Court No.1
RESERVED

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BENCH, NAINITAL)

O.A. No. 37 of 2011

Narayan Singh Appellant
By Legal Practitioner for the Appellant

Versus

Union of India & Others Respondents
By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	22.03.2022 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** Order pronounced. O.A. No. 37 of 2011 is **allowed.** For order, see our judgment passed on separate sheets. Misc. Applications, pending if any, shall be treated as disposed of accordingly. **(Vice Admiral Abhay Raghunath Karve) Member (A)** **(Justice Umesh Chandra Srivastava) Member (J)** rathore

AFR
Court No. 1
RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BENCH, NAINITAL)

Original Application No 37 of 2011

Tuesday, this the 22nd day of March, 2022

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Ex Rifleman Narayan Singh (No. 0110782K) Ex 1 Assam Rifles, C/o 99 APO, S/o Shri Har Singh, R/o Village-Sunkot, PO-Joshypura, Distt-Nainital (Uttarakhand)

…….. Appellant

Ld. Counsel for the Appellant: **Shri Lalit Kumar**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Home Affairs, North Block, New Delhi.

2. Union of India through Secretary Ministry of Defence, South Block, New Delhi.

3. Chief of the Army Staff, Integrated HQ of MoD (Army), New Delhi.

4. Commandant, 1 Assam Rifles, C/o 99 APO.

5. The Director General Assam Rifles Shillong.

…… Respondents

Ld. Counsel for the Respondents :**Shri Rajesh Sharma**, Advocate Central Govt Counsel

ORDER

"Per Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)"

1. The instant Original Application has been filed on behalf of the appellant under Section 15 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

> *"(i) To quash/set aside the impugned orders dated 30th January 2002 (Annexure-A/1), dated 16th September 2002 (Annexure-A/2) and dated 06th April 2006 (Annexure-A/3).*
>
> *(ii) To reinstate the Appellant in service with all consequential benefits.*
>
> *(iii) To award the cost of this O.A.; and*
>
> *(iv) To grant any other relief which the Hon'ble Court may deem fit and proper on the facts and circumstances of the case.*

2. Brief facts of the case are that the appellant was enrolled in Assam Rifles of the Indian Army on 24.10.1993 as a Rifleman. While posted with 1 Assam Rifles Battalion under the command of respondent No. 4 the appellant absented himself without leave for the period 21.05.2001 to 02.01.2002 (total 226 days) for which he was tried by Summary Court Martial (SCM) under Section 39 (a) of the Army Act, 1950 and sentenced to be dismissed from service vide order dated 30.01.2002 (Annexure A/1). The appellant preferred appeal dated 13.05.2002 against findings of dismissal order which was dismissed by Director General Assam Rifles on 16.09.2002 (Annexure A/2). He then preferred a petition dated 16.09.2002 to GOC-in-C, Eastern Command and when nothing happened in that petition for

more than two years he preferred a petition dated 14.03.2005 to Chief of the Army Staff (COAS). When nothing happened in that petition also for a considerable period he filed a writ petition (Civil) No. 5500 of 2005 in the Hon'ble Delhi High Court which was disposed off on 23.09.2005 (Annexure A/15) with direction to COAS to decide appellant's petition dated 14.03.2005 by 30.11.2005 with liberty to appellant to assail the order to be passed in his petition, if he still felt aggrieved.

3. Feeling aggrieved with no action being taken in his matter by the COAS despite the order of the Hon'ble Delhi High Court, the appellant filed another writ petition (Civil) No. 1309 of 2006 in the Hon'ble Delhi High Court in which the Court was pleased to issue notice to the COAS (respondent No. 3). It was after that only his petition dated 14.03.2005, submitted under Section 164 (2) of the Army Act, 1950, was rejected by the COAS vide order dated 06.04.2006 (Annexure A/3). Thereafter, appellant withdrew the writ petition No. 1309 of 2006 from the Hon'ble Delhi High Court with liberty to file a fresh writ petition in any other High Court in view of decision of the Hon'ble Supreme Court reported in 2001 (9) SCC 525, ***Dinesh Chandra Gahtori vs Chief of the Army Staff & Anr***, wherein it has

been held that COAS could be sued in any part of the country.

