

Court No.1

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

Original Application No. 232 of 2015

Saturday, this 17 day of December, 2016

Hon'ble Mr. Justice D.P.Singh, Member (J)

Hon'ble Air Marshal Anil Chopra, Member (A)

Chander Pal (No. 4162771 Ex Naik), son of late Shri Ram Nath,
resident of village Jaimatpur, Post- Balipur, District Firozabad (UP)

..... Applicant

By Legal Practitioner Shri R. Chandra, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence,
Government of India, New Delhi.
2. The Chief of the Army Staff, Integrated Headquarters, New
Delhi-11
3. The Officer-In-Charge Records, The Kumaon Regiment, PIN-900
473 C/o 56 APO
4. The Chief Controller, Defence Accounts (Pension), Draupadi
Ghat, Allahabad (U.P.)
5. The Commanding Officer, 5 Kumaon C/o 56 APO

..... Respondents

By Legal Practitioner Mrs. Deepti P. Bajpai, Learned Counsel for the
Central Government.

ORDER

1. This is an application filed by the applicant under Section 14 of the Armed Forces Act, 2007 being aggrieved with the impugned order of discharge from service on account of his conviction and sentence in a criminal case, in which later on he was acquitted by the Hon'ble High Court on appeal.

2. We have heard Shri R.Chandra, learned counsel for the applicant and Mrs. Deepti P. Bapai, learned Standing Counsel appearing for the respondents, assisted by OIC Legal Cell Major Soma John.

3. Indisputably, the applicant was enrolled in the Army in Kumaon Regiment on 03.03.1971. He was granted two months' annual leave with effect from 07.04.1977 to 07.06.1977 by 5 Kumaon Regiment. On 10.04.1977 while the applicant was on annual leave, an FIR was lodged against him and he was involved in a criminal case at his native village Jaimatpur, Post Office Balipur, District Firozabad, UP. The applicant was subjected to trial, wherein he was convicted under Section 307 IPC and sentenced to four years' RI by the Sessions Judge, Mainpuri vide judgment and order dated 21.07.1983. Against the said conviction and sentence, the applicant preferred a criminal appeal in Hon'ble Allahabad High Court. During pendency of appeal, he was released on bail on 27.07.1083. During bail period, he reported in Rajput Regiment Centre, Fatehgarh and thereafter he was returned to

his parent Unit i.e. 5 Kumaon Regiment and was taken in the strength. The applicant was issued a show cause notice and thereafter discharged from service with effect from 22.07.1984. The order of discharge was passed exclusively for the reason that he was convicted by the Sessions Court in a criminal case under Section 307 IPC (supra). However, against the aforesaid conviction, the appeal preferred by the applicant before the Hon'ble High Court was allowed vide order dated 20.04.1992 followed by his acquittal. Since the applicant was acquitted by the Hon'ble High Court, he preferred a writ petition bearing No. 33418 of 1992, praying for setting aside the discharge order and his reinstatement in service but the same was rejected by the Hon'ble Court vide order dated 06.08.2009 on the ground that his acquittal by the High Court cannot be made the basis for reinstatement after 8 years, and more than 17 years have elapsed thereafter and the applicant must have attained the age of superannuation by now. Later on, the applicant has preferred the present O.A for payment of service benefits. The delay in filing the O.A was condoned the O.A was admitted for hearing.

4. Submission of Shri R.Chandra, learned counsel for the applicant is that since the applicant has been honourably acquitted by the Hon'ble High Court in appeal, he is entitled for reinstatement in service. Learned applicant's counsel has invited our attention to the judgment and order dated 03.02.2016 passed in *T.A.No. 726 of 2010*,

Rudra Pal Singh versus The Union of India and another, where this Tribunal exactly in an identical case, after considering various pronouncements of Hon'ble the Supreme Court, held that proceedings on the basis of conviction in a criminal case shall become *non est* if the person concerned is acquitted of the charges. Thus, once the applicant was acquitted of the charges levelled against him by a competent court of law, he cannot be deprived of service benefits.

5. We find force in the submission made by learned applicant's counsel. The foundation of applicant's discharge from service was his conviction and sentence awarded by a competent criminal court, which has been set aside by the Hon'ble High Court and he has been acquitted of the charges levelled against him. Once the root cause of passing of discharge order goes, then the applicant would be entitled to all consequential benefits including *status quo ante*. The respondents cannot deny to the applicant the service benefits which he would have gained in case he was not discharged from service.

6. In view of above, the O.A is allowed. The impugned order of discharge is hereby quashed. However, keeping in view the factual matrix on record, we decline to grant back wages, but for the purpose of pensionary benefits, the entire period of service of the applicant of the rank he was holding at the time of discharge shall be counted and he shall be paid all consequential benefits including pensionary benefits and arrears thereof expeditiously, say, within four months

from the date of production of a certified copy of the present order.
OIC Legal Cell shall also communicate this order to the authority
concerned forthwith.

7. No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

(Justice D.P.Singh)
Member (J)

Dated: Dec 17, 2016
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