

**Court No.3****ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW****TRANSFERRED APPLICATION No 726 of 2010**Wednesday, this the 03<sup>rd</sup> day of February 2016**Hon'ble Mr. Justice D.P. Singh, Member (J)**  
**Hon'ble Air Marshal Anil Chopra, Member (A)**

Rudra Pal Singh (No 4544011Nk 1 Mahar Unit) Son of Sri Raghuraj Singh Resident of Gandhi Nagar Post Sesamau Tehsil and District Kanpur Nagar

1/1. Smt Vidya Singh aged about 54 years w/o Late Rudra Pal Singh @ Chhote Lal Singh (since deceased).

1/2 Subhash Singh aged about 34 years S/o Late Rudra Pal Singh @ Chhote Lal Singh (since deceased).

1/3 Ajeet Singh aged about 32 years, S/o Late Rudra Pal Singh @ Chhote Lal Singh (since deceased).

1/4 Pramod Singh aged about 31 years S/o Late Rudra Pal Singh @ Chhote Lal Singh (since deceased).

1/5 Pradeep Singh aged about 29 years, S/o Late Rudra Pal Singh @ Chhote Lal Singh (since deceased).

All residents of H. No. 184/2, Hanumant Vihar, Navbasta, Kanpur Nagar.

...Petitioners

Ld. Counsel for the: **Shri R.K.S. Chauhan**  
Advocate **Advocate**

Versus

1. The Union of India through Secretary, Ministry of Defence, New Delhi.

2. Chief of Army Staff, Army Headquarter, New Delhi.

.....Respondents

Ld. Counsel for the : **Shri Rajesh Kumar Singh. Chauhan**  
Respondents **Central Govt Counsel assisted by**  
**Lt Col Subodh Verma, OIC Legal**  
**Cell**

**ORDER (ORAL)**

1. We have heard Ld. Counsels for the parties and perused the record.
2. The original petitioner Rudra Pal Singh being aggrieved with the impugned order of discharge from service on account of pendency of criminal cases had preferred writ petition No. 42725 of 2005 which has been transferred to this Tribunal in pursuance of section 34 of Armed Forces Tribunal Act, 2007 and re-numbered as T.A. No. 726 of 2010.
3. The short question involved in the present petition is that the petitioner was discharged from the army Service while working on the post of Lance Naik under the provisions of Army Act Section 20(3) read with Army Rule 13 (3) (iv) on account of involvement in a criminal case under section 307 IPC., which was sanctioned by the competent authority A copy of the impugned order is filed as per annexure CA-5 to the counter affidavit. From the record placed before the Tribunal, order of discharge dated 23.01.1989 is reproduced as under:-

**“SANCTION OF COMPETENT AUTHORITY FOR  
CARRYING OUT LOCAL DISCHARGE”**

*Under the provisions of Para 423 of Regs for the Army 1962 and Army Act Sect 20 (3) and Army Rule 13 (3) iii (v), I hereby sanction the discharge of No 4544011N L/Nk (TS) Rudra Pal Singh of 9 MAHAR who is involved in a murder case and his services are no longer required.*

Station : Field (c/o 99 APO)

Dated : 23 Jan 89

sd/- x x x x x x x x x  
(CS Dhillon)  
Brig Cdr 81 Mtn Bde”

4. Being aggrieved with the impugned order of discharge the petitioner preferred a statutory complaint which was decided by order of Feb 2005. A perusal of the impugned order as well as the appellate order shows that the applicant was discharged in pursuance to provisions contained in Rule 13 (3) iii (v) of Army Rules 1954 on account of pendency of criminal case (supra). The order shows that the applicant was acquitted by an order dated 21.05.1989. In consequence thereto he has been discharged from army service.

5. Submission of Ld. Counsel for the petitioner is that the applicant had served the army during pendency of the criminal case for 13 years, six months and 08 days and was acquitted by the High Court i.e. after conviction and pendency of appeal; in the High Court. It has been submitted by Ld. Counsel for the petitioner that so far as criminal case in which the petitioner was involved under Section 307 IPC. is concerned, the petitioner has been acquitted by the High Court by order dated 14.05.1992 in Criminal Appeal No. 1247 of 1983. Certified copy of the order of acquittal has been produced before the Tribunal by Ld. Counsel for the petitioner, which is taken on record. A perusal of the order shows that the appeal was allowed and the conviction and sentence of the petitioner was set aside and he has been relieved of all the charges levelled against him.

6. Ld. Counsel for the respondents invited attention to another aspect of the matter that the petitioner was involved in another case in District Jaunpur under Section 396 IPC. Though said offence is not mentioned as a ground for dismissal from service, but we have taken note of it. In response, argument advanced by Ld. Counsel for the petitioner is that the petitioner has been acquitted in said criminal case by Sessions Judge, Jaunpur. Thus, it is evident that the petitioner has been acquitted of the charges levelled against him in criminal cases (supra). Acquittal of the petitioner seems to be honourable discharge. Accordingly, conviction and sentence of the petitioner becomes non-est in the eyes of law for all times to come.

7. Ld. Counsel for the petitioner vehemently argued and submitted that the petitioner is entitled for restoration in service since the grounds on which he was discharged no more exist and the impugned order of discharge merely on the ground of pendency of criminal cases is liable to be set aside.