4. The appellant then filed a writ petition in the Hon'ble High Court of Uttarakhand at Nainital being writ petition No. 588 of 2006 (SS) which was dismissed on the premise of lack of territorial jurisdiction vide order dated 07.11.2009 (Annexure A/6). Then appellant preferred Special Appeal No. 11 of 2010 against order dated 07.11.2009 passed by single judge which was also dismissed on 14.05.2010 (Annexure A/17) on the same reason.

5. Thereafter, the appellant has filed this O.A. under Section 15 of the Armed Forces Tribunal Act, 2007 vide which appellant has challenged order dated 30.01.2002 dismissing him from service, order dated 16.09.2002 of the Director General Assam Rifles dismissing his departmental appeal and order dated 06.09.2006 of the COAS dismissing the appeal preferred by the appellant under Section 164 (2) of the Army Act, 1950. Appellant has also prayed to reinstate him in service with all consequential benefits.

6. Learned counsel for the appellant submitted that Assam Rifles Act, 1941 and the Assam Rifles Rules, 1985, which govern the service conditions of the appellant, nowhere provided that a member of Assam Rifles could be tried by a Court Martial under the Army Act, 1950. Advancing his

arguments learned counsel for the appellant further submitted that the appellant had not given his consent that he could be governed by the provisions of the Army Act, 1950. He further submitted that the appellant neither signed the prescribed enrolment form nor was he borne on the strength of any Corps of the regular Army and he could not be deemed to be an enrolled person within the meaning of Army Act so as to become amenable to trial by a SCM under the Army Act.

7. In regard to violation of certain Acts and Rules during Court Martial proceedings, learned counsel for the appellant submitted that the respondents have violated Army Act, 106 read with Army Rule 181 and 183, Army Rule 115 (2), Army Rule 34, Army Rule 129 and Army Rule 22. It was further submitted that since the Court Martial proceedings were concluded within thirty minutes from its commencement, the proceedings of Court Martial are vitiated as held by the Hon'ble Apex Court in ***Union of India & Ors vs A.K. Pandey***, reported in JT 2009 (12) SC 3647. It was further submitted that the respondents could not alter or vary the terms and conditions of appellant's service unilaterally which were governed by statutory provisions of law.

8. Learned counsel for the appellant further submitted that the appellant was convicted by respondent No. 4 in a mechanical manner i.e. the trial commenced at 1300 hrs and concluded at 1330 hrs in just thirty minutes without complying with the mandatory requirements of law. In support of his contention, learned counsel for the appellant has relied upon this Tribunal's order dated 01.08.2013 passed in T.A. No. 988 of 2010, ***Ex Sep/Dvr (MT) VD Jha vs Union of India & Ors***.

9. On the other hand learned counsel for the respondents submitted that SRO dated 06.12.1962 amended vide SRO 325 dated 31.08.1977 issued by Central Govt under Army Act Section 4, the provisions of Army Act are applicable to persons belonging to Assam Rifles with modifications and exceptions when they are attached to or actively incorporated with any body of the regular Army. The provisions of Sections 6, 7, 8 and 9 of the Assam Rifles Act are superseded while the above mentioned SRO remains operative. At the time of the trial the unit of the appellant was acting under operational control of regular Army and therefore, the provisions of the Army Act were applicable to the appellant. The SCM conducted by his Commanding Officer had requisite jurisdiction to try the appellant. Respondents learned counsel further submitted that the

