

RESERVED
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Transferred Application No. 16 of 2017

Tuesday, this the 12th day of July, 2022

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Hav/Pham S.P. Shukla (now Sep.) No. 13957780L
S/o Late R.N. Shukla,
Central Command Hospital,
Lucknow Cantt

.... **Petitioner**

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

Versus

1. Union of India, through its Secretary, Ministry of Defence, DHQ PO New Delhi.
2. Chief of the Army Staff, Army Headquarters, DHQ PO, New Delhi.
3. GOC-in-C Central Command, Lucknow Cantt.
4. Commandant & OIC Records, AMC Centre & School & Records, Lucknow Cantt.
5. GOC 33 Corps, C/o 56 APO.
6. Commandant Command Hospital, Lucknow Cantt.
7. Commanding Officer, 118 Field Regiment, C/o 99 APO.
8. GOC-in-C, Eastern Command, Fort William Calcutta.

... **Respondents**

Ld. Counsel for the Respondents : **Shri R.C. Shukla**,
Central Govt Counsel

ORDER

1. The petitioner, preferred Writ Petition No. 1572 of 2005 before the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench,

Lucknow which has been transferred to this Tribunal and has been registered as T.A. No. 16 of 2017. By means of this T.A. petitioner has prayed for the following :-

- “(A) To issue a writ of mandamus or a writ in the nature of mandamus or any other writ direction or order, commanding the respondents to promote the petitioner to the rank of Nb Subedar at his original seniority with effect from the date his immediate juniors have been promoted with all consequential service benefits.
- (B) To issue a writ or certiorari or a writ in the nature of certiorari or any other writ, direction or order, quashing and setting aside the impugned Summary Court Martial proceeding and the punishment awarded therein as contained in annexure No. 4 and 5B to the writ petition with all consequential service benefits to the petitioner.
- (B)(i) To issue writ order or direction in the nature of certiorari quashing the letter dated 01.06.2005, as contained in Annexure No. 9 to the writ petition, and also the order dated 16.05.2005 (after summoning the same in original) be quashed.
- (C) To issue ad-interim mandamus or any other direction or order commanding the respondents not to locally discharge the petitioner from service as a consequence of Annexure No. 4.
- (D) To grant any such other relief, direction, or order or writ in favour of the petitioner deemed just and proper in the light of the facts and circumstances of the instant case.
- (E) To award the cost in favour of the petitioner.”

2. Brief facts of the case are that the petitioner was enrolled in Indian Army (AMC) on 22.03.1984 and promoted to Naik in 1989 and to the rank of Havildar in 1996. The petitioner was initially considered

for promotion to the rank of Nb Sub against the vacancy of 01.06.2002 but was found ineligible due to award of red ink entry punishment. The petitioner was reconsidered for promotion to the rank of Nb Sub against the vacancy of 01.10.2002 and was recommended for promotion but the petitioner being involved in a disciplinary case was superseded for promotion. SCM was convened in December 2004 in which the petitioner was reduced to the rank of Sepoy and as per terms of engagement applicable to the rank of Sepoy, he cannot serve for more than 20 years which he has already completed (in 2004), thus, he was discharged from service locally as soon as it was practicable, i.e. 05.03.2005. The petitioner preferred a petition dated 03.02.2005 to GOC-in-C Eastern Command against punishment awarded by SCM "reduced to ranks" which was rejected vide order dated 16.05.2005. Thereafter, petitioner filed Writ petition No. 1572/2005 in the Hon'ble High Court of Allahabad, Lucknow Bench against the punishment awarded by SCM. The Hon'ble High Court vide its order dated 12.04.2006 directed to reinstate the petitioner into service with all consequential benefits w.e.f. 09.11.2006. The Special Appeal filed by the UOI was allowed and the impugned order dated 12.04.2006 of High Court was set aside vide Hon'ble Supreme Court order dated 24.10.2007. In compliance with the ibid order, the petitioner was discharged from service locally and struck off strength from the Army w.e.f. 30.11.2007 (FN). Being aggrieved, the petitioner has filed the application to quash SCM proceedings and to grant promotion to the rank of Nb Sub with all service benefits.

