A.F.R.
Court No.1

Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

Transferred Application No.81 of 2012

Wednesday this the 07th day of January, 2015

Hon'ble Mr. Justice S.C. Chaurasia, Member (J)
Hon'ble Air Marshal Anil Chopra, Member (A)

No.15392739-H
Ex Signalman (TER) Devendra Kumar
Son of late Hari Singh,
R/o Village and P. O. Nagla Pithora,
District : Muzaffarnagar

…….. Applicant

By Legal Practitioner Col (Retd.) Ashok Kumar and
Shri Rohit Kumar, Advocate

Versus

1. Union of India Through Secretary, Ministry of Defence,
Via Chief of the Army Staff, New Delhi.

2. GOC-in-C, Western Command,
Through Commanding Officer,
2 Corps, Air Support Sig Unit,
C/o 56 A.P.O.

3. SO-in-C Through GOC
2 Corps via Commandant-cum-CRO
Army Signal Corps Records Post Bag No. 5,
Jabalpur via-OIC Legal Cell,
Sub Area, Allahabad.

…… Respondents

By Legal Practitioner Shri Dileep Singh, Standing Counsel for the Central Government,

ORDER

"Hon'ble Mr. Justice S.C. Chaurasia, Member (J)"

1. The Civil Misc. Writ Petition No.33596 of 2001, No.15392739-H Ex Signalman (TER) Devendra Kumar vs. Union of India & others, was filed under Article 226 of the Constitution of India, on behalf of the applicant in the Hon'ble High Court of Judicature at Allahabad and he has claimed the reliefs as under:

> *"(i). Order the respondents to allow the petitioner to continue in colour service as envisaged in terms of the provisions of para 420 of the DSR 1987 with all the consequential benefits to the petitioner.*
>
> *(ii) Quash the impugned punishment order signed by the General Officer Commanding 2, Corps on 24 June 2000 (Annexure C.A.-2) on page 13 of the counter affidavit refers) with all the consequential benefits to the applicant.*
>
> *(iii) issue any other writ, order or direction considered expedient, in the interest of justice.*
>
> *iv) Award the cost.*
>
> *(v) Quash DO Part II Order No.0/152/2000 dated 14 Aug 2001 (Annexure C.A.-3 on page 14 of the counter affidavit refers) with all the consequential benefits to the applicant."*

2. The Hon'ble High Court has transferred the said writ petition under Section 34 of the Armed Forces Tribunal

Act, 2007 to this Tribunal and it has been registered as Transferred Application.

3. The applicant's case, in brief, is that he was enrolled in the Indian Army on 13.12.1995 and was earmarked to Army Corps of Signals. After training at 2 Signal Training Centre (2-STC) at Goa up to 11.06.1998, he was posted to 2 Corps, Air Support Signal Unit (2-CASSU). He performed the functions there as a Soldier Technician (TER) up to 14.05.2000. The applicant was married with Miss Punam, D/o Ram Dhari of village and post office Kuralsi, District Muzaffarnagar on 25.04.1992. He was having peaceful/happy married life, but on account of his duty, long separation was not to the liking of his wife. The applicant came on leave from 07.12.1996 to 22.12.1996. She expressed that she would like to join him at his duty station, but he impressed upon her that due to nature of his duty and for administrative reasons, it was not practicable and she should wait for some more time. The applicant had gone to his sister's place at village and post office Purmaphi, District Muzaffarnagar lying at the distance of about 40 Kms. from his village. On the same day, his wife Punam bolted herself into a room from inside and immolated herself. The information about the said incident

was given by the Gram Pradhan to his father-in-law, Shri Ram Dhari and he came to his house and had participated in her last rites. Thereafter, the applicant returned to his unit and conveyed about the unfortunate incident to his Company Commander. His father-in-law lodged an F.I.R. on/around 27/28 December, 1996 at the local police station, which was registered at case crime No.149 of 1996 under Sections 304-B and 201 I.P.C. and 3/4 Dowry Prohibition Act. The relations between the applicant and his wife were cordial, but she committed suicide due to his service conditions, because it was not possible to keep her with him, when he was not present in the village, as is evident from the testimony of the villagers/Gram Pradhan of the village (Annexure-1). The case was sent to the court of Sessions Judge, Muzaffarnagar and the applicant was produced there under the arrangement of the respondents. He was granted bail vide order dated 21.10.1997, the copy of the bail order is enclosed as Annexure 2. The applicant was tried under the said charges and he was convicted and sentenced for life imprisonment vide order dated 12.05.2000 passed by the learned 2nd Additional Sessions Judge, Muzaffarnagar. The applicant filed an appeal No.1122 of 2000 in the Hon'ble High Court of Judicature at

