

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
 (Court No. 2)
RESERVED

Transferred Application No. 159 of 2009

Thursday the 19th day of November, 2015

“Hon’ble Mr. Justice Abdul Mateen, Member (J)
 Hon’ble Lt. Gen. A.M. Verma, Member (A)”

Signal Man Kamlesh Kumar Singh aged about 34 years S/o Sub Major & Hon’rary Captain Mahendera Singh Kuchwala, presently residing at Lucknow.

.....Petitioner

By Major R.D. Singh(Retd.), learned counsel for the applicant.

Versus

1. Union of India, through the Secretary Ministry of Defence, DHQ PO New Delhi.
2. Chief of the Army Staff, Army Headquarters, DHQ PO, New Delhi.
3. GOC-in-C, Central Command, Lucknow Cantt U.P.
4. GOC-in-C, U.P. Area, Bareilly Cantt. U.P.
5. Commandant, Rajput Regimental Centre, Fatehgarh, (U.P.).
6. Col. Ranjit Singh, Officer Commanding Troops, Rajput Regimental Centre, Fatehgarh.
7. Col P.K. Singh, Officer Commanding Troops, Rajput Regimental Centre, Fatehgarh.
8. Col. R.S. Rana, Presiding Officer, Court of Inquiry, C/o Sikh L.I. Regimental Centre Fatehgarh.

.....Respondents

By Shri Mukund Tewari, learned counsel for the respondents, along with Capt. Soma John, Departmental Representative.

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ORDER

1. Writ Petition No. 6201 of 2003 was received from Lucknow Bench, Allahabad High Court on 11.12.2009 and was re-numbered as above.
2. The petitioner seeks to quash GOC, U.B. Area order dated 28.08.2003 and Discharge Certificate dated 30.08.2003 annexed as Annexure No. 15 and 15-A to the petition, re-instate the petitioner and consider the petitioner eligible for promotion with all consequential benefits and award appropriate compensation for illegal confinement from 23.06.1999 to 04.02.2001 and open arrest from 04.02.2001 to 28.02.2001.
3. Facts of the case are that the petitioner was enrolled in the Army in Signal Regiment on 07.12.1989. He was posted to 11 Corps Engineering Signal Regiment in 1995 and subsequently moved to 21 Corps AREN Unit at Bhopal. The allegations against him were that while at Jalandhar and Bhopal, communicated information which would be useful to the enemy to a person not authorised to receive this information. The investigation took considerable time and the respondents found it legally inexpedient to subject the petitioner to trial by court martial due to limitation of law. A show cause notice was served to the petitioner on 16.07.2003 and after considering petitioner's reply he was dismissed by the order of the GOC, UB Area on 28.08.2003.
4. The petitioner was represented by Major R.D. Singh(Retd.) his learned counsel. The petitioner states that three generations of his family have served in the Army. He states that he was posted to 11 Corps Engineering Signal Regiment on 18.08.1992 where he became suspicious
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of activities of some personnel including officers of the unit. The petitioner states that he was able to obtain proof of some nefarious activities of Sep. Zafar Iqbal who was then serving in the same unit as the Petitioner. The petitioner says he informed his father who is a retired Honoray Captain from the Army who in turn reported the matter to Major General M. Bhatia, the then Additional Director General, Signal Intelligence vide his letter dated 05.12.1997. Petitioner claims that his father was called by Major General M. Bhatia where he personally reported this matter to Major General Bhatia and Major General I.S. Kang, ADG, MI on 17 and 18 December 1997. Based on the advice given by his father, the petitioner provided detailed information to one Major G.S. Mehta on 22.12.1997. The petitioner who was at Bhopal, attached at Jalandhar. In Jalandhar, the petitioner claims he met Major G.S Mehta, OC Western Command , Intelligence Unit and worked tandem with intelligence personnel often disguised as Carpenter and Reddiwala. The petitioner says that he received order from MI, Directorate on 03.3.1998 to report to his unit i.e 21 Corps Signal AREN Unit. In the unit, he was detailed for classification II course at ITTR, Jabalpur. The course, however, according to the petitioner was curtailed due to operational reasons and he was asked to report to Headquarters Central Command on 20.06.1999. Zafar Iqbal against whom the petitioner had provided information, deserted service and was later apprehended by STF at Kanpur in June 1999. The petitioner claims that thereafter he too was arrested on 20.06.1999 and he was subjected to torture and was deprived of sleep. The petitioner says that he was forced to

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give in writing a confessional statement. The petitioner claims he was also threatened as to why did he report the matter to ADG, SI and to ADG, MI.

