

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****COURT NO.1****Transfer Application No. 70 of 2013**Tues day, this the 10th day of January, 2017**Hon'ble Mr. Justice D.P. Singh, Member(J)****Hon'ble Air Marshal Anil Chopra, Member(A)**

Pan Singh Pundir son of Balwant Singh,
 Resident of village Partoli, Post Office Kimoli,
 District Chamoli, Uttarakhand

- Petitioner

Versus

1. Union of India through Secretary Defence,
 Ministry of Defence, New Delhi.
2. Commanding Officer 6 Mahar Regiment (Borders)
 C/o 56 APO
3. The Chief of Army Staff,
 Army Headquarters, DHQ Post Office, New Delhi
4. Officer-in-Charge Records,
 Records The Mahar Regiment, Sagar (MP) – 470001

Respondents

Learned counsel appeared
 for the petitioner

- Shri R. Chandra, Advocate

Learned counsel appeared
 for the respondents

- Mrs. Amrita Chakraborty, Standing Counsel
 assisted by Maj Soma John, OIC Legal Cell

ORDER**Per Justice D.P. Singh**

1. Being aggrieved with an order of discharge dated 08.07.1993 as contained in Annexure-5 to the transfer application, the petitioner has preferred a writ petition bearing number W.P.No. 74 of 2011 in the High Court of Uttarakhand, Nainital, which has been transferred to this Tribunal and now registered as Transfer Application No. 70 of 2013.
2. We have heard learned counsel for the petitioner Shri R. Chandra and Mrs. Amrita Chakraborty, Standing Counsel, assisted by Maj Soma John, OIC Legal Cell and perused the record.
3. The admitted facts on record are that the petitioner joined Indian Army as Soldier on 10.01.1983. During the course of service, the petitioner was convicted in a case under Sections 120-B, 201, 304-B and Section 498-A of Indian Penal Code in Sessions Trial No. 8 of 1991, sentenced for seven years' R.I. under Section 304-B I.P.C., two years' R.I. for offence under Section 498-A I.P.C., one year's R.I. under Section 201 I.P.C. and six months' R.I. for offence under Section 120-B I.P.C. by the judgment and order dated 17.06.1992 passed by the Sessions Judge, Chamoli.

4. Being aggrieved with the aforesaid conviction, the petitioner preferred a criminal appeal, numbered as CrI. Appeal No.1303 of 2001 in the High Court of Uttarakhand, Nainital. Because of conviction in the criminal case (supra), the petitioner was discharged from Army by the impugned order dated 08.07.1993, a copy of which has been filed as Annexure No.5 to the Transfer Application, for brevity hereinafter referred to as T.A. The appeal was allowed by the Uttarakhand High Court by an order dated 08.05.2009, a copy of which has been filed as Annexure No.3 to the T.A.

5. After acquittal in the criminal case, the petitioner preferred representation dated 25.05.2009, followed by reminders dated 16.04.2010, 19.08.2010 and 14.12.2010 . On account of inaction on the part of respondents, he preferred writ petition and that is why the matter came before us. The submission of petitioner's counsel Shri R. Chandra is that since the petitioner has been acquitted in the criminal case, he is entitled for restoration in service with all consequential benefits. It is also submitted that after conviction in criminal case (supra), the petitioner was discharged by the impugned order by serving a show cause notice dated 17.06.1993 but in spite of reply submitted by the petitioner that an appeal is pending in the matter, order of discharge/ termination dated 08.07.1993 was passed. Learned counsel for the petitioner has relied upon the decisions of

