

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****T.A. No. 596 of 2010****Friday, this the 11th day of August, 2023****“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”****“Hon’ble Maj Gen Sanjay Singh, Member (A)”**

Udai Veer Singh No. 4186494K s/o Devi Singh R/o : Village:
 Nagla Sewa Post: Bab Shah District: Etah

..... Petitioner

Ld. Counsel for the : **Col BP Singh (Retd), Advocate**
 Petitioner

Versus

1. The Union of India, through its Secretary, Ministry of Defence, New Delhi.
2. The Chief of Army Staff, New Delhi.
3. The Additional Directorate General, Discipline & Vigilance DV-3, Adjutant General’s Branch, Army Headquarters, New Delhi.

.....Respondents

Ld. Counsel for the : **Shri Shailendra Sharma Atal,**
Central Government Counsel.

ORDER

“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”

1. Civil Misc Writ Petition No 18369 of 2006 has been received by this Tribunal by way of transfer under Section 34 of the Armed Forces Tribunal Act from Hon’ble High Court of Judicature at Allahabad and renumbered as T.A. No 596 of 2010. By means of this petition, following reliefs have been made:-

“1. Issue a writ, order or direction in the nature of certiorari quashing the impugned Order dated 14.03.2005 passed by the Summary Court Martial and Order dated 16.01.2006 passed by the respondent No. 2, The Chief of Army Staff, New Delhi.

2. Issue a writ, order or direction in the nature of mandamus commanding the respondents to reinstate the services of the petitioner as usual subject to pending decision of the instant writ petition.

3. Issue a writ, order or direction in the nature of mandamus commanding the respondents to release the entire fund and salary which is due upon the respondents pending decision of the instant writ petition.

4. Issue any other writ, order or direction which this Hon’ble Court may deem fit and proper in the circumstances of the case.

5. And award cost of the petition to the petitioner.”

2. The undisputed factual matrix on record is that the petitioner was enrolled in the Indian Army on 14.04.1984. On 12.07.2001, he

was arrested by Military Police while working as Clerk in 213 Transit Camp, C/o 56 APO and Rs 53,680/- was recovered from his box. A Court of Inquiry was held and petitioner was found guilty for two charges. Petitioner was tried by Summary General Court Martial (SGCM) and he was found guilty for first charge. SGCM awarded him rigorous Imprisonment of 1 year and dismissal from service. The petitioner made statutory complaint which was rejected. Being aggrieved, petitioner has filed instant application to quash impugned order passed by SGCM and Chief of Army Staff and to reinstate him in service and release entire dues.

3. Ld. Counsel for the petitioner submitted that the petitioner was enrolled in Indian Army on 14.04.1984. He was falsely implicated for accepting illegal financial gratification from transients at 213 Transit Camp, C/o 56 APO. On search a sum of Rs. 53,680/- was recovered from his box. Matter was investigated and two charges were framed against him. First Charge was for committing an offence contrary to Section 5(2) of Prevention of Corruption Act Samvat 2006 in that he was in possession of cash amounting to Rs. 53,680/-, sum disproportionate to known sources of his income which he could not satisfactorily account for. Second Charge was under Army Act Section 63, "An Act prejudicial of good order and military discipline for improperly taking a sum of Rs. 200/- from Driver Rakesh Kumar of 158 (I) Tpt Civil GT". During SGCM, the petitioner had deposed

various financial transactions to arrive at figure of Rs. 53,680/- which are as follows:-

Income

(a) Salary drawn Nov 2000 to May 2001	- Rs. 48,000/-.
(b) Loan for house construction and Expenses to bring his family.	- Rs. 47,000/-
(c) Brought from home in Apr 2001	<u>- Rs. 32,000/-</u>
Total	- Rs. 1,27,000/-

Expenditure

(a) Purchase of Gun with License	- Rs. 30,000/-
(b) Dispatched Home	- Rs. 40,000/-
(c) Returned loan to Hav HC Joshi	- Rs. 2,000/-
(d) Pocket Expenses	<u>- Rs. 1320/-</u>
Total	Rs. 73,320/-

Rs. 1,27,000/- - Rs. 73,320/- = 53680/-

(Income) (Expenditure)

4. Learned counsel for the petitioner submitted that at the same time during raid by the Military Police Rs. 30,000/- recovered from another Hav/Clerk Ajmer Singh who was also found guilty of keeping amount Rs. 30,000/- but he was acquitted during SGCM that is highly arbitrary and bad in the eye of law.

