

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**T.A. NO. 107 of 2011**Tuesday, this the 27th day of February, 2018**Hon'ble Mr. Justice S.V.S. Rathore, Member (J)****Hon'ble Lt Gen Gyan Bhushan, Member (A)**

Ex Nk No. 13695958-F Lekh Raj Singh, son of late Shri Ganga Shyam Singh, resident of village Sher Nagar, Post Roopnagar, Tehsil Chhatta, District Mathura.

.... Petitioner

Ld. Counsel for the applicant: **Shri Yashpal Singh, Advocate**

Versus

1. Union of India (The Secretary to the Government of India), Ministry of Defence, South Block, New Delhi.
2. The Chief of the Army Staff, Army Headquarters, Sena Bhawan, Integrated Hqrs of Ministry of Defence, New Delhi.
3. The Commandant, 3-Guards (1 RAJ RIF), C/0 56 A.P.O, Hissar (Haryana).
4. Officer-In-Charge, Brigade of the Guards, PIN-000746, C/o 56 APO.

.....Respondents

Ld. Counsel for the Respondents: **Shri Md Zafar Khan, CGSC**
assisted by Maj Piyush Thakran,
OIC, Legal Cell.

ORDER**Per Justice SVS Rathore, Member (J)**

1. Initially, the petitioner, who joined the Indian Army in August, 1995 and was punished with dismissal from service on 19.09.2007 pursuant to Summary Court Martial proceedings, had filed a writ petition (C) bearing No.9450 of 2009 before the Hon'ble Delhi High Court. The said petition

was disposed of by the Hon'ble Court vide order dated 29.05.2009, issuing direction to the respondents to decide the pending statutory petition filed by petitioner under Section 164(2) of the Army Act within a period of four weeks. In the meantime, however, the said statutory petition of the petitioner was rejected by the Chief of the Army Staff on 25.05.2009. Feeling aggrieved, the petitioner filed second appeal for consideration, which also appears to have been disposed of with communication to the petitioner that he has remedy by way of filing a Mercy Petition under Section 179 of the Army Act for redressal of his grievance. Thereafter, Mercy Petition was filed by the petitioner on 14.09.2009. Since the said Mercy Petition was not decided for quite some time, the petitioner approached the Hon'ble Principal Bench of Armed Forces Tribunal at New Delhi by filing OA No. 206 of 2010, which has been transferred to this Bench under the orders of Hon'ble Chairman of the Principal Bench dated 03.10.2011 and after receipt of the same by this Bench, it has been renumbered as above (T.A.No. 107 of 2011).

2. We have heard learned counsel for the parties at length and perused the record.

3. By means of this petition, the petitioner has made the following prayers:-

“(a) To set aside the finding and sentence awarded by the Summary Court Martial held on 19.09.2007 inflicting the punishment of reduction in rank and dismissal from service to the applicant after summoning the original records.

(b) That the order of the Appellate Authority having altogether ignored the defence of the applicant and toed the line of Disciplinary Authority's order without implementation of his mind and without providing opportunity of personal hearing to the applicant, be also quashed and set aside.

(b-1) To set aside the order dated 12.08.2014 as communicated by letter dated 30.09.2014 passed on the mercy petition dated 24.09.2009 submitted by the applicant

against the findings and sentence of Summary Court Martial held on 19.09.2007 after summoning the original records; and grant all consequential service benefits including reinstatement and promotion to the rank of Naik from due date and fix pension and other benefits accordingly.

(c) The applicant be ordered to be reinstated in service in his post and position with all consequential benefits.

(d) Allow any other and further relief as may kindly be deemed fit and proper in the circumstances of this case in order to safeguard the interest of justice; and

(e) Allow costs of this application in favour of the humble applicant.”