Hon'ble Supreme Court in the cases of Jasbir Singh vs. Punjab and Sind Bank and others reported in (2007) 1 SCC 566 and G.M. Tank vs. State of Gujarat and another reported in (2006) 5 SCC 446 and submitted that since the petitioner has been acquitted in the criminal case, he is entitled to be restored in service and impugned order is liable to be set aside. In response to the arguments advanced by the learned counsel for the petitioner, it is argued by the learned counsel for the respondents Mrs. Amrita Chakraborty, assisted by Maj Soma John, OIC Legal Cell that since the petitioner has been given benefit of doubt by the High Court and acquittal is not clear, he is not entitled to reinstatement in service. The learned counsel for the respondents has relied upon a decision of Hon'ble Supreme Court in the case of Ajai Kumar Singh vs. Flag Officer Commanding & others decided on 13.07.2016. According to judgment of Ajay Kumar Singh (supra), mere acquittal in the criminal case does not automatically give right to be restored into the service. Hon'ble Supreme Court noted that it shall be open to the competent authority to take a decision whether the enquiry into the conduct is required to be done before directing reinstatement or appropriate action should be taken as per law, if otherwise, available. Ajay Kumar Singh was a temporary government servant and in view of the relevant rule, being temporary government servant authorities have right to invoke the provision and terminate

the service of the employee. Their Lordships further held that if the employee has honourably been acquitted, he can make a claim for reinstatement. In the case of Ajay Kumar Singh further in para-24 the Hon'ble Supreme Court recorded finding that the acquittal of the appellant was a debatable point and on being granted only benefit of doubt to him, he has no right to seek reinstatement and consequential benefits. The relevant portion of the judgment is reproduced as under:-

“24. The tribunal came to the collective conclusion that no satisfactory evidence had been adduced by the prosecution to sustain the conviction of DK Singh and therefore the tribunal set aside the conviction giving him the benefit of doubt. From a perusal of the impugned judgment, it is clear that the tribunal has acquitted the appellant-DK Singh on the ground that the prosecution has not established the guilt of the accused beyond reasonable doubt. It is not as if, the appellant-DK Singh was honourably acquitted. It is also to be pointed out that as discussed above, that we have taken the view that the identity of the appellants by PW-14 (Manager) and PW-18 (Cashier) is credible and acceptable. Evidence of PW-14 and PW-18 identifying DK Singh as one of the culprits is a factor to be reckoned with while considering the plea of the appellant-DK Singh for reinstatement. Additionally, it is to be pointed out that as seen from the evidence of K. Rama Krishna Rao-Inspector of Police (PW-17) on 10.06.1998, DK Singh deposited Rs.90,000/- in his bank account No.3395 of SBI BR Township Branch and the explanation of the appellant for this deposit is not convincing. Having regard to our findings on the evidence of PWs 14 and 18, the acquittal of appellant-DK Singh itself becomes a debatable point. However, we do not propose to go into this aspect since the Union of India has not filed any appeal challenging acquittal of DK Singh. Appellant-DK Singh who was only granted benefit of doubt cannot seek for reinstatement and the consequential benefits and his appeal is also liable to be dismissed.”

6. However, the case of Ajay Kumar Singh (supra) seems to be not fit to the facts and circumstances of the present case for the reason that Ajay Kumar Singh was a temporary government employee and his service could have been terminated under the relevant rule without regular enquiry. Secondly, it is observed by their Lordships of the Supreme Court that option is open to the employer to hold a departmental enquiry (supra) and take appropriate decision.

7. So far as the present case is concerned, the petitioner was a soldier of the Indian Army and was entitled to continue in service up to the age of superannuation in accordance with the Army Act and the Rules framed thereunder. It is appropriate to consider the cases referred to by the petitioner. In the case of **G.M. Tank**, their Lordships of Hon'ble Supreme Court held that where a person is exonerated from criminal charges, he shall be entitled to full salary, allowances and promotions. The Hon'ble Supreme Court considered the cases reported in Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. & Anr. , (1999) 3 SCC 679 (two Judges), Union of India vs. Jaipal Singh, (2004) 1 SCC 121 (two Judges), Commissioner of Police, New Delhi vs. Narender Singh, 2006(4) Scale 161= 2006(4)JT 328 (two Judges), R.P. Kapur vs. Union of India & Anr. AIR 1964 SC 787 (five Judges), Corporation of the City of Nagpur, Civil Lines, Nagpur & anr. Vs.

