

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

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

**ORIGINAL APPLICATION 248 of 2015**

**Wednesday this the 07th day of February, 2018**

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

**Hon'ble Lt Gen Gyan Bhushan, Member (A)**

Smt. Malti Devi, widow of No. 14293770W  
Late Hav (DR) Deo Lakhan Prasad  
Resident of No. 8,  
Topekhana Bazar, Lucknow Cantt.  
Lucknow, (U.P.)

..... **Applicant**

By Legal Practitioner – Shri VK Pandey,  
Learned counsel for the Applicant.

Versus

1. Union of India through Secretary to the Ministry of Defence,  
Government of India, New Delhi-110011.
2. Chief of the Army Staff through Director General of Signals (Sigs.4  
(b)), General Staff Branch, Army Headquarters, D.H.Q.P.O.,  
New Delhi-110011
3. Officer-in-Charge, Signals Records, Post Box No. 5,  
Jabalpur-482001.
4. Commanding Officer, 25 Wireless Experimental Unit,  
C/O 56 APO.

..... **Respondents**

By Legal Practitioner – Shri Amit Jaiswal,  
Learned Counsel for the Central Govt.

**ORDER**

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

1. Initially Writ Petition No.6278 (SS) of 1997 was filed by Late Hav Deo Lakhan Prasad, husband of the applicant. Ex Deo Lakhan Prasad expired on 29<sup>th</sup> November 2004 and thereafter his wife Smt. Malti Devi was substituted as sole petitioner under the orders of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow. Writ Petition No.6278 (SS) of 1997 was transferred to this Tribunal and was registered as T.A.No.121 of 2011, which was dismissed on 12.04.2013 with liberty to file a fresh O.A. and thereafter this O.A. was filed by the applicant with the following prayers :

- “(i) *That this Hon'ble Tribunal may kindly be pleased to quash the impugned order dated orders/letter/charge sheet/summary Court Martial dated 21.06.2009, 24.06.1998, 26.09.1996, 19.09.1996, 30.08.1993, 26.08.1993 passed by the opposite party no.3,2,2,1,4 & 4 as contained in Annexure No.1, 2, 3, 4, 5 & 6 to this Original Application.*
- (ii) *That this Hon'ble Tribunal may kindly be pleased to direct the opposite parties to pay the entire pension, gratuity, arrear etc. of her husband to the applicant alongwith the admissible interest rate and continue the Family Pension to the applicant from the date of death of her husband i.e. 29.11.2004 to onwards in the interest of justice alongwith the other consequential benefits.*
- (iii) *That this Hon'ble Tribunal may kindly be pleased to pass any other order or direction which this Hon'ble Court may deem just and proper in the circumstances of the case.*
- (iv) *That this Hon'ble Tribunal may be pleased to award the cost of the Original Application to the applicant in the interest of justice.”*

2. Brief facts for the purpose of the instant appeal may be summed up as under :

3. The husband of the applicant was enrolled in Corps of Signals of Indian Army on 08.11.1974. After completion of Basic Military Training, he was attested as Soldier and served for 18 years, 07 months and 15 days. While serving in 25 Wireless Experimental Unit, he was tried by the Summary Court Martial (herein after referred to as the “SCM”) on 11<sup>th</sup> January 1993 and was charge-sheeted as under :

CHARGE SHEET

No 14293770W HAV (DR) DEO LAKHAN PRASAD, of  
25 Wireless Experimental Unit is charged with.

First Charge AN ACT PREJUDICIAL TO GOOD ORDER  
Army Act AND MILITARY DISCIPLINE,  
Sec 63 at village Madraon in Nov 89 improperly received Rs 3,000/- (Rupees  
three thousand only, and at Lucknow in Nov/Dec 89 Rs 5,000/- (Rupees five  
thousand only) and again at Lucknow in Jan 90 Rs 2,000/- (Rupees two thousand  
only) from Shri Gore Lal for assisting in his enrolment in the Army.

Alternative OBTAINING FOR HIMSELF A GRATIFICATION  
First Charge AS A MOTIVE FOR PROCURING THE  
ENROLMENT OF A PERSON

Army Act  
Sec 64 (e)

in that he,

At village Mandraon in Nov 89 obtained for himself Rs 3,000/- (Rupees  
Three thousand only), and at Lucknow in Nov/Dec 89 Rs 5,000/- (Rupees five  
thousand only) and again at Lucknow in Jan 90 Rs 2,000/- (Rupees two thousand  
only) as gratification from Shri Gore Lal as a motive for procuring his enrolment.

Second Charge AN ACT PREJUDICIAL TO GOOD ORDER  
Army Act AND MILITARY DISCIPLINE,  
Sec 63

in that he,

at Lucknow in Sep 89 improperly received Rs 5,000/- (Rupees five  
thousand only), at village Mansoorpur in Dec 89 Rs 3,000/- (Rupees three  
thousand only) and again at Lucknow in Sep 90 Rs 7,000/- (Rupees seven  
thousand only) from Shri Shiv Bhola for assisting in his enrolment in the Army.

Alternative OBTAINING FOR HIMSELF A GRATIFICATION  
Second Charge AS A MOTIVE FOR PROCURING THE  
ENROLMENT OF A PERSON

Army Act  
Sec 64 (e)

in that he,

at Lucknow in Sep 89 obtained for himself Rs 5,000/- (Rupees five  
thousand only), at village Mansoorpur in Dec 89 Rs 3,000/- (Rupees three  
thousand only) and again at Lucknow in Sep 90 Rs 7,000/- (Rupees seven  
thousand only) as gratification from Shri Shiv Bhola as a motive for procuring  
his enrolment.