appellant was enrolled in Assam Rifles on 24.10.1993 and served with 1 Assam Rifles for six years and three months. During the course of his service he was awarded 14 days rigorous imprisonment on 27.04.2000 under Section 48 of the Army Act for intoxication and 14 days rigorous imprisonment under Section 39 (a) for absence without leave (21 days). His further submission is that while serving in field, the appellant deserted from unit lines without any reason on 21.05.2001 at about 1400 hrs. A Court of Inquiry (C of I) was ordered by the Commandant 1 Assam Rifles vide convening order dated 05.07.2001 which declared him as a deserter w.e.f. 21.05.2001. He further submitted that an apprehension roll dated 24.06.2001 was also issued in this regard. The appellant did not join voluntarily and he was apprehended at Silchar by personnel of 1 Assam Rifles on 02.01.2002 (AN) after being absent without leave for 226 days. After detailed investigation and applying all the legal provisions, the appellant was tried by Summary Court Martial held on 30.01.2002 under Section 39 (a) of Army Act, 1950 and dismissed from service w.e.f. 30.01.2002. He further submitted that the Summary Court Martial proceedings were sent to Deputy Judge Advocate General, HQ Eastern Command who after vetting had held- `in order to maintain the discipline in the force and keeping in view the nature and gravity of the offence, long period of absence

and past blemished record of service of the accused, the sentence awarded by the court is just and legal'. His other submission is that pursuant to order dated 23.09.2005 passed by the Hon'ble Delhi High Court, petition dated 14.03.2005 was dismissed by the COAS vide order dated 06.04.2006 (Annexure R-2). Learned counsel for the respondents further submitted that while the appellant was subject to SCM in respect of his unauthorized absence in which he pleaded guilty and based on that he was held guilty and sentenced to be dismissed from service. His other submission is that due procedure was followed before holding him guilty. He was heard on charge by the Commanding Officer before being produced for trial. Since due procedure prescribed under Rules 22, 34, 115, 129, 181 and 183 of the Army Rules, 1954 were followed in the trial, no question of trial being vitiated does arise. He pleaded for dismissal of O.A.

10. Heard Shri Lalit Kumar, learned counsel for the appellant and Shri Rajesh Sharma, learned counsel for the respondents and perused the material placed on record.

Applicability of Army Act, 1950 to Assam Rifles

11. As per SRO dated 06.12.1962 amended vide SRO 325 dated 31.08.1977 issued by the Central Govt under Army Act Section 4, the provisions of the Army Act were applicable

to the appellant belonging to Assam Rifles at that time as held by the COAS vide order dated 06.04.2006, the operative portion of which for convenience sake is appended below:-

> *"4. According to SRO 318 dated 06 December 1962 amended vide SRO 325 dated 31 August 1977 issued by Central Govt under Army Act Section 4, the provisions of Army Act are applicable to persons belonging to Assam Rifles with modifications and exceptions when they are attached to or acting with any body of the regular Army. The provisions of Sections 6, 7, 8 & 9 of the Assam Rifles Act, 1941 are suspended while the above mentioned SRO remains operative. At the time of trial, the unit of the petitioner was acting under operational control of regular Army and therefore, the provisions of Army Act were applicable to the petitioner. The SCM conducted by his Commanding Officer had the requisite jurisdiction to try him."*

12. Thus, from the aforesaid it may be inferred that the appellant could be tried under Army Act, 1950 and the Commanding Officer 1 Assam Rifles had jurisdiction to try him summarily.

13. Perusal of SCM proceedings shows that the appellant was heard on charge by the Commanding Officer before being proceeded for trial. Before being arraigned by the Commanding Officer, he was informed about the charge for which he was to be tried by delivering the copy of Summary of Evidence/Court of Inquiry alongwith a copy of Charge Sheet. Thus, Army Rule 34 stands complied with and it

nowhere requires that Charge Sheet shall be read over to him. It only requires that he shall be informed of the charge for which he was to be tried which seemed done with delivery of copy of Charge Sheet alongwith Summary of Evidence/Court of Inquiry as is evident from Annexure R-11.

14. Army Rule 129 was also complied with as SCM proceedings show that a friend of accused was provided to the appellant namely Nb Sub BK Chhetri of 1 Assam Rifles to assist him during SCM proceedings who remained present with him during SCM.