3. Learned counsel for the petitioner submitted that petitioner has been discharged from service locally on 30.11.2007 without adopting legal procedure as provided in Army Act and Army Rules and without promoting him to the post of Naib Subedar for which he was considered twice. The petitioner is innocent in the matter and the JCO incharge under whose supervision he was working has been awarded only 'Severe Reprimand' but the petitioner has been reduced to rank i.e. from the rank of Havildar, brought down to rank of Sepoy which is not only oppressive and perverse but also discriminative and violative of petitioner's right protected by law. The petitioner was found not guilty of first charge and was found guilty only to the alternative charge and was punished with 'reduced to ranks' and that the award of said punishment is wholly illegal and void ab-initio. He pleaded to set aside impugned SCM proceedings and the punishment awarded therein and to promote to the petitioner to the rank of Naib Subedar as per his original seniority with all consequential service benefits.

4. On the other hand, Ld. Counsel for the respondents submitted that petitioner was promoted to the rank of Havildar in 1996. The petitioner was initially considered for promotion to the rank of Nb Sub against the vacancy of 01.06.2002 but was found ineligible due to award of red ink entry punishment. The petitioner was reconsidered for promotion to the rank of Nb Sub against the vacancy of 01.10.2002 and was recommended for promotion but Command Hospital, Central Command, Lucknow intimated vide letter dated

27.11.2002 that petitioner was involved in a disciplinary case which is under finalisation and thus petitioner was superseded for promotion in terms of Army Order 20/81. Since the petitioner was reduced to the rank of Sepoy by SCM and as per terms of engagement applicable for a Sepoy, he cannot serve for more than 20 years which he has already completed, thus, he was discharged from service locally w.e.f. 05.03.2005. The petitioner preferred a petition dated 03.02.2005 to GOC-in-C Eastern Command against punishment awarded by SCM i.e. "reduced to ranks", in which he was demoted from Havildar to Sepoy which was rejected vide order dated 16.05.2005. The petitioner filed Writ petition No. 1572/2005 in the Hon'ble High Court of Allahabad, Lucknow Bench against the punishment awarded by SCM. The Hon'ble High Court vide its order dated 12.04.2006 directed to reinstate the petitioner into service with all consequential benefits. A Special Appeal No. 303/2006 was filed on behalf of UOI on 12.05.2006 challenging the Court order dated 12.04.2006. During the pendency of Special Appeal, the Hon'ble High Court vide its order dated 13.07.2006 directed respondent No. 4 to comply with the court order dated 12.04.2006. Thereafter, a Civil Misc. Appeal No. 28033/2006 in Special Appeal was filed on behalf of UOI to stay the operation and implementation of order dated 12.04.2006 but the Hon'ble High Court rejected the interim relief vide its order dated 19.08.2006.

5. Learned counsel for the respondents further submitted that Special Leave Petition No. 17075/2006 was filed before the Hon'ble

Supreme Court challenging the High Court order dated 19.08.2006 but the Apex Court was not inclined to interfere in the matter. The Hon'ble Supreme Court also directed High Court to dispose the matter at the earliest. In compliance, the Hon'ble High Court ordered to reinstate the petitioner into service w.e.f. 09.11.2006. The Special Appeal filed by the UOI was allowed and the impugned order dated 12.04.2006 was set aside vide Hon'ble Supreme Court order dated 24.10.2007. In compliance with the ibid order, the petitioner was discharged from service locally and struck off strength from the Army w.e.f. 30.11.2007 (FN). He submitted that trial of the petitioner by Commanding Officer of 118 Field Regiment is fair, legal and within the ambit of law.

6. During the course of hearing, learned counsel for the respondents raised objection inter alia on the ground that punishment awarded to the petitioner in summary trial being less than a dismissal or imprisonment of a period of three months is not included in purview of 'service matters' defined in Section 3(o) of the Armed Forces Tribunal Act, 2007. He further submitted that an application in regard to service matters is maintainable in Armed Forces Tribunal only if it is included in definition of service matters given in Section 3(o) of the Act not otherwise. He further submitted that punishment of 'Reduced to ranks' being excluded from the definition of service matters, therefore, application filed against the same is not maintainable in the Tribunal.

7. In support of aforesaid submission, learned counsel has placed reliance on the judgment of Armed Forces Tribunal (Principal Bench), New Delhi in O.A. No. 665 of 2020 in the matter of **Dfr Shatrughan Singh Tomar vs. Union of India and Ors**, decided on 07.04.2021. In this case, the Principal Bench after considering the judgment of the Allahabad High Court in the case of **Major Kunwar Ambreshwar Singh vs. Union of India** [2015 (3) SLR 595] and many other judgments delivered by the various Benches has held that order of 'Reduced to ranks' in summary trial is excluded from the definition of service matters in Section 3(o) of the Armed Forces Tribunal Act, 2007, therefore, application against the said punishment is not cognisable by Armed Forces Tribunal.

