/s 39(a) of Air Force Act. Therefore, this contention of Mr. Tandon is not acceptable.

15. Challenging the entire DCM proceedings, Mr. Tandon has submitted that the appellant was kept under unlawful arrest and thereby he was deprived of defending himself in the DCM trial by engaging his own counsel. He was not even allowed to meet his wife during such unlawful confinement. Thus, by denying reasonable opportunity to defend, the entire DCM proceeding was vitiated. Therefore, the punishment awarded is also not tenable. He has also submitted that the accused/appellant submitted a statement on 20.11.03, but the DCM authorities failed to consider the same and awarded punishment without discussing it. The Judge Advocate also stated in his summary statement about the purpose for which the appellant had to remain absent for the short period of 14 days but that too was not taken into account by the DCM authorities while awarding

the punishment. Thus, it is quite apparent that the DCM trial was held with pre-determined mind to punish the appellant in any event and hence the finding of the DCM is perverse and the punishment too harsh. This contention is, however, seriously rebutted by Mr. Mukherjee by stating that the appellant was kept under custody as per rules pending DCM proceedings. But he was allowed to meet his wife regularly and if he had any intention to engage any lawyer of his choice, he could have done so through his wife which is the normal procedure. Even otherwise he never raised any demand before the DCM for permitting him to engage a lawyer. He is an educated person, therefore, it cannot be said that he did not know the procedure. We find sufficient substance in this contention of Mr. Mukherjee. As per Sec. 102 of the Air Force act, any person subject to the Act who is charged with an offence may be taken into air force custody. The appellant having been charged u/s 39(a), he was taken in custody. He was at liberty to ask for service of a private counsel to defend him. But as already stated the charge was not contested by the appellant. He, in fact, admitted that he had to remain absent without any leave or permission during the period in question to attend his MCA course at Ranchi. That apart, he was given assistance of defending officer and he never raised any objection in this regard. Therefore, such plea of Mr. Tandon is also not tenable.

16. Mr. Tandon has further contended that the charge-sheet issued against the appellant relates to his absence without leave for the period from 15 Sep to 29<sup>th</sup> Sep 2003 whereas the respondents have also brought in extraneous factor by branding him to be a habitual offender although no such offence was indicated in the article of charge. As already noted above, the past punishment records of the appellant was exhibited in the DCM Trial but no objection was raised at that time. We do not find any illegality or infirmity in consulting such past records of the appellant by the DCM while awarding the sentence. In fact, if his past service was unblemished, the punishment might have been mitigated.

17. Mr. Tandon, Id. Counsel has argued with much vehemence that the entire DCM proceeding initiated against the appellant was ill conceived and vindictive. By referring to various factual details as stated in the application/appeal as also in the counter affidavit, he submits that it is an admitted

position that the appellant was given a posting at Ranchi on educational ground. By referring to policy decision dt. 23.2.95, clause 9 he has submitted that the appellant was entitled to be posted at Ranchi till completion of MCA course. Even though he was given such posting, but he was transferred out prematurely before completion of the course ignoring the repeated requests of the appellant and despite strong recommendation of his commanding officer. Even after joining his new place of posting, he tried to be posted back to Ranchi by submitting various appeals which were duly recommended by his superior authorities but to no avail. Therefore, he prayed for early discharge from service on compassionate ground, but that too was not acceded to. The sole intention of the appellant to remain away during the period in question i.e. only for 14 days was to prosecute his studies at Ranchi. Therefore, the authorities could not have taken such a drastic step for such minor lapse/offence and dismiss the appellant from service, thereby depriving him of his pensionary benefits after rendering about 14 years of service in the Air Force. He has further contended that the punishment of dismissal from service together with reduction in rank is non-implementable, because if a person is dismissed from service, how can he be reduced in rank. For effecting the punishment of reduction in rank, one has to remain in service. Therefore, it is quite evident that the punishment imposed is the result of total non-application of mind.

18. Mr. Mukherjee has referred to Sec. 73 of Air Force Act which specifies different kind of punishment that can be awarded by court martial. Sec 75 of the Act provides for combination of punishments and Sec 79 provides that if an NCO is punished with sentence of different kinds including dismissal, he is automatically reduced in rank. Therefore, there was no illegality in awarding the punishment of dismissal together with reduction in rank.