15. Army Rule 115 (2) also seems to be complied with in the matter as pleaded guilty statement of the appellant has been recorded in hand of the Commanding Officer which appellant has also signed. Annexure A/1 which is the form of proceedings of SCM shows that the Court which tried the appellant for the offence under Section 39 (a) of the Army Act was presided over by Colonel PS Sandhu who was his Commanding Officer. The trial was attended by AR-047 Commandant (2IC) RK Marak, JC-17753H Sub Maj Deo Bahadur Thapa and JC-19220 Nb Sub BK Chhetri attended as friend of accused. The trial commenced on 30.01.2002 at 1300 hrs at field and ended at 1330 hrs same day i.e. within 30 minutes of the commencement. Col PS Sandhu, the Commanding Officer had also acted as interpreter. The

appellant was duly sworn as Court and interpreter as well. The appellant was put only one question if he pleads guilty of the charge levelled against him or not to which he 'pleaded guilty' which was recorded in hand by the Commanding Officer and it was signed by both the appellant and the Court i.e. Col PS Sandhu. Annexure A/1 also shows that before recording the appellant's plea the Court i.e. Col PS Sandhu had explained to the appellant the meaning of the charge to which he had pleaded guilty and ascertained that appellant understood the nature of the charge he had pleaded guilty. He (the Court) had also informed the appellant the general effects of the plea and difference in procedure which will be followed consequent to the said plea. He had satisfied himself before recording the plea of appellant that appellant understands the charge and the effect of plea of guilty.

16. The plea of learned counsel for the appellant that factum of compliance prescribed in Army Rule 115 (2) shall be deemed complied with only if it is recorded in the given form in Army Rule 115 (2A) in hand of the Court (the Commanding Officer) is not tenable. What is said in Army Rule 115 (2A) is that factum of compliance provided in Army Rule 115 (2) should be done in the manner given in Army Rule 115 (2A). It is nowhere said that it must be in the

hand of the Court. Even if it is in typed form and signed below by the Court and the accused the purpose of compliance would be completed.

17. In view of the above, if we look at Annexure A/1 then we find that in the case in hand the factum of compliance prescribed in Army Rule 115 (2) was exactly done in the same manner as said in Army Rule 115 (2A). It is signed by both the Court (Commanding Officer) and the appellant which is sufficient. Thus, so far Army Rule 115 (2) is concerned, it stands complied with.

18. When we look at the case we find that after a month of appellant's absence from duty without leave a Court of Inquiry (C of I) was assembled on 05.07.2001 to inquire into the cause of absence as required under Section 106 of the Army Act, 1950. The Court was administered the oath before conducting the inquiry. Witnesses were examined in the said inquiry who were also to be administered oath or affirmation before making statement as required under Army Rule 181 and 183 but the same was not done resulting into violation of aforesaid rules. This violation of mandatory rules vitiate the whole trial of the appellant as based on finding of the C of I the appellant was declared a deserter w.e.f. 21.05.2001 and for which he was charged and tried by the SCM. Since the charge for which the appellant was

tried and held guilty and sentenced to be dismissed from service was based on findings of the C of I in which statement of witnesses was recorded without complying with the mandatory requirement of administering oath, the whole SCM proceedings stood vitiated. This renders whole proceedings and findings of the SCM and sentence recorded by the SCM unsustainable in the law. For convenience sake, Rule 181 and 183 of the Army Rules, 1954 are reproduced as under:-

> *"**181**. **Evidences when to be taken on oath or affirmation-**Evidence shall be recorded on oath or affirmation when a court of inquiry is assembled—*
>
> *(a) on a prisoner of war, or*
>
> *(b) to inquire into illegal absence under section 106, or*
>
> *(c) in any other case when so directed by officer assembling the court. Explanation-The court shall administer the oath or affirmation to witnesses as if the court were a court-martial.*
>
> ***183**. **Court of inquiry as to illegal absence under section 106**.*
>
> *(1) A court of inquiry under section 106 shall, when assembled, require the attendance of such witnesses as it think sufficient to prove the absence and other facts specified as matters of inquiry in that section.*
>
> *(2) It shall take down the evidence given it in writing and at the end of the proceedings shall make a declaration of the conclusions at which it has arrived in respect of the facts it is assembled to inquire into.*
>
> *(3) The commanding officer of the absent person shall enter in the court-martial book of the corps of department a record of the declaration of the court, and the original proceedings will be destroyed.*
>
> *(4) The court of inquiry shall examine all witnesses who may be desirous of coming forward on behalf of the absentee, and shall put such questions to them as may be desirable for*

testing the truth or accuracy of any evidence they have given and otherwise for eliciting the truth, and the court in making its declaration shall give due weight to the evidence of all such witnesses.

