

Reserved**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 18 of 2022**Tuesday, this the 11th day of July, 2023**“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”****“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

No. 15177443H Gunner (Chef Mess) Kumarul Hossain of 324 Field Regiment attached with 9/3 Administrative and Training Regiment, Artillery Centre Nasik Road Camp Son of: Abu Bakkar Siddique Resident of : Manikpur Kurulia Murshidabad West Bengal – 742132.

..... **Applicant**

Ld. Counsel for the : **Ms. Madhulika Yadav, Advocate**
Applicant

Versus

1. Union of India through Secretary Ministry of Defence New Delhi - 110001.
2. Chief of the Army Staff Integrated Headquarters Ministry of Defence, South Block, New Delhi - 110001.
3. The General Officer Commanding in Chief, Southern Command, H.Q. Southern Command, Koregaon Park, Pune - 411001.
4. Commandant, Artillery Centre, Nasik Road Camp.
5. Commanding Officer 3, Administrative and Training Regiment, Artillery Centre Nasik Road Camp.

.....**Respondents**

Ld. Counsel for the
Respondents.

:**Shri Shailendra Sharma Atal,**
Central Government Counsel.

ORDER**“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”**

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- “(a) To pass appropriate order for quashing of the impugned order of dated 08.04.2019 and 31.07.2020 as contained as Annexure No. 1 and 2 respectively.*
- “(b) To issue / pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*
- “(c) To allow this application with cost.”*

2. Briefly stated, applicant was enrolled in Army on 23.07.2007 in Regiment of Artillery. While posted at Nasik, he visited Mumbai on casual leave and stayed in Navy Sainik Rest House where his mobile was stolen for which a FIR was lodged at Bandra Police Station. At this, applicant could not control his anger and he took three mobiles from there, kept them for some time and returned them thereafter. After this, a case of theft was lodged and a charge sheet was filed against him on 10.03.2019. The applicant was tried by District Court Martial (DCM) for offence of theft under section 69 of Army Act 1950 and he was awarded punishment to suffer rigorous imprisonment for three months and to be dismissed from service. The applicant filed mercy petition before respondents but the same was dismissed. Being aggrieved, applicant has filed this O.A. with the prayer to grant him service pension.

3. Ld. Counsel for the applicant submitted that during 11 years of service, the applicant served in various part of the country. He had an unblemished service record during first 6 years of service. His first wife divorced him and his second wife suffered abortion of 8 months pregnancy. These personal tragedies resulted in mental disturbance. While posted at Nasik, he took four days casual leave to visit Mumbai. He stayed there in Navy Sainik Rest House where his mobile was stolen. He lodged FIR at Bandra Police Station. He could not control his anger and he took three mobiles from there and kept them for some time and then he returned them. He had just taken those mobiles for some time so that he might be able to get his mobile back. A FIR for theft was lodged against him and he was sent to his unit. He was tried by DCM for the Civil Offence of 'Theft' u/s 69 Army Act 1950, on 08.04.2019 at Artillery Centre, Nasik Road Camp. DCM was held and applicant was awarded the punishment of three months rigorous imprisonment and dismissal from service. Applicant filed the mercy petition wherein he confessed his guilt and submitted that his intention was not to steal the mobile phones. He assured that he will improve his discipline, behaviour and will abide by all rules and regulations of the Army and will not commit any offence in future. It is submitted that in the statement dated 08.04.2019, the Commanding Officer has written that the accused is entitled to reckon 15 years of service for the purpose of determining

of pension/gratuity. His Mercy Petition was dismissed vide order dated 31.07.2020.

4. Learned counsel for the applicant further submitted that impugned orders have been passed without considering the applicant's mental condition and statement of the applicant. Applicant's mental condition was not stable, he was mentally disturb due to his wife's abortion of a son at 8 month pregnancy and a second son died 4 days after his birth which led to aberration of his behaviour. The incident of theft was reason of his mental disturbance. He himself had admitted the facts and confessed his guilt. Ld. Counsel for the applicant pleaded that punishments awarded are harsh to the gravity of the offence, so the applicant be permitted to complete his 15 years service.

