

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

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

**Transferred Application No. 970 of 2010**

**Wednesday this 11<sup>th</sup> day of April, 2018**

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

Rajput Chandrapal Singh,  
Son of Shri Fateh Singh,  
Resident of Village Nagala Dani,  
Post Office Rochan Manikpur,  
District Firozabad.

..... **Petitioner**

By Legal Practitioner: Col (Retd) Rakesh Johri, Advocate  
Learned Counsel for the Petitioner.

Versus

1. Chief of Army Staff,  
Army Headquarters, New Delhi.
2. Brigadier Commander,  
Headquarters Jalandhar Sub Area,  
Jalandhar Cantt, Punjab.
3. Union of India through Secretary,  
Ministry of Defence,  
South Block,  
New Delhi – 110011.

..... **Respondents**

By Legal Practitioner: Shri D.K Pandey,  
Learned Standing Counsel for the Central  
Government.

**ORDER**

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

1. Initially the petitioner filed Civil Misc. Writ Petition No.11403 of 1995 before the Hon'ble High Court of Judicature at Allahabad and under the order dated 11<sup>th</sup> March 2010 of the Hon'ble High Court of Judicature at Allahabad, it was transferred to this Tribunal and registered as T.A.No. 970 of 2010 in pursuance of the provisions contained in Section 34 of the Armed Forces Tribunal Act, 2007.

2. By means of the instant T.A., the petitioner has made the following prayers:-

*“(i) to issue a writ, order or direction in the nature of certiorari quashing the order dated 21<sup>st</sup> October, 1994 (Annexure-7 of the writ petition) passed by the respondent no. 2.*

*(ii) to issue a writ, order or direction in the nature of mandamus commanding the respondents to take back the petitioner in service and to pay him salary and wages to which he is entitled.*

*(iii) to pass a suitable writ, order or direction as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.*

*(iv) to award the costs of the petition in favour of the petitioner.”*

3. In brief the facts necessary for the purpose of the instant T.A. may be summed up as under :

The petitioner was enrolled in Army Service Corps on 21<sup>st</sup> March 1989 as a Store Hand General Duty. He did his tenure in Siachen Glacier and thereafter he was posted to 277 PCU at Jalandhar Cantt. The petitioner was married and he had a good married life. In the year 1992, while the petitioner was posted in 277 PCU at Jalandhar Cantt, one Havildar/Clerk (Stores) Ram Roop Singh of the same unit, who was an immediate superior officer of the petitioner, used to misuse his position as a senior and he used to forcibly stimulate private parts of the petitioner and used to cause ejaculation. He tried to indulge in sodomy but due to resistance offered by the petitioner, he could not succeed in his evil designs. He also used to threaten the petitioner with dire consequences and also used to beat him to ensure that he continues to surrender to his such immoral lust. In such circumstances, the petitioner was extremely scared to report the matter to any one. The entire activities of Ram Roop Singh was one sided. The petitioner had only surrendered to the exploitation by his

superior. Such unnatural activities of Ram Roop Singh increased day by day and the petitioner felt scared to report, being ashamed, he could not report the matter to the higher authorities. On 15.10.1993 the petitioner, because of such harassment and due to such disgraceful circumstances, made an attempt to commit suicide by consuming "Beygon" insecticide. He wrote a letter to his Commanding Officer giving a detailed account of his agony. This letter was recovered from the petitioner when he was in Military Hospital in Jalandhar Cantt. It is pertinent to mention that this suicide note has not been brought on record by the respondents. However, by treatment, the petitioner survived. A court of inquiry was conducted. The case of the petitioner is that he was not given due opportunity to put his version. After the court of inquiry, a disciplinary action was recommended against Ram Roop Singh and also against the petitioner. Havildar Ram Roop Singh was charged under Section 46(a) of the Army Act for disgraceful conduct of an indecent kind. Summary and additional summary of evidence was recorded and pre trial documents were submitted to JAG Branch. However, JAG Branch did not advise trial by Court Martial in respect of Hav Ram Roop Singh in view of case of **P. Rathinam : Nagbhushan Patnaik vs. Union of India** (1994 AIR SC 1844). On 27<sup>th</sup> November 1994, a show cause notice was given to the petitioner by the Commanding Officer, Jalandhar Sub Area. The submission of the learned counsel for the petitioner is that this show cause notice is in violation of settled preposition of law and the material on which the decision was taken to discharge the petitioner from service was not provided to him and, therefore, his discharge was not in accordance with law

4. After arguing at some length, learned counsel for the petitioner has submitted that he does not intend to make his submission on merits as the case has been pending for more than 20 years. He has restricted his arguments only on the point of punishment awarded.