(5) An oath or affirmation shall be administered to the witnesses in the manner specified in rule 181."

19. In regard to absence of appellant w.e.f. 21.05.2001 a C of I was held on 05.07.2001 under Section 106 of the Army Act, 1950. In the said C of I witnesses namely Hav Babu Singha, Rfn KS Rabna and Rfn AR Chaudhary were examined and based on their statements appellant was declared a deserter.

20. A combined reading of the Rule 181 and 183 shows that evidence in C of I to inquire into illegal absence under Section 106 of the Army Act shall be recorded after administering oath or affirmation to the witnesses as object behind holding Court of Inquiry is to find out the truth in respect of appellant's absence which can be achieved by testing the truth or accuracy of the evidence of the witnesses.

21. A perusal of Court of Inquiry reveals that witnesses who were examined by the Court in Court of Inquiry proceedings were not administered any oath or affirmation in the prescribed form, as required under Rules 181 and 183 of the Army Rules, 1954. Thus, findings recorded by the Court in Court of Inquiry proceedings are proved violative of the

mandatory rules and appellant's arraignment of the charge based on the said findings of the Court and findings of guilty of charge based on pleaded guilty statement of the appellant. Apropos above, an inference may be drawn that structure of Summary Court Martial proceedings cannot stand on its legs when Rule 181 and 183 of Army Rules, 1954 have not been followed as per maxim '*debile fundamentum fallit opus'*, which means when the foundation falls, superstructure falls.

Mechanical Trial

22. We find that the Court assembled on 30.01.2002 at 1300 hrs and concluded at 1330 hrs on same day. The procedure of Summary Court Martial shows that after service of Charge Sheet upon the accused, he has to be afforded adequate opportunity of defence by permitting sufficient time to prepare his defence. Rules 33(7) and 34(1) prohibits any commencement of trial prior to 96 hours after service of Charge Sheet upon the person concerned. However, where the accused person is in active service, the inter regnum period is 24 hours.

23. Therefore, the next aspect to be considered is that the trial was concluded within 30 minutes on the same day on which it was commenced. Copy of Summary Court Martial proceeding are on record from which it is borne out that

Summary Court Martial was held on 30.01.2002 at 1300 hours and was concluded at 1330 hrs on the same day. It was a sacred and mandatory duty of the authority conducting the Summary Court Martial to advice the individual to withdraw his plea of guilty. This was, regrettably, not done. Instead, the Summary Court Martial proceedings were completed with undue haste i.e. within 30 minutes and within this 30 minutes the requirement of reading and explaining the charge and further explaining the provisions of the Army Rule 115(2) and also reading and explaining the summary of evidence of witnesses that had been examined, were to be complied with. After doing all these, the punishment proceeding was also completed within this 30 minutes. Inspite of the certificate of compliance of Army Rule 115(2), we are of the view that it is not humanely possible to complete all these steps within just 30 minutes, the result of which was to the conviction of the appellant. We, therefore, hold that the appellant was found guilty in this case only after completing an empty formality by way of the summary trial proceeding without following the requirement of law.