Allahabad and during pendency of the appeal, he was granted bail vide order dated 17.07.2000 and the operation of the order of the learned 2nd Additional Sessions Judge, Muzaffarnagar was stayed, the copy of the order is enclosed as Annexure-3. Since the applicant was on leave from 10.04.2000 to 30.05.2000 and it was expected that the judgment would be delivered by the said court in the month of May itself, he sent the telegrams, including the telegrams dated 03.06.2000 and 05.06.2000 to the unit requesting for extension of leave by granting him 30 days, part of annual leave debitable to the year 2001, in accordance with rules, but the same was refused by the respondents, stating that he had been awarded life imprisonment and was being discharged from service, as such advance Annual leave was not permissible. The applicant had right to appeal against the impugned judgment and order dated 12.05.2000 and hence, leave as prayed for, might have been granted to enable the applicant to seek justice as per para 420 of the Defence Services Regulations (Regulations for the Army) 1987 as well as Army Orders on the subject, the photostat copy of the refusal of leave telegram dated 02.06.2000 has been enclosed as Annexure 4. The applicant reported back to the unit for duty on 01.08.2000, as he was granted bail

vide order dated 17.07.2000 passed by the Hon'ble High Court and the operation of the impugned judgment was suspended/stayed, but the respondents acted mala fide and beyond jurisdiction to discharge him from service with effect from 15.05.2000, as is evident from the letter dated 22.05.2000 of the Signal Records, Jabalpur addressed to the PAO (OR) Corps of Signal Ledger Group-20, Jabalpur, the copy of the Signal Records Order regarding finalization of the accounts of the applicant is enclosed as Annexue-5. On reporting to the unit, it was conveyed to the applicant that he had already been discharged from service with effect from 24.06.2000 under the orders of the GOC (General Officer Commanding) HQ-2 Corps under the powers vested in him under the provisions of para 423 of the DSR, 1987, Section 20 (3) of the Army Act, 1950 read with Rule 17 of the Army Rules, 1954.

4. The applicant made a representation on 20.10.2000 to the Government of India, Ministry of Defence, for redressal of his grievances, but no action was taken thereon, the copy of the representation dated 20.10.2000 is enclosed as Annexure-6. The applicant filed a Civil Misc. Writ Petition No.13009 of 2001 and the prayer for quashing the impugned order of discharge effective from 15.05.2000 and

reinstatement in service was made. The Hon'ble High Court instead of granting the said relief, directed the respondents, vide order dated 10.04.2001, to decide the applicant's representation within three months, the copies of the judgment dated 10.04.2011 and the counsel's notice dated 28.04.2001 are enclosed as Annexures- 7 & 8. The applicant's statutory petition dated 20.10.2000 was finally rejected and the order dated 20.08.2001 was issued with the concurrence of AG/DV and the Ministry of Defence (Annexure -9). The impugned order had been passed by the respondents illegally with mala fide intention in violation of paragraphs 420, 421 and 423 of the DSR (Regulations for the Army) 1987, Army Order 89 of 1981, Section 20 (3) of the Army Act, 1950 and the Rules 17 and 18 (3) of the Army Rules, 1954 and hence, the impugned order deserves to be quashed.

5. The respondents have filed the counter affidavit and have not disputed the applicant's service particulars and his marriage with Miss Punam as per official record. Their version is that the applicant was on leave from 08.12.1996 to 22.12.1996. The alleged certificate of Gram Pradhan is of no avail after adjudication by the competent court finally, after considering all the facts and circumstances.

