

Reserved**Court No. 2****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 548 of 2021**Friday, this the 20th day of January, 2023**“Hon’ble Mr Justice Ravindra Nath Kakkar, Member (J)”****“Hon’ble Maj Gen Sanjay Singh, Member (A)”**

No. 15216540Y Ex Sepoy Suraj Kumar, Son of Rajendra Singh,
 Resident of Village: Mannulal Bhatadi, PO: Bheri Khrud, PS:
 Urwaganj, Tehsil: Gola, district: Gorakhpur

..... Applicant

Ld. Counsel for the : **Shri Rohit Kumar, Advocate.**
 Applicant

Versus

1. Union of India, Through its Secretary, Ministry of Defence,
South Block, New Delhi 110011.
2. The Chief of the Army Staff, DHQ PO, New Delhi - 110011.
3. Commandant cum Chief Records Officer, Artillery Centre and
Records, Nasik Road Camp, Maharashtra

.....Respondents

Ld. Counsel for the : **Ms. Appoli Srivastava,**
 Respondents. **Central Govt. 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) *To quash the rejection order of the Officiating Officer in Charge Records, Artillery Centre dated 11 Oct 2018 with all the consequential benefits to the applicant.*
- (b) *To summon and quash the dismissal order of the applicant 08 Mar 2017 (referred in paragraph 4 of the rejection order dated 11 Oct 2018 – copy not handed over to the applicant till date) with all the consequential benefits to the applicant.*
- (c) *To direct the respondents to allow the applicant rejoin duty and complete his terms of engagement or till the case of the applicant is decided in the Court of Law.*
- (d) *Any other relief (s) which this Hon’ble Tribunal may deem appropriate, just and proper in the interest of the justice and in the facts and circumstances of the case also be granted to the applicant.*
- (e) *Award cost.*

2. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Army on 05.01.2007. He was married to Smt Sunita Yadav on 13.01.2011. His relationship with his wife was not healthy. Wife of the applicant filed case against him under Section 125 of CrPC and Section 9 of Hindu Marriage Act. Applicant was

arrested by police for murder of his wife during casual leave. Applicant was released on bail granted by Hon'ble High Court Lucknow Bench. After release on bail, he joined duty at Artillery Camp and further posted to 108 Field Regt. A Court of Inquiry was held and applicant was found guilty by the Court. He was awarded punishment of life imprisonment and dismissal from service. The applicant sent representation for reinstatement in service but his representation was rejected. Being aggrieved, applicant has filed instant Original Application with the prayer to quash dismissal order and to reinstate him in service.

3. Learned counsel for the applicant submitted that the applicant was married to Smt Sunita Yadav on 13.01.2011. Relationship of the applicant with his wife was not healthy. Litigations were going on between both the parties. Divorce Petition was also filed by the applicant under Section 13 of the Hindu Marriage Act 1955 and claim for maintenance under Section 125 Criminal Procedure Code, 1973 was filed by the wife of the applicant and the same was being pursued by both of them separately. Applicant was informed by Commanding Officer, 108 Fd Regt that complaint has been received that he had remarried which the applicant denied. He was granted leave from 30.09.2013 to 05.10.2013 and reported for duty to 1 Arty Bde located at Ambala. On 24.10.2013 a police team reached 1 Arty Bde, Ambala

and has shown some document to authorities and army authorities handed over the applicant to them and the applicant was taken in custody to GRP Gonda and thereafter he was produced before Session Judge Gonda where from he was sent to jail. He filed appeal against the order of Additional Sessions Judge, Gonda before Hon'ble Allahabad High Court, Lucknow Bench and applicant was enlarged on bail vide order dated 24.01.2018. While allowing the bail application, Hon'ble High Court suspended the sentence awarded to him by Additional Session Judge Gonda. Applicant has no criminal history and he was never convicted in any other case except this one, wherein he has been falsely implicated due to a matrimonial dispute. If it is assumed that applicant who is a government employee has been convicted then also he ought not to be dismissed from service. Conviction alone is not enough to punish a government employee but it is also the conduct of the employee on the basis of which government employee can be punished. The applicant submitted representation for joining service which was illegally and arbitrarily rejected vide order dated 11.10.2018.

