

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

T.A 907 OF 2010

Friday this the 26<sup>th</sup> day of November, 2010

“Hon’ble Mr. Justice Janardan Sahai, Member (J)  
Hon’ble Lt. Gen. P R Gangadharan, Member (A)”

Ramjas ( No.14255963 M Regimental Havildar  
Major), S/O Shri Hoshiyar Singh, aged about 43  
years, 6 Mountain Division, Signal Regiment  
Bareilly, C/O 56 APO

..... Applicant

By Legal Practitioner Shri R.Chandra, Advocate.

Versus

1. Union of India, through the Secretary,  
Ministry of Defence, Government of  
India, New Delhi.
2. Chief of Army Staff, Army Headquarters,  
DHQ Post Office, New Delhi.
3. The Officer-in-Charge, Signal Records,  
Jabalpur Cantt. Jabalpur.
4. The Commanding Officer, 6 Mountain  
Division, Signal Regiment C/O 56 APO

..... Respondents

By Legal Practitioner Shri K.D. Nag, Sr.  
Standing Counsel for the Central Government

*Order*  
**JUDGMENT**

“Hon’ble Mr. Justice Janardan Sahai”

1. The applicant Ramjas was enrolled in the Indian Army on  
20.03.1984. He was promoted to the rank of Naik in the year 1989 and he  
was thereafter promoted as Havildar on 01.12.1993. The petitioner was

approved for promotion to the rank of Naib Subedar on 16.03.2005. The promotion was, however, cancelled by order dated 24.04.2005 passed by the third respondent, Officer-in-Charge, Signal Records on the ground that the applicant was involved in Criminal Case No. 344/1989 under section 452/323/506/34 IPC. The applicant filed Writ Petition No. 15393 of 2007(S) in the High Court at Jabalpur. Counter and rejoinder affidavits were exchanged in the High Court and the papers were thereafter transmitted to the Tribunal in view of the provisions of section 34 of the Armed Forces Tribunal Act, 2007.

2. We have heard Sri R.Chandra, holding brief of Sri K.C.Ghildiyal, learned counsel for the applicant and Sri K.D. Nag, Sr.Standing Counsel on behalf of the respondents.

3. Learned counsel for the applicant submits that the recital in the order of cancellation of promotion that Criminal Case No. 344/1989 was pending is incorrect and in fact the case had been decided on 16.10.1998. The copy of the judgment in the said case has been annexed by the applicant as Annexure P-4. A perusal of this judgment indicates that the applicant was convicted for the offences under section 452/323/34 and 506 IPC and was awarded punishment of fine. From the facts, which have been stated in the judgment of the trial court, the Addl.Chief Judicial Magistrate it appears that a complaint was lodged by one Chhotey Lal alleging that the accused Banwari Lal and others used to commit theft of electricity and about 10 days prior to the incident a Foreman came to the

village and he got removed the wires of the accused from the pole and the accused and members of his family were having a feeling that this was on information of the complainant and not only this, there was exchange of hot words between Santara, wife of the complainant and the womenfolk of the accused and on 12.03.1988 at about 6.00/7.00 p.m., the brother of the accused Banwari, Ram Chander, sons of Chiranji Lal, their wives Santra, w/o Banwari Lal and Surti Devi w/o Ram Kishore had committed criminal trespass by entering his house and also abused him and when they were asked why they were abusing him, they said that he had made a complaint against them and that they will teach him a lesson and thereupon some lathi blows were given. In the counter affidavit, the respondents have stated that apart from this case under section 452/323/34 and 506 IPC there was another Criminal Case No.72/95 : State vs. Banwari and others, which was pending against the applicant. From the facts set out in the judgment of the appellate court it appears that there <sup>was</sup> ~~may~~ be a dispute about a plot of land. The complainant in this case was Chotey Lal who was the complainant in the other case also. It appears that in that case, the applicant, who was one of the accused was convicted for the offence under section 325 IPC by the trial court, namely, Judicial Magistrate I, Rewari. A Criminal Appeal No.71/02 was filed by the accused persons and the said appeal was partly allowed and conviction under section 325 IPC was converted into one under section 323 IPC and sentence of fine was awarded against the applicant. It appears that against this judgment a

revision was filed before Punjab & Haryana High Court and on 20.09.2010 the Punjab & Haryana High Court allowed the revision on the basis of compromise between the parties and the offence was compounded and the accused were acquitted. A copy of this order has been filed in this

Transferred Application.

4. The criteria for grant of promotion in matters where departmental case or a criminal case or the matter is pending investigation has been laid down in the Army Order No.1 of 2001. As the question involved in this case turns upon the application of this Army Order, we quote the said Army Order as under:

“1. Cases have come to notice where JCOs and OR while involved in disciplinary, vigilance or criminal cases were inadvertently promoted or discharged before finalization to these cases.

2. Whereas the above situation is not likely to arise in cases in which the competent authority to promote and individual or sanction his discharge is the Commanding Officer of the individual, such a situation may occur where the promotion/discharge is effected by the Record Office.