24. It is well settled proposition of law that a thing should be done in the manner provided under the statute, Act or the Rules framed there under. In AIR 2005 SC 1090, ***Manik Lal***

Majumdar and others vs. Gouranga Chandra Dey and Others, the Hon'ble Supreme Court reiterated that legislative intent must be found by reading the statute as a whole. In 2006 (2) SCC 670, ***Vemareddy Kumaraswami and Another vs. State of Andhra Pradesh***, their Lordships of the Hon'ble Supreme Court affirmed the principle of construction and when the language of the statute is clear and unambiguous, Court cannot make any addition or subtraction of words. In AIR 2007 SC 2742, ***M.C.D. vs. Keemat Rai Gupta*** and AIR 2007 SC 2625, ***Mohan vs. State of Maharashtra***, their Lordships of the Hon'ble Supreme Court ruled that Court should not add or delete the words in statute. Casus Omisus should not be supplied when the language of the statute is clear and unambiguous. In AIR 2008 SC 1797, ***Karnataka State Financial Corporation vs. N. Narasimahaiah and others***, the Hon'ble Supreme Court held that while constructing statute it cannot be extended to a situation not contemplated thereby. Entire statute must be first read as a whole then section by section, phrase by phrase and word by word. While discharging statutory obligation with regard to taking action against a person in a particular manner that should be done in the same manner.

25. It is not in dispute that the Summary Court Martial proceedings concluded within 30 minutes. As held in ***VD Jha*** (supra) we find that the said trial could not have been concluded within 30 minutes as the trial consists of 21 stages. Thus, considering the lengthy procedure during Summary Court Martial proceedings, we are of the view that the Summary Court Martial Proceedings could not be concluded within the short span of thirty minutes.

26. Apart from above, the Hon'ble Supreme Court in the case reported in 2009 (1) SCC 552, ***Union of India vs. A.K. Pandey***, has categorically held that gap of 24 hours or 96 hours, as the case may be, is mandatory and contravention of the provision shall vitiate the trial. For convenience sake, para-22 of the judgment is reproduced as under:

> *"22. The principle seems to be fairly well settled that prohibitive or negative words are ordinarily indicative of mandatory nature of the provision; although not conclusive. The Court has to examine carefully the purpose of such provision and the consequences that may follow from non-observance thereof. If the context does not show nor demands otherwise, the text of a statutory provision couched in a negative form ordinarily has to be read in the form of command. When the word "shall" is followed by prohibitive or negative words, the legislative intention of making the provision absolute, peremptory and imperative becomes loud and clear and ordinarily has to be inferred as such. There being nothing in the context otherwise, in our judgment, there has to be clear ninety-six hours interval between the accused being charged for which he is to be tried and his arraignment and interval time in Rule 34 must be read absolute. There is a purpose behind this provision: that purpose is that before the accused is called upon for trial, he must be given adequate time to give a cool thought to the charge or charges for which he is to be*

tried, decide about his defence and ask the authorities, if necessary, to take reasonable steps in procuring the attendance of his witnesses. He may even decide not to defend the charge(s) but before he decides his line of action, he must be given clear ninety-six hours. A trial before General Court Martial entails grave consequences. The accused may be sentenced to suffer imprisonment. He may be dismissed from service. The consequences that may follow from non-observance of the time interval provided in Rule 34 being grave and severe, we hold, as it must be, that the said provision is absolute and mandatory. If the interval period provided in Rule 34 is

held to be directory and its strict observance is not insisted upon, in a given case, an accused may be called upon for trial before General Court Martial no sooner charge/charges for which he is to be tried are served. Surely, that is not the intention; the timeframe provided in Rule 34 has definite purpose and object and must be strictly observed. Its non-observance vitiates the entire proceedings."

27. In view of the settled proposition of law, so far as facts of the present case are concerned, the Summary Court Martial proceeding vitiates on account of non-compliance of statutory provisions (supra) and consequently the punishment awarded also vitiates.

28. During the course of hearing respondents' learned counsel submitted that the appellant, who was dismissed from service, would not be entitled to back wages even if the O.A. is allowed due to technical fault in SCM proceedings on the premise of 'no work and no pay'. In this regard appellant's learned counsel submitted that the appellant had surrendered on 02.01.2002 (AN) at rear HQ of the battalion and immediately on surrender he was put in prison cell i.e.

quarter guard. He further submitted that the appellant was willing to work but he was prevented from doing so.