4. Learned counsel for the applicant further submitted that, applicant was dismissed from service on 08.03.2017 under Section 20 of the Army Act, 1950 read with Rule 17 of the Army Rules 1954 because he was punished by Additional Sessions Judge Gonda vide

judgment and order passed in Crime NO 313 of 2013 and Crime No 1 of 2014 dated 08.03.2017. The applicant was not provided copy of dismissal order. Applicant is not aware about his service status post his conviction as he was in jail. After grant of bail by Hon'ble Allahabad High Court, Lucknow Bench, the applicant's father made a representation dated 14.02.2018 with the respondents requesting that his son may be permitted to join the duties but no action was taken by the respondents. Applicant filed O.A. No 317 of 2018 before this Tribunal which was disposed of vide order dated 17.07.2018 with the direction to respondents to decide the representation of the applicant by a speaking and reasoned order. Representation of the applicant was rejected by Officiating Officer in Charge Records, Artillery Centre vide order dated 11.10.2018. Order dated 11.10.2018 is arbitrary, illegal unjust and capricious being ultra vires to the Constitution of India as well as Army Act 1950. The applicant was convicted by a competent court of law against which he preferred an appeal and applicant has been released on bail and the sentence has been suspended, therefore it is not legal to presume that the applicant is convicted during pendency of appeal. The applicant was convicted on 08.03.2017 and on the same day i.e. 08.03.2017, he was dismissed from service. It is clear violation of Rule 17 of Army Rules, 1954 which provides opportunity of hearing. While discharging the applicant, Principles of nature justice were not followed and mandate contained in

Rule 17 of the Army Rules 1954 was also not followed. In support of his contention he relied on judgments past by Hon'ble Apex Court, reported in AIR 2018 SC 2378 in ***Kanhaiya Kumar Vs Union of India and others*** in which Hon'ble Apex Court has held that the power of dismissal or removal could be exercised after the delinquent was informed of the particulars of the cause of action and allowed reasonable time to state in writing any reasons he may have to urge against his dismissal or removal from service.

5. 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, applicant has 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. Conduct of the applicant was not considered while dismissing applicant from service. Applicant was dismissed merely on reason of being convicted for an offence under Section 302 IPC.

6. Regarding conviction and sentence of life imprisonment, learned counsel for the applicant has contended that applicant preferred a Criminal Appeal against the order of conviction and sentences in the Hon'ble High Court, Lucknow Bench and in the said appeal applicant has not only been enlarged on bail but sentences have also been suspended. Thus, he submitted that when in Criminal Appeal, applicant has been enlarged on bail and sentences have been suspended then applicant could not be dismissed from service. Learned counsel for the applicant pleaded that rejection order of statutory complaint passed by Officer In Charge Records, Artillery Centre and dismissal order of the applicant be quashed and applicant be allowed to join duty and complete his terms of engagement or till the case of the applicant is decided by the Court of law.

7. On the other hand, learned counsel for the respondents submitted that applicant was married to Ms. Sunita Yadav on 13.01.2011. Relationship of the applicant with his wife was not good. Applicant with his wife was counselled in presence of their parents but no result could be achieved in settling the dispute in amicable manner. The applicant filed a case for divorce at Allahabad on 14.03.2012. In retaliation, his wife also filed three cases against the applicant at Faridkot under Section 12 of Domestic Violence Act and for maintenance allowance. He was granted casual leave from 01.10.2013

to 05.10.2013. After joining duty, on 21.10.2013 Sub Inspector Jai Prakash Pathak from U.P. Police reported at 1 Arty Bde Camp with arrest warrant of the applicant stating that applicant killed his wife during leave. Applicant was released on bail on 16.07.2015 by High Court, Lucknow Bench vide order dated 03.07.2015. After release on bail, the applicant physically reported to 1 Arty Bde Camp on 19.07.2015. Further the applicant was posted to 108 Fd Regt wef 11.01.2016 to attend court cases before Additional Sessions Judge, Gonda. On 08.03.2017 after final hearing, the applicant was awarded punishment of imprisonment for life and fine of Rs. 20,000/- under Section 302 of IPC, imprisonment for five years and fine of Rs. 10,000/- under Section 201 IPC & imprisonment for one year & fine upto Rs. 2,000/- under Section 4/25 of Arms Act.