Since the applicant was granted bail by the court, he was allowed to join the duty during pendency of trial. The learned 2nd Additional Sessions Judge, Muzaffarnagar had informed the Commanding Officer, 2 Corps. Air Supporting Signal Unit about the conviction and sentence of the applicant vide his letter dated 15.05.2000, the copy of which is enclosed as AnnexureC.A.-1. By that time, no information was given by the applicant to the respondents about filing of appeal. The applicant applied for extension of leave, when he was already in jail to serve out the sentences awarded to him by the court and hence, the leave could not be granted to a convicted soldier already in jail. Para 420 of the Defence Services Regulations relates to the performance of duty under trial, which was allowed to the applicant. The applicant reported to the unit much after he had already been terminated from service vide order dated 24.06.2000 and the order was communicated to him. The order of termination/discharge was a valid and sound order and there was no mala fides on the part of the respondents, the copy of the order dated 24.06.2000 is enclosed as Annexure C.A.-2. The order doing the applicant SOS from 15.05.2000 was subsequently cancelled and made effective from 24.06.2000 vide Part II order dated 14.08.2001, the

copy of the order is enclosed as Annexure C.A.-3. As a result of change in the date of SOS (made effective from 24.06.2000), revision of finalisation of final settlement of accounts in respect of the applicant would be made accordingly. There had been no violation of any law or rule by the respondents in terminating the services of the applicant, after his conviction under Sections 304-B and 201 I.P.C. and Section 3/4 Dowry Prohibition Act. There had been no violation of paragraph 423 of the DSR and Rule 17 of the Army rules, 1954. After conviction and sentences awarded by the learned 2nd Additional Sessions Judge, Muzaffarnagar, the applicant was sent to jail on 15.05.2000 to serve out the sentences and was in jail for 63 days. There was no information regarding bail to the applicant till 01.08.2000. Consequently, he was struck off the strength with effect from 15.05.2000, which was subsequently, made effective from 24.06.2000 vide Annexure C.A.-3. There had been no violation of Rule 18 (3) of the Army Rules, 1954. The applicant was allowed to join the duty, while he was on bail during trial of the case and he was properly defending his case. The applicant was dismissed from service on the ground of conviction by the criminal court and hence, giving of information of the

particulars of cause of action etc. was not required. The applicant's case is devoid of merits and is liable to be dismissed with cost.

6. The applicant has filed the rejoinder affidavit and has asserted his previous version. He has further stated that it was not permissible to pass any order with retrospective effect and the change of date of order does not nullify the illegality committed by the respondents.

7. The counter affidavit and the rejoinder affidavit have been exchanged between the parties.

8. We have heard Col (Retd.) Ashok Kumar and Shri Rohit Kumar, learned counsel for the applicant, Shri Dileep Singh, learned counsel for the respondents and perused the record.

9. It is not disputed that on the basis of the F.I.R. lodged by the father-in-law of the applicant, case was registered at case crime No.149 of 1996 under Sections 304-B, 201 I.P.C. and 3/4 Dowry Prohibition Act and after investigation, charge-sheet was submitted against the applicant. He was tried by the Court of Sessions and was, ultimately, convicted in Sessions Trial No.378 of 1997 under Sections 304-B, 201 I.P.C. and 3/4 Dowry Prohibition Act, police station Titavi, District

Muzaffarnagar and was sentenced to undergo imprisonment for life, two years rigorous imprisonment and 6 months rigorous imprisonment, respectively, vide judgment and order dated 12.05.2000 passed by the learned 2nd Additional Sessions Judge, Muzaffarnagar and was sent to jail in order to serve out the sentences awarded to him.

10. Learned counsel for the applicant has drawn our attention towards the statement of the Village Pradhan and other villagers (Annexure-1) and the copy of the order dated 21.10.1997 (Annexure-2) passed by the learned Sessions Judge, Muzaffarnagar and has submitted that the statements of Village Pradhan and the others villagers indicate that the applicant's wife had committed suicide and the applicant was not involved in the commission of the offence. The statements of the Village Pradhan and other villagers (Annexure-1) indicate that the applicant had gone to his sister's house and in his absence, his wife had committed suicide. In the bail order dated 21.10.1997 (Annexure -2), learned Sessions Judge, Muzaffarngar has observed that "In this case, the cause of death is not certain. The applicant is a Military man. Having considered all facts and circumstances of the case, I find it to be a fit case for bail."

