

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BENCH NAINITAL)****O.A. No. 221 of 2021**Monday, this the 05th day of July, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No 4574448W Ex Sepoy Praveen Kuriyal S/O Purushottam Dutt, R/O Bholi Farm No. 8, Shyampur, Tehsil-Rishikesh, Rishikesh, District, Dehradun, Uttarakhand.

..... Applicant

Ld. Counsel for the: **Shri Kishore Rai**, Advocate
Applicant **Shri Rajesh Nagarkoti**, Advocate

Versus

1. Union of India, Ministry of Defence through its Secretary, South Block, New Delhi-110001.
2. P.C.D.A. (P) Allahabad, Uttar Pradesh.
3. Addl Dte Gen Personnel Services Adjutant General's Branch, IHQ of MoD (Army), Room No-11, Plot No-108 (West) Brassey Avenue, Church Road, New Delhi-110001.
4. Senior Record Officer, Records the 15 Mahar Regt, Sagar (MP) Pin-911515, C/O 56 APO.

..... Respondents

Ld. Counsel for the : **Ms Pushpa Bhatt**
Respondents Central Govt Counsel.

ORDER

1. The instant Original Application under Section 14 of the Armed Forces Tribunal Act, 2007 has been filed by the applicant with the following prayers :-

“(i) A direction to quash the order dated 29.03.2017 passed by respondent No. 4 (contained as Annexure No. 3 to this original application) or to-

(ii) A direction to reinstatement the service of the applicant with full back wages.

(iii) A direction to convert the dismissal of applicant into discharge for consequential benefits.

(iv) An appropriate direction to grant the pensionary benefits along with other retiral benefits which are provided to the army personnel w.e.f. 29.03.2017.

(v) To summon the entire records of the applicant pertaining to reinstatement of the service.

(vi) Any other relief to which the applicant is found entitled may also very kindly be granted to the applicant.

2. Brief facts of the case are that having been enrolled in army on 03.12.2001 applicant was arrested on 09.12.2010 by civil police in a criminal case related to murder of Smt Laxmi Devi under section 364, 302, 201, 504 and 506 of IPC. He was enlarged on bail on 03.02.2011. After release on bail vide order dated 25.01.2011, applicant reported to his unit on 03.02.2011 and he was allowed to continue in service with an undertaking that he would present himself in the court at the time of hearing. He continued to serve in the army and while on leave from 22.03.2017 to 20.04.2017, he was arrested by civil police on 29.03.2017 after a court of Sessions Judge found him guilty in the aforesaid criminal case vide order dated 29.03.2017

sentencing him to life imprisonment. Thereafter, applicant was dismissed from army service w.e.f. 29.03.2017 in terms of Section 20 (3) of Army Act, 1950 read with Rule 17 of Army Rules, 1954 and para 423 of Defence Service Regulations for the Army 1987 (Revised Edition) being undesirable soldier. Against order dated 29.03.2017, a criminal appeal No. 111 of 2017 was filed by applicant in the Hon'ble High Court of Uttarakhand at Nainital which was allowed vide order dated 17.12.2018. The applicant was acquitted setting aside order dated 29.03.2017 passed by the court of Sessions Judge, Uttarakhand. After acquittal, applicant sent representations to re-instate him into service but was denied.

3. It is worthwhile to mention that none of the parties has filed impugned order dated 29.03.2017 even after mentioning time and again by this Tribunal. Therefore, the O.A. is being disposed off in absence of the aforesaid impugned order. This O.A. has been filed by applicant to re-instate him into service/grant of service pension.

4. Learned counsel for the applicant submitted that since applicant has been acquitted by the Hon'ble High Court of Uttarakhand, Nainital by order dated 17.12.2018 and also he has served for more than 15 years in the army at the time of dismissal from service, he be either re-instated in service or be granted service pension by converting dismissal into discharge from service along with all consequential benefits.

5. Per contra, respondents' learned counsel submitted that applicant was dismissed from service in terms of Section 20 (3) of Army Act, 1950 read with Rule 17 of Army Rules, 1954 and para 423

of Defence Service Regulations for the Army 1987 (Revised Edition) being undesirable soldier after he was convicted by Sessions Court for life imprisonment. He further submitted that applicant's suitability for further retention in service was examined by Commander, 83 Infantry Brigade who, keeping in view of applicant's involvement in criminal case and thereafter life imprisonment by court of law, has approved his dismissal from service under relevant Army Rules w.e.f. 29.03.2017 i.e. the day he was sent to jail after pronouncement of judgment by Sessions Court. He pleaded the O.A. to be dismissed.

6. We have heard learned counsel for the parties and perused the material placed on record.

7. The moot question involved in this case is whether an army person, who was involved in a criminal case and sentenced to life imprisonment by Sessions Court and thereafter acquitted by the Hon'ble High Court, can be re-instated in service/granted service pension if he had completed pensionable service at the time of dismissal from service?

8. It is not disputed that after sentencing applicant to life imprisonment by a Sessions Court, Uttarakhand on 29.03.2017 he was dismissed from army service w.e.f. 29.03.2017 being undesirable soldier in terms of Army Act and Rules. It is also not disputed that the applicant was sentenced to life imprisonment and thereafter he was acquitted by the Hon'ble High Court of Nainital vide order dated 17.12.2018. Since both the parties have admitted that impugned order is of dated 29.03.2017 but none of the parties

have produced copy of the impugned order dated 29.03.2017, therefore, we proceed to decide the O.A. in absence of the aforesaid impugned order.

