

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****COURT NO. 2****T.A. No. 02 of 2015****Thursday, this the 15th day of December, 2016****"Hon'ble Mr. Justice D.P.Singh, Judicial Member
Hon'ble Air Marshal Anil Chopra, Administrative Member"**

Chattar Singh ex Subedar JC- 690093W SUB/PNA son of Shri Pyare Singh resident of Village Postika, Tehsil Gabhana, Post Office, Pisawah, District Aligarh. **Petitioner**

Versus

1. Union of India through Secretary Ministry of Defence, Govt. of India, New Delhi.
2. Chief of the Army Staff, Defence Headquarters, Ministry of Defence, New Delhi.
3. General Officer Commanding, MPB & O Area, Jabalpur.
4. Officer Commanding, Military Hospital, Jhansi.

.....**Respondents****Ld. Counsel appeared
for the Applicant****- Shri M.R. Gupta,
Advocate****Ld. Counsel appeared
for the Respondents****- Shri Bhanu Pratap Singh,
Advocate, Addl. C.G.S.C****Assisted by****- Maj Soma John , OIC Legal Cell**

Order

(Per Se Hon'ble Mr Justice Devi Prasad Singh, Member (J))

1. Being aggrieved by the order of dismissal from service as a measure of punishment, the petitioner had preferred a writ petition bearing Writ Petition No 25739 of 2002, which stood transferred to this Tribunal under section 34 of the Armed Forces Tribunal Act, 2007 and was registered as T.A. No 2 of 2015.

2. Bereft of unnecessary details, the facts of the case are that the petitioner was enrolled in the Indian Army as Sepoy on 05.01.1970. In September 1992, he was transferred to Military Hospital Jhansi as Nursing Assistant where he was conferred the rank of J.C.O. While posted at Jhansi, besides his normal duties, he was also assigned the duty of supervising the working of CSD Canteen. A charge sheet dated 13.10.1999 was served on the petitioner enumerating four charges, which relate back to the year 1995 pertaining to alleged misappropriation of funds/property of the CSD Canteen. The duties assigned to the petitioner involved supervision over salesman CSD, checking daily sales and taking over cash, carrying out surprise check of stores to ensure that there is no pilferages, responsible for posting and receipt of daily sales on the central

register of stores and sales, to prepare sales summary at the end of every month, attended with responsibility for security of canteen stores (both grocery and liquors) and cash. He was also In-charge of liquor stores and issue of liquor sales. In August 1996, certain discrepancies were detected in the account of the CSD Canteen for the period from 04.04.1995 onwards when the exchange of charge of canteen was taking place between Maj (Mrs) Anu Lal and Lt Col VRR Rao, the then Canteen Officer. When the matter was gone into deeply, it was noticed that many deposits in CSD account register were not reflected in bank pass book. Thus, the total fraud that was detected, was to the extent of sum of Rs 1,70,000/- for the period from July 1995 to December 1995. The counterfoils of bank pay in slip were also not available. However, with the deposit of some sums at later dates, the total loss approximated to a sum of Rs 1,24,000/-. Upon further scrutiny, it came to light that petitioner and one Sep/AA T.D.Pillai were involved in the scam. Subsequently, by a convening order dated 23.08.1996, a court of inquiry was held which was taken to completion on 16.10.1996. Pursuant to court of inquiry report, disciplinary inquiry was instituted for action against the petitioner for defalcating the regiment

funds, for making false statement before the court of inquiry, and for negligence in performance of duties as CSD Canteen JCO. The said inquiry also recommended disciplinary action against Sep/AA T.D.Pillai for defalcation of regiment funds and for falsifying the financial documents. Punitive action was also ordered against Col Dinesh Kapoor and Lt Col VRR Rao, who were canteen officers on different dates during the period of fraud. Acting on the court of inquiry report, Lt Col VRR Rao was released from service on 31.10.1996. Since petitioner was posted at different Unit away from the place, he was recalled and posted to Jhansi Military Hospital with effect from 24.09.1996. Since petitioner was to retire on 31.01.1998, instruction to proceed against him was issued on 31.12.1997 as a consequence of which proceedings against him commenced. Hearing of charges was carried out as per Army Order 24 of 1994. Summary of evidence commenced on 07.01.1998 and completed on 10.01.1998. The documents were transmitted for pre-trial advice through Station Headquarters on 20.01.1998. The petitioner was tried by General Court Martial at Military Hospital Jhansi on 20.11.1999 for offence under section 57 (a) of the Army Act 1950 and was visited with the punishment of dismissal from