5. In July 1999, the petitioner says that he was transferred to Quarter Guard Cell of AMC Centre and School, Lucknow and a Court of Inquiry to enquire into alleged acts of espionage by Zafar Iqbal was ordered by HQ Lucknow Sub Area vide their order dated 03.08.1999. The petitioner says that he was kept blind folded and hands tied behind his back. He was shifted to 9 GR at Kanpur on 09.08.1999 where he was tortured and made to sign another statement. He remained with 9 GR till 30.10.1999. Thereafter he was transferred to Rajput Regimental Centre, Fatehgarh where he was kept in solitary confinement from 20.06.1999 to 04.01.2000. The petitioner claims that he was not permitted to take bath, shave and get his hair cut. The petitioner says that when the GOC, 4 Infantry Division visited him on 04.01.2000 the petitioner requested that he be allowed to take bath, whereafter he was given a cold water bath at 9 PM. Petitioner says that no one from his family was allowed to meet him. The petitioner's father, according to the petitioner, requested on 09.03.2000 to be allowed to meet the petitioner. Based on this request, the family was allowed to meet him but his family was humiliated.

6. The petitioner says that the act of keeping him in closed custody from 23.06.1999 to 04.02.2001 was illegal and unconstitutional. The close arrest from 04.02.2001 to 28.03.2003 too is legally not sustainable. The petitioner was handed over the charge-sheet in November 2000 in which seven charges had been laid out. However the charges could not be

proved. A Summary of Evidence was recorded which mentioned no charges. GOC-in-C, Central Command ordered trial by GCM in November 2002 and the petitioner claims he was once again to put in close arrest in 22.11.2000 and released on 23.11.2002. The petitioner filed WP No. 8150 of 2002 in Delhi High Court on 09.12.2002 requesting quashing the convening order of GCM. This petition was disposed of by the Hon'ble High Court vide their order dated 07.04.2003 stating that Headquarters UB Area had intimated that the GCM was not been convened and hence nothing remained in the petition. The petitioner was then posted to HQ UB Area, Signal Regiment where he reported on 28.04.2003. The petitioner submitted petition seeking Redressal of Grievances on 07.4.2003 but was not provided any relief. He received a Show Cause Notice on 16.03.2003 to which he replied on 05.08.2003. Without application of mind. GOC, UB Area dismissed him from service vide his order dated 28.08.2003 under the provisions of Army Act 20 read with Army Rule 17.

7. The learned counsel for the petitioner brings to the notice of the court that a letter dated 27.03.2003 which is filed in another case Transferred Application no. 67 of 2010 filed by the petitioner seeking a set of different reliefs. This letter has been signed by Lt. Col. Dharam Pal, SO(B) of DV Branch of HQ Central Command and states that decision to dismiss the petitioner from service had been approved by the GOC-in-C, Central Command. According to the learned counsel, the decision had already been taken to dismiss the petitioner in February 2003 and rest of the actions, posting him to Signal Unit within Central Command, issued Show

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Cause Notice and dismissal order were all exercises in fulfillment of this decision. The decision of February 2003 is illegal and on this ground alone the petitioner deserves to be granted relief asked for by him.

8. The respondents represented by Shri Mukund Tewari. The respondents recounted the events from 1995 onwards, according to which, while serving with 11 Corps Signal Regiment and 21 Corps Signal Regiment (AREN), the petitioner was involved in espionage activities and his culpability was established based on a Court of Inquiry and Summary of Evidence that the petitioner had handed over documents to Zafar Iqbal. Being in knowledge that Zafar Iqbal gone to Nepal. The petitioner did not report this matter. The petitioner wrote a letter to one Ramesh Chopra of Dubai giving deployment of 11 Corps, borrowed money from Zafar Iqbal and handed over documents to Ikram and Jafar Iqbal.

