

**Reserved****Court No.2****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 466 of 2020**Thursday, this the 16<sup>th</sup> day of February, 2023**“Hon’ble Mr Justice Ravindra Nath Kakkar, Member (J)”****“Hon’ble Maj Gen Sanjay Singh, Member (A)”**

Rishipal Singh (No. 15783153Y L/NK - Operator Radio), son of Jagdish Singh, resident of House No. 253 / 248, G-Block, Janakpuri, Mathura (Uttar Pradesh).

**..... Applicant**

Ld. Counsel for the Applicant : Shri Yashpal Singh, Advocate

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi.
2. Commander, 615 (Independent) Air Defence Brigade, PIN - 928615, C/o 56 APO.
3. Officer - in - Charge Army Air Defence Records, PIN - 908803, C/o 56 APO.
4. Commanding Officer, 47 Air Defence Regiment, PIN - 925747, C/o 56 APO

**.....Respondents**

Ld. Counsel for the Respondents. :Shri Yogesh Kesarwani,  
Central Government Counsel.

**ORDER**

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

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- (a) *Issue / pass an order setting aside the order dated 01.06.2018 passed by the Commander, 615 (Independent) Air Defence Brigade and Part - II Order dated 05.09.2018 issued in compliance thereof, dismissing the applicant from service with effect from 01.06.2018, after summoning the relevant original record.*
- (b) *Issue / pass an order directing the respondents to consider case of the applicant for reinstatement and continuity in service with all consequential service benefits including arrears of salary.*
- (c) *Issue / pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*
- (d) *Allowing this Application with cost.*

2. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Army on 26.07.2003. While in service he was married to Smt Kusum, daughter of Tehsildar Singh on 05.05.2005. Smt Kusum committed suicide on 06.07.2005. A case was registered against the applicant in the Court of Additional

Sessions Judge, Court No 2, Hathras and applicant was convicted and sentenced with seven years of rigorous imprisonment. The applicant filed an appeal in Hon'ble High Court Allahabad against the conviction and he was released on bail. Being convicted in a Criminal Case applicant was dismissed from service by the respondents as per policy. The applicant sent representation for setting aside punishment of dismissal and to reinstate him in service but his representation was rejected. Being aggrieved, applicant has filed instant Original Application to reinstate him in service and grant him service pension.

3. Learned counsel for the applicant submitted that the applicant was enrolled in the Army on 26.07.2003. He was married to Smt Kusum as per Hindu rites, ritual and customs. He was granted 62 days Annual Leave from 25.04.2005 to 25.06.2005. Smt Kusum committed suicide on 06.07.2005 in her Maika while applicant was on duty in his unit located in Madhopur (Punjab). A FIR was lodged under Sections 498/306 IPC and 3/4 Dowry Prohibition Act against the applicant and his other family members. Applicant was awarded 7 years rigorous imprisonment. Applicant preferred Criminal Appeal before Hon'ble High Court Allahabad. Hon'ble High Court pleased and granted bail to the applicant and applicant was released on bail on 01.09.2018. Hon'ble High Court vide order dated 08.03.2019 also stayed effect and operation of order dated 12.02.2018 passed by

Court of Additional Sessions Judge which is in effect till today. As per army policy, on award of punishment of imprisonment, applicant was dismissed from service. Applicant has been dismissed from service for the reason that he was convicted and sentenced in criminal case. That order of Trial Court is sub-judice before Hon'ble High Court, Allahabad and Hon'ble High Court has been pleased to grant bail to the applicant. After release on bail, applicant requested respondents to re-instate him in service but he was not allowed to join duty. Applicant has completed more than 14 years of service with exemplary character. The Hon'ble Supreme Court has held that if for any misconduct or action, a person has been punished, then he or she cannot be punished again for the same action by other authority whether it is civil or military as it will amount to double jeopardy, hit by Article 20 (2) of the Constitution of India.

4. Learned counsel for the applicant submitted that the applicant has challenged the dismissal order in the present Original Application on the ground that order of dismissal, being based on conviction only, is bad in law. In support of his contention he placed reliance on various judgements wherein it has been held that a Government servant cannot be dismissed from service merely on the reason that he has been convicted for an offence. Learned counsel for the applicant submitted that as per judgments, it is also held that while passing any order against a Government servant, based on

conviction, the conduct of the Government servant needs to be taken into consideration. Exemplary conduct of the applicant was not considered while dismissing him from service.

5. Regarding conviction and sentence of life imprisonment, learned counsel for the applicant has contended that applicant preferred a Criminal Appeal before Hon'ble High Court, Allahabad against the order of conviction and sentences and in the said appeal applicant has not only been enlarged on bail but sentences have also been stayed. Thus, he submitted that when in Criminal Appeal, applicant has been enlarged on bail and sentences have been stayed then applicant could not be dismissed from service.

