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**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**Transferred Application No. 45 of 2010**

Tuesday this the 19<sup>th</sup> day of April, 2011

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

Tribhuwan Son of Late  
Shiv Nidhi Singh Resident of  
House no.213 Rajpur Neori  
Ballia

..... Applicant

By Legal Practitioner Sri V.P.Pandey

Versus

1. Union of India through Ministry of  
Defence New Delhi
2. Dte General of Military Training,(MT-  
14) General Staff Branch,  
Army Headquarters,  
New Delhi- 110 011

-----Respondents

By Legal Practitioner Shri Alok Mathur  
Sr. Standing Counsel

ORDER

“Hon’ble Mr. Justice Janardan Sahai”

1 The applicant Tribhuwan was tried by Summary Court Martial on 15-10-2001 for an offence under section 44 of the Army Act. The charge- sheet dated 13-10-2001 sets out charge as under:

The accused No 15614393W Rect Tri Bhawan of Pratap Training Company, Trg Bn. Guard RC is charged with:

Army Act Section-44- Making at the time of enrolment a willfully false answer to a question set forth in the prescribed form of enrolment which was put to him by the Enrolling Officer before whom he appeared for the purpose of being enrolled:

In that he at BRO on 7<sup>th</sup> March 2001 when appeared before Recruiting Officer for the purpose of being enrolled to the question put to him. 'Have you ever been imprisoned by the Civil Power or are you under trial for any offence or has any complaint or report being made against you to the Magistrate or Police for any offence? If so, give details, "answer "No" whereas as per the verification roll received from District Magistrate, Ambedkar Nagar (U.P) reveals that a Crime case no. 58,59 under section 427/504 IPC is registered against him which is pending for trial in Civil Court."

The applicant pleaded guilty to the charge and was convicted and awarded punishment of dismissal from service. The applicant filed Writ Petition No.1990 of 2002

in Allahabad High Court Lucknow Bench. The counter affidavit was exchanged in the writ petition whereafter the papers were transmitted to the Tribunal in view of section 34 of Armed Forces Tribunal Act, 2007.

02- We have heard Sri R.K.Upadhyay, learned counsel for the applicant and Sri R.K.Singh, Central Government counsel for the respondents.

03- It was submitted by learned counsel for the applicant that the charge- sheet dated 13-10-2001 was served on the applicant on 15-10-2001 and the trial commenced on 15-10-2001 and thus the interval between service of the charge-sheet and commencement of trial was less than 96 hours. Reliance has been placed on Rule 34 of the Army Rules which provides that gap between service of the charge sheet and arraignment in the trial shall not be less than 96 hours. The fact that the charge sheet was served on the applicant on 15-10-2001 is not in dispute and is conceded by the respondent's counsel. It is thus quite clear that the interval between the service of the charge sheet and the arraignment was less than 96 hours. In Union of India Vs. A.K.Pandey 2009 (10) SCC 532 it was held by the Supreme Court that provisions of Section 34 are mandatory and breach thereof would invalidate the trial. In that case too the respondent A.K.Pandey had pleaded guilty to the charge. Despite the said plea the Apex Court up held the order of the

High Court acquitting the respondent A.K.Pandey and treating him in continuous service on the ground that provisions of Rule 34 are mandatory and had been breached . The decision of the Supreme Court in Union of India Vs. A.K.Pandey (supra) is binding upon us and we are of the view that trial was vitiated for non-compliance of provisions of Rule 34 of the Army Rules.

04- The question which now arises is as to what relief should be granted and whether retrial should be ordered. It has been held in a catena of cases that even though an order of dismissal is set aside or a conviction by the criminal case is set aside, re-instatement is not a necessary consequence. The ground on which punishment in the disciplinary inquiry was set aside or the grounds on which trial was found to be vitiated and accused acquitted, has also to be seen and in cases where punishment awarded in the disciplinary proceedings is set aside on some technical ground of non-compliance with some principle of natural justice as want of opportunity the proper course is not to direct reinstatement of the employee but to direct continuance of the inquiry proceedings from the stage it was vitiated.

In State of Punjab and others Vs. Dr. Harbhajan Singh Greasy 1996 (9) SCC 322 a Government doctor was charged for dereliction of duty. The Inquiry Officer had submitted a report that he had admitted having private practice at Moga during the period of his suspension. The disciplinary authority accordingly

ordered for his removal from service. The High Court allowed the writ petition and directed for his reinstatement with consequential benefits. The State of Punjab filed appeal before the Apex Court and following extracted portion of para-3 of the judgment is quoted below:

“ It is now a well settled law that when the enquiry was found to be faulty, it could not be proper to direct reinstatement with consequential benefits. Matter requires to be remitted to the disciplinary authority to follow the procedure from the stage at which the fault was pointed out and to take action according to law. Pending enquiry the delinquent must be deemed to be under suspension. The consequential benefits would depend upon the result of the enquiry and order passed thereon.”

The Supreme Court however did not order retrial as the respondent had superannuated in the meanwhile.

05- Let us examine the question in the context of the facts of this case. In the counter affidavit the respondents have alleged that before the charge sheet a show cause notice dated 7-8-2001 was served upon the applicant as to why action be not taken against him under section 44 of the Army Act for giving false answer at the time of enrolment. In his reply dated 13-8-2001 annexed to the counter affidavit he stated that he thought it a petty case and that he was on bail. In the writ petition the applicant has not stated that he has not pleaded guilty. It also appears that the applicant was enrolled in the Military service on 7-3-2001 and had been sent for training on 09-3-2001 and papers were sent for verification on 19-4-2001 and on 08-8-2001 the

report of the District Magistrate, Ambedkar Nagar was given in which it was found that he was being tried for offence under sections 427/504 IPC being Criminal case no. 58/ 98, the trial of which was pending at that stage. The applicant had thus put in only five months of service and even on the date when the applicant was punished by Court Martial, he had put in barely seven months of service. It is thus clear that the applicant does not dispute that there was a criminal case against him and he did not mention this fact in answer to the question which was put to him by the Recruiting Officer at the time of his enrolment. He has tried to explain his conduct by asserting that he thought it was a petty matter and he had been bailed out. Ordering for reinstatement in such a case would amount to giving premium to dishonesty and fraud. It would not be proper to direct reinstatement. After his conviction he has not worked and on the principle of no work no pay he is not entitled to any salary vide Baldev Singh Vs. Union of India, Appeal (Civil) 3892 of 1999 decided by the Supreme Court on 28-10-2005 relying upon Ranchodji Chaturji Thakore Vs. Superintendent Engineer Gujrat Electricity Board and others (1996) 11 SCC 603 and Union of India and others Vs. Jaypal Singh 2004 (1) SCC 121. As a period of more than nine years has elapsed since the applicant was convicted it is not appropriate to direct retrial after such a long lapse of time and particularly when we have

not directed reinstatement and have also not granted payment of any emoluments.

06- In the circumstances we partly allow the T.A. by setting aside the conviction and sentence of dismissal awarded to the applicant in the Summary Court Martial, but we decline to pass any order for reinstatement in service.

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

(Justice Janardan Sahai)  
Member (J)

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