

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION NO 202 of 2010

Tuesday, this the 23rd day of May 2017

Hon'ble Mr. Justice D.P. Singh, Member (J)
Hon'ble Air Marshal Anil Chopra, Member (A)

Mukesh Mishra, Lance Nayak No. 14433792P
Before Dismissal posted as Lance Nayak,
At 4th Artillery Brigade New Cantt., Allahabad
District Allahabad, S/o Late Kedar Nath Mishra
Permannt R/o Village Misawaliya, Post & Police
Station Sikandarapur, Ballia, District – Ballia. - Applicant

Ld. Counsel for the: **Shri P.N. Chaturvedi, Advocate**
Applicant

Verses

1. The Union of India, through the Secretary Ministry of Defence, Government of India, New Delhi.
2. The Chief of Army Staff, Army Headquarter, DHQ, Government of India, New Delhi.
3. The Director General Arty (10), General Staff Branch, Army Headquarters, DHQ, New Delhi.
4. The Major General/GOC, 4 Infantry Division Old Cantt, Allahabad.
5. The Commandant 4 Artillery Brigade, New Cantt, Allahabad, District-Allahabad.
6. The Commanding Officer (C.O.), 4 Artillery Brigade, New Cantt, Allahabad.
7. The Major, 4 Artillery Brigade, New Cantt, Allahabad, District-Allahabad.
8. The Lieutenant Colonel, Chief Record Officer, OIC Records, District-Allahabad.

...Respondents

Ld. Counsel for the :
Respondents.

Shri D.K. Pandey, Central
Govt Counsel, assisted by
Maj Soma John,
OIC Legal Cell

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ORDER (Oral)

1. Heard Shri P.N. Chaturvedi, Ld. Counsel for the applicant and Shri D.K. Pandey, Ld. Counsel for the respondent, assisted by Maj Soma John, OIC Legal Cell and perused the records.
2. This is an application under Section 14 of the Armed Forces Tribunal Act, 2007, preferred against impugned order of dismissal dated 26.11.2008, communicated vide order dated 21.10.2009, passed in pursuance to Rule 17 read with Rule 13 (3) (iii) (v) of the Army Rules, 1954 on account of conviction of applicant in a criminal case under Sections 147, 148, 149, 307 and 302 I.P.C. read with Sections 3/25/27 of the Arms Act in Sessions trial No 244 of 2006, passed vide judgment and order dated 03.10.2008 by which he was awarded punishment alongwith other accused for undergoing imprisonment for life and fine.
3. According to Ld. Counsel for the applicant, the applicant had joined the Indian Army on 01.02.1994. Thereafter while working on the post of L/Nk the applicant was tried by Additional Special Sessions Judge in Sessions Trial No. 244/2006 for offences under Sections 147, 148, 149, 307 and 302 IPC read with Section 3/25/27 of the Arms Act. The applicant was punished by an order dated 03.10.2008 by Sessions Judge and sentenced to serve life imprisonment with a fine of Rs 5,000/-.
4. Against the order of conviction against the applicant, an appeal was filed in the High Court of Judicature at Allahabad, bearing no.



7098 of 2008, in which the High Court had suspended the order of punishment and passed the following order on 23.10.2009:-

"On consideration of the facts and the ground on which the applicants have been enlarged on bail and keeping in mind the fact that the appellants were in service and appeal is to take long time in its disposal this court directs that sentence so awarded against the appellants Lal Mohan Mishra and Mukesh Mishra, shall remain suspended."

5. It appears that the respondents have exercised the power to dismiss the applicant in pursuance of provisions contained in Army Regulation 423 of 1987, which provides that in the event of conviction in a criminal case, the accused may be dismissed from service without waiting for the decision in the first court of appeal. For convenience sake, Army Regulation 423 (supra) is reproduced as under:-

"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."

6. In pursuance to above provision contained in Regulation 423 the respondents have exercised its power under Regulation 423 read

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with Section 20 of the Army Act, 1950 and dismissed the applicant by impugned order dated 26.11.2008. Feeling aggrieved with impugned order of dismissal dated 26.11.2008, passed in pursuance to Section 20 of the Army Act, 1950 read with Rule 13 (3) (iii) (v) in conjunction with Regulation 423 of Army Regulations, 1987, the applicant has preferred the present petition. While assailing the impugned order of dismissal it has been submitted by Ld. Counsel for the applicant that since the order of punishment has been suspended by the High Court, the applicant is entitled to be restored in service and impugned order of dismissal is liable to be set aside.

7. On the other hand Ld. Counsel for the respondents has submitted that unless and until the pending appeal is culminated in acquittal by the court concerned, in the present case the High Court of Judicature at Allahabad, the applicant shall not be entitled for restoration in service and order of dismissal shall remain in force, hence the order of dismissal has rightly been passed by the respondents.

8. We have considered the arguments advanced by Ld. Counsel for the parties at length. A plain reading of the order passed by the High Court, suspending the sentence shows that the High Court had temporarily suspended the sentence as an interim measure and not on merits or even without recording a finding on merits in the interim order. The High Court had proceeded to suspend the order till further order of the court keeping in view the fact that the appeal is to take long time in its disposal. Suspension of sentence without entering

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into the merits of the sentence awarded to the applicant, means Regulation 423 of Army Regulations still survives and restoration of the applicant in service, having dubious character may adversely affect the service of the Indian Army. Of course in case the High Court would have granted bail or suspended the sentence on merits, the applicant may have a case for interference with the decision taken against him for dismissal from service. Since in the present case the High Court has not entered into the merits of the case in case the order of dismissal passed by Army is set aside and the applicant is restored in service, the object of Regulation 423 shall be frustrated.

9. While parting with the case, we wish to add that the services rendered by a person in the Armed Forces are different from the services rendered by a person in civil area. In the Armed Forces hundred percent discipline is required to be followed by persons whosoever may be i.e. from soldier to general and a person whose mind set is of criminal record may abuse the Armed Forces and there is every likely hood of irreparable loss and injury to his service career in case he is permitted to remain in service by the criminal court. The purpose of Regulation 423 cannot be overlooked while dealing with the present controversy.

10. So far as the case of Lal Mohar Mishra (Lance Nayak) No 15119421Y is concerned, Original Application, bearing no. 201 of 2010 filed by him has been allowed after entertaining the same in pursuance to an interim order dated 23.10.2009 passed

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by the High Court, suspending the sentence during the pendency of Criminal Appeal No. 7098 of 2008 filed by him and his case stands at par with the present case.

11. We are of the view that no interference is called for with impugned order of dismissal from service dated 26.11.2008, communicated vide order dated 21.10.2009, unless and until the applicant is exonerated or acquitted in the pending criminal appeal filed by him by the High Court of Judicature at Allahabad.

12. The application lacks merit and is accordingly **rejected**.

No order as to costs.

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(Air Marshal Anil Chopra)
Member (A)

Dr. D.P.

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

Dated: 23.05.2017

Jpt