11. It appears that the Village Pradhan and other villagers had recorded their statements and had affixed their signatures, after the incident and the said bail order was passed, during investigation of the case. Since the charge-sheet was filed against the applicant, after completion of investigation and thereafter, he faced trial in the Court of Sessions and was also convicted and sentenced by the competent court after contest, the said statements of Village Pradhan and other villagers and the said bail order are of no help to the applicant and they do not affect the conviction and sentence awarded by the competent court after trial, in accordance with law.

12. The applicant preferred an appeal No.1122 of 2000 in the Hon'ble High Court of Judicature at Allahabad against the said judgment and order passed by the learned 2nd Additional Sessions Judge, Muzaffarnagar and the applicant was enlarged on bail vide order dated 17.07.2000 passed by the Hon'ble High Court. The bail order dated 17.07.2000 passed by the Hon'ble High Court is reproduced as under for ready reference:

> *"Heard Sri S.K. Garg, learned counsel for the appellant and the A.G.A.*
>
> *The appellant is in jail since 12.5.2000. I have seen the evidence.*

> *Considering the circumstances, the appellant Devendra Kumar is released on bail on the execution of his sentence shall remain suspended on his executing a personal bond with two sureties to the satisfaction of the C.J.M. Muzaffarnagar."*

13. Learned counsel for the applicant has submitted that the applicant had been enlarged on bail by the Hon'ble High Court during the pendency of the appeal and the operation of the impugned judgment and order had been stayed and hence, the applicant would not have been discharged from service on the ground of his conviction by the criminal court. On the other hand, learned counsel for the respondents has submitted that it is true that the applicant had been enlarged on bail during the pendency of the appeal, but his conviction was not stayed and he is still a convict and has been dealt with as such, in accordance with law.

14. The applicant has been enlarged on bail, during the pendency of the appeal, under Section 389 of the Code of Criminal Procedure, 1973. It may be reproduced as under:

> ***"389. Suspension of sentence pending the appeal; release of appellant on bail.-***
>
> *(1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in*

confinement, that he be released on bail, or on his own bond:

Provided that the Appellate Court shall, before releasing on bail or on his own bond a convicted person who is convicted of an offence punishable with death or imprisonment for life or imprisonment for a term of not less than ten years, shall give opportunity to the public prosecutor for showing the cause in writing against such release:

Provided further that in cases where a convicted person is released on bail it shall be open to the Public Prosecutor to file an application for the cancellation of the bail.

(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of an appeal by a convicted person to a Court subordinate thereto.

(3) Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the Court shall,-

(i) where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years, or

(ii) where the offence of which such person has been convicted is a bailable one, and he is on bail,

order that the convicted person be released on bail, unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate Court under sub-section (1); and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.

(4) When the appellant is ultimately sentenced to imprisonment for a term or to imprisonment for life, the

time during which he is so released shall be excluded in computing the term for which he is so sentenced."

15. During the pendency of appeal, the applicant has been enlarged on bail by the Hon'ble High Court under Section 389 of the Code of Criminal Procedure, 1973. The bail order dated 17.07.2000 (Annexure-3) passed by the Hon'ble High Court indicates that the execution of the sentence awarded to the applicant was suspended. The said bail order does not indicate that the operation of the impugned judgment and order dated 12.05.2000 passed by the learned Additional Sessions Judge, Muzaffarnagar was stayed. There is no mention in the bail order that the conviction of the applicant shall also remain stayed. Thus, neither the impugned judgment and order passed by learned Additional Sessions Judge, Muzaffarnagar was stayed nor the conviction of the applicant was suspended by the Hon'ble High Court, while releasing the applicant on bail, during the pendency of the appeal. The contention of the learned counsel for the applicant, that the operation of the impugned judgment and order was stayed by the Hon'ble High Court, is against the record and hence, it is not tenable. In fact, the sentences awarded to the applicant only were suspended by the Hon'ble High Court, while releasing the applicant on bail, during pendency of the appeal. Mere

suspension of sentence awarded to the applicant does not mean that his conviction was also stayed. Since the conviction of the applicant under Sections 304-B, 201 I.P.C. and 3/4 Dowry Prohibition Act was not stayed, the applicant is still a convict and has to be dealt with as such, under the relevant Service Rules.

