

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION (A) No. 347 of 2020**Friday, this the 03rd day of December, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Ex Gunner (GD) Lance Nayak (No. 152055961) Gaurav Kumar, son of Bansi Lal Singh, resident of Kumhar Mandi, Sahadatganj, House No-18/12, Cantt, Post Office-Cantt (Sadar), Police Station-Cantt (Sadar) and District-Faizabad (Uttar Pradesh)

..... Applicant

Ld. Counsel for the : **Shri DPS Chauhan**, Advocate.
Applicant

Versus

1. The Union of India through Secretary Ministry of Defence, Sough Block, New Delhi.
2. General Officer Commanding Counter Insurgency Force (Victor), C/o 56 APO.
3. Major General, General Officer Commanding.
4. Commanding Officer, 200 Field Regiment, C/o 56 APO.
5. Principal Controller Defence Account (PCDA) Draupadi Ghat, Ashok Marg, Prayagraj (Allahabad).

.....Respondents

Ld. Counsel for the
Respondents.

Dr. Gyan Singh, Advocate
Central Govt. Counsel

ORDER

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

(i) to quash the sentence dated 20.07.2018 and promulgated order dated 26.07.2018 award by the District Court Martial.

(ii) to reinstate the applicant in service with all consequential benefits and

(iii) to grant any relief which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

2. L/Nk Gaurav Kumar of Indian Army while posted with WARCEN Chandimandir was alleged to grab Mrs Veena Katoch W/o Col Ritesh Katoch, Commanding Officer, 44 Rashtriya Rifles on 31.07.2015 and subsequently on 03.08.2015 she noticed same person crossing nearby, noted his motorcycle number and reported to CMP Desk Room. A Court of Inquiry (C of I) to this effect was conducted vide order dated 10.11.2015 which directed disciplinary action against the said Army person. Applicant was tried by District Court Martial (DCM) under Section 69 of Army Act, 1950 with charge as "Committing a civil offence, that is to say, using criminal force to a woman with intent to outrage her modesty, contrary to Section 354 of

the Indian Penal Code". On 22 and 23.06.2018 applicant was tried by District Court Martial (DCM) awarded punishment (i) dismissal from service and (ii) to suffer rigorous imprisonment for one year. Applicant is stated to have preferred a petition dated 13.07.2018 which was rejected vide order dated 22.12.2018. He, after release from civil imprisonment on 11.04.2019, has filed this O.A. to quash Court Martial proceedings dated 20.07.2018 and its promulgation order dated 26.07.2018 with a prayer to reinstate him in service with consequential benefits.

3. Submission of learned counsel for the applicant is that the Court of Inquiry was held on 10.11.2015 and on subsequent days in which three witnesses were produced including the applicant but on which date the said Court of Inquiry concluded was not known to applicant. It is further submitted that since Mrs Veena Katoch could neither recognize applicant nor registration number of applicant's motor cycle, even then he was charged for the incident. It was further pleaded that independent witness No 3 i.e. Hav AK Biswas has not put any date and signature while giving his statement during the Court of Inquiry. His further submission is that applicant was punished prior to recording of any findings which is against rules on the subject. He pleaded that applicant is innocent and he had accepted the guilt under compulsion and coercion of

Army officers. His other submission is that since no one saw him that he had outraged the modesty of a woman, merely suspicion made by the lady cannot be a ground for his dismissal through DCM. It was also submitted that applicant was not permitted to cross examine the other witnesses during the course of Court Martial Proceedings. He pleaded to set aside DCM Proceedings and reinstate applicant into service with all consequential benefits.

4. Rebutting submissions made by applicant, learned counsel for the respondents submitted that Charge Sheet and Summary of Evidence both in Hindi and English were handed over to applicant on 23.06.2018 and receipt of the same was obtained (Annexure CA-1). His other submission is that the Court of Inquiry was convened by the order of Station Commander, Chandimandir on 10.11.2015 and it concluded on 04.02.2016, therefore, it is incorrect to say that date of conclusion of Court of Inquiry was not known to applicant. He submitted that further proceedings related to DCM were conducted on the basis of findings recorded during the course of Court of Inquiry. He pleaded that the Court Martial Proceedings were conducted as per rules on the subject and applicant took active part throughout the proceedings in which he declined to cross examine the witnesses who were part of the Court of Inquiry/DCM. He pleaded for dismissal of O.A.

