

**Court No 1**  
**RESERVED**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**TRANSFERRED APPLICATION NO 633 of 2010**

Thursday, this the 11<sup>th</sup> day of January, 2018

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

No. 14255557-M Ex Hav Upendra Singh Chauhan, S/O R.P. Chauhan,  
Vill-SonaKabas, PO-SonaKabas, Tehsil-Itnadpur, Distt-Agra.

....Petitioner

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

Verses

1. Chief of the Army Staff, New Delhi.
2. G.O.C., U.P. Area, Bareilly.
3. Commandant-cum-CRO, Sig Records Depot Regmt, Post Bag No. 5, Jabalpur.
4. Col R.K. Sharma, Commandant, Sikh Light Inf Regimental Centre, Fatehgarh.
5. Union of India, Through, Secretary, Ministry of Defence, New Delhi.

.....Respondents

Ld. Counsel for the : **ShriMdZafar Khan**, Central  
Respondents. Govt Counsel assisted by  
**MajSalenXaxa**, OIC Legal Cell.

**ORDER**

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

1. Being aggrieved with the impugned order of punishment dated 10.05.2004, contained in Annexures No. 7 to the petition, whereby petitioner

has been discharged from service in pursuance of Army Rule 13(3), Item No.III (v) of Army Rules, 1954 and also against letter dated 22.06.2004, contained in Annexure No.9 to the petition, by which his petition was returned as he had already exhausted his legal right, he preferred writ petition, bearing No. 34508 of 2004 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 now registered as T.A. No. 633 of 2010.

2. The brief facts of the case are that while the petitioner was serving with 11 Corps Engineering Signal Regiment between 01.11.1994 to 30.11.1995. He being aware of the visit of Signalmn Mohd Zafar of the same Unit to Nepal, without obtaining prior sanction of competent authority, failed to bring it to the notice of immediate superior officer. Competent authority initiated action on 01.03.2000 for the same. During the year 1995, petitioner improperly borrowed Rs.5,000/- from aforesaid Signalmn Mohd Zafar. It also came to the knowledge of the authority that during December 1996- January 1997 petitioner hosted a liquor party in his living room, hence charge sheeted on the aforesaid counts. Since petitioner denied the charges levelled against him as such Summary Court Martial was held on 08.06.2002. After recording the evidence the proceedings were adjourned sine die to procure the attendance of essential witnesses in his defence. On re-assembling of Court Martial proceedings, petitioner withdrew his plea of 'Not guilty' to all the three charges levelled against him. Since the petitioner had admitted his guilt, he was awarded following punishments:-

- (a) Reduced to 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.

3. Thereafter the petitioner filed a writ petition, bearing No. W.P. 34508 of 2004 in the Allahabad High Court, 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. 633 of 2010.

4. We have heard learned counsel for the petitioner Shri Rohit Kumar as well as learned counsel for the respondents Shri Md Zafar Khan, assisted by Maj Salen Xaxa, OIC Legal Cell and perused the record.

5. 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, H.C.S. Rautela and Upendra Singh Chauhan (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.”

6. 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 11<sup>th</sup> January, 2018

**(Justice Devi Prasad Singh)**

JPT

