

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Transferred Application No. 64 of 2016****Friday, this the 17th day of March, 2023****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)****Hon'ble Maj Gen Sanjay Singh, Member (A)**

No. 14231163-P, Ex L/Hav Surendra Vavu
 S/o Ram Krishan
 Village and PO – Kandhesighar,
 Dist – Etawah (UP)

.... Applicant

Ld. Counsel for the Applicant : **Mohd. Shariq Khan** and
Shri SG Singh, Advocate
(Not Present)

Versus

1. Chief of the Army Staff, through OIC Legal Cell, Headquarter Sub Area, Allahabad.
2. GOC-in-C Central Command, Through OIC Pension Cell (Army) Kariappa Road, Allahabad.
3. Commandant-cum-CRO Signal Records Through CCDA (Pension) Draupadighat, Allahabad.

... Respondents

Ld. Counsel for the Respondents : **Shri Yogesh Kesarwani**,
 Central Govt Counsel

ORDER (Oral)

1. The petitioner filed Civil Writ Petition No. 47494 of 2000 before the Hon'ble High Court of Judicature at Allahabad which has been transferred to this Tribunal and has been registered as T.A. No. 64 of 2016, whereby the petitioner has sought the following reliefs:-

- “(I) Issue a writ, order or direction in the nature of certiorari summoning impugned orders of the SCM/Statutory petition dated 31st December, 1998, and the rejection order dated 20th April 2000 and quash the impugned and result, with all the consequential benefits to the petitioner.
- (II) Issue a writ, order or direction to the respondent No. 3 treating the petitioner having continued in colour service, pay his salary and perks during the pendency of the case.
- (III) Issue any other writ, order or direction consider expedient and in the interest of justice and equity.
- (IV) Award the cost.”

2. Brief facts of the case are that the applicant was enrolled in the Army in the year 1980. The applicant while serving in 24 Inf Div Signal Regiment, on 09.04.1996 when driving a TATA 4 Ton vehicle, a person (Major Singh) who was smelling of liquor got hit by the vehicle while crossing the road and later on died. The case of the applicant was taken over by the Army under Section 125 of Army Act, 1950 and has been dealt with the procedure laid down in Criminal Court and Court Martial (adjustment of jurisdiction) Rules, 1978 read with conjunction with para 418 of the Defence Service Regulation. The applicant was charged under Section 69 of Army Act, 1950 read with Section 304-A of the I.P.C. for causing death of Shri Major Singh by rash and negligent act. The applicant was awarded punishment of (i) ‘To be reduced from Lance Havildar to Sepoy’ and (ii) ‘To suffer

Rigorous Imprisonment for one month and 15 days in military custody' vide sentence dated 21.10.1997. Being aggrieved, the applicant has filed the present Transferred Application to quash SCM order and to treat applicant continued in service to complete service of his rank of Havildar and thereafter, grant pensionary benefits of his last rank.

3. Learned counsel for the applicant pleaded that applicant was enrolled in the Indian Army (Signals) in the year 1980. The applicant has been promoted to the rank of Naik and L/Havildar between 1989 to 1993. The applicant while serving in 24 Inf Div Signal Regiment, on 09.04.1996 when driving a TATA 4 Ton vehicle, a person (Major Singh) who was smelling of liquor got hit by the bonnet of the vehicle from right side while crossing the road and later on died. The applicant in fear left the vehicle and reported the matter to Military Police and higher authorities. The applicant wanted to file a FIR being fault of late Shri Major Singh who got hit due to his mistake moving to and fro in the influence of liquor but late Shri Major Singh having proximity with some politicians, FIR was registered against the applicant.

4. Learned counsel for the applicant further pleaded that case of the applicant either should have been allowed to proceed in accordance with the law on the statute in Criminal Court and Court Martial (Adjustment of Jurisdiction) Rules 1978 read in conjunction with para 418 of the Defence Services Regulations (Regulation for the Army) 1987, or the case should have been properly taken over under

the provisions of Section 125 of the Army Act, 1950 read in conjunction with para 418 of the Defence Services Regulations (Regulation for the Army) 1987 and proper trial proceedings restored to rather than taking recourse to Summary Court Martial proceedings which was in such case barred under the provisions of section 69/120 of the Army Act, 1950. In the case Summary of Evidence was recorded by Major BC Chowdhry and additional Summary of Evidence was recorded by another officer, Major BK Thakur. Copy of Appendix of Army Order 24/94 has also not been found attached with the proceedings.

5. Learned counsel for the applicant further pleaded that as per Army Rule 22, this is mandatory to hear the charge in the presence of accused and he should be given full liberty to cross-examine any witness against him but the respondents failed to do so. In the Summary of Evidence, the Recording Officer should sign on all pages and not only last page which is incorrect procedure. The provisions of Army Rule 23 have also not been followed by the Recording Officer of Summary of Evidence to call for the evidence of the doctor who conducted post mortem. The SCM has been held for an offence of culpable Homicide under Section 304-A of IPC, which was not to be tried by SCM and trial, if any, ought to have been initiated in accordance with law or by District Court Martial (DCM), as it was barred under the provisions of Section 120 of Army Act, 1950. The provisions of Rule 40 of the Army Rules, 1954 and Section 130 of the Army Act, 1950 were not followed by the Presiding Officer (Col AK

Bhargava, CO 24 Inf Div Sig Regt) of the Trial Court. The appointment of Major US Verma of 24 Inf Div Sig Regt, as 'friend of the accused', against the request of the applicant to have legal defence from a counsel of his choice establishes that provision of Article 20 of the Constitution of India and Rule 101 of Army Rules 1954, have not been followed.