5. Learned counsel for the petitioner submitted that petitioner was tried by SGCM on 14.03.2005. Petitioner was found guilty for First Charge and he was not found guilty for Second Charge. SGCM awarded him Rigorous imprisonment of one year and dismissal from service. The petitioner justified the alleged amount of Rs. 53,680/- but his defence was not accepted. He made statutory complaint dated 14.03.2005 to Chief of Army Staff which was rejected vide order dated 09.01.2006. As per Prevention of Corruption Act, it is legally mandatory to follow the procedural safeguards mentioned in the Act. It gives a proviso that no police officer below the rank of Assistant Superintendent of Police shall investigate any such offence without the order of a Magistrate of First Class or make any arrest without a warrant. The criminal misconduct with which the petitioner is charged in discharge of official duty has been mentioned in Section 5 of above Prevention of Corruption Act. Section 7 of said Act provides that any person charged with the above offence shall be a competent witness. It is imperative for the authorities to follow but same was not followed. The conduct of disciplinary proceedings is illegal and arbitrary and liable to be quashed. Petitioner has unblemished service record of more than 15 years. The punishment awarded to the petitioner is excess and against the principle of natural justice. Learned counsel for the petitioner pleaded that punishment of dismissal awarded by

SGCM be quashed and dismissal of the petitioner be changed into discharge thereby enabling petitioner for service pension.

6. Per contra, Ld. Counsel for the respondents submitted that petitioner while performing the duties of issuing arrival-dispatch slip to the transients accepted illegal financial gratification of Rs. 20/- to Rs. 100/- per transient for tempering with leave dates in their leave certificate and was also found in improper possession of Rs. 53,680/-, source of which he could not justify. A Court of Inquiry (COI) was held on 14.07.2001 at HQ 26 Arty Bde. The petitioner was attached with 5271 ASC Bn for trial/ finalization of disciplinary action under the provisions of Army Order 7/2000. Hearing of charge was held on 28.01.2002. Evidence was reduced in writing in Form of Summary of Evidence (SoE). Based on Summary of Evidence, Charge Sheet was prepared. The petitioner was charged with two charges. First under Prevention of Corruption Act being public servant as a clerk in 213 Transit Camp, petitioner was in possession of cash amounting to Rs. 53,680/- sum disproportionate to his known source of income which he could not satisfactorily justify and Second under an Act Prejudicial to good order and military discipline in that he on 12.07.2001, improperly accepted a sum of Rs. 200/- from Driver Rakesh Kumar of 758 (I) Transport Platoon. It was proved by the evidence of Sub M Muni (PW-2) and Hav RK Birla (PW-4) that petitioner had drawn a total salary of Rs. 48,000/- between Nov 2000

to Jul 2001 and he was in possession of Rs. 53,680/-. As per letter (Exhibit 102) of SGCM proceedings written by wife of petitioner, she confirmed receipt of Rs. 57,000/- from the petitioner. The prosecution has also proved that petitioner had bought a gun costing Rs. 30,000/- and also the petitioner had paid Rs. 2,000/- for a licence, besides his day to day expenses. The amount of Rs. 53,680/- found in possession of the petitioner was disproportionate to his known source of income. SGCM was ordered as a successive trial of five accused vide HQ 71 Sub Area convening order dated 05.05.2004 and concluded on 14.03.2004. The petitioner was found guilty for First Charge and not guilty for Second Charge. SGCM awarded punishment of Rigorous Imprisonment for one year and to be dismissed from service to the petitioner. The said sentence was duly confirmed by Commander, HQ 71 Sub Area. The sentence was promulgated on 25.06.2005. The petitioner submitted appeal before Chief of the Army Staff (COAS) which was treated as Post Confirmation Petition. This appeal was rejected by COAS vide letter dated 16.01.2006.

7. Ld. Counsel for the respondents further submits that as per Para 41 (a) of Pension Regulation for the Army 2008 (Part-I), an individual who is dismissed under the Provisions of Army Act, 1950 or removed under the Rules made thereunder as a measure of penalty, will be ineligible for pension or gratuity in respect of all

previous service. The petitioner is offender under Army Act, 1950,; hence, he is not entitled for grant of any type of gratuity or pension. Learned counsel for the respondents pleaded that O.A lacks merit and is liable to be dismissed.

8. We have heard learned counsel for the parties and perused the documents available on record.

9. The question before us to decide is whether the petitioner is entitled for grant of service pension being a case of dismissal after completion of more than 15 years of colour service.

10. In the instant case petitioner has rendered more than 15 years of service. Learned counsel for the petitioner has pointed out some procedural irregularities in the arguments, but there is no argument as to how his defence has been prejudiced by such procedural irregularities, unless and until any prejudice is caused, every irregularity cannot be a ground to justify the interference of court.

11. The Hon'ble Supreme Court in the case of **Major G.S. Sodhi vs. Union of India** (1991) 2 SCC 382) has observed in para 21 as under :

"It must be noted that the procedure is meant to further the ends of justice and not to frustrate the same. It is not each and every kind of defect preceding the trial that can affect the trial as such."