4. The facts necessary for the purposes of instant T.A, as stated by the petitioner in writ petition, may be summarised as under:-

On 17.11.2006, the petitioner, while performing the duties of BFNA at the unit M.I.Room, was ordered to shift his bag and baggage from M.I. Room to Unit lines. When he was shifting his bag and baggage from M.I.Room to his Unit, Sub Rana Ram Chaudhary with his colleagues arrived there and began to shower slaps on the petitioner. When the petitioner asked as to why he was subjected to beatings, Sub Rana Ram shouted, “*I will teach you as to how a Naik is to be beaten.*” Besides Sub Rana Ram, the petitioner was surrounded by Nk Ram Kumar, Hav Chandra Prakash, JHM Ramesh and Nk Ramesh Kumar. All of them were intoxicated. When the petitioner tried to run away from there, Nk Ram Kumar gave a Lathi blow on his legs and manhandled him for about 15-20 minutes. Thereafter the said persons, in order to fabricate blame on the petitioner, created wholesome breakages and made M.I.Room in disorderly shape. They jointly informed the authorities that the petitioner was responsible for the chaos, breakages and also for upsetting the material in the M.I. Room. Upon this, the petitioner was scolded by Company Adjutant Siddarth and Adjutant Captain Anurag and on visiting the M.I.Room, they held the petitioner responsible, for aforesaid breakages

and rowdiness in M.I.Room. The petitioner was confined to Quarter Guards without any hearing. The next day he was brought before the Commanding Officer, who also abused him. The petitioner was again misbehaved by the persons present. The Commanding Officer punished the petitioner with “severe reprimand and 14 days’ pay fine” for intoxication and consumption of liquor from unauthorised sources. According to the petitioner, he was provided no medical treatment for the injuries suffered by him. When the petitioner was unheard by the authorities of the Company and was given inhuman beatings, he made a complaint of the ill-treatment meted out to him to some civil and military authorities beyond his Company on 21.05.2007. As per counter affidavit filed by the respondents, the petitioner had also hit Hav Chandra Prakash and L/Nk Ram Kumar who tried to assist Sub Rana Ram Chaudhary and since the petitioner was totally getting out of control, L/Nk Ram Kumar , Sub Rana Ram Chaudhary and Hav Chandra Prakash hit him with a stick and brought him under control.

5. According to the petitioner, no inquiry into the grievance raised by him in his complaint dated 21.05.2007 was held. The petitioner was served with a tentative charge-sheet dated 06.06.2007 by Col VG Pande, Commandant, 3 GUARDS (1 RAJ RIF) and thereafter charge-sheet dated 02.09.2007 by Col SP Singh Commandant, 3 GUARDS (1 RAJ RIF). He was, thus, subjected to Summary Court Martial (SCM) proceedings on the following charges:

“CHARGE-SHEET

The accused No. 13695958F Rank Naik Name Lekh Raj Singh Unit 3 GUARDS (1 RAJ RIF) is charged with:

**ARMY ACT
SECTION 63**

**AN ACT PREJUDICIAL TO GOOD ORDER AND
MILITARY DISCIPLINE**

in that he,

at field on 31 Mar 2007 when asked by Officer recording Summary of Evidence, RC-1114X Maj BS Sharma, who was ordered to record Summary of Evidence in respect of JC-403331A Sub Rana Ram Choudhary, against whom he had alleged that he used criminal force to him, refused to make any statement.

**ARMY ACT
SECTION 63**

**AN ACT PREJUDICIAL TO GOOD ORDER AND
MILITARY DISCIPLINE**

in that he,

at field on 07 Apr 2007 when asked by Officer recording Summary of Evidence SL-4315F Maj Vishwanathan Nair MS, who was ordered to record Summary of Evidence in respect of No. 16690293M Hav Chandra Prakash, against whom he had alleged that he used criminal force to him, refused to make any statement.

**ARMY ACT
SECTION 63**

**AN ACT PREJUDICIAL TO GOOD ORDER AND
MILITARY DISCIPLINE**

in that he,

at field on 16 Apr 2007 when asked by Officer recording Summary of Evidence IC-55403A Maj Siddharth Singh, who was ordered to record Summary of Evidence in respect of No. 13694187L Nk Ram Kumar, against whom he had alleged that he used criminal force to him, refused to make any statement.

