

Court No 1
RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

TRANSFERRED APPLICATION NO 572 of 2010

Thursday, this the 11th day of January, 2018

“Hon’ble Mr. Justice D.P. Singh, Member (J)
Hon’ble Air Marshal BBP Sinha, Member (A)”

T A NO 572 of 2010

No-15365548-K Ex Naik H.C.S. Rautela S/O Late N.S. Rautela, Vill-BatgalRautela, PO-Sitlakhet, Distt-Almora (UP).

....Petitioner

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

Verses

1. Chief of the Army Staff, New Delhi-110011.
2. GOC, Uttar Bharat Area, Bareilly.
3. Commandant-cum-CRO, Signals Records, Post Bag No. 5.
4. Commandant-cum-CRO SIKH LIRC Fatehgarh, Farrukhabad.
5. Union of India Through Secretary, Ministry of Defence, New Delhi-110011.

.....Respondents

Ld. Counsel for the : **Shri Sushil Kumar Singh**, Central
Respondents. Govt Counsel assisted by **Maj**
SalenXaxa, OIC Legal Cell.

ORDER

“Per Hon’ble Mr. Justice Devi Prasad Singh, Member(J)”

1. Being aggrieved with the impugned order of punishment dated 10.10.2005, whereby petitioner has been dismissed from service in pursuance of Army Rule 13(3), Item No.III (v) of Army Rules, 1954, he

preferred a writ petition, bearing No. 7054 of 2006 in the Hon'ble High Court of Judicature at Allahabad, which has been transferred to the present Tribunal in pursuance of Section 34 of the Armed Forces Tribunal Act, 2007 and registered as T.A. No. 572 of 2010.

2. The undisputed facts born out from records are that the petitioner was enrolled in the Corps of Signals on 28.06.1988. While serving with 108 MtnBde Sig Coy, he was charge sheeted for an act prejudicial to good order and military service under Section 63 of the Army Act as certain information had come out that he had some acts in contravention of paragraph no. 337 of the Regulations for the Army, 1987. Petitioner was levelled with four charges, which he pleaded not guilty during Summary Court Martial proceeding held on 08.06.2002. The Summary Court Martial proceedings was adjourned sine die to procure the attendance of essential witnesses after petitioner pleaded not guilty.

3. When the Court Martial proceeding again assembled petitioner withdrew his earlier plea of 'Not Guilty' in respect of all the four charges. However, he was found guilty of all the four charges. Since the petitioner had admitted his guilt, he was awarded following punishments:-

- (a) Reduction of rank.
- (b) Dismissed from service.
- (c) To suffer six months rigorous imprisonment and with directions that the sentence of rigorous imprisonment shall be carried out by confinement in Civil Prison.

4. Thereafter the petitioner filed a writ petition, bearing No. W.P. 54436 of 2005 before Allahabad High Court, which was disposed of finally with a direction to respondent no.1 i.e. Chief of the Army Staff to consider and decide the statutory petition to be preferred by the petitioner by a speaking and reasoned order within a period of four months. The

statutory petition preferred by the petitioner under Section 164(2) of the Army Act on 17.01.2005 has been finally rejected by the Chief of Army Staff on 10.10.2005, against which petitioner preferred writ petition, bearing W.P. No. 7054 of 2006 in Allahabad High Court, Lucknow Bench, Lucknow, which has been transferred to the present Tribunal in pursuance of Section 34 of the Armed Forces Tribunal Act, 2007 and registered as T.A. No. 572 of 2010.

5. We have heard learned counsel for the petitioner Shri Rohit Kumar as well as learned counsel for the respondents Shri Sushil Kumar Singh, assisted by Maj SalenXaxa, OIC Legal Cell and perused the record.

6. We have allowed T.A. No. 635 of 2010 while dealing the case of Nk Anil Joshi, petitioner of that case. It has not been disputed that in pursuance to same Court of Inquiry action was taken against Nk Anil Joshi (supra) and two other accused persons, namely, Upendra Singh Chauhan and H.C.S. Rautela (present petitioner). In Nk Anil Joshi's case we have held that the Court of Inquiry was not done in accordance with the Army Rule 180. Broadly the controversy in question is covered by the finding recorded in the case of Nk Anil Joshi (supra) in T.A. No. 635 of 2010, vide our judgment and order dated 08.01.2018. Hence on the same ground the present petition deserves to be allowed. In Nk Anil Joshi vs. Chief of the army Staff, New Delhi & others we have passed the following order:-

“ORDER

O.A. is allowed. The impugned Summary Court Martial proceedings commenced on 17.06.2002 and thereafter from time to time, show cause notice dated 06.01.2004 and order dated 14.05.2004 passed by the Chief of Army Staff rejecting the statutory petition of the petitioner are set aside with all consequential benefits. Petitioner shall be deemed notionally in

service on the rank which he was holding at the time of dismissal and shall be entitled for continuity of service of the rank which he was holding with all consequential benefits, including pension, arrears of salary and wages.

However, keeping in view the facts and circumstances of the present case, we confine arrears of salary to 50% but he shall be entitled to full pension in accordance with the rules immediately from the date of notional retirement of service of the rank which he was holding.

Let the order be complied with and all consequential benefits be paid to the petitioner within six months from today, failing which petitioner shall be entitled for interest @ 10% per annum.

No order as to costs. ”

7. The present petition is also allowed and decided finally with the same terms and directions as of T.A. No. 635 of 2010, Nk Anil Joshi vs. Chief of the Army Staff, New Delhi & others (supra), vide our judgment and order of date i.e. 08.01.2018.

No order as to costs.

(Air Marshal B.B.P. Sinha)
Member (A) Member (J)
Dated 11th January, 2018

(Justice Devi Prasad Singh)

JPT