6. From the aforesaid, it is established that law on the statute under the Army Act/Army Rules, Regulations/Army Orders have been violated while conducting the trial of SCM and therefore, punishment/order passed by the SCM to be quashed and applicant to be treated having continued in service to complete service of his rank of Havildar and thereafter, applicant to be given pensionary benefits of his last rank accordingly.

7. On the other hand, Ld. Counsel for the respondents submitted that on 09.04.1996, applicant met with an accident while driving military vehicle (TATA 4 Ton) which resulted death of a civilian named Major Singh for which an FIR was also registered against the applicant. The case of the applicant was taken over by the Army under Section 125 of Army Act, 1950 and was dealt with the procedure laid down in Criminal Court and Court Martial (adjustment of jurisdiction) Rules, 1978 read with conjunction with para 418 of the Defence Service Regulation. The applicant was charged under Section 69 of Army Act, 1950 read with Section 304-A of the I.P.C. for causing death of Shri Major Singh by rash and negligent act and there

is no irregularity in the charge sheet in respect of recording of Summary of Evidence also in accordance with provisions of Section 120 of the Army Act, 1950 and there is no violation of procedural safeguards contained in Army Order 24 of 1994. SCM may try any offence punishable under this Act. The Commanding Officer while carrying out SCM has abided by Section 130 of Army Act, 1950 and applicant never raised any objection at that time nor asked for legal defence by a counsel of his choice. It is also nowhere prescribed in Army Rule 23 that officer recording Summary of Evidence to sign in all pages or last page of Summary of Evidence.

8. Learned counsel for the respondents further submitted that applicant had pleaded guilty on account of charge against him and Summary of Evidence was recorded and conducted under Army Rule 22 in accordance with the existing order on the subject and Court has followed the proper procedure while carrying out the SCM as per Army Act, 1950 & Army Rules, 1954. Evidence of Doctor MS Kingra was taken while recording additional summary of evidence and evidence of Doctor who conducted post-mortem was not necessary and not recorded. The SCM passed following sentences :-

- (a) To be reduced from lance Havildar to Sepoy.
- (b) To suffer Rigorous Imprisonment for one month and 15 days in military custody.

9. learned counsel for the respondents further submitted that applicant was reduced to the rank from Lance Havildar to Sepoy and

was sent on home as per sentence dated 21.10.1997 passed by the SCM. Thus, law on the statute under the Army Act/Army Rules/Regulations/Army Order have not been violated while documenting/ conducting the trial by SCM and no illegality, irrationality and perversity have been committed in the conduct of trial and SCM was conducted strictly in accordance with law. Hence, Transferred Application filed by the applicant is misconceived and therefore, reliefs prayed by the applicant are liable to be dismissed.

10. We have heard learned counsel for the respondents and perused the material placed on record.

11. We find that late Shri Major Singh, a civilian who was hit by the bonnet of the vehicle (TATA 4 Ton), which was driven by the applicant, while crossing the road due to panic raised by applying brake of the vehicle, blowing repeated horns and turning back towards the vehicle under the influence of liquor. It is admitted fact that late Shri Major Singh died due to vehicle accident but he was under influence of liquor and could not cross the road normally even after applying brakes, giving repeated horns, and turning/taking to vehicle on left side of the road. Late Shri Major Singh's body was stinking of liquor which is established/ recorded in the statement of Witness No. 1, Nk SC Goswami, who was Co-driver of the vehicle and Witness No. 4, Shri Roor Singh, a civilian resident of Village Lonara who was in his tea shop which was next to liquor shop and witnessed the accident. Though, in this case, post-mortem of

abdomen was not done and therefore, medically it was not proved whether late Shri Major Singh had consumed liquor or not but as per applicant and Witness No. 1 and 4, somehow, it appears that late Shri Major Singh was under influence of liquor and could not cross the road properly/in normal speed like a mentally sound person.

12. We also find that SCM has been conducted as per rules and there is no illegality or irrationality in the conduct of SCM which was conducted strictly in accordance with law and applicant has been awarded punishment of (i) 'To be reduced from Lance Havildar to Sepoy' and (ii) 'To suffer Rigorous Imprisonment for one month and 15 days in military custody' vide sentence dated 21.10.1997.

13. Keeping in view, gravity of offence due to vehicle accident and having analysed the gravity of fault of the applicant being driver of the vehicle and late Shri Major Singh who was under influence of liquor and died after being hit with right side of bonnet of vehicle, we are of the opinion that second punishment of Rigorous Imprisonment of 1 month and 15 days awarded to the applicant by the Commanding Officer on 21.10.1997 should remain intact but the first punishment, 'To be reduced from Lance Havildar to Sepoy' being harsh should be set aside. Thus, applicant having served for a period of 17 years and 11 months in the Army should be and is held entitled to receive service pension for his pensionable service.

14. In view of the above, Original Application is **partly allowed**. The first punishment of the applicant (Reduction to rank) passed by SCM

on 21.10.1997 is set aside and applicant is granted service pension having served pensionable service. The respondents are directed to grant service pension to the applicant in the rank of Lance Havildar, if it is not being paid to him from the next date he was finally sent to home/Struck of Strength (SOS) from the Army. The respondents are further directed to implement this order within a period of four months from the date of receipt of certified copy of this order. Delay shall invite interest @ 8% per annum till actual payment.

15. No order as to costs.

16. Pending Misc. Application(s), if any, shall stand disposed off.

(Maj Gen Sanjay Singh)
Member (A)

Dated: 17th March, 2023
SB

(Justice Umesh Chandra Srivastava)
Member (J)