

**Court No.1**  
**Reserved Judgment**

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

**Transferred Application No. 16 of 2015**

Thursday this the 6<sup>th</sup> day of September, 2018

**Hon'ble Mr. Justice S.V.S. Rathore, Member (J)**  
**Hon'ble Air Marshal BBP Sinha, Member (A)**

Kamal Singh Bhadoria  
S/o Sri Dashrath Singh Bhadoria  
Havaldar/Clerk No. 6917189-A  
R/o Ram Nagar Nagar Fort  
Ram Nagar  
Varanashi – 231008 U.P.

..... Petitioner

By Legal Practitioner - Shri K.K. Singh Bisht, Advocate.

Versus

1. Union of India through Secretary,  
Ministry of Defence, New Delhi.
2. Chief of Army Staff,  
Army Head Quarter, New Delhi.
3. Commanding Officer,  
15 Infantry Division Ordinance Unit,  
C/o 56 APO

..... Respondents

By Legal Practitioner – Shri Bhanu Pratap Singh,  
Learned Counsel for Central Government

**ORDER**

**“Hon'ble Mr. Justice S.V.S. Rathore, Member (J)”**

1. Initially, the petitioner had filed Writ Petition No. 46592 of 1999 before the Hon'ble High Court of Judicature at Allahabad and

by the order of Hon'ble High Court dated 05.10.2015, said Writ Petition was transferred to this Tribunal under the provision of Section 34 of Armed Forces Tribunal Act, 2007 and registered as T.A. No. 16 of 2015.

2. By means of this T.A., the petitioner has made the following prayer :-

*“(a) Issue a writ, order or direction in the nature of Certiorari, quashing the impugned orders dated 13.08.1999 (Annexure-8 to this Petition) and the impugned order dated 9.7.1998 (Annexure-6 to this petition) and order dated 21.04.1998 (Annexure No.5).*

*(b) Issue a writ order or direction in the nature of Mandamus commanding the respondents to grant all pensionary benefits for the rank of Hawaldar (Clerk) for which the petitioner is entitled under law and is also in conformity with the order dated 30.12.1997.*

*(c) Issue any other suitable writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.*

*(d) To award the cost of the present writ petition in favour of the petitioner and against the respondents.”*

3. In brief, the facts of the case are that the petitioner was enrolled in the Army in February 1981. During his service period, he has served in different stations and in different capacities. His work and conduct was found to be fully satisfactory. He was promoted to the post of Havildar on 01.04.1988. After completion of 15 years of service, the post on which petitioner was working, there was an option under rules to seek retirement from service. Therefore, the applicant submitted an application to the competent



*in that he,*

*at 15 Inf DOU OR lines on 20 Oct 97 at 2020 hrs being a single person left the OR lines and went to family Qtr No-207 Gulat Road occupied by No 6926401N Nk Prem Singh, prohibited by unit Standing Order.*

*Place : Amritsar*

*(Jagdish Chand)*

*Dated : 16 Apr 98*

*Lt Col*

*Offg Commanding Officer  
15 Inf Div Ord Unit"*

4. In the Summary Court Martial, the petitioner was found to be guilty and he was discharged from service. By the SCM the petitioner was awarded punishment to be reduced to ranks and to be dismissed from service. Feeling aggrieved by the aforesaid order of SCM, the petitioner had filed the aforesaid Writ Petition.

5. During the arguments, learned counsel for the petitioner submitted that since the petitioner had pleaded guilty therefore in this T.A., he does not intend to challenge the findings of the SCM but he has restricted his prayer only on the point of disproportionate sentence.

6. It is submitted that the petitioner had served in Army for 17 years and 24 days. But, by the order of dismissal, he became disentitled for pension and his family members are suffering for want of financial assistance in the form of pension.

7. Learned counsel for the petitioner has fairly conceded that the discharge of the petitioner was sanctioned w.e.f. 15.03.1998. In view of the provisions of Section 123 of the Army Act, 1950, since the petitioner was to be tried by SCM, hence his discharge was

deferred in view of Section 123 of Army Act which reads as under:-

**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 person shall be tried for an offence, unless his trial commences<sup>1</sup> 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."*

8. In this case the petitioner has restricted his prayer only regarding the disproportionate sentence awarded to him. In support of his arguments, learned counsel for the petitioner has placed reliance on the pronouncement of the Hon'ble Apex Court in the case of **Ranjit Thakur vs Union of India & ors.** [1987 (4) SCC 611] and also on the pronouncement of Hon'ble Apex Court

in the case of **Central Industrial Security Force & ors vs. Abrar Ali** [AIR 2017 SC 200] and also on the pronouncement of the Hon'ble Apex Court in the case of **H.C.Sarin vs Union of India & ors.** [1976 (1) SCC 765].

9. On the point of adequate punishment, we would like to refer the pronouncement of Hon'ble Apex Court in the case of reported in AIR 1992 SC (417) **Ex Naik Sardar Singh vs. Union of India & Ors** their Lordship of the Supreme Court have held as under :-

*“This principle was followed in Ranjit Thakur v. Union of India, (1987) 4 SCC 611: (AIR 1987 SC 2386) where this court considered the question of doctrine of proportionality and it was observed thus (at p.2392 of AIR): “The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the conclusive province of the court-martial, if the decision of the count even as to sentence is outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review.*

*(Emphasis supplied)*

10. Keeping in view the aforesaid facts, we are of the view that petitioner has completed 17 years of service and thereafter he has been awarded the sentence of ‘to be reduced to Ranks and to be dismissed from service’. We are mindful of the fact that the offence proved against the applicant was of very serious nature in view of the strict discipline requirements of the Army. We are,

however, of the view that to meet the ends of justice, the dismissal of the petitioner from service should be converted into discharge from service while maintaining the punishment of 'to be reduced to ranks'. This reduction would still be an adequate and proportionate punishment keeping in view the alleged incident and role of the petitioner, as coming out from the Summary of Evidence. Reduction to ranks for a Havildar in Army with over 17 years of service is also a very serious punishment, which in our opinion would meet the ends of justice.

11. In view of the aforesaid, Transferred Application is liable to be partly allowed and is hereby **partly allowed**. Findings of SCM are hereby confirmed. The sentence of 'to be reduced to ranks' is hereby confirmed. However, the punishment of the dismissal from service dated 21.04.1998 passed by the SCM, is hereby modified into discharge from service. The petitioner shall be entitled for service pension of the rank to which he is reduced to. Accordingly, the respondents are directed to comply with the order within a period of four months from the date of receipt of a certified copy of this order and release the pension to the petitioner. In case the respondents fail to give effect to this order within the time stipulated above, the petitioner would start earning interest on the amount accrued @ 9% from due date till the date of actual payment.

Learned counsel for the respondents as well as the Registrar of this Tribunal are directed to communicate this order to the authorities concerned to ensure compliance of the order.

No order as to costs.

**(Air Marshal BBP Sinha)**

**Member (A)**

Dated : September, 2018

SB

**(Justice S.V.S. Rathore)**

**Member (J)**