5. Heard learned counsel for the parties and perused the material placed on record including original Court Martial Proceedings.

6. Applicant Lance Naik Gaurav Kumar was posted with WARCEN, Chandimandir. On 31.07.2015 while he was proceeding from Command Camp to WARCEN at Chandimandir, it was alleged that he grabbed Mrs Veena Katoch from behind when she was cycling and ran away from the sight. The lady lodged a written complaint with CMP Desk. On 03.08.2015 the lady identified his motor cycle and again lodged a written complaint. Thereafter, search was made by the CMP personnel on the basis of motor cycle registration number and after thorough search and with the help of RTO office it was established that the aforesaid motor cycle registration number belonged to applicant. Court of Inquiry was conducted on 10.11.2015 and concluded on 04.02.2016 and based on findings of Court of Inquiry, Summary of Evidence was recorded by Lt Col Punyashlok Brahma of 200 Fd Regt on 05.04.2018 and statement of all three witnesses including the accused were recorded. Summary of Evidence consisting of 14 pages concluded on 06.04.2018. Thereafter, applicant was charge sheeted on 11.06.2018. The applicant was tried by District Court Martial on 22.06.2018 and subsequent days for committing an offence under Section 354 of IPC. He voluntarily

pleaded guilty to the charge and the Court accordingly found him guilty to the charges and awarded punishment - dismissal from service and suffer one year rigorous imprisonment in civil prison. The order of sentence was promulgated on 26.07.2018.

7. We find that Mrs Veena Katoch had lodged an anonymous complaint on 31.07.2015 for the said incident. Later on the basis of motor cycle registration number it was found that applicant was the person who grabbed her. During the course of Court of Inquiry applicant pleaded guilty to the charges labelled against him. Submission of applicant that he was not provided with relevant papers connected with District Court Martial and related exhibits is not sustainable as respondents have placed Annexure CA-1 duly signed by applicant which specifies that a complete set of Court Martial Proceedings was received by him on 23.06.2018.

8. Against aforesaid punishment applicant on 13.07.2018 submitted a representation in terms of Section 179 of Army Act, 1950 which was rejected by General Officer Commanding, 9 Infantry Division vide order dated 29.12.2018 and a copy was forwarded to applicant on 14.01.2019 while he was lodged in civil jail. For convenience sake, the aforesaid order is reproduced as under:-

"1. I have examined the petition by No 15205596L Lance Naik (House Keeper) Gaurav Kumar under Army Act Section 179 vide his letter No

15205596L/CF/XX/A dt 13 Jul 2018 along with relevant records.

2. The petitioner was tried by District Court Martial on 22 June 2018 and subsequent days for committing an offence under Section 354 of Indian Penal Code. He voluntarily pleaded 'Guilty' to the charge. The court accordingly found him 'Guilty' and awarded him the following sentence:-

(a) Dismissal from service.

(b) One year rigorous imprisonment.

3. The sentence awarded to the petitioner is the legal minimum punishment prescribed for the offence for which he has been tried, as such it cannot be interfered with.

4. In view of the above, I reject the petition submitted by No 15205596L Lance Naik (House Keeper) Gaurav Kumar."

9. In view of the foregoing, we find that the charge under Section 354 of IPC stood proved against the applicant and, therefore, it cannot be said that the applicant deserves any sympathy once he pleaded guilty for the charges labelled against him. There is no substance in the grounds taken by the applicant.

10. After careful perusal of the allegations made in the petition and the proceedings of the District Court Martial, we are of the view that the appeal filed by the petitioner under Section 179 of the Army Act, 1950 was rightly dismissed by the competent authority after confirmation of the proceedings. The dismissal of the appeal cannot be said to be calling for any interference by this Tribunal.