16. Learned counsel for the applicant has submitted that on being released on bail by the Hon'ble High Court during pendency of the appeal, the applicant would have been permitted to perform his Military duties during the period he remained on bail, but in violation of paragraph 420 of the Defence Services Regulations (Regulations for the Army) Revised Edition, 1987 and the Army Order No.89 of 1981, the applicant was not permitted to join his duties and he was dismissed from service, illegally. On the other hand, learned counsel for the respondents has submitted that the applicant was permitted to join his duties during the period of bail during trial, but there is no provision for permitting the applicant to join his duties during the period of bail after his conviction by a competent court, particularly, when the order of conviction was not stayed by the appellate court.

17. The point for determination is as to whether there has been violation of Paragraph 420 of the Defence Services Regulations (Regulations for the Army) Revised Edition, 1987 and the Army Order 89 of 1981. Paragraph 420 of the Defence Services Regulations (Regulations for the Army) Revised Edition, 1987 and the relevant part of the Army Order 89 of 1981 may be reproduced as under:

> ***"420. Duties while Released on Bail.***- *(a) A JCO, WO, OR or an enrolled non-combatant, released on bail and awaiting trial by the civil power will, during the period he remains on bail perform all military duties without prejudice to his trial by the civil power when required to surrender for the same.*
>
> *(b) In order to facilitate resumption of duties, he will be attached to a unit/formation nearest to the place where the court is situated. As soon as the CO of the arrested person receives information about the arrest by the civil police in accordance with para 397, the person will be instructed telegraphically that, if and when he is released on bail by the court, he will report for duty to the nearest formation/unit immediately so that he may be able to perform duty. The formation/unit to which the person reports on release on bail will intimate the date of his arrival to his parent formation/unit who in turn will issue necessary orders relating to his attachment."*
>
> **"ADJUTANT GENERAL'S BRANCH 04597/150/MT2**
>
> **"Army Order 89/81 ATTACHMENT OF SERVICE PERSONNEL OTHER THAN OFFICERS TO UNITS AND FORMATIONS NEAREST TO THE PLACE OF THEIR TRIAL IN A CRIMINAL COURT AND FOR PROGRESSING DISCIPLINARY VIGILANCE CASES**

1. In accordance with para 420 of the Regulations for the Army, 1962, a Junior commissioned Officer, Warrant Officer or Other Ranks including an Enrolled Non-Combatant, released on bail and awaiting trial by the civil power, will, during the period he remains on bail, perform all military duties without prejudice to his trial by the civil power.

2. The arrest of a person subject to the Army Act by the civil police is required to be reported to his Commanding Officer by them in accordance with the instructions issued by the Ministry of Home Affairs vide letter No. F.9/7/60-Judl II dated 14 Jul 60 (reproduced in AO 409/71). As soon as this information is received, the arrested person will be instructed telegraphically that if and when he is release d on bail by the court, he will report for duty to the nearest station or formation headquarters immediately so that he may be able to perform duty in terms of the Regulations quoted above. The Station or formation Headquarters concerned to which he repots when released on bail will intimate the date of his arrival to his parent unit. To avoid delay, the attachment in such cases will be effected by the immediate formation headquarters of the parent unit concerned by making a direct request to the Headquarters of the Sub Area where such attachment is required to be made, endorsing copies of all the superior formations concerned. This procedure for effecting attachment will also apply in cases where the individual after committing the crime reports to his unit and is later claimed for investigation/trial by the civil authorities.

3. …….