9. On the point of issue of show cause notice to applicant prior to dismissal from service as raised by learned counsel for the applicant in para 15 of the O.A., we are clear that a show cause notice in terms of Note 1 of Rule 17 of Army Rules, 1954 is not required to be issued when dismissal or removal is sought on account of misconduct for which a person has already been convicted by court of law. The applicant was convicted for life imprisonment and thereafter he was acquitted by the Hon'ble High Court. It is also a fact that he was dismissed from service on the date he was awarded life imprisonment. Prima facie, it is crystal clear that applicant, though allegedly involved in a criminal case, was first enlarged on bail and thereafter granted acquittal by the Hon'ble High Court vide order dated 17.12.2018. Therefore, applicant seems to be eligible for either to be re-instated in service or granted benefits of army service. Since applicant is a Sepoy who can only serve 15 or 17 years in the army, therefore re-instatement in service is not feasible at this juncture. He is, thus eligible to be granted service pension and other consequential benefits applicable to him.

10. He was convicted and sentenced by the Sessions Judge but has been acquitted in appeal by the High Court. Copy of the judgment of the High Court is on the record as Annexure 2. It's perusal shows that the High Court found him not guilty. The prosecution case was based on evidence which later was not

proved. It appears that the applicant was not subjected to any departmental proceedings or enquiry before passing of the dismissal order or after acquittal by the Hon'ble High Court.

11. The stand of the respondents for not granting pensionary benefits after dismissal from service, as discussed hereinabove is not legally tenable and wrong and is liable to be rejected. In nutshell, it is held that the applicant is entitled to the pensionary and other consequential benefits after acquittal by the Hon'ble High Court as the order dated 17.12.2018 seems to have not been challenged in the Hon'ble Apex Court.

12. Additionally, the case presents a unique situation with reference to the right of an army personnel like the applicant being dealt with under Rule 17 of the Army Rules, 1954 when he is released by the Hon'ble High Court. The point is res integra. The order passed by the respondents sending the applicant out of service cannot be characterised as dismissal or removal or discharge simplicitor. The applicant's services can be dispensed with under Rule 17 in view of the conviction, but in the light of the order dated 17.12.2018 of the Hon'ble High Court Nanital, the right of the applicant to get pensionary benefits cannot be denied. For convenience sake extract of Rule 17 is reproduced as under:-

"17. Dismissal or removal by Chief of the Army Staff and by other officers-Save in the case where a person is dismissed or removed from service on the ground of conduct which has led to his conviction by a criminal court or a court-martial, no person shall be dismissed or removed under sub-section (1) or subsection (3), of section 20, unless he has been informed of the particulars of the cause of action against him and allowed reasonable time to state in writing any reasons he may have to urge against his dismissal or

removal from the service : Provided that if in the opinion of the officer competent to order the dismissal or removal, it is not expedient or reasonably practicable to comply with the provisions of this rule, he may, after certifying to that effect, order, the dismissal or removal without complying with the procedure set out in this rule. All cases of dismissal or removal under this rule where the prescribed procedure has not been complied with shall be reported to the Central Government.

NOTES

1. *A show cause notice is required to be given under this rule to the individual whose dismissal or removal from service is contemplated, except when the authority competent to order such dismissal or removal considers it inexpedient or impracticable to give such notice as stipulated in the proviso to the rule. Show cause notice will not be necessary when the dismissal or removal is sought on grounds of misconduct for which the person has already been convicted by a criminal court or court-martial.*

2. *When dismissal or removal of a person is sought on grounds of misconduct for which he has not been convicted by a criminal court or a court-martial, the authority competent to order such dismissal or removal should satisfy itself that trial by court-martial of such a person is inexpedient or impracticable for reasons other than probable failure to establish the charges, and that further retention in service of the individual is undesirable.*

3. *All cases of dismissal removal under this rule where the prescribed procedure has not been followed are to be reported to the Central Government.”*

Thus, keeping in view the comparative study of the rights of persons in civil service and in the army by the Full Bench of the Hon'ble Delhi High Court in the case of ***A.K.Malhotra Vs. Union of India & Others***", 1997 (4) SLR 151, it is made clear that the order passed by the respondents dismissing the applicant from service is only dispensing with his services. Therefore, impugned order dated 29.03.2017 is liable to be set aside

13. The aforesaid pronouncement of the Hon'ble Delhi High Court is clear on the point that if a person succeeds in appeal and conviction order is set aside and is acquitted honourably, he should be given all the benefits had he not been convicted or dismissed from the service.

14. In the result, the petition succeeds and is allowed and the order dated 29.03.2017 dismissing applicant from service is set aside. The applicant shall be deemed to be discharged from service w.e.f. 29.03.2017 with full pension and all other consequential benefits. The respondents are directed to release pensionary benefits to applicant within a period of four months from today. Default will invite interest @ 8% per annum.

15. No order as to costs.

16. Pending miscellaneous applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

Dated: 05 July, 2021
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(Justice Umesh Chandra Srivastava)
Member (J)

RESERVED

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BENCH, NAINITAL)

O.A. No. 221 of 2021

Ex Sep Praveen Kuriyal
 By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others
 By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>05.07.2021</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p style="text-align: center;">Heard Shri Kishore Rai and Shri Rajesh Nagarkoti, learned counsel for the applicant and Ms Pushpa Bhatt, learned counsel for the respondents.</p> <p style="text-align: center;">Judgment pronounced.</p> <p style="text-align: center;">Original Application is allowed.</p> <p style="text-align: center;">For order, see our judgment passed on separate sheets.</p> <p style="text-align: center;">Misc. Applications, pending if any, shall be treated as disposed of accordingly.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) Member (A)</p> <p style="text-align: center;">(Justice Umesh Chandra Srivastava) Member (J)</p>

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