12. The aforesaid view expressed by the Hon'ble Supreme Court in the case of **Major G.S. Sodhi** (supra) has again been followed by the Hon'ble Apex Court in the case of **Union of India & ors vs. Major A. Hussain** [1998] (1) SCC 537], wherein the Hon'ble Apex Court has observed as under :-

“ In G.S. Sodhi's case this Court with reference to Rules 22 to 25 said that procedural defects, less those were vital and substantial, would not affect the trial. The Court, in the case before it, said that the accused had duly participated in the proceedings regarding recording of summary of evidence and that there was no flagrant violation of any procedure or provision causing prejudice to the accused.”

13. Now we come to the alternative arguments of the learned counsel for the petitioner, which is on the point of disproportionate punishment. Keeping in view the long service of more than 15 years of the petitioner, and nature and gravity of offence, the punishment of dismissal from service is too harsh. In support of his arguments, learned counsel for the petitioner has placed reliance on the pronouncement of Hon'ble Supreme Court in the case of **Major G.S. Sodhi vs. Union of India** (Criminal Misc. P. No. 8905 of 1990) decided on 19.03.1991, wherein the Hon'ble Supreme Court has held as under :-

“3. A similar order was also passed in Religious Teacher Ex N. Sub. R.K. Sharma v. The Chief of the Army Staff and Ors. (Cr. M.P. No. 349/80 in W.P. (Crl.) No. 244/80 dated 29.4.80), by a Bench of two Judges of this Court. While dismissing the writ petition, the Bench observed that "the Court Martial has not inflicted a punishment on him of forfeiture of pension or other service benefits and counsel for the other side has assured the

Court that whatever the pension and other service benefits are permissible to the petitioner under the law will be given to him."

4. In the instant case also, the Court Martial has not inflicted any other punishment of forfeiture of pension or other service benefits of the petitioners. Therefore they are also entitled to these benefits. Accordingly the respondent is directed to pay the entire pension, gratuity and provident fund under the rules to each of these petitioners within three months from the date of receipt of this order. Both the criminal miscellaneous petitions are accordingly disposed of."

14. Reliance has also been placed in the pronouncement in the case of **S. Muthu Kumaran vs. Union of India & others** [Civil Appeal No. 352 of 2017] decided on 17.01.2017. In this case, the petitioner was involved in the recruitment racket in Jammu and in that background, the Hon'ble Supreme Court has observed in para 11 as under :

"11. No doubt, the dismissal order passed against the Applicant was within the powers of the concerned authorities. However, as far as the dismissal from service is concerned, it is an extreme punishment imposed against the applicant. The applicant has to thrive in civil life by doing an appropriate job suitable to his qualification. In the facts and circumstances of the present case, we are inclined to modify the punishment of dismissal from service into discharge from service. The modification of the sentence of dismissal from service into that of discharge will not change the position of the applicant, so as to claim any re-instatement into service. Even if he was discharged from service, in lieu of dismissal from service, the applicant cannot seek for any employment or re-employment into the Army. Therefore, there would not be any grievance for the respondents in the event of punishment of dismissal being modified into that of discharge. At the same time, interest of justice would be served as the applicant would get the benefits like gratuity and other attendant benefits

for the service rendered by him and the applicant would also get an opportunity to lead honourable life in the society.”

15. For all these reasons, we feel that the offence committed by the petitioner does not seem to be of so grave in nature and, therefore, punishment of dismissal awarded to the petitioner seems excessive. Keeping in view the pronouncements of the Hon'ble Supreme Court, mentioned above, and the facts and circumstances of the case as well as length of service of the petitioner, these aspects of the case are an important distinguishing feature which renders the punishment of dismissal from service to be harsh and disproportionate to the offence committed by the petitioner. Petitioner has rendered more than 15 years unblemished colour service and considering this, it appears that punishment awarded is too harsh and petitioner deserves a sympathetic consideration. Accordingly, dismissal of the petitioner is converted into discharge and petitioner is entitled for grant of service pension with retiral dues.

16. Resultantly, Transferred Application deserves to be partly allowed and is hereby partly **allowed**. Finding of sentence dated 14.03.2005 passed by SCM is hereby modified only to the extent that the order of dismissal shall stand converted into the order of discharge as a case of extreme. The petitioner has already undergone imprisonment for one year. Due to law of limitation, the pensionary benefits shall come into effect from the date of the

passing of present order. Petitioner shall be entitled to service pension of Sepoy for the services rendered by him in accordance with Pension and other Rules/Regulations in force. Let the pension and amount due be paid to the petitioner within the period of four months from the date of communication of order. If the same are not paid within the time stipulated, then the respondents shall be liable to pay interest at the rate of 8% per annum on the amount due till the date of its actual payment.

17. The Registry is directed to provide a copy of this order to learned counsel for the respondents for its onwards transmission and necessary compliance.

18. No order as to costs.

(Maj Gen Sanjay Singh)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated: 11 August, 2023
ukt/