V. Ramachandra G. Modak & Ors., AIR 1984 SC 626 (three Judges), Anil Kumar Nag vs. General Manager (PJ), Indian Oil Corporation Ltd., Haldia & Ors., (2005) 7 SCC 764 (three Judges), Depot Manager, A.P. State Road Transport Corporation vs. Mohd. Yousuf Miya & Ors., (1997) 2 SCC 699 (three Judges), State of Andhra Pradesh & Ors. vs. S. Sree Rama Rao, AIR 1963 SC 1723 (three Judges), Krishnakali Tea Estate vs. Akhil Bharatiya Chah Mazdoor Sangh & Anr., (2004) 8 SCC 200 (three Judges). The relevant paras-15 and 16 of G.M. Tank's case (supra) are quoted hereunder:-

15. The judgments relied on by the learned counsel appearing for the respondents are not distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a Departmental case against the appellant and the charge before the Criminal Court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer, Mr. V.B. Raval and other departmental witnesses were the only witnesses examined by the Enquiry Officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the

examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by his judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

16. In our opinion, such facts and evidence in the department as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though finding recorded in the domestic enquiry was found to be valid by the Courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony's case (supra) will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed.”

8. The Armed Forces Tribunal, Regional Bench, Chandigarh in O. A. No.1358 of 2012, **Darbara Singh vs. Union of India and others,** after considering number of judgments of Apex Court observed that where a person is not subjected to any departmental proceedings or enquiry before passing of the discharge order or acquittal by the High Court, then he shall be entitled to be restored in service from the date of discharge to the date of acquittal and from the date of acquittal to the date of superannuation.

9. The Hon'ble Supreme Court in the case reported in (2007) 1 SCC 566, **Jasbir Singh vs. Punjab and Sind Bank and others**, decided on 31.10.2006 set aside the order of dismissal where incumbent was acquitted in the criminal case and reinstated in service with full back wages. Their Lordships relied upon Capt. M. Paul Anthony's case (supra). The Hon'ble Supreme Court in a recent case reported in (2016) 1 SCC 671, **Baljinder Pal Kaur vs. State of Punjab and others**, held that even after acquittal on merit in criminal case because of hostile witnesses a departmental proceeding is valid to award appropriate punishment. While deciding the identical case in T.A. No. 726 of 2010, Rudra Pal Singh vs. The Union of India and another, by judgment and order dated 03.02.2016 after considering number of Apex Court's judgment, we have held as under :-

"8. In the case of Union of India & ors vs. Harjeet Singh Sandhu reported in (2001) 5 SCC 593, their Lordships of the Hon'ble Supreme Court had considered this aspect of the matter and held as under :-

"26. The pronouncement of judicial verdict would thereafter exclude any independent disciplinary action being taken against the delinquent officer on the same facts which constituted the misconduct amount to an offence for which he was charged before the criminal court. In the vent of his being convicted, if some further disciplinary action is still proposed to be taken, then it is the conduct of the officer leading to his conviction (as found by the criminal court) which is capable of being taken into consideration by the Central

Government or the Chief of the Army Staff under sub-rules (3), (4) and (5) of Rule 14 for the purpose of such action. The facts forming the conduct of the officer leading to his conviction shall alone form the basis of the formation of opinion as to whether his further retention in service is undesirable whereupon he may be dismissed, removed or compulsorily retired from the service in the manner prescribed by the said sub-rules. ...”

9. *In view of the above, since discharge of the petitioner from Army was on account of pendency of criminal appeal, which no more exists, the order of discharge loses its sanctity and the petitioner seems to be entitled for restoration in service with all consequential benefits.*

10. *Attention has been invited to another decision of the Hon’ble Supreme Court in the case of Divisional Controller, Karnataka State Road Transport Corporation vs.M.G. Vittal Rao, reported in (2012) 1 SCC 442, wherein in paras 21, 22, 23 and 24 their Lordships have held as under:-*

“21. A similar view has been reiterated by this Court in Supdt. of Post Officers v. A. Gopalan, Kendriya Vidyalaya Sangathan v. T. Srinivas, Krishnakali Tea Estate V. Akhil Bharatiya Chah Mazdoor Sangh, Commr. Of Police v. Narender Singh, South Bengal State Transport Corpn, V. Sapan Kumar Mitra and Punjab Water Supply Sewerage Board v. Ram Sajivan.

