

Court No. 1
Reserved Judgment

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

TRANSFERRED APPLICLATION NO.671 of 2010

Ex-Subedar/Clerk Umakant Mishra (No.JC 30575-M) Resident of
561 Transport Nagar, Post Dhoomanganj, District Allahabad.

..... **Petitioner**

Versus

1. Union of India, through its Secretary, Ministry of Defence,
Government of India, South Block,
New Delhi 110011.
2. Chief of the Army Staff, Army Head Quarter,
SENA BHAWAN, New Delhi.
3. General Officer, Commanding-in-Chief, Headquarters,
South Welfare Command, C/o 56 APO.
4. General Officer Commanding, 1st Corps, C/o 56 APO.
5. Commanding Officer, 38 Assault Engineer Regiment,
C/o 56 APO.

..... **Respondents**

Alongwith

TRANSFERRED APPLICATION NO.1381 of 2010

Ex-Subedar/Clerk Umakant Mishra (No.JC 30575-M) Resident of
561 Transport Nagar, Post Dhoomanganj, District Allahabad.

..... **Petitioner**

Versus

1. Union of India, through the Secretary, Ministry of Defence,
DHQ, Post Office, South Block,
New Delhi 110011.

2. Chief of the Army Staff, Army Head Quarters,
DHQ, Post Office, South Block,
New Delhi 110011.
3. General Officer, Commanding, 1 Corps,
C/o 56 APO.
4. Commanding Officer, 38 Assault Engineer Regiment,
C/o 56 APO.

..... **Respondents**

By Legal Practitioner: Shri PN Chaturvedi, Advocate
Learned Counsel for the Petitioner

By Legal Practitioner: Shri DK Pandey, Learned Standing
Counsel for the Central Government
assisted by Major Piyush Thakran,
Departmental Representative

Hon'ble Mr. Justice S.V.S.Rathore, Member (J)
Hon'ble Lt Gen Gyan Bhushan, Member (A)

Tuesday this the 20th day of February, 2018

ORDER

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

1. Since both these T.As. arise out of the same General Court Martial (in short 'GCM') proceedings, initiated against the petitioner, therefore, vide order dated 24th August 2015, both the T.A.s were directed to be listed together and the same were heard and are being disposed of together.

2. T.A.No.671 of 2010 arise out of Civil Misc. Writ Petition No. 11538 of 2009, whereby the petitioner has prayed for the following reliefs :

“(a) Issue a writ, order or direction in the nature of certiorari quashing the order dated 23.1.2009 passed by respondent No.2 (Annexure-1 to writ petition), order dated 21.7.2006 passed by respondent No.3 (Annexure-4 to writ petition) and order dated 06.8.2007 passed by respondent No.5 (Annexure-13 to writ petition).

(b) Issue a writ, order or direction in the nature of mandamus commanding the respondents to treat the petitioner in service and treat the order dated 21.7.2006 and 06.8.2007 in consequential.

(c) Issue a writ order or direction as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

(d) Award costs of writ petition to the petitioner”.

3. T.A.No.1381 of 2010 arise out of Civil Misc. Writ Petition No.9637 of 2007, whereby the petitioner has prayed the following reliefs :”

“a. Issue a writ, order or direction in the nature of certiorari quashing the finding and sentence of the General Court Martial dated 22nd June, 2006 (Annexure No.16 & 17 to the writ petition).

b. Issue a writ, order or direction in the nature of mandamus commanding the respondents to reinstate the petitioner in service with all consequential benefits.

c. Issue any other writ, order or direction, which this Hon'ble Court may deem fit and proper in the circumstances of the case.

d. Award the cost of the petition to the petitioner.”