service. Sep/AA T.D.Pillai was tried by Summary Court Martial and was awarded punishment of imprisonment for one year in civil jail attended with punishment of dismissal from service on 07.01.2000. The punishment awarded to the Petitioner was confirmed by General Officer Commanding-in-Chief (Central Command) on 20.08.2000 and it was promulgated on 04.09.2000. The punishment in respect of Sep/AA T.D.Pillai was promulgated on 07.09.2000.

3. We have heard learned counsel for the Petitioner as also learned counsel for the respondents ably assisted by OIC Legal Cell. We have perused the materials on record.

4. While assailing the impugned order of dismissal, the substance of arguments advanced by learned counsel for the Petitioner is that no punishment could have been awarded to the petitioner after his superannuation from service and in this connection he drew attention to the fact that Court Martial Proceeding had been embarked upon and taken to finality after retirement of the petitioner. It is further argued by learned counsel for the petitioner that Sep/AA T.D.Pillai was later-on exonerated from charges studded with all consequential benefits notwithstanding the fact that he had confessed to his guilt of embezzlement. Learned

counsel for the petitioner also invited our attention to the judgment of the High Court in which learned Single Judge of Allahabad High Court had allowed the writ Petition No 25739 of 2002 filed by the petitioner by order dated 23.02.2005 observing that T.D.Pillai had admitted in his statement that he had prepared the reconciliation statement of July and that the Commanding officer had authenticated it and further that he had owed moral responsibility for the loss that had occurred and thus, it was held that since T.D.Pillai had admitted the guilt, the petitioner could not have been held liable and punished. Further, the High Court held that the order of dismissal was passed after retirement of the petitioner i.e 31.01.1998, which could not have been done. Hence, the High Court had quashed the orders dated 20.08.2000 and 13.11.2001 with all consequential retiral benefits.

5. Learned counsel for the respondents repudiating the submission invited attention to the judgment of the Division Bench rendered in Intra-Court Appeal (Special Appeal) No 6 of 2009 whereby while setting aside the order of the learned Single Judge, the Division Bench remitted the matter for decision afresh vide order dated 08.08.2014. Learned counsel also invited our attention to the observations contained in the body of

the judgment rendered by the Division Bench. The Division Bench noticed in the judgment that T.D.Pillai was maintaining the requisite books from 05.09.1995 onwards whereas petitioner Chhattar Singh was charged with regard to reconciliation statement prepared in July 1995 i.e prior to Sept 1995. The Division Bench also took the view that though the petitioner had attained the age of superannuation on 31.01.1998 and order of dismissal was passed by Court Martial proceeding subsequently on 20.11.1999 and confirmed on 20.08.2000 but learned Single Judge should have taken into account whether under the Army Act and Rules framed there-under, the proceedings could have been commenced or continued even after retirement with punishment of dismissal from service.

6. In the instant case charges were framed against the petitioner on 13.10.1999. In all four charges were framed which being relevant are reproduced below.

"First Charge Army Act Section 52(b)

DISHONESTLY MISAPPROPRIATING THE PROPERTY BELONGING TO MILITARY INSTITUTION.

in that he,

at Jhansi, between 03 Apr, 1995 and 05 Sep. 1995, which came to the knowledge of competent authority on 28 Oct. 1996, while performing the duties of JCO-In-Charge of CSD

Canteen, MH Jhansi, dishonestly misappropriated a sum of Rs. 48,337.40 (Rupees forty eight thousand three hundred thirty seven and paise forty only) belonging to the said Canteen.