22. In the Union of India V. Naman Singh Shekhawat this Court held that departmental proceeding can be initiated after acquittal by the criminal court. However, the departmental proceeding should be initiated provided the department intended to adduce any evidence which could prove the charges against the delinquent officer. Therefore, initiation of proceeding should be bona fide and must be reasonable and fair.

23. *In Pandiyan Roadways Corpn. Ltd. V. N Balakrishnan, this Court reconsidered the issue taking into account all earlier judgments and observed as under (SCC pp. 766-67, paras 21-22).*

“21. There are evidently two lines of decisions of this Court operating in the field. One being the cases which would come within the purview of Capt. M. Paul Anthony v. Bharat Gold Mines Ltd and G.M. Tank v. State of Gujrat. However, the second line of decisions show that an honourable acquittal in the criminal case itself may not be held to be determinative in respect of order of punishment meted out to the delinquent officer, inter alia, when (i) the order of acquittal has not been passed on the same set of facts or same set of evidence; (ii) the effect of difference in the standard of proof in a criminal trial and disciplinary proceeding has not been considered (see Commr. Of Police v. Narender Singh) or; where the delinquent officer was charged with something more than the subject matter of the criminal case and/or covered by a decision of the civil court (see G.M. Tank, Jasbir Singh v. Punjab & Sind Bank and Noida Entrepreneurs Assn. v. Noida, SCC at P. 394, Para 16).

22.’41. We may not be understood to have laid down a law that in all such circumstances the decision of the civil court or the criminal court would be binding on the disciplinary authorities at this Court in a large number of decisions points out that the same would depend upon other factors as well. (See e.g. Krishnakali Tea Estate and RBI v. S. Mani) Each case is, therefore, required to be considered on its own facts.

24. *Thus, there can be no doubt regarding the settled legal proposition that as the standard of proof in both the proceedings is quite different, and the termination is not based on mere conviction of an employee in a*

criminal case, the acquittal of the employee in a criminal case cannot be the basis of taking away the effect of departmental proceedings. Nor can such an action of the department be termed as double jeopardy. The judgment of this Court in Capt. M. Paul Anthony does not lay down the law of universal application. Facts, charges and nature of evidence, etc. involved in an individual case would determine as to whether decision of acquittal would have any bearing on the findings recorded in the domestic enquiry.”

A perusal of the above quoted paras of the decision in the case of Divisional Controller, Karnataka State Road Transport Corporation vs.M.G. Vittal Rao (supra) shows that that proceedings on the basis of conviction in criminal case(s) shall become non-est in the person concerned is acquitted of the charges. Thus, once the petitioner was acquitted of the charges leveled against him by competent courts of law, he cannot be deprived from service benefits. Facts, charges and nature of evidence, etc. involved in an individual case would determine as to whether decision of acquittal would have any bearing on the findings recorded in the domestic enquiry. Acquittal in criminal case shall finalise career of person and departmental proceedings shall be of no use. In the case of K. Venkateshwarlu vs. State of Andhra Pradesh reported in (2012) SCC 73 the proposition of law laid down is that once a person is acquitted in a criminal case honourably, then departmental proceedings along with all charges shall stand vitiated.

11. In view of settled proposition of law, the impugned order of discharge solely on the basis of pendency of criminal cases loses its efficacy. ”

12. Subject to aforesaid proposition of law, it is borne out that even acquittal in criminal case does not preclude the authorities to award appropriate punishment after departmental enquiry but in the present case no disciplinary enquiry has

been held to punish the applicant keeping in view the conduct for which he was charged in the criminal case.

13. It shall further be appropriate to consider the merit of the case. A perusal of the judgment of the appellate court i.e. High Court of Uttarakhand shows that after the death of petitioner's wife an F.I.R. was lodged and petitioner's family, including his father was charged. The High Court observed that it was his father Balwant Singh, who demanded dowry to the extent of Rs.10,000/- but during the pendency of appeal he seems to have expired and the appeal abated against him. The High Court further noted that none of the prosecution witnesses has stated that the appellant/ accused i.e. husband used to torture or harass his wife for dowry.