4. A perusal of the record shows that prior to it, the petitioner had preferred another Civil Misc. Writ Petition No.3217 of 2005 which was subsequently withdrawn on 16.01.2007. The petitioner was tried by GCM and as per record, the following charges were levelled against him :

CHARGE SHEET

The accused No. JC-305735M Subedar/Clerk (General Duty) Umakant Mishra of 38 Assault Engineer Regiment, is charged with:-

First Charge

Army Act Sect 52(f) - SUCH AN OFFENCE AS IS MENTIONED IN CLAUSE(f) OF SECTION 52 OF THE ARMY ACT, WITH INTENT TO DEFRAUD

in that he,

at Jhansi, on 27 January 2000, which came to the knowledge of the authority competent to initiate action on 29 September 2003, in the absence of any requisition for issue of a railway warrant from Number 137914M Naik S Chandrasekharan of his unit, while performing the duties of Head Clerk of 492 Composite Assault Squadron ex 38 Assault Engineer Regiment, with intent to defraud, caused to be issued warrant IAFA-1707 Serial Number 088306 in his own name for return journey of self, wife and two children over 12 years between Jhansi and Allahabad, while recording in the counter foil use of railway warrant by the said Naik S Chandrasekharan and two other ranks from Muzaffernagar to Jhansi.

Second Charge

Army Act Sec 57(a) - IN A WARRANT SIGNED BY HIM KNOWINGLY
MAKING A FALSE STATEMENT.

in that he,

AT Jhansi, on 26 February 2000, which came to the knowledge of the authority competent to initiate action on 29 September 2003, while performing duties as aforesaid in the first charge, prepared and signed a warrant IAF-1707 Serial Number 088313 in the name of Number 1384445K Naik OV Murughan, well knowing that no such warrant was needed by said Naik OV Murughan.

Third Charge

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

in that he,

AT Jhansi, between 01 January 2000 and 08 March 2000, which came to the knowledge of the authority competent to initiate action on 29 September 2003, improperly signed the warrants IAF-1707 bearing Serial Numbers 088316 and 088318, well knowing that he was not authorized to do so.

Fourth Charge

Army Act Sec 69 COMMITTING A CIVIL OFFENCE THAT IS TO
SAY CAUSING DISAPPEARANCE OF EVIDENCE
OF OFFENCE, CONTRARY TO SECTION 201 OF
INDIAN PENAL

in that he,

AT Jhansi, on 12 May 2004, having reasons to believe that an offence as is mentioned in clause (f) of section 52 of the Army Act has been committed in respect of warrant IAF-1707 Serial Number 088306, did cause the evidence of the same to disappear, to wit by tearing the main leaf of the said warrant into pieces and flushing them down the toilet, with the intention of screening himself from legal consequences.

Place : Jhansi

Sd/-x-x-x-x-

(SS Kapoor)

Date: 06 January 2005

Colonel Commanding Officer

38 Assault Engineer Regiment

To be tried by a General Court Martial

Place : Jhansi

Sd/-x-x-x-x-

(Susheel Gupta)

Date : 12 January 2005

Lieutenant General

General Officer Commanding

1 Corps

5. The GCM held the petitioner guilty and inflicted punishment of one year's R.I. and dismissal from service. The petitioner's imprisonment awarded by the GCM was stayed by the Hon'ble High

Court vide order dated 22.02.2007 in Writ Petition No.11538 of 2009. The petitioner, who has argued his case in person, has initially argued that the GCM be set aside and he be reinstated in service, but during the course of arguments, he has fairly admitted that he wants to restrict his prayer only with regard to grant of pension because he has already attained the age of superannuation. He has argued that the petitioner had put in 24 years of service. He had absolutely unblemished career. The allegation against him was only with regard to misuse of one warrant. It has been averred in Para 11 of the counter affidavit that GCM was completed on 22nd June 2006. The Court had not found guilty of third charge, but found the petitioner guilty of 1st, 2nd and 4th charges. Accordingly, the petitioner was sentenced to imprisonment of one year's R.I. and also dismissal from service. The petitioner has argued that keeping in view the long unblemished career of more than 24 years' of service, the punishment awarded to the petitioner was disproportionate to the misconduct committed by him. Keeping in view, the submission of the petitioner himself, whereby he has restricted his prayer at this stage only with the point of appropriate sentence, we are not entering into the merits of the case.

6. On behalf of the respondents, it has been argued that the GCM has fully complied with the procedure prescribed therefor and the finding of guilt was rightly recorded by the GCM. Since at this stage, the petitioner is not challenging the finding of guilt recorded by the GCM, therefore, we do not consider it appropriate to enter into the merits of the case.