3. In order, therefore to obviate occurrence of cases of this nature, the following procedure is laid down:-

(a) Before ordering promotion, substantive or active, the Record Office will obtain clearance from the unit/format where an individual is serving regarding his non-involvement in any disciplinary, vigilance or criminal case. If an individual is reported to be involved in any of the following cases, a ban on his promotion will be imposed:-

(i) Disciplinary cases: Where formal cognizance of an offence has been taken.

(ii) Vigilance cases: Where a report from the SPE/CBI has established a prima facie case against the individual.

(iii) Criminal cases: Where a person is facing prosecution by Government in a Court of Law on a matter involving moral turpitude of lack of integrity.

(b) Units/formations will inform the Record Office of the institution and the result of the disciplinary /vigilance /criminal case against personnel serving under them. The cases of promotion to higher ranks in respect of those who are subsequently acquitted or against whom the case is withdrawn will be reviewed and they may be recommended for such promotion is to be effected from a retrospective date, the individual who has been acquitted or against whom the case has been withdrawn will be so promoted from the due date if he is considered fit in all respects.

(c) Serving personnel against whom disciplinary/vigilance cases are pending at the time of their retirement / release/ invalidation, will be retired/release/invalided out on the due dates and Army Act Sec 123 invoked to proceed against them till finalization of the case.

(d) Persons against whom proceeding are pending in criminal or civil court as also those who are material witnesses in disciplinary cases will be discharged/invalided out on the due dates

4. AO 20/81 is hereby cancelled.”

5. It appears from the aforesaid Army Order that where a person is facing prosecution by Government in a court of law on a matter involving moral turpitude or lack of integrity, his promotion can be withheld. No other Army Order has been brought to our notice. The basic question, therefore, involved in this case is whether any element of moral turpitude is involved in the case under section 452, 323/34 in which the applicant has been convicted. The test as to when an offence can be said to involve moral turpitude has been laid down in various decisions of the Apex Court and of High Courts. Learned counsel for the applicant placed reliance on (2008) 3 SCC 273 : State of MP vs Hazari Lal and upon the decision of the Delhi High Court in Government of NCT of Delhi and

another vs. Robin Singh, W.P.(C) No.2068/2010, decided on 25.08.2010. Sri K.D.Nag, learned counsel for the respondents has placed reliance upon the decision in Sushil Kumar Singhal vs. Regional Manager, Punjab National Bank, (2010) 8 SCC 573. In all these cases it has been held that the conduct which is considered as deplorable or which shocks the moral conscience of the society would be considered as conduct involving moral turpitude. We have already set out the facts of the case in which the applicant has been convicted. It appears that although one of the offences for which the applicant was convicted was under section 452 but the facts indicate that it was an ordinary fight (marpit) in which some of ladies were also involved. Considering the totality of the circumstances of the case, the Magistrate himself had awarded sentence of fine alone and had not awarded any sentence of imprisonment. The Delhi High Court in the case of Robin Singh(supra) dealt with the issue at considerable length and has also referred to the Notification/Order of the State of Haryana giving list of cases said to be involving moral turpitude. The said list which has been reproduced by the Delhi High Court is as follows:

“ Sections 120-A, 121-A, 122 to 1234, 161,161-1A,165,167,181,182,193 to 201, 205,209, 293, 302, 304, 307, 354, 359, 362, 363 to 366, 366-A, 366-B, 367 to 373, 376, 377, 379, 380, 391, 392, 398 to 400, 403, 404, 406 to 409, 417 to 421, 449, 450, 453 to 458, 465 to 468, 471 to 476, 477-A, 489-A, 489-B, 489-C, 489-D, 489-E, 493 to 498 of the Penal Code.”

6. It would appear from the offences mentioned above that section 452 is not one of the offences included in the list of offences involving moral turpitude. One of the tests to be applied in such cases where the offence <sup>is</sup> which has been committed by an employee is whether that would bring bad name to the department. Moreover if the offence is committed by a person in the lower rungs of the service and which does not involve any breach of the service rules and which does not relate to integrity and is not of such nature which may shock the conscience of the society, the offence would not furnish a ground where the services of an employee may be terminated or he may <sup>be</sup> not be deprived of his due promotion. The Army Order itself has provided that it would be in cases where moral turpitude is involved that the promotion order can be withheld. The Army Order itself has laid down that it would be in cases involving moral turpitude that promotion can be withheld. In the other criminal case the applicant has been acquitted after compounding. Even otherwise, the offence was under section 323 which is not an offence involving moral turpitude. In our opinion, the order of cancellation of promotion of the applicant dated 24.04.2005 was not justified because we are of the opinion that the offence committed by the applicant does not involve moral turpitude. Moreover, the order appears to have been passed without application of mind in that there is a recital therein requesting intimation of the outcome of the case No 344 of 1989 which in fact had already been decided earlier.

7. For the reasons stated above, we set aside the order dated 24.04.2005 cancelling the promotion of the applicant. In case his tenure of service on the promotion post has not run out, he may be reinstated in service, otherwise he may be granted notional promotion with consequential benefits.

(Lt. Gen. P R Gangadharan)  
Member (A)

(Justice Janardan Sahai)  
Member (J)

RPS