4. Where the criminal case in which the person is facing trial is adjourned for long period i.e. for over 60 days, he will be returned to his parent unit with the proviso that he is made available on the next date of hearing of the case. However, when the parent units make a specific request that the attached person be returned when the adjournment is for period 30-60 days, the unit/formation to which the person is attached will accede to such a request.

5. ……….

6. ……..."

18. From a bare perusal of paragraph 420 of the said Regulations and the Army order 89 of 1981, as quoted above, it is clear that a JCO, WO, OR or an enrolled non-combatant, released on bail and awaiting trial by the civil power will, during the period he remains on bail, perform all military duties without prejudice to his trial by the civil power. Besides it, the procedure for attachment of the individual to a unit/formation nearest to the court having jurisdiction is prescribed therein, so that the individual may defend himself properly, while facing trial by the criminal court. It is not disputed that the applicant was enlarged on bail during investigation/trial vide order dated 21.10.1997 passed by the learned Sessions Judge, Muzaffarnagar and he was permitted to join his duties during the period he remained on bail, during trial. These provisions are

applicable to an individual, who has been enlarged on bail during investigation/trial and awaiting trial and in fact, these provisions are not applicable to an individual, who has been convicted and sentenced by a competent criminal court after trial and has been enlarged on bail by the appellate court, during pendency of the appeal. Since these provisions were not applicable to the applicant, after his conviction, the question of their violation by the competent authority did not arise. We do not agree with the contention of the learned counsel for the applicant that the applicant was restrained from joining his duties, illegally, after being enlarged on bail during pendency of the appeal and there had been violation of paragraph 420 of the Defence Services Regulations (Regulations for the Army) Revised Edition, 1987 and the Army Order 89 of 1981.

19. Learned counsel for the applicant has submitted that no show cause notice was given to the applicant by the competent authority before dismissing the applicant from service and thus, there had been violation of Section 20 (3) of the Army Act, 1950 and Rule 17 of the Army Rules, 1954. Learned counsel for the respondents has submitted that there was no need to issue show cause notice to the applicant before passing the order of dismissal, because he

was dismissed from service on the ground of his conduct, which led to his conviction by a criminal court and there had been no violation of the said provisions. The Section 20 of the Army Act, 1950 and rule 17 of the Army Rules, 1954 may be reproduced as under for ready reference:

> *"20.* ***Dismissal, removal or reduction by the Chief of the Army Staff and by other officers.*** *(1) The Chief of the Army Staff may dismiss or remove from the service any person subject to this Act, other than an officer.*
>
> *(2) The Chief of the Army Staff may reduce to a lower grade or rank or the ranks, any warrant officer or any non- commissioned officer.*
>
> *(3) An officer having power not less than a brigade or equivalent commander or any prescribed officer may dismiss or remove from the service any person serving under his command other than an officer or a junior commissioned officer.*
>
> *(4) Any such officer as is mentioned in sub- section (3) may reduce to a lower grade or rank or the ranks, any warrant officer or any non-commissioned officer under his command.*
>
> *(5) A warrant officer reduced to the ranks under this section shall not, however, be required to serve in the ranks as a sepoy.*
>
> *(6) The commanding officer of an acting non-commissioned officer may order him to revert to his permanent grade as a non- commissioned officer, or if he has no permanent grade above the ranks, to the ranks.*
>
> *(7) The exercise of any power under this section shall be subject to the said provisions contained in this Act and the rules and regulations made thereunder."*

> *"17.* ***Dismissal or removal by Chief of the Army Staff and by other officers.*** *Save in the case where a person is dismissed or removed from service on the ground of conduct which has led to his conviction by a criminal court or a court-martial, no person shall be dismissed or removed under sub-section (1) or sub-section (3) of Section 20; unless he has been informed of the particulars of the cause of action against him and allowed reasonable time to state in writing any reasons he may have to urge against his dismissal or removal from the service.*
>
> *Provided that if in the opinion of the officer competent to order the dismissal or removal, it is not expedient or reasonably practicable to comply with the provisions of this rule, he may after certifying to that effect, order the dismissal or removal without complying with the procedure set out in this rule. All cases of dismissal or removal under this rule where the prescribed procedure has not been complied with shall be reported to the Central Government."*