**ARMY ACT
SECTION 63**

**AN ACT PREJUDICIAL TO GOOD ORDER AND
MILITARY DISCIPLINE**

in that he,

at Hisar Mil Stn during month of Dec 2006 submitted an application dated Nil directly to the President of India, Defence Minister and others, contrary to para 557 of the Regulations for the Army, Revised Edition 1987 which enjoins that all such correspondence will be submitted through proper channel.

Station : HISAR MIL STN
Dated : 02 Sep 2007

Sd.-/
(SP Singh)
Col
Comdt
3 GUARDS (1 RAJ RIF)"

6. In SCM proceedings, as many as seven witness were examined, and in that the witness No. 1 is Major Brikam Singh Sharma, who was ordered to record Summary of Evidence in respect of Sub Rana Ram

Choudhary. Witness No. 2 is Major Vishwanathan Nair MS, who was ordered to record Summary of Evidence in respect of Hav Chandra Prakash, who was charged with having used criminal force against Nk Lekh Raj Singh. Witness No. 3 is Subedar Raj Pal Singh, who was detailed as an independent witness during recording the Summary of Evidence in respect of Hav Chandra Prakash. Witness No. 4 Maj Siddharth Singh was detailed to record the Summary of Evidence in respect of Nk Ram Kumar. Witness No. 5 Sub Ramendra Nath Tripathi was detailed as an independent witness for recording the Summary of Evidence in respect of Nk Ram Kumar. Witness No. 6 Sub Mankar GS was also detailed as an independent witness during recording the Summary of Evidence in respect of Sub Rana Ram Chaudhary.

7. It is pertinent to mention here that witnesses No. 1 to 6 were detailed to record Summary of Evidence against those army personnel i.e. Sub Rana Ram Choudhary, Hav Chandra Prakash and Nk Ram Kumar, who were charged with having used criminal force against the petitioner and were also subjected to Summary Court Martial proceedings separately. The petitioner refused to cross-examine these witnesses and stated that whatever he had to say, he would say it in front of the Corps Commander.

8. Witness No. 7 Nb Sub (Clerk) Aditya Kumar Hazra has deposed that on 14.02.2007, the Unit received a copy of petition filed by the petitioner on 08.02.2007, which was submitted by him directly to the President of India, the Defence Minister, the Prime Minister, the Army Headquarters, Army Commander, Corps Commander and others, contrary to the provision of para 557 of the Regulations for the Army, Revised Edition 1982, which requires that all such correspondence can be made only through proper channel.

8. The petitioner pleaded not guilty to Charges No. 1 to 3. He, however, pleaded guilty to the last charge (No.4).

9. On conclusion of the trial, the SCM held the petitioner guilty of all the charges and awarded punishment of reduction to rank and dismissal from service on 19.09.2007.

10. It transpires from a perusal of the record that during pendency of the instant petition, the Mercy Petition of the petitioner was allowed and on humanitarian ground, his dismissal from service was converted into discharge.

11. During the course of arguments, it has come to our notice, as admitted by the parties' counsel too, that the army personnel, who were charged with the offence of beating the petitioner, were given the punishment of '*severe reprimand*' only.

12. The only submission made by the learned counsel for the applicant is that keeping in view the facts and circumstances of the case coupled with the fact that the army personnel, who were charged with the offence of beating the petitioner, were given a lesser punishment i.e. severe reprimand only, the punishment of dismissal or discharge from service awarded to the petitioner is too harsh and excessive, and is not commensurate with the gravity of offence alleged. He has made a prayer for intervention in the matter on this ground alone. He has not pressed the petition on merits.

13. We have gone through the record very carefully. The admitted facts of the case are that the other army personnel, who had beaten the petitioner and for which he had made a complaint, were tried by the SCM separately for such army offence which form part of the same transaction.

They being found guilty were awarded punishment of severe reprimand. The petitioner is alleged to have refused to give any evidence during trial against these persons. It transpires from the perusal of the evidence recorded during SCM that it was not an absolute refusal by the petitioner to give evidence, but in statement of one witness, it has come out that he would give his statement before the Corps Commander.