19. As already stated, Id. Counsel for the appellant has relied on posting policy dt. 23 Feb 95 and contended that it was incumbent on the authorities to allow the appellant stay at Ranchi for the period to be required for completing the course. He has referred to Para 9 of *ibid* policy which reads as follows:-

**“Posting on Educational Grounds:**

9. An airman desirous of acquiring higher education may apply for posting to a particular place. **The tenure of posting on this account may vary between the period equivalent to the duration of the course or normal tenure depending upon the feasibility and service exigencies.** Likewise, airmen may also apply for in-situ extension of their tenure for the actual period needed for completion of the course. The application on this account should, however, be made within 12 months of his arrival at that station. Airmen, having exceeded this period of stay, may also apply for extension of tenure but must await decision of AFRO before committing to course/study. Airmen desirous of doing any course/study at a specific unit (present unit or otherwise) must not deposit tuition/admission fees for such courses/studies and unit commanders, before granting such sanction for pursuing such course/studies must obtain the concurrence of AFRO before granting such sanction. The ground of permission by the Unit Cdr and or payment of fees without prior approval of AFRO will not be an acceptable justification for consideration of application for posting/in-situ screening by AFRO.”

20. It is obvious that posting at a particular place on educational ground is not a right but depends on service exigency as also tenure of posting. The respondents have taken a ground that the appellant before his enrolment in BIT for MCA course did not seek any permission. He applied only after he became successful in the entrance examination. However, the authorities considered his case sympathetically and allowed him a posting at Ranchi for three years’ duration which is the tenure. Thereafter, he was transferred as per rules/policy. It is also admitted by the appellant that he was always granted leave whenever asked for and even from next year’s entitlement in advance. Therefore, it cannot be said that the respondents were vindictive but they accommodated the appellant to a great extent possible. Therefore, it is unacceptable that the benefit of the policy regarding posting on educational ground was denied to him. That apart, it appears that when the applicant was transferred from Ranchi he prayed for his retention on education ground but when that was not accepted, he filed a writ petition in the Hon’ble Jharkhand High court being WP(S) 2809/2002 which was disposed of on 16.5.02 (annexure-8). Relevant portion is quoted below:-

“..... The case of the petitioner is that he is studying in MCA Course in BIT, Mesra; the course is of 4-5 years. His posting at Ranchi was made on his request for study as per guidelines/posting policy of airmen dated 28<sup>th</sup> Nov 2001 (annexure-9).

The posting policy as enclosed by petitioner is dated 28 Nov 2001. The petitioner cannot take advantage on the said policy to substantiate that he was posted in the year 1999 on the basis of Nov 2001 policy. Further the policy dated 28 Nov 2001 as relates to posting on compassionate ground, the petitioner cannot claim any right for his posting at Ranchi.

It will be also evident that the petitioner was selected and admitted in MCA course in the year 1998 whereas he was posted in the State of Jharkhand in April 1999. There is nothing on record to suggest that the petitioner was posted at Ranchi to pursue study.

In the aforesaid background this court is not inclined to interfere with the order of transfer. The petitioner may approach the higher authority.

21. Thus, his challenge against his transfer failed and thereafter he preferred an application for discharge on compassionate ground in July 2002 which was rejected. He renewed his prayer again in Oct 2002 but on this occasion it was turned down on technical ground with the advice to apply afresh with proper documentation. The appellant did not apply again. Therefore, both the grounds as taken by the appellant to support leniency in the offence of AWL i.e. he was not given posting for full term of the course and his prayer for discharge on compassionate ground was not acceded to, do not appear to be reasonable and hence not acceptable.

22. Ld. Counsel has submitted that the DCM did not record any finding that the appellant's absence for only 14 days was wilful. He has referred to a decision of the Hon'ble Apex Court in the case of **Krushnakant B Parmar –vs- UOI & Ors**, reported in (2012) 3 SCC 178 to contend that before awarding any punishment, the authorities ought to have arrived at a conclusion that the absence was wilful. He submits that it was well known to the respondents that the appellant was pursuing his MCA course and in spite of his repeated requests he was not given re-posting at Ranchi for completing the course. Therefore, he was compelled to go to Ranchi for attending his course; as otherwise, his entire effort to get the MCA degree would have been futile. Therefore, the DCM before inflicting the punishment of 'dismissal from service', ought to have taken into account all these factors which it failed to do so.