20. The applicant was charged under Sections 304-B, 201 I.P.C. and 3/4 Dowry Prohibition Act and was tried by a competent criminal court and the applicant had contested the case. After completion of the trial, the applicant was convicted and sentenced under Sections 304-B, 201 I.P.C. and 3/4 Dowry Prohibition Act and the information about his conviction was sent to the competent authority by the learned Additional Sessions Judge, Muzaffarnagar vide letter dated 15.05.2000 (Annexure C.A.-1). The applicant's

matter was considered by the competent authority in the light of the conviction and sentence awarded by the learned Additional Sessions Judge and he was of the view that it is desirable that the applicant does not remain on the rolls of the Army and consequently, in exercise of his powers, he has dismissed the applicant from service under Section 20 (3) of the Army Act read with rule 17 of the Army Rules, 1954 with immediate effect vide order dated 24.06.2000, as is evident from the Annexure C.A.-2. The Part-II order No.0/152/2001 dated 14.08.2001 (Annexure C.A.-3) has also been published.

21. From the bare perusal of rule 17 of the Army Rules, 1954, it is clear that if an individual is dismissed or removed from service on the ground of conduct which has led to his conviction by a criminal court, the procedure prescribed in the said rule 17, before passing the order of dismissal or removal under Section 20 (3) of the Army Act, will not apply and it is an exception to the general rule. In the instant case, the applicant has been convicted and sentenced for the commission of serious offences by a competent criminal court and he has been dismissed from service under Section 20 (3) of the Army Act, 1950 by the competent authority. The applicant has been dismissed

from service on the sole ground of his conviction and sentence by the criminal court for the commission of the said offences and hence, in view of the exception provided in rule 17, there was no need for the competent authority to follow the procedure prescribed therein, before passing the order of dismissal against the applicant. Since the applicant has been convicted and sentenced by a competent criminal court after a fair trial and the applicant has been dismissed from service on the said ground, there was no need for issue of show cause notice to the applicant, before passing of the dismissal order. Under these circumstances, there had been no violation of rule 17 of the Army Rules, 1954. We do not agree with the contention of the learned counsel for the applicant that there had been violation of Section 20 (3) of the Army Act, 1950 and rule 17 of the Army Rules, 1954 by the competent authority, while passing the impugned order against the applicant.

22. Learned counsel for the applicant has submitted that the applicant, as of right, has preferred an appeal against the judgment and order of his conviction and during pendency of the appeal, he has also been enlarged on bail and hence, there was no justification for his dismissal from service. He has further submitted that the competent

authority has passed the impugned order in violation of paragraph 423 of the Defence Services Regulations (Regulations for the Army) Revised Edition, 1987. Learned counsel for the respondents has rebutted the contention of the learned counsel for the applicant and has submitted that there had been no violation of the said paragraph 423, while passing the impugned order.

23. The paragraph 423 of the Defence Services Regulations (Regulations for the Army) Revised Edition, 1987 may be reproduced as under:-

> ***"423. Conviction of Officers, JCOs, WOs and OR by The Civil power***.- *The conviction of an officer by the civil power will be reported to the Central Government and that of a JCO to the Chief of the Army Staff for such action as these authorities see fit to take. The conviction of a WO or OR will be reported to the brigade/sub-area commander who will decide whether dismissal, discharge or reduction is desirable.*
>
> *The disciplinary authority may, if it comes to the conclusion that an order with a view to imposing a penalty on a Government servant on the ground of conduct which had led to his conviction on a criminal charge should be issued, issue such an order without waiting for the period of filing an appeal or, if an appeal has been filed without waiting for the decision in the first court of appeal."*

24. From the perusal of paragraph 423 of the Defence Services Regulations (Regulations for the Army) Revised

Edition, 1987, it is clear that conviction of a WO or OR will be reported to the brigade/sub-area commander and he will decide whether dismissal, discharge or reduction is desirable on the ground of conduct, which has led to his conviction on a criminal charge by a competent court and he will issue such an order without waiting for the period of filing an appeal or, if an appeal has been filed without waiting for the decision in the first court of appeal. In the instant case, after considering the matter, Lt. General GOC was of the view that it is desirable that the applicant does not remain on the rolls of the Army and consequently, he has passed the order of dismissal. It was not necessary for the competent authority to wait for the decision of the first appellate court. Under these circumstances, the said contention of the learned counsel for the applicant is not tenable. We hold that there had been no violation of paragraph 423 of the Defence Services Regulations (Regulations for the Army) Revised Edition, 1987, while passing the order of dismissal against the applicant.