8. In the case of ***Union of India & ors vs. Harjeet Singh Sandhu*** reported in (2001) 5 SCC 593, their Lordships of the Hon'ble Supreme Court had considered this aspect of the matter and held as under :-

*“26. .... The pronouncement of judicial verdict would thereafter exclude any independent disciplinary action being taken against the delinquent officer on the*

*same facts which constituted the misconduct amount to an offence for which he was charged before the criminal court. In the vent of his being convicted, if some further disciplinary action is still proposed to be taken, then it is the conduct of the officer leading to his conviction (as found by the criminal court) which is capable of being taken into consideration by the Central Government or the Chief of the Army Staff under sub-rules (3), (4) and (5) of Rule 14 for the purpose of such action. The facts forming the conduct of the officer leading to his conviction shall alone form the basis of the formation of opinion as to whether his further retention in service is undesirable whereupon he may be dismissed, removed or compulsorily retired from the service in the manner prescribed by the said sub-rules. ...”*

9. In view of the above, since discharge of the petitioner from Army was on account of pendency of criminal appeal, which no more exists, the order of discharge loses its sanctity and the petitioner seems to be entitled for restoration in service with all consequential benefits.

10. Attention has been invited to another decision of the Hon'ble Supreme Court in the case of ***Divisional Controller, Karnataka State Road Transport Corporation vs.M.G. Vittal Rao***, reported in (2012) 1 SCC 442, wherein in paras 21, 22, 23 and 24 their Lordships have held as under:-

*“21. A similar view has been reiterated by this Court in Supdt. of Post Officers v. A. Gopalan, Kendriya Vidyalaya Sangathan v. T. Srinivas, Krishnakali Tea Estate V. Akhil Bharatiya Chah Mazdoor Sangh, Commr. Of Police v. Narender Singh, South Bengal State Transport Corpn, V. Sapan Kumar Mitra and Punjab Water Supply Sewerage Board v. Ram Sajivan.*

*22. In the Union of India V. Naman Singh Shekhawat this Court held that departmental proceeding can be initiated after acquittal by the criminal court. However, the departmental proceeding should be initiated provided the department intended to adduce any evidence which could prove the charges against the delinquent officer. Therefore, initiation of proceeding should be bona fide and must be reasonable and fair.*

*23. In Pandiyan Roadways Corpn. Ltd. V. N Balakrishnan, this Court reconsidered the issue taking into account all earlier judgments and observed as under (SCC pp. 766-67, paras 21-22).*

*“21. There are evidently two lines of decisions of this Court operating in the field. One being the cases which would come within the purview of Capt. M. Paul Anthony v. Bharat Gold Mines Ltd and G.M. Tank v. State of Gujrat. However, the second line of decisions show that an honourable acquittal in the criminal case itself may not be held to be determinative in respect of order of punishment meted out to the delinquent officer, inter alia, when (i) the order of acquittal has not been passed on the same set of facts or same set of evidence; (ii) the effect of difference in the standard of proof in a criminal trial and disciplinary proceeding has not been considered (see Commr. Of Police v. Narender Singh) or; where the delinquent officer was charged with something more than the subject matter of the criminal case and/or*

covered by a decision of the civil court (see *G.M. Tank, Jasbir Singh v. Punjab & Sind Bank and Noida Entrepreneurs Assn. v. Noida*, SCC at P. 394, Para 16).

22. ....'41. We may not be understood to have laid down a law that in all such circumstances the decision of the civil court or the criminal court would be binding on the disciplinary authorities at this Court in a large number of decisions points out that the same would depend upon other factors as well. (See e.g. *Krishnakali Tea Estate and RBI v. S. Mani*) Each case is, therefore, required to be considered on its own facts.

24. Thus, there can be no doubt regarding the settled legal proposition that as the standard of proof in both the proceedings is quite different, and the termination is not based on mere conviction of an employee in a criminal case, the acquittal of the employee in a criminal case cannot be the basis of taking away the effect of departmental proceedings. Nor can such an action of the department be termed as double jeopardy. The judgment of this Court in *Capt. M. Paul Anthony* does not lay down the law of universal application. Facts, charges and nature of evidence, etc. involved in an individual case would determine as to whether decision of acquittal would have any bearing on the findings recorded in the domestic enquiry.”

A perusal of the above quoted paras of the decision in the case of ***Divisional Controller, Karnataka State Road Transport Corporation vs.M.G. Vittal Rao*** (supra) shows that that proceedings on the basis of conviction in criminal case(s) shall become non-est in the person concerned is acquitted of the charges. Thus, once the petitioner was acquitted of the

charges leveled against him by competent courts of law, he cannot be deprived from service benefits. Facts, charges and nature of evidence, etc. involved in an individual case would determine as to whether decision of acquittal would have any bearing on the findings recorded in the domestic enquiry. Acquittal in criminal case shall finalise career of person and departmental proceedings shall be of no use. In the case of ***K. Venkateshwarlu vs. State of Andhra Pradesh*** reported in (2012) SCC 73 the proposition of law laid down is that once a person is acquitted in a criminal case honourably, then departmental proceedings along with all charges shall stand vitiated.

11. In view of settled proposition of law, the impugned order of discharge solely on the basis of pendency of criminal cases loses its efficacy.

12. The T.A. is accordingly allowed and the impugned order of discharge dated 23.01.1989 is hereby quashed. However, keeping the factual matrix on record, we decline to grant back wages, but for the purpose of pensionary benefits, the entire period of service of the original petitioner Late Rudra Pal Singh of the rank he was holding at the time of discharge shall be counted. The petitioner's successors of Late Rudra Pal Singh shall be paid consequential benefits including pensionary benefits expeditiously, say, within four months from the date of production of a certified copy of this order. OIC Legal Cell shall



also communicate this order to the authority concerned forthwith.

No order as to cost.

**(Air Marshal Anil Chopra)**  
**Member (A)**

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

An oral prayer has been made by Ld. Counsel for the respondents for grant of leave to appeal. We are of the opinion that no question of public importance seems to be involved in the present case.

Accordingly, prayer for leave to appeal under Section 31 of the Armed Forces Tribunal Act, 2007 is rejected.

**(Air Marshal Anil Chopra)**  
**Member (A)**

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