8. In reply, the learned counsel for the petitioner submitted that this Bench as well as other Benches of the Armed Forces Tribunal have held in number of cases, that order of punishment awarded in summary trial or summary disposal being included in "*any other matter*" under Section 3(o) (iv) is cognisable by Armed Forces Tribunal. Therefore, the Transferred Application filed by the petitioner against the punishment of Severe Reprimand is maintainable before this Tribunal.

9. The "service matters" as defined in Section 3(o) of the Armed Forces Tribunal Act, 2007, in so far as it is relevant for the instant case, is reproduced as under :-

"3(o) "service matters", in relation to the persons subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950), mean all matters relating to the conditions of their service and shall include –

- (i) remuneration (including allowances), pension and other retirement benefits;
- (ii) tenure, including commission, appointment, enrolment, probation, confirmation, seniority, training, promotion, reversion, premature retirement, superannuation, termination of service and penal deductions;
- (iii) summary disposal and trials where the punishment of dismissal is awarded;
- (iv) Any other matter, whatsoever, but shall not include matters relating to –
 - (i) orders issued under section 18 of the Army Act, 1950 (46 of 1950), sub-section (1) of section 15 of the Navy Act, 1957 (62 of 1957) and section 18 of the Air Force Act, 1950 (45 of 1950); and
 - (ii) transfers and postings including the change of place or unit on posting whether individually or as a part of unit, formation or ship in relation to the persons subject of the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950).
 - (iii) leave of any kind;
 - (iv) Summary Court Martial except where the punishment is of dismissal or imprisonment for more than three months;”

10. Armed Forces Tribunal (Principal Bench), New Delhi in the matter of **Dfr Shatrughan Singh Tomar** (supra) has considered at length the issue of whether punishment of Severe Reprimand in summary trial/summary disposal is cognisable by the Armed Forces Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 and has held that this being excluded from the definition of service matters under Section 3(o) of the Act, the same is not cognizable by the Tribunal. While coming to this conclusion the Principal Bench has analysed various judgments rendered by the various Benches as well as judgment of the Allahabad High Court in the case of **Major Kunwar Ambreshwar Singh** (supra) and has held that service disputes or the matters stipulated in the ‘inclusion clause’ and ‘any other matter, whatsoever’ not contemplated therein come in the inclusion clause, but thereafter certain items mentioned from sub-

clauses (i), (ii), (iii) to (iv) of the exclusion clause are taken away or excluded from the definition of 'service matters', that is they are beyond the jurisdiction of the Armed Forces Tribunal and one of the items excluded is 'all punishment imposed after Summary Court Martial except dismissal or imprisonment for more than three months'. The Principal Bench finally opined that order of Severe Reprimand being excluded from the definition of service matters under Section 3(o) of Armed Forces Tribunal Act, 2007, application against the same is not maintainable in Armed Forces Tribunal.

11. We are in agreement with the judgment of the Principal Bench and are of the view that just as punishment of Severe Reprimand so also punishment of Reduced to ranks, in summary trial / summary disposal being excluded from the definition of service matters as defined in Section 3(o) (iv) of the Armed Forces Tribunal Act, 2007, which does not fall within the purview of 'service matters' and therefore, the same is not cognisable in Armed Forces Tribunal.

12. We find that O.A. filed by the petitioner under Section 14 of Armed Forces Tribunal Act, 2007 against the order of punishment 'Reduced to rank' in summary trial/summary disposal which is excluded in definition of service matters of the Section 3(o) of the Armed Forces Tribunal Act, 2007 is not cognizable by the Tribunal and hence, the O.A. is liable to be dismissed. Otherwise on merit also, we do not find any irregularity or illegality either in discharging the petitioner from service in the rank of Sepoy or in non promotion to the post of Nb Sub. The local discharge of the petitioner after

reduction in the rank of Sepoy is procedurally correct and there is no violation of any rules/regulations or principle of natural justice. The T.A. is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

13. No order as to costs.

14. Pending Misc. Application(s), if any, shall stand disposed off.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)

Member (A)

Member (J)

Dated: July, 2022

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