25. Learned counsel for the applicant has drawn our attention towards the letter of Signal Abhilekh Karyalaya, Signals Records, Jabalpur (Annexure-5), for finalization of accounts on the ground that the applicant had been

dismissed from service with effect from 15.05.2000 and has submitted that the order of dismissal cannot be passed with retrospective effect in view of rule 18 (3) of the Army Rules, 1954. Learned counsel for the respondents has submitted that the order of SOS of the applicant from service with effect from 15.05.2000 was subsequently cancelled and made effective from 24.06.2000 vide Part-II Order dated 14.08.2001 and there had been no violation of rule 18 (3) of the Army Rules, 1954. Learned counsel for the applicant has replied that the subsequent order passed by the competent authority, cannot cure the illegality committed earlier. The Rule 18 (3) of the Army rules, 1954 may be reproduced as under:-

> *"18.* ***Date From which retirement, resignation, removal, release, discharge or dismissal otherwise than by sentence of court-martial takes effect.*** *(1).....*
> *(2).....*
> *(3) The retirement, removal, resignation, release, discharge or dismissal of a person subject to the Act shall not be retrospective."*

26. The applicant's version is that he reported back to the unit for duty on 01.08.2000 and then he was informed that he had already been dismissed from service with effect from 24.06.2000. The Annexure -5 indicates that earlier the applicant's dismissal was made effective from 15.05.2000,

but later on the order dated 15.05.2000 was cancelled due to wrong publication and his dismissal order was made effective with effect from 24.06.2000 vide Part-II order dated 14.08.2001 (Annexure C.A.-3). The order of dismissal (Annexure C.A.-2) was passed by the competent authority on 24.06.2000 on the basis of the said conviction order and his dismissal was made effective from 24.06.2000. The Rule 18 (3) of the Army Rules, 1954 provides that the dismissal of a person subject to the Army Act shall not be retrospective. It appears that the technical error committed earlier was rectified later on and the dismissal order was made effective from the date it was passed. The dismissal order of the applicant is based on the sole ground of his conviction by the competent criminal court and there had been no change in factual position. The technical error can be rectified later on, particularly, when there had been no change in factual position. At present, no order dated 15.05.2000 is in existence and it has already been cancelled. We do not agree with the contention of the learned counsel for the applicant that the said error could not be rectified later on and there had been violation of rule 18 (3) of the Army Rules, 1954. We hold that there had been no violation of Rule 18 (3) of the Army Rules, 1954.

27. The applicant had filed Civil Misc. Writ Petition No. 13009 of 2001 in the Hon'ble High Court of Judicature at Allahabad and it was disposed of finally with the direction that the applicant's statutory petition be disposed of expeditiously and if possible, within three months of the receipt of this order (Annexure -7). The applicant has filed the copy of petition dated 20.10.2000 (Annexure-6) and in compliance with the order of the Hon'ble High Court dated 10.04.2001, the applicant's petition was considered by the competent authority and was rejected finally and it was communicated to the applicant vide letter dated 20.08.2001 (Annexure-9). Thus, the applicant's statutory complaint/ petition was also rejected by the competent authority.

28. In view of the aforesaid discussion, we are of the definite view that the applicant has been dismissed from service, in accordance with law and there is no valid or sufficient ground to interfere in the impugned dismissal order. The Transferred Application No.81 of 2012, Ex Signalman (TER) Devendra Kumar vs. Union of India and others, lacks merit and it is dismissed, accordingly. The parties shall bear their own costs.

(Air Marshal Anil Chopra)
Member (A)

(Justice S.C. Chaurasia)
Member (J)

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