Charge AN ACT PREJUDICIAL TO GOOD ORDER  
Army AND MILITARY DISCIPLINE,  
Act Sec 63

in that he,

AT Lucknow in June 91 improperly recd Rs 5,500/- (Rupees five thousand five  
hundred only) from Shri Krishna Kumar Tiwari for assisting in the enrolment of  
his son (Master Shailendra Kumar Tiwari) in the Army.

Alternative Charge Army  Act Sec 64(e)	OBTAINING FOR HIMSELF A GRATIFICATION AS A MOTIVE FOR PROCURING THE ENROLMENT OF A PERSON
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in that he,

AT Lucknow in Jun 91 obtained for himself Rs 5,500/- (Rupees five thousand five hundred only) as gratification from Shri Krishna Kumar Tiwari as a motive for procuring enrolment of his son (Master Shailendra Kumar Tiwari).

Charge Army Act Sec 47	USING CRIMINAL FORCE TO A PERSON SUBJECT TO THE ARMY ACT BEING HIS SUBORDINATE IN RANK
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in that he,

AT C/O 56 apo ON 12 Jan 93 at about 2230h struck a heavy blow on the face of No 14293219Y Sigmn Paras Nath of the Same unit causing swelling of his lips and resulting in a head injury due to th resultant fall; later the NCO picked up the OR who was lying sprawled on the ground and once again threw him down with great force thus using criminal force against a subordinate.

Alternate  Charge Army Act Sec 63	AN ACT PREJUDICIAL TO FOOD ORDER AND MILITARY DISCIPLINE
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in that he,

at C/O 56 APO on 12 Jan 93 at about 2230h struck a heavy blow on the face of No 14293219Y Sigmn Paras Nath of the same unit causing swelling of his lip0s and resulting in a head injury due to the resultant fall; later the NCO picked up the OR who was lying sprawled on the ground and once again threw him down with great force thus using criminal force against a subordinate.

Place : C/O 56 APO

Sd/-x-x-x-x-x-

(Rakesh Sachdeva)

Dated : 11 Jan 93

Commanding Officer

25 ireless Experimental Unit

4. The SCM held the deceased soldier guilty and awarded punishment (i) reduce to the rank, (ii) Rigorous Imprisonment of six months in civil prison and dismissal from service.
5. The submission of the learned counsel for the applicant is that the applicant's husband has rendered about 18 years, 07 months and 15 days of service, including non-qualifying service of two months and 10 days. This aspect of the matter was not considered appropriately by the SCM, while awarding the punishment, because of the dismissal from service, he would forfeit the rights to get pension, which shall also be an additional punishment on the family of the applicant. It has also been argued that the husband of the applicant had an unblemished service record, therefore,

keeping in view his long unblemished service record, the punishment awarded to him becomes disproportionate to the offence committed by him.

6. Learned counsel for the respondents has argued that in this case the husband of the applicant was found involved in recruitment racket, for which he was found guilty and, therefore, he is not entitled to any leniency in the punishment.

7. Learned counsel for the applicant has placed reliance on the pronouncement of Hon'ble Apex Court in the case of **S.Muthu Kumaran vs. Union of India & others** [Civil Appeal No.352 of 2017] decided on 17.01.2017. In the facts of that case also, the applicant was involved in the recruitment racket in Jammu and in that factual background, the Hon'ble Supreme Court has observed in Para 11 as under :

*“11. No doubt, the dismissal order passed against the Applicant was within the powers of the concerned authorities. However, as far as the dismissal from service is concerned, it is an extreme punishment imposed against the applicant. The applicant has to thrive in civil life by doing an appropriate job suitable to his qualification. In the facts and circumstances of the present case, we are inclined to modify the punishment of dismissal from service into discharge from service. The modification of the sentence of dismissal from service into that of discharge will not change the position of the applicant, so as to claim any re-instatement into service. Even if he was discharged from service, in lieu of dismissal from service, the applicant cannot seek for any employment or re-employment into the Army Therefore, there would not be any grievance for the respondents in the event of punishment of dismissal being modified into that of discharge. At the same time, interest of justice would be served as the applicant would get the benefits like gratuity and other attendant benefits for the service rendered by him and the applicant would also get an opportunity to lead honourable life in the society.”*

8. Learned counsel for the applicant has also placed reliance on the pronouncement of the Hon'ble Apex Court in the case of **Naik Sardar Singh vs Union of India & ors** (AIR 1992 SC 417) and has drawn our attention towards the following part of the said judgment, which reads 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 court 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)*

9. When the facts of the instant case are tested on the touchstone of the aforementioned legal principles, then it is clear that the instant case also relates to the recruitment racket. The applicant's husband had completed about more than 18 years of service and because of the dismissal from service, he would forfeit the rights to get pension, which shall be an additional punishment on the family of the deceased soldier.

10. Keeping in view the similarity of facts, the principle as laid down in the case of S.Muthu Kumaran (supra), the deceased soldier becomes entitled to the benefit of the said judgment.

11. Therefore, keeping in view the discussions made above, the O.A. deserves to be partly allowed to the extent that the punishment inflicted on the deceased soldier deserves to be modified to discharge from service. Since the deceased soldier has expired, therefore, there is no question of interference in the sentence of punishment. The sentence of reduce to rank also deserves to be confirmed.

12. Accordingly, this O.A. is **partly allowed**. The order of dismissal from service is modified to discharge from service. The punishment of reduce to rank stands confirmed. The impugned order stands modified to this extent only. Consequence upon discharge from service entitled to the deceased soldier would be as per Army Rules and Regulations. Entire exercise shall be completed within four months from today, failing which the respondents shall have to make payment of interest @ 9% per annum from the date of death of the husband of the applicant till the date of actual payment.

No order as to costs.

(Lt Gen Gyan Bhushan)  
Member (A)

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

Dated: February , 2018.  
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