5. It is submitted by the learned counsel for the petitioner that the circumstances clearly indicate that the petitioner was the victim of the immoral behaviour of his superior officer Hav Ram Roop Singh, who has been punished with dismissal from service by the respondents. The punishment of the applicant i.e. discharge from service is too harsh, as the

petitioner not only lost his job, but because of such loss of job, he could not complete his pensionable service. He had no means to maintain his family. It is submitted that keeping in view the circumstances, the punishment of discharge from service was too harsh and shocks the conscience of the Court/Tribunal.

6. On the contrary, learned counsel for the respondents has argued that the petitioner, who was a Member of the disciplined Force could not show any courage to report such incident to any of his superior officers and such a behaviour was not expected from an Army Jawan, who is supposed to show courage. On the contrary, the petitioner behaved like a coward who succumbed to the evil design of Hav Ram Roop Singh and therefore, the sentence awarded to the petitioner, cannot be said to be excessive or disproportionate.

7. Before proceeding further in the matter, we would like to quote the show cause notice given to the petitioner, which reads as under :

“CONFIDENTIAL

*Headquarters  
Jalandhar Sub Area  
Jalandhar Cantt*

*3021/1817/A3  
No. 6387475F Sep/SHGD /RC Pal Singh*

SHOW CAUSE NOTICE

1. *I have observed the following lapses on your part on perusal of proceedings of the court of inquiry/S of E's and other docus :-*

*(a) You were having an unnatural and abnormal sexual relationship with Sep/Clk(S) (then Hav) Ram Roop Singh of your unit.*

*(b) You have attempted to commit suicide by drinking 'Baygon Liquid' on 15 Oct 93.*

2. *It appears to me from the available evidence that you have lapsed on the above counts. I offered you an opportunity to explain your conduct on the above counts and show cause as to why you should not be discharged from service under the provisions of AR 13, for the lapses on your part.*

3. *You should submit your reply to this show cause notice within ten days of its receipt, failing which it shall be assumed that you have no grounds to urge against the proposed action and the said action shall be proceeded with.*

4. *Copies of C of I, S of E and addl S of E's (I, II & III) are enclosed for your perusal.*

*(GS Sabdhu)  
Brig  
Cdr”*

Thus, it is clear that in the show cause notice explanation was called for attempting to commit suicide and also for abnormal sexual relationship.

Vide order dated 21<sup>st</sup> August 1994, the petitioner was discharged from service. The order of discharge reads as under :

“CONFIDENTIAL

Headquarters  
Jalandhar Sub Area  
Jalandhar Cantt  
21 Oct 94

3021/1817/A3(i)  
No 6387475F Sep/SHGD  
RC Pal Singh  
277 PCU  
Jalandhar Cantt

ORDERS OF COMMANDER JHALANDHAR SUB  
AREA OF REPLY TO SHOW CAUSE NOTICE  
NO 6387475F SEP/SHGD RC PAL OF 277 PET CONT UNIT

1. Ref show cause notice bearing No 3021/1817/A3 dated 28 Sep 94 issued to you, and your reply vide your letter No NIL dated 10 Oct 94.
2. I have examined in detail your case as also your reply to the show cause notice placed before me. Your abnormal and unnatural sexual relationship with Sep RR Singh, could not have been possible without your tacit approval to this perverted game.
3. I, therefore reject your reply as it lacks substance.
4. Further, I am of the opinion that your further retention in service will not be in the interest of discipline in the Army. I therefore, by virtue of powers vested in me vide Army Rule 13, direct that you be discharged from service with immediate effect.

Sd/-x-x-x-x-x-x  
(GS Sandhu)  
Brig  
Cdr

CONFIDENTIAL”

8. A perusal of the order of discharge shows that the Commanding Officer was of the view that the petitioner was also tacitly involved in such activities and, therefore, he has punished him. There is no whisper in the order of discharge that the petitioner was punished for attempting to commit suicide. That was not considered as a ground for discharge. At this stage, we would like to reproduce Paragraph 4 of the counter affidavit filed on behalf of the respondents, which reads as under :

*“4. That No. 6387475-F Sep/SHGD R.C. Pal Singh of 277 Petroleum Contract Unit Type ‘C’ attempted to commit suicide on 15<sup>th</sup> October 1993 in the Unit lines by consuming baygon liquid. As per his suicide note, which was recovered from him in Military Hospital Jalandhar*

*Cantt on 16<sup>th</sup> October, 1993 he has alleged that he was compelled to commit suicide due to mental physical and sexual harassment caused by No. 6377424-A Sep Clk(s) (then Hav/Clk(s) Ram Roop Singh of same unit. A Staff Court of Inquiry was convened by the Station Headquarters Jalandhar Cantt. Vide their convening order No. 313/256/A dated 22 Oct 93. The Staff Court of Inquiry has partially blamed No. 5377424-A Sep/Clk(s) (then Hav/Clk(s) Ram Roop Singh for causing mental, Physical and sexual harassment and thereby provoking No. 6387475-F Sep/SHGD R.C. Pal Singh to commit suicide.”*

This averment in the counter affidavit shows that the petitioner was compelled due to such circumstances created by Ram Roop Singh to commit suicide. There is no whisper in the counter affidavit that the petitioner was also a consenting party to such activities.