9. The respondents stated that during the investigation, full opportunity had been given to the petitioner to prove his innocence which he failed to do. He was ousted from the service on the ground "***Not Eligible For Future Employment In Government Service***". The petitioner, according to the respondents was deeply involved in espionage as established in Summary of Evidence and Additional Summary of Evidence. He was handed over to Rajput Regimental Centre by Headquarters 59 Mountain Brigade on 31.10.1999 for disciplinary proceedings. The petitioner was posted to UB Area Signal Regiment where he reported on 28.04.2003. The respondents state that the classification II course of the petitioner was not curtailed but he was RTU. According to the respondents, the petitioner gave

his confessional statement on his own and no third degree methods were used. The respondents stated that the petitioner was a corroborator and there was no requirement to subject him to any kind of duress. He was not forced to sign any document. While he was in Quarter Guard he was dealt with as per the SOP. He was attached with the Rajput Regimental Centre, Fatehgarh on the authority sanctioned by the Government of India from time to time. The family of the petitioner, when they came to Fatehgarh to meet him, were looked after. Even though the petitioner was under custody, his pay and allowance regularly reached the family. As regards his classification pay, the Signal Records state that the petitioner was not qualified for Classification Pay and no promotion had been granted to him since he lacked MR-II and upgrading classification II. Since trial by SCM, was found to be not expedient, action under the provisions of Army Act Section 20 read with Army Rule 17 was initiated and a Show Cause Notice was served to him on 16.03.2003. The reply received from the petitioner was examined and was found not to be satisfactory. Accordingly, he was dismissed from service as his service was not consider desirable in view of his involvement in espionage. The respondents state that the procedure as laid down by law was followed. The respondents state that though the GCM could not be convened, the petitioner has not been exonerated the charges leveled against him.

10. Heard both sides and examined the documents.

11. The alleged involvement of the petitioner in espionage activities came to notice of the respondents probably on arrest of Zafar Iqbal in August

1999 following which a Court of Inquiry was ordered on 03.08.1999. The offences were said to be committed in 1995,1996 and 1997. A Charge-sheet was prepared in November 2000 and the GCM was ordered to be convened by order dated 18.11.2002. Since the offences which gave consequences to convene the GCM came to the notice of the respondents in August 1999, the trial by GCM vide an order dated 18.11.2002 was time barred as stipulated under Section 122 of the Army Act. Accordingly, HQ UB Area informed the government counsel in CWP No. 8150 of 2002 filed on 09.12.2002 at Delhi High Court that the GCM was not convened and the case was disposed of vide order dated 07.04.2003 by the Delhi High Court.

12. A copy of the Summary of Evidence and Additional Summary of Evidence has been provided by the petitioner annexed to his petition. PW-1 is Zafar Iqbal who was recalled in Additional Summary of Evidence too. Zafar Iqbal states that he gave misleading statements in the Court of Inquiry to take revenge from the petitioner for reporting his i.e Zafar Iqbal's activities and Zafar Iqbal accordingly led a trap with the help of L/Nk Mansuri of the same unit. In the Additional Summary of Evidence, Zafar Iqbal said that he informed the petitioner about his Nepal visit. He i.e Zafar Iqbal did not remember what document he took from the petitioner implying he did received some documents from Zafar Iqbal allowed and stated that in January and February 1997 no information was provided by the petitioner. Petitioner's father also gave a statement during Summary of Evidence in which he stated that he had provided information to Major General Bhatia.

13. Since trial by GCM has not been held, the charges against the petitioner cannot be said to have been proved or disproved. Zafar Iqbal's statement during the Summary of Evidence is contradictory and therefore the charges that have been leveled against the petitioner do remain in the realm of not having been proved. The respondents took more than three years to investigate the case. In the Summary of Evidence, copy of which provided by the petitioner. We find that there are only three witnesses i.e. Zafar Iqbal, petitioner's father who gave a statement in favour of the petitioner and another officer who only testified with regard to petitioner's confinement. We do express a sense of surprise that after such prolonged investigation the respondents were unable to garner irrefutable evidence against the petitioner.