6. Learned counsel for the applicant submitted that action of the respondents dismissing the applicant from service suffers from the vice of arbitrariness affecting the applicant's right under Articles 14 and 16 read with Article 21 of the Constitution of India. Learned counsel for the applicant pleaded that applicant may be treated as an ex-serviceman with pensionary benefits by treating him notionally in service till pensionable period and converting the punishment of dismissal in discharge.

7. On the other hand, learned counsel for the respondents submitted that punishment awarded to the applicant is legally and technically correct. On 06.07.2005, the applicant received intimation

through his father that his wife had committed suicide on 06.07.2005 while at her parents house. Subsequently, the mother of Smt Kusum (wife of the applicant) also committed suicide. A dowry case was registered against the applicant and his family in Session Court Hathras. Bail application of the applicant was rejected and applicant was remanded to Judicial Custody on 29.05.2006 while on part of Annual Leave. The applicant was released on bail on 06.08.2006. He reported to Station Headquarter Mathura on 07.08.2006 for attending Court hearings. The individual was sent on 07 days Part of Annual Leave wef 07.02.2018 to 13.02.2018. As per intimation received from Mr Mahipal, brother of the applicant, he last attended hearing of the case on 07.02.2018. The hearing adjourned to 09.02.2018 wherein the applicant was found guilty of charges and is presently in Aligarh Jail since 09.02.2018. As per judgment of Additional Session Judge, Court Number 2, Hathra, applicant has been sentenced imprisonment for two years and pay fine amounting to Rs. 5,000/- under Section 498-A of IPC. He has been awarded punishment of 7 years under Section 304-B of IPC, Imprisonment for 1 year under Section 3/4 of Anti Dowry Law and pay fine Rs. 2,000/- . It was also directed that *“all original punishments will run concurrently”*. As per Army Act Section 20, any army person sentenced to imprisonment shall be dismissed from service. Army Rule 17 states that when dismissal of a person is sought on grounds

of misconduct for which he has not been convicted by a criminal court or a court martial, the authority competent to order such dismissal should satisfy itself that trial by Court Martial of such person is inexpedient or impracticable for reasons other than probable failure to establish the charge and that further retention in serviced of the individual is undesirable. A statement of case was forwarded and dismissal of the applicant was approved. Part II Order for dismissal was published for dismissal of applicant. The dismissal of the applicant is in order as per AO 28/2001/DV which states that, *“The importance of duration of the term of imprisonment served lies in the fact that a man is liable to make undesirable contacts in jail. It will seldom be advisable to retain in the Army a man who has recently been in jail, or man who has at any time been in jail for more than six months”*. The individual was in jail from 09.02.2018 to 01.09.2018 (204 days) As per Section 20, applicant was liable to be dismissed from service. Applicant preferred appeal against the verdict of lower Court and he was released on bail on 01.09.2018. On 13.03.2019, Hon'ble High Court put stay on the punishment awarded by Sessions Court, Hathras. The case is presently pending before Hon'ble High Court, Allahabad. Learned counsel for the respondents submitted that due to following reasons, the O.A. lacks merit and is liable to be dismissed:-

(i) Wife of the applicant Smt Kusum and her mother committed suicide and case was registered against the applicant and his family. Applicant was sentenced with imprisonment and fine.

(ii) Death of wife of the applicant due to conduct of applicant in no way regarded good conduct more so when individual is an armed forces person.

(iii) In judgment rendered in Criminal Case in which applicant has been convicted and sentenced for imprisonment with fine, cannot be said that applicant has been dismissed from service based on conviction only and his conduct was not considered when he was dismissed.

(iv) As per rule position an armed forces person on being convicted for an offence may be dismissed from service. This being the rule position, order of dismissal from service passed against the applicant is not bad in law so that the same may be quashed.

(v) The ratio of law laid down in various judgments also supports the order of dismissal rather than allowing applicant to be in service.

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

9. For better understanding of the position, regulation 423 of Regulations for the Army is quoted below:

**“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.”*

10. A bare reading of the above observations would make it clear that the Regulations which provided for the grant of pension can also provide for taking it away on justifiable grounds.

11. In the instant case, applicant has shown a wrong conduct which cannot be expected from a disciplined soldier. We do not find any lacuna in the procedure adopted by the respondents to terminate the services of the applicant after his conviction in criminal case. The applicant is not entitled to the relief prayed in Original Application to quash his discharge order and to allow him to join duty. The case law referred by the applicant is based on different facts and is of no help to the applicant.

12. We, therefore do not find any merit in the application to interfere with the impugned discharge order passed by the respondent authority in terminating the services of the applicant. Consequently, the application being devoid of merit is liable to be **dismissed**. Resultantly, O.A. is **dismissed**.

13. No order as to costs.

14. Pending applications, if any, stand disposed off.

**(Maj Gen Sanjay Singh)**  
**Member (A)**

**(Justice Ravindra Nath Kakkar)**  
**Member (J)**

Dated : 16 February, 2023

UKt/-