Second Charge Army Act Section 52(b)

DISHONESTLY MISAPPROPRIATING THE PROPERTY BELONGING TO A MILITARY INSTITUTION

in that he,

at Jhansi, between 03 Apr.1995 and 09 Sep. 1995, which came to the knowledge of competent authority on 28 Oct. 1996, while performing the duties of JCO-In-Charge of CSD Canteen, MH Jhansi, dishonestly misappropriated a sum of Rs. 10,000/- (Rupees Ten thousand only) belonging to the said Canteen.

Third Charge Army Act Section 57 (a)

IN A RECONCILIATION STATEMENT MADE BY HIM KNOWINGLY MAKING A FALSE STATEMENT

in that he,

at Jhansi, between Jul. 1995 and Aug. 1995, which came to the knowledge of competent authority on 28th Oct. 1996, while performing the duties as mentioned in the first charge, in the reconciliation statement for the month of Jul. 1995, prepared by him, showed cash balance as Rs. 1,68,947.22 (Rupees one lac sixty eight thousand nine hundred forty seven and paise twenty two only) whereas he well knew the same to be Rs. 61,499.42 (Rupees sixty one thousand four hundred ninety nine and paise forty two only).

Fourth Charge Army Act Section 57 (a)

IN A RECONCILIATION STATE-MENT MADE BY HIM KNOWINGLYMAKING FALSE STATEMENT.

in that he,

at Jhansi, between Jul. 1995 and Aug. 1995, which came to the

knowledge of competent authority on 28 Oct. 1996, while performing the duties as mentioned in the first charge, in the reconciliation statement for the month of Aug. 1995, prepared by him, showed cash balance as Rs. 2,50,087.92 (Rupees two lacs fifty thousand ninety seven and paise ninety two only whereas he well knew the same to be Rs. 87,541.02 (Rupees eighty seven thousand five hundred forty one and paise two only)."

7. The Court Martial Proceedings were held under section 123 of the Army Act 1950 and the petitioner was found not guilty in respect of Charges 1,2 and 4. As against charge No. 3, the petitioner was found guilty and thus dismissed from service. The order of punishment was confirmed by order dated 20.08.2000. The statutory appeal preferred before Chief of Army Staff under section 164 of the Act culminated in dismissal vide order dated 13.01.2001. It was in this backdrop that jurisdiction of the High Court under Article 226 was invoked.

8. A plain reading of charge no 3 in respect of which, the petitioner has been found guilty, manifests that the cash balance in the record has been shown to be Rs 1,68,947.22 instead of balance of Rs 61,499.42. From the materials on record, it is also evident that Sep/AA T.D.Pillai was the subordinate official who prepared the

draft copy of the account which was duly confirmed by the petitioner. Thus, the foundation of irregularity in the record seems because of incorrect preparation of account by Sep/AA T.D.Pillai but the fact remains that the petitioner being J.C.O. was the Incharge and was responsible for the omission and commission of his subordinates. Though Sep/AA T.D.Pillai has been found guilty of misappropriation of funds for which later-on, he was exonerated but it also brooks no dispute that the petitioner has not been held guilty for misappropriation of any fund. The delinquency which was imputed to the petitioner, seems to be dereliction of duty, failing to keep watch over the subordinates with effective command and control. It leaves no manner of doubt that because of administrative failure on the part of the petitioner, Sep/AA T.D.Pillai romped home by successfully depicting incorrect statement in the accounts.

9. So far as the right of Disciplinary authority to impose punishment of dismissal from service under the Army Act is concerned, it seems to be available under section 123 of the Act, though the legislature by amending and adding sub section (2) in Sec 123 with effect from 06.09.1992 computed the period of limitation to be three years to take disciplinary action

against the retired employee but the same is not attracted for application to the present case being a controversy earlier to the amendment as aforesaid. For the sake of convenience, section 123 of the Army Act is reproduced below.