14. Before we dwelve further on this issue, we wish to address the issue of illegal confinement raised by the petitioner. The petitioner was in custody at Rajput Regimental Centre and before that in the Quarter Guard Cell of AMC Centre and School based on orders of competent authority while the investigation were on. The Rajput Regimental Centre has produced a copy of their SOP which deals with treatment of prisoners and we are inclined to accept the respondents contention that the petitioner was dealt with exactly as provided for in the SOP and that no third degree method or torture were used against the petitioner. The act of keeping the petitioner in custody too is justifiable in view of the fact that a serious charge such as espionage was being investigated against the petitioner and therefore, petitioner's allegation in this regard too is legally not sustainable

and is hereby rejected. However, we do note with concern a statement by the respondents that since the petitioner was a corroborator “there was no requirement to subject him to any kind of duress” which implies that had he not been a corroborator he would have been subject to duress. If this indeed is the case we strongly recommend to the respondents to desist from such a practice and ensure that no one who is kept in closed arrest or open arrest or any one is subjected to any kind of duress.

15. Reverting to the issue of evidence against the petitioner, according to the respondents, when the trial was barred by limitation under the provisions of Army Act Section 122, the GCM was not convened. This is a fair proposition. However, the letter signed by Lt. Col Dharam Pal is of concern to us. The letter reads as follows :-

“190105/Gen/U/A/(DV)(PC)

27 Feb 2003

*OIC Signal Records
Jabalpur (MP)-482001*

DISCH/POSTING NO. 15370933K SIGMN KK SINGH OF
21 CORPS SIG REGT ATT TO RAJPUT REGT CENTRE
FATEHGARH

1. *No 15370933X Sigmn KK Singh of 21 Corps Sig Regt is att with Rajput Regtl Centre Fategarh for disciplinary action against him for his involvement in espionage case. The case is very old, and there are chances of the individual taking the pleas of time bar. The Army Cdr has now approved for finalising the case of the individual by adm action to dismiss him from service under AA Sec 20 read with AR 17.*

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2. *In view of the above, you are requested to post the individual under any of the signal unit under jurisdiction of Central Command. Preferably UB Area Sig Regt or Signal Centre Jabalpur for finalising the adm action against the individual.*

*Sd/-x-x-x-x-x
(Dharam Pal)
Lt Col
SO 'B' (DV)
For Offg COS"*

16. We asked the respondents to produced the directions of the GOC-in-C, Central Command mentioned in the above mentioned letter of 27.02.2003. However, respondents were unable to produce the record stating that this happened in 2003 and records were not available. It is obvious that the decision to dismiss the petitioner had been taken in February 2003. Thereafter, the respondents posted the petitioner to Signals Unit in HQ Central Command where he reported on 28.04.2003 where a Show Cause Notice was issued on 16.07.2003, and subsequently, having received the reply from petitioner, he was dismissed from service on 28.08.2003. We find substance in the contention of the petitioner that the decision to dismiss him from service had been taken well before he was posted to a unit of Central Command and rest of the actions by the respondents were mere formalities to provide clothing to that decision. In the absence of the grounds on which the decision has been taken by the GOC-in-C Central Command, we are inclined to believe that the decision par se is fully illegal and unconstitutional and cannot be held to be sustainable in law. Accordingly, we are inclined to reject such a decision

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taken by GOC-in-C, Central Command in February 2003 and consequently the Dismissal Order dated 28.08.2003 and Discharge Certificate dated 30.08.2003 are also liable to be quashed.

17. Accordingly, the petition is partly allowed. We, hereby, quash the Dismissal order dated 28.08.03 and Discharge certificate dated 30.08.2003. The petitioner will be considered to be notionally in service from the date of his discharge till he attains service which makes him eligible for grant of pension where after he shall be paid pension as applicable. We make it clear that he will not be entitled to any salary for the duration for which he is held to be notionally in service. The respondents may consider him for grant of promotion if the petitioner fulfills the QR for promotion and such a promotion will be wholly at the discretion of the respondents. The confinement from 23.06.1999 to 04.02.2001 was in accordance with the laid down policy and hence the relief for being awarded a appropriate compensation for such confinement is hereby rejected. No order as to costs.

(Lt. Gen. A.M. Verma)
Member(A)
rpm.

(Justice Abdul Mateen)
Member (J)