29. It is an admitted fact that the appellant was absent without leave for 226 days. We have observed that on 02.01.2002 (AN) the appellant when surrendered /apprehended was put to bars and tried by SCM on 30.01.2002 and dismissed from service.

30. We have heard the rival submissions of both the parties on the issue of 'no work and no pay'. The principle of 'no work and no pay' has been considered by the Hon'ble Apex Court in ***Union of India vs K.V. Jankiraman*** decided on 27 August, 1991. Prior to ***Jankiraman*** (supra), the Hon'ble Apex Court held the view that, in case of reinstatement in service, the delinquent was invariably entitled to full back wages. But since ***Jankiraman*** (supra) the view started changing and in several cases thereafter the Hon'ble Apex Court applied the principle to deny back wages in the background of the facts of the particular case. It is needless to take into account all the judgments of the Hon'ble Apex Court dealing with the principle and applying the same in the facts of the particular case. However, it may be appropriate to notice a judgment of the Hon'ble Apex Court in ***U.P. State Brassware Corporation Ltd. & Anr. Vs. Uday Narain Pandey***, [(2006)1SCC 479] in which the

Hon'ble Supreme Court has held that back wages of a terminated employee may or may not be granted according to facts and circumstances of the case. Thus, it is clear that there is no hard and fast rule that, in case of reinstatement, a delinquent is, in all circumstances, entitled for payment of back wages and the principle of 'no work and no pay' can in no circumstance be applied by the disciplinary authority in the event of reinstatement, upon complete or partial exoneration from charge.

31. Accordingly, applying the said principle of 'no work and no pay' it is clear that the appellant is not entitled to back wages as earlier he was absent without leave for a period of 226 days and after surrender on 02.01.2002 his services were terminated on 30.01.2002. However, in view of the fact that the appellant had preferred an appeal dated 13.05.2002 to Director General Assam Rifles against his impugned dismissal which was dismissed vide order dated 16.09.2002 and that thereafter, on same day i.e. on 16.09.2002 he preferred a petition dated 16.09.2002 to GOC-in-C Eastern Command and after waiting for two years he filed a petition dated 14.03.2005 to COAS and when nothing was heard the appellant was compelled to file writ petition No 5500 of 2005 in Hon'ble Delhi High Court which was disposed of vide order dated 23.09.2005 with direction

to COAS to decide his petition by 30.11.2005. When petition dated 14.03.2005 being not decided by the COAS even after directions of Hon'ble Delhi High Court, the appellant filed writ petition No 1309 of 2006 in Hon'ble Delhi High Court in which notice was issued to COAS and his petition dated 14.03.2005 was rejected vide order dated 06.04.2006. The appellant thereafter withdrew his petition which was allowed with liberty to file fresh petition in any other High Court in view of decision of ***Dinesh Chandra Gahtori*** (supra). The appellant then filed writ petition No 588 of 2006 (SS) in Hon'ble High Court of Nainital which was dismissed vide order dated 07.11.2009 on the premise of lack of territorial jurisdiction. Special Appeal No 11 of 2010 filed against order dated 07.11.2009 was also dismissed on 14.05.2010 on the same ground.

32. From the aforesaid, we observe that since the appellant has been continuously litigating for his cause at various platforms/Courts where he would have expended a considerable amount, he deserves compensation which we quantify to Rs 10 lacs. The said compensation is to be paid to the appellant by the respondents within a period of 3 months from today.

33. In view of observations made above, the O.A. deserves to be allowed.

34. O.A. is **allowed** accordingly. Impugned order of dismissal dated 30.01.2002 (Annexure A/1), order dated 16.09.2002 (Annexure A/2) and order dated 06.04.2006 (Annexure A/3) are set aside. The appellant shall be deemed to continue in service from the rank from which he has been dismissed from service and shall be paid full regular pension from the date of his retirement in the rank of Rifleman which he was holding at the time of dismissal from service. No back wages, however, are allowed. Let his entitled pension be paid within four months from today with all consequential benefits. Default will invite interest @ 8% p.a.

35. No order as to costs.

36. Miscellaneous application(s), pending if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 22.03.2022
rathore