7. It is admitted fact that the petitioner had long service record of 24 years, 04 months and 05 days, which is mentioned in his certificate on termination of service. The order of dismissal has forfeited the pension of the petitioner and his retiral benefits, which after putting in such a long service, would definitely cause great prejudice and hardship to the petitioner, because after such a long

unblemished service career, he would not be able to maintain his family.

8. Learned counsel for the respondents has argued that unless and until, the GCM proceedings are set aside on merits, no relief can be granted to the petitioner.

9. We are not impressed with the aforesaid submission because we are entertaining these T.As. only on the ground of appropriate sentence.

10. The GCM has inflicted the punishment of dismissal from service only and has not inflicted any other punishment, therefore, keeping in view the length of service of the petitioner, the punishment of dismissal from service is too harsh. On this point, we would like to refer the pronouncement of Hon'ble Supreme Court in the case of **Major G.S.Sodhi vs. Union of India** (Criminal Misc. P.No.8905 of 1990) decided on 19.03.1991, wherein the Hon'ble Supreme Court has held as under :

" 3. A similar order was also passed in Religious Teacher Ex N. Sub. R.K. Sharma v. The Chief of the Army Staff and Ors. (Cr. M.P. No. 349/80 in W.P. (Crl.) No. 244/80 dated 29.4.80), by a Bench of two Judges of this Court. While dismissing the writ petition, the Bench observed that "the Court Martial has not inflicted a punishment on him of forfeiture of pension or other service benefits and counsel for the other side has assured the Court that whatever the pension and other service benefits are permissible to the petitioner under the law will be given to him."

4. In the instant case also, the Court Martial has not inflicted any other punishment of forfeiture of pension or other service benefits of the petitioners. Therefore they are also entitled to these benefits. Accordingly the respondent is directed to pay the entire pension, gratuity and provident fund under the rules to each of these petitioners within three months from the date of receipt of this order. Both the criminal miscellaneous petitions are accordingly disposed of."

11. We may also refer the pronouncement in the case of **S.Muthu Kumaran vs. Union of India & others** [Civil Appeal No.352 of 2017] decided on 17.01.2017. In this case also, the appellant was involved in the recruitment racket in Jammu and in that 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 6 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.”

12. When we examine the sentence awarded by the GCM to the petitioner in the background of the aforementioned pronouncements, then we are of the considered view that the punishment of dismissal from service was too harsh and not proportionate to the misconduct committed by him. During the course of arguments, it is admitted that the petitioner had already remained about seven months in custody during the GCM proceedings. However, subsequently the operation of the order was stayed, therefore, part of the sentence awarded to the petitioner could not be served in pursuance of the order passed by the Hon’ble High Court.

13. Keeping in view the aforementioned case laws and long unblemished service record of the petitioner, we are of the view that the finding recorded by the GCM deserves to be confirmed. However, the sentence awarded to the petitioner vide GCM deserves to be modified to the extent that for all the charges, the punishment shall be reduced to the period of imprisonment already undergone by him. The order of dismissal from service deserves to be converted into discharge from service with consequential benefits.

14. Accordingly, **Transferred Application No. 671 of 2010** alongwith **Transferred Application No. 1381 of 2010** is **partly allowed**. The findings of guilt recorded by the GCM deserve to be confirmed and is hereby confirmed. However, the sentence awarded

to the petitioner is hereby modified to the extent that for all the charges, the punishment shall be reduced to the period of imprisonment already undergone by him. The order of dismissal from service is hereby converted into discharge from service. The petitioner shall be entitled to the post retiral benefits, including pension from the date of his discharge. The respondents are directed to calculate the arrears of pension within a period of four months from the date a copy of this order is produced before them, failing which they will have to pay interest @9% per annum at the total amount accrued from the date of discharge till the date of actual punishment.

No order as to costs.

15. Registry is directed to provide a copy of this order to the learned counsel for the respondents for onward transmission to the respondents to ensure compliance.

(Lt Gen Gyan Bhushan)
Member (A)

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

Dated: February , 2018.
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