14. For convenience paras- 34 and 35 of the appellate judgment of the High Court are reproduced as under :-

"34. As regards the demand of dowry, it has nowhere been alleged that appellant no.1 Pan Singh or appellant no.2 Lila Devi ever made any demand of dowry. The allegation is only against appellant no.3 Balwant Singh that he demanded Rs.10,000/- as dowry and the appeal against appellant no.3 has been abated. PW5 Madan Lal, Patwari has also stated that no complaint regarding demand of dowry was made by the father of the deceased Balwant Singh Bisht (PW2) at the time of compromise. Furthermore, PW4 Jai Singh has also stated that when he met

Bhwneshwari Devi at her house in village Partoli she told him to get her property partitioned and no complaint whatsoever regarding demand of dowry or cruelty or harassment by any family member was made by her. No prosecution witness has stated that the appellants/accused i.e. husband or in-laws of deceased Bhwneshwari Devi used to torture or harass her for dowry. Only PW2 Balwant Singh Bisht, the complainant and father of deceased has alleged that appellant no. 3 Balwant Singh demanded Rs.10,000/- as dowry, but his appeal has been abated. Hence, in these facts and circumstances, it can safely be inferred that it is not a case of 'dowry death'.

35 In view of foregoing discussion, offence u/s 304-B and 498-A IPC is not proved against the appellants/accused beyond reasonable doubt and they are entitled to get the benefit of the same."

15. A perusal of the observation made by the High Court shows that the offence was not proved against the appellants/ accused beyond reasonable doubt, hence they are entitled to be benefited. However, finding is categorical that appellant has not done anything wrong to his wife. Though in para-40 High Court held that accused are entitled for the benefit of doubt but in earlier paras (supra), it is also held that the guilt has not been proved. Thereafter, the operative portion of the judgment of the High Court, while allowing the appeal held as under :-

"41. Accordingly, the appeal is allowed. The judgment and order dated 17.6.1992 passed by the Sessions Judge, Chamoli in Sessions Trial No. 8 of 1991, State v. Pan Singh & Ors, convicting the appellants u/s 120-B, 201, 304-B & 498-A of IPC is hereby set aside. Appellants Pan Singh and Lila Devi

are acquitted of the charges leveled against them. Consequently, sentence of 7 years' R.I. u/s 304-B IPC, 2 years' R.I. u/s 498-A IPC, 1 year's R.I. u/s 201 IPC and R.I. for a period of six months u/s 120-B IPC awarded to each of the appellants is also quashed. The appellants are on bail. They need not surrender. Their bail bonds are cancelled. Sureties are discharged. "

16. A plain reading of the operative portion of the order shows that the punishment was quashed and the appeal was allowed. Prima facie observation seems to be abrasive and not clear with regard to grant of benefit of doubt for the purpose of acquittal. Keeping in view the fact that the operative portion of the order declares that punishment awarded is quashed, there seems to be no room of doubt that the appellant was acquitted, that too under the teeth of finding that there was no allegation against him in the first information report with regard to torture or harassment or demand of dowry by in-laws. In the absence of any allegation found to be correct against the appellant, he seems to be acquitted without any stigma.

17. In view of the aforesaid, the T.A. deserves to be allowed. Accordingly, the T.A. is allowed and the impugned order of discharge dated 08.07.1993, contained in Annexure-5 to the T.A. is set aside with all consequential benefits. Petitioner shall be deemed to be in continuous in service in the rank which he was holding at the time of discharge till the age of superannuation for the purpose of arrears of

salary and regular pension. However, arrears of salary till the age of superannuation are confined to 50%, but he shall be paid full post retirement regular pension and other service benefits. Let arrears be paid within four months from the date of production of a certified copy of this order and the respondents shall continue to pay him regular pension. OIC Legal Cell shall also communicate this order to the authorities concerned forthwith.

18. No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

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

JPT