14. So far as the charge of sending representation/complaint without adopting the procedure of through proper channel is concerned, the petitioner has pleaded guilty. But when we examine the facts of this case, it is clear from the pleadings of the parties that the aforesaid four army personnel, who had beaten the petitioner, had made a false complaint against him and he was ill-treated at every stage. A sepoy in the Army is not a well-educated person and if his immediate superior officers ill-treat him, then how can he believe that his complaint against those superior officers shall be entertained by the high-ups. In these compelling circumstances, the petitioner appears to have sent the complaint/representation directly to higher civil and military authorities. This factual position does not appear to have been considered while awarding punishment to the petitioner.

15. Before proceeding further in the matter, we would like to consider as to what would be the appropriate punishment for the charge against the petitioner. Learned counsel for the petitioner has argued that the sentence of dismissal awarded to the petitioner was disproportionate to the offence committed by him. We have also examined the sentence from the aforesaid point of view. On the point of adequate punishment, we would like to refer the pronouncement of Hon'ble Supreme Court in the case of

reported in AIR 1992 SC 417, **Ex Naik Sardar Singh vs. Union of India & Ors**, wherein the Apex Court 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 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)

16. When the facts of this case are tested on the touchstone of aforementioned legal proposition, then there cannot be two opinion that the petitioner, who had not even acquired the minimum pensionable service was dismissed from service. On Mercy Petition, however, his dismissal has been converted into discharge. It is also noted with concern that the persons, who had admittedly beaten the petitioner, were awarded simple punishment of severe reprimand by the Army authorities, while the punishment of reduction to rank and dismissal/discharge from service was awarded to the petitioner. The petitioner had only 12 years 01 month and 19 days of service on the date the sentence by SCM was passed against him. Keeping in view the facts and circumstances of the case as aforesaid, the punishment of dismissal/discharge awarded to the petitioner is too harsh and excessive, as on the one hand it snatches away the opportunity from the petitioner to complete the pensionable service and on the other, he is left with no means to maintain his family. The sentence awarded by the competent authority and modified on Mercy Petition

without giving him the benefit of pension to maintain his family, would cause grave injustice to the petitioner. We are of the considered view that in the facts and circumstances of the instant case, the punishment of reduction to rank only would be the adequate sentence.

17. Accordingly, this **TA No. 107 of 2011 is partly allowed**. So far as the findings of SCM and punishment of reduction to rank are concerned, they are hereby confirmed. The petitioner shall be treated to be in service notionally from the date of dismissal/discharge till the date of attainment of required qualifying pensionable service, for which he shall not be entitled to any salary or back wages on the principle of 'no work no pay'. From the date of attainment of such qualifying service for pension, the petitioner shall be entitled to pension and all other associated benefits in accordance with law and rules. The respondents are directed to comply with this order within a period of four months from the date a copy of this order is produced before them. The entire arrears of pension shall be paid to the applicant within the aforesaid period of four months. If the same are not paid within the time stipulated, then the respondents shall also be liable to pay interest at the rate of 9% per annum on the amount due from the date of its accrual till the date of its actual payment.

The Registry is directed to provide a copy of this order to learned counsel for the respondents for its onwards transmission and necessary compliance.

No order as to costs.

(Lt Gen Gyan Bhushan)
Member (A)

(Justice SVS Rathore)
Member (J)

February ,2018
LN/-

Form No. 4
{See rule 11(1)}
ORDER SHEET

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Court No.1

T.A.No. 107 of 2011

Lekhraj Singh

Applicant

By Legal Practitioner for the Applicant

Versus

Union of India & Others

Respondents

By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>27.02.2018</u> <u>Hon'ble Mr. Justice S.V.S. Rathore, Member (J)</u> <u>Hon'ble Lt Gen Gyan Bhushan, Member (A)</u></p> <p style="text-align: center;">Judgment pronounced.</p> <p style="text-align: center;">T.A. is partly allowed.</p> <p style="text-align: center;">For orders, see our judgment and order of date passed on separate sheets.</p> <p style="text-align: center;">(Lt Gen Gyan Bhushan) Member (A)</p> <p style="text-align: center;">(Justice S.V.S Rathore) Member (J)</p> <p>LN/-</p>