8. As per provisions of Para 423 of Regulations for Army 1987, an individual who has been convicted by Court is required to be dismissed from service immediately after his conviction with prior approval of Brigade/Sub Area Commander. Accordingly, after obtaining requisite sanction of Commander, 24 Arty Bde, the applicant was dismissed from service wef 08.03.2017 under the provisions of Section 20 of Army Act read with Rule 17 and Para 423 of Regulations for the Army 1987. At the time of his dismissal from service, the applicant had rendered 06 years, 09 months and 17 days of qualifying service only

excluding 633 days of nonqualifying service. As per Army Order 28/201/DV, there is specific provision that a person who has been in jail for six months or more could not be retained in service. Applicant filed Criminal Appeal NO 504/2017 before Hon'ble High Court, Lucknow Bench. He was granted bail by the Hon'ble High Court, Lucknow Bench. He filed statutory complaint which was rejected by the respondents vide order dated 17.07.2018. Terminal benefits and AFPP Fund shall be paid to the applicant on receipt of certain documents from the applicant. 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. The ratio of law laid down in various judgments relied upon by the applicant also supports the order of dismissal rather than allowing applicant to be in service. Punishment of dismissal awarded to the applicant is legally and technically correct and instant Original Application deserves to be dismissed.

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

10. The question before us to decide is "whether an applicant who has been released on bail in appeal can be reinstated in service".

11. 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.”

12. The Hon'ble Apex Court in the case of Deputy Director of Collegiate Education (Administration), Madras Vs S Nagoor Meera, Civil Appeal No 2992 of 1995 (Arising out of SLP (C) No 684 of 1995, D/24.03.1995 report in AIR 1995 Supreme Court 1364 has held that under the provisions of Article 311 (2) of the Constitution, a Government servant can be dismissed from service on the ground of conduct which has led to his conviction on a criminal case. Para 9 and 10 of the said judgment reads as under:-

“9. The Tribunal seems to be of the opinion that until the appeal against the conviction is disposed of, action under clause (a) of the second proviso to Article 311 (2) is not permissible. We see no basis or justification for the said view. The more appropriate course in all such cases is to take action under clause (a) of the second proviso to Article 311(2) once a Government servant is convicted of a criminal charge and not to wait for the appeal or revision, as the case may be. If, however, the Government servant- accused

is acquitted on appeal or other proceedings, the order can always be revised and if the Government servant is reinstated, he will be entitled to all the benefits to which he would have been entitled to had he continued in service.

*In this case applicant has been punished by the court and dismissed from service for murder of his wife. Until the said conviction is set aside by the competent Court, it may not be advisable to retain such person in service. The other course suggested, viz, to wait till the appeal, revision and other remedies are over, would not be advisable since it would mean continuing in service a person who has been convicted of a serious offence by a criminal court. It should be remembered that the action under clause (a) of the second proviso to Article 311 (2) will be taken only where the conduct which has led to his conviction is such that it deserves any of the three major punishments mentioned in Article 311 (2). As held by this court in *Shankardass v. Union of India* (1985) 2 SCR 358.*

Clause (a) of the second proviso to Article 311 (2) of the Constitution confers on the Government the power to dismiss a person from service" on the ground of conduct which has led to his conviction a criminal charge". But that power like every other power has to be exercised fairly, justly and reasonably. Surely the Constitution does not contemplate that a Government servant who is convicted for parking his scooter in a no parking area should be dismissed from service. He may perhaps not be entitled to be heard on the question of penalty since clause (a) of the second proviso to Article 311 (2) makes the provisions of that article inapplicable when a penalty is to be imposed on a Government servant on the found of conduct which had led to his conviction on criminal charge. But the right to impose a penalty carries with it the duty to act justly.

10. *What is really relevant thus is the conduct of the Government servant which has led to his conviction on a criminal charge. Now, in this case, the respondent has been found guilty of corruption by a criminal court. Until the said conviction is set aside by the appellate or other higher court, it may not be advisable to retain such person in service. As stated above, if he succeeds in appeal or other proceedings, the matter can always be reviewed in such a manner that he suffers no prejudice".*

13. On perusal of above judgment, it is clear that a Government servant can be dismissed from service on the ground of conduct which has led to his conviction on a criminal case. 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 dismissal order and to allow him to join duty.

14. We, therefore do not find any merit in the application to interfere with the impugned dismissal 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**.

15. No order as to costs.

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

(Maj Gen Sanjay Singh)
Member (A)

Dated: 20 January, 2023
ukt/-

(Justice Ravindra Nath kakkar)
Member (J)