5. On the other hand, Id. Counsel for the respondents submitted that during visit to Mumbai on 25 June 2017, applicant stayed at Sainik Aram Grah (Sailor Home) in Room No. 502. He went to visit Bandra Beach where he lost his mobile and registered an FIR at Bandra Police Station in this regard. On 26.06.2017 at around 0600 Hrs, an individual informed to Jitender Kumar (Mechanical Engineer, PW-3 in the Summary of evidence) who was performing Sentry duty at Sailor home that his mobile was missing from barrack. Jitender Kumar immediately recalled that his mobile was also missing since morning when he came on duty. They informed regarding missing

mobile phone to Sachin Kumar (Leading Mechanical Engineer, PW-2 in the Summary of Evidence) in the evening on 26.06.2017 itself. On 27.06.2017 at 0800 Hrs Sachin Kumar (Leading Mechanical Engineer) was informed by other security sentry that three mobile phones were missing since last night from Naval Sailor Institute and also told that a person on 5th floor was in possession of two/three mobile phones and was trying to format them. Sachin Kumar (Leading Mechanical Engineer, PW-2) along with Jitendra Kumar (PW-3) went to 5th floor and questioned about the missing phones with the applicant, Kumarul Hossain. Applicant initially refused but on being pressurized he revealed that one mobile was with him. On further investigation, the applicant gave two more mobile phones with SIM and memory cards. They immediately escorted him to the office with his bag & reported the matter to Officiating Warden Master Chief Petty Officer/CHERA, Deepak Verma. During investigation the applicant confessed his offence that he had stolen the mobiles. The search of baggage was conducted at Sailor Institute, Sagar and Panchanama was carried out on 27.06.2017. During search 03 mobile phones, 25 SIM Cards, 05 Memory Cards, 03 Card readers, 05 Pen drives and 02 grocery cards were recovered and taken into custody.

6. Ld. Counsel for the respondents further submitted that on scrutiny of call details it was found that calls/ sms have been made

to Saudi Arabia through the only active SIM Card i.e No. 7908502438. The same was confirmed by the applicant. He also confessed his offence to Military Police during recording of Military Police Occurrence/ Investigation report. Applicant was handed over to HQ Maharashtra, Gujarat and Goa Area Provost Unit on 27.06.2017. Thereafter, he was brought to Indian Naval Hospital Ship, Asvini on the same day and applicant was declared 'FIT' for detention in guard room/ cell. On 29.06.2017, applicant was handed over to the representative of Administrative and Training Regiment, Artillery Centre, Nasik Road Camp. Subsequently, a Court of Inquiry was convened vide letter dated 15.07.2017. Based on findings and Opinion of Court of Inquiry, it was directed that disciplinary action be taken against the applicant. Accordingly, case was heard by Col. Arvind Kumar, Commanding Officer (CO), 3 Administrative and Training Regiment. Summary of Evidence was recorded on 19.03.2018 and same was forwarded along with the recommendations of the C.O to obtain the sanction for trial of DCM.

7. Subsequently, on 08.04.2019, the applicant was tried for the offence under Army Act u/s 69 for 'Committing a civil offence, that is to say Theft, contrary to Section 379 of the IPC' by DCM wherein the applicant was awarded the punishment of rigorous imprisonment for three months and dismissal from service. The sentence was confirmed on 20.05.2019 and order was promulgated on 25.05.2019.

Applicant was handed over to Upnagar Police Station Nasik Road on the same day. On 17.10.2019, a Mercy petition was submitted by the applicant which was rejected by the GOC-in-C, Southern Command vide order dated 31.07.2020 and the same was handed over to the applicant in original on 12.02.2021.

8. Heard the Id. Counsel for the applicant as well as Id. Counsel for the respondents and perused the records.

9. The sole contention of applicant is that the applicant has committed crime due to mental disturbance and the punishment awarded to him is harsh in comparison to gravity of offence. Perusal of the record reveals that the claim of the applicant that he committed theft due to acute mental disturbance, has not reported anywhere during DCM proceedings. Perusal of DCM Proceedings and connected document reveals that the trial has been conducted in accordance with relevant provisions of Army Act and Army Rules affording all opportunities to the applicant to defend his case. During the course of arguments it has also been emerged that the applicant was awarded four punishments (03 times u/s 63 and 01 time u/s 39(f) of the Army Act 1950) for various offences before the instant case.

10. The proceedings of DCM were conducted in accordance with the provisions of Army Act 1950 and the Rules made thereunder and

do not suffer from any legal infirmity. Considering the nature and gravity of the offences for which the applicant was found 'Guilty' and his past soiled record of service, wherein he was punished four times earlier, his punishment of dismissal from service is just and appropriate and does not call for any interference. We do not find any procedural illegality or irregularity in conducting the DCM and finding recorded on the basis of the evidence is also in accordance with the material on record.

11. There being overwhelming evidence on record against the applicant, we do not find any convincing ground to interfere with the order of dismissal. Thus, we are of the view that the applicant has failed to prove his case and hence, we have no valid reason to reinstatement of the applicant in service so that he is able to earn his pension by doing minimum pensionable service. In this view of the matter, we are of the considered opinion that the applicant is not entitled to any relief as claimed from this Tribunal.

12. Accordingly, this O.A. lacks merit, deserves to be dismissed and is hereby **dismissed**.

13. No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated : 11 Jul, 2023

ukt/