23. Mr. Mukherjee has submitted that the appellant was in the habit of taking frequent leave without any authority for which he was given punishment entries on five occasions, out of which the last three were during the period from April 2003 to July 2003. He was issued with warning to be cautious in future in August 2003 but the appellant did not amend himself and again remained

absence within a month of such warning letter. This shows his lack of devotion to duty and discipline.

24. We have gone through the decision of the Hon'ble Apex Court in **Krushnakant B Parmar (supra)** wherein it has been observed as under:-

“16. In the case of the appellant referring to unauthorised absence the disciplinary authority alleged that he failed to maintain devotion to duty and his behaviour was unbecoming of a government servant. The question whether ‘unhorsed absence from duty’ amounts to failure of devotion to duty or behaviour unbecoming of a government servant cannot be decided without deciding the question whether absence is wilful or because of compelling circumstances.

17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be wilful. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation etc. but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a government servant.”

25. We find that this was a case where disciplinary proceeding was initiated for unbecoming conduct under CCS (Conduct) Rules. But in the present case, ‘absence without leave’ is an offence under the Air Force Act. Ordinarily, the service rules and regulations applicable to civilians are not applicable to army/air force personnel who are governed by separate Army Act or Air Force Act and Rules framed there under. These are disciplined forces requiring high standard, the judgement rendered in the case of civilians cannot be straightway applicable to air force or army personnel.

26. In **Praveen Bhatia –vs- UOI & Ors**, 2012(1) AFLJ 132, where also the appellant was an Air Force officer, the Hon'ble Apex Court has observed that –

“15. The power of the court to interfere with the quantum of punishment is extremely restricted and only when the relevant factors have not been considered the court can direct re-consideration or in an appropriate case to certain litigation, indicate the punishment to be awarded; and that can only be in a very rare cases”

27. We notice that the appellant was issued with a warning letter dated 30 Aug 2003 wherefrom it appears that there were total of five entries of punishment – 3 red ink and 2 black ink

entries in the conduct sheet. As per policy an airmen is liable to be discharged from service if he has earned six punishment entries (both red ink and black ink) or four red ink entries or four punishment entries for repeated commission of any specific type of offence. The appellant earned three red ink entries for OSL and was punished by 'severe reprimand' during the period from 26<sup>th</sup> Apr to 4<sup>th</sup> July 2003. Even after a month of the ibid warning letter, he again committed the offence of AWL. Even assuming that no court martial trial was held against the appellant, for such AWL, he would have been issued a further punishment entry and in that event, as per policy letter, he would be liable to be discharged. Therefore, we do not find that there was any non-application of mind in awarding the punishment. It appears that the appellant was more interested in his own career rather than any commitment towards the interest of the organisation. It is also noticed that securing an MCA degree is not related to his job in the Air Force nor was he sponsored for such course. He was pursuing the course on his own for his own benefit and not for the organisation. When he is employed in a disciplined force, it is incumbent on him to maintain proper discipline and high standard of the force. Being a sergeant in rank he is a non-commissioned officer; holding such authority he cannot indulge in such undisciplined act which may induce indiscipline amongst others, which is not at all desirable. We, therefore, find no reasonable ground to interfere with the DCM proceedings or the punishment awarded by the said DCM.

28. Lastly, we may observe that one of the contentions raised on behalf of the appellant is that by such punishment of dismissal, even though the appellant is now holding MCA degree he could not get any Govt. job and has remained unemployed. However, we notice that since the punishment order was issued in 2003 and more than a decade has passed since then, the appellant in any event has become over-aged for any Govt. job. Therefore, such a plea at this stage is meaningless.

29. In the result, we do not find any merit in this appeal and accordingly it stands dismissed on contest but without cost.

30. Let original records be returned to the respondents on proper receipt.

31. Let a plain copy of the order duly countersigned by the Tribunal Officer be furnished to both sides on observance of usual formalities.

**(LT. GEN. K.P.D.SAMANTA)**  
**MEMBER (ADMINISTRATIVE)**

**(JUSTICE R.N.RAY)**  
**MEMBER (JUDICIAL)**