"123. Liability of offender who ceases to be subject to Act. - (1) *Where an offence under this Act had been committed by any person while subject to this Act, and he has ceased to be so subject, he may be taken into and kept in military custody, and tried and punished for such offence as if he continued to be so subject.*

(2) *No such persons shall be tried for an offence, unless his trial commences ²(within a period of three years after he had ceased to be subject to this Act; and in computing such period, the time during which such person has avoided arrest by absconding or concealing himself or where the institution of the proceeding in respect of the offence has been stayed by an injunction or order, the period of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded:)*

Provided that nothing contained in this sub-section shall apply to the trial of any such person for an offence of desertion or fraudulent enrolment or for any of the offences mentioned in section 37 or shall affect the jurisdiction of a criminal court to try any offence triable by such court as well as by a court-martial.

(3) *When a person subject to this Act is sentenced by a court-martial to transportation or imprisonment, this Act shall apply to him during the term of his sentence, though he is cashiered or dismissed from the regular Army, or has otherwise ceased to be subject to this Act, and he may be kept, removed, imprisoned and punished as if he continued to be subject to this Act.*

(4) *When a person subject to this Act is sentenced by a court-martial to death, this Act shall apply to him till the sentence is carried out."*

10. In view of the provisions contained in sub section (1) of section 123, there appears to be no room for doubt that the order of dismissal or his being cashiered from service could have been passed even against a superannuated person of the Army though under service jurisprudence, after retirement, order of dismissal could not have been passed. Admittedly, the petitioner being military personnel, he is not governed by civil jurisprudence and thus keeping in view the statutory provisions as contained in the Army Act, such order may be passed. Hence on this score, objection raised by learned Counsel for the petitioner does not commend to us for acceptance. Of course, after 06.09.1992, the Authorities have to keep in mind the limitation provided there-under but for an earlier event prior to 06.09.1992, no such restriction seems to be provided under the aforesaid section.

Thus, in our considered view, the punishment awarded to the petitioner by the General Court Martial does not suffer from any jurisdictional error or infirmity.

11. Coming to second limb of argument, it is argued that Sep/AA T.D.Pillai has been exonerated of the charges. The factual aspect does not seem to be disputed. There is no gainsaying that the petitioner

was Incharge of the CSD Canteen and Sep/AA T.D.Pillai was his subordinate and was there to assist the petitioner. Though there were other superior officers to manage the affairs of the CSD Canteen of the rank of Major and Lt Col as stated (supra) the responsibility that lay on the shoulders of the petitioner, also cannot be ignored or wished away. No doubt, Sep/AA T.D.Pillai, who was charged with the duty of doing the ground-work and used to prepare the statements of accounts had the responsibility of placing the correct figures while preparing the account and looking to the fact that T.D.Pillai had admitted the guilt of not showing correct factual amount and had also confessed that originally accounts were prepared by him showing incorrect figures, in this view of the matter, the offence/misconduct committed by the petitioner stands mitigated and call for a lenient view and that too for the reasons that no charge against the petitioner has been established with regard to misappropriation of funds. In the fact-situation, the only charge that can be brought home to him at the most is his administrative failure and it is in this backdrop that we are inclined to take a view that the punishment of dismissal awarded to him errs on the side of severity.

12. Thus in the above conspectus we are of the view that the punishment awarded to the petitioner that too in the teeth of exoneration of Sep/AA T.D.Pillai errs on the side of severity and is held to be disproportionate to the misconduct. The punishment awarded to the Petitioner shocks the conscience of the Tribunal and calls for a lenient view.

13. As a result of foregoing discussion, T.A deserves to be allowed in part and it is partly allowed. The impugned orders dated 20.08.2000 and 13.11.2001 are set aside to the extent that the order of punishment of dismissal from service shall stand altered to order of discharge but it would be without any benefit of back-wages. However, the petitioner, treating him to be discharged from service, shall be entitled to all consequential benefits flowing from his discharge which may be available to him in accordance with Rules. The order shall be complied with within a period not exceeding four months.

14. There shall be no order as to costs.

(Air Marshal Anil Chopra)
Member (A)

(Justice D.P. Singh)
Member (J)

Date: December, ,2016

MH/-