9. Since the arguments have been restricted only on the point of sentence, therefore, we are not entering into the procedural infirmities, if any, in this case. But from perusal of the order of discharge, it is clear that he was punished on the ground that the petitioner was also involved because in the opinion of the Commanding Officer, such activities would not have been possible without the tacit consent of the petitioner himself. But Paragraph 4 of the counter affidavit does not say so. The conclusion of the Commanding Officer appears to be wrong, because if any such act would have been done with the consent of the petitioner himself, then there would not have been any occasion for the petitioner to make an attempt to commit suicide and to end his life. No order of punishment has been passed for attempting to commit suicide. Apart from it, the order of discharge, which was passed under Army Rule 13, also does not indicate that the petitioner was punished for not making complaint of such an act or for showing a behaviour unexpected from an Army Jawan. Admittedly, Hav Ram Roop Singh was an immediate superior officer of the petitioner, who had abused his position to sexually exploit the petitioner under constant threat of removal from service and when such behaviour persisted, then under these compelling circumstances, the petitioner, out of shame and fear, has made an attempt to commit suicide. We do not find any substance in the submission of the learned counsel for the respondents that such fearful behaviour was not expected from an Army Jawan. The reason is that an Army Jawan is never expected to face such a situation in Army service. The Court cannot ignore this aspect of the case also. It is nowhere the case of the respondents that while performing an Army duty,

his behaviour was not upto the mark. The circumstances which was created by Hav Ram Roop Singh by sexually exploiting the petitioner, was absolutely unexpected circumstances, which a new entrant in Army Army would have never expected to face. How a person would react to such an unexpected circumstances, would differ from man to man. Every person cannot be expected to react in a particular manner. So simply because the petitioner could not make any complaint to the higher authorities, could not have been a ground for his discharge. Though the only mistake committed by the applicant was that he could not dare to make complaint to his immediate superior officer regarding this immoral behaviour. However, there was no evidence that the applicant himself was a consenting party to such an activity. In such circumstances, ends of justice would have met if the petitioner would have been punished with any other punishment except from his discharge as in our opinion, he ought to have continued in service. At this stage, we would like to consider the legal position on the point of appropriate sentence.

10. On the point of adequate punishment, we would like to refer the pronouncements 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)

11. Now we proceed to examine the submission of the learned counsel for the petitioner in the aforementioned legal position. The submission of the learned counsel for the petitioner has substance that the petitioner was virtually a victim of the offence committed by Hav Ram Roop Singh. Even in the court of inquiry, it has not come in evidence that the applicant has willingly joined in such activities. Admittedly the petitioner has made an attempt to commit suicide, which also establishes that he was not a

consenting party to such activities. Had it been so, then there was absolutely no occasion for him to attempt suicide.

12. We are of the considered view that the punishment of discharge of the petitioner from Army service was not justified, as he himself was the victim of the immoral behaviour of his superior. In this back ground, we are of the view that the ends of justice would met if the petitioner is treated to be in notional service till he acquires pensionable service and thereafter he shall be entitled to get the pension of the rank in which he was serving last. However, the petitioner shall not be entitled to get any back wages on the principle of 'no work no pay'.

13. Accordingly, the T.A. is **partly allowed** and the order dated 21<sup>st</sup> October 1994, discharging the petitioner from service, is hereby set aside. Keeping in view that the matter is more than 20 years old, we do not propose to substitute any other punishment. The petitioner shall be notionally treated to be in service till the date of his acquiring pensionable service. However, he shall not be entitled to the back wages for the said period on the principle of 'no work no pay', but shall be entitled for service pension of the rank held by him, taking into account his notional service. The respondents shall calculate the pension of the petitioner from the date of his notional discharge after acquiring pensionable service.

The respondents are directed to complete this exercise within a period of six months from today, failing which the petitioner shall be entitled to interest @ 9% per annum on the amount accrued 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 B.B.P. Sinha)  
Member (A)

(Justice S.V.S.Rathore)  
Member (J)

Dated: April , 2018.  
PKG