

Reserved**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 385 of 2020**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)”**

Havildar Naresh Kumar (Army No: 15695813H), S/o Shri Chander Prakash, R/o: Village / Colony - Homeland City Ph-II, Post Office: Sriganganagar, District :Sriganganagar, District: Rajasthan - 33501.

..... Applicant

Ld. Counsel for the Applicant : **Shri Vikas Singh Chauhan and
Shri Abhay Raj Singh, Advocate**

Versus

1. Chief of the Army Staff, Integrated Head Quarter of Ministry of Defence (Army), South Block, New Delhi - 110011.
2. Brigade Commander, 416 Engr Bde, PIN - 914416, C/o 56 APO
3. Officer Commanding, 416 Engr Brigade Sig Sec, PIN - 914416, C/o 56 APO

..... Respondents

Ld. Counsel for the Respondents : **Shri DK Pandey,
Central Govt. Counsel.**

ORDER

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

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

- “(i) by means of present application applicant is praying to quash the impugned order dated 25.09.2019.*
- “(ii) by means of present application applicant’s further praying that appropriate / disciplinary proceedings to be initiated against the Service No. IC-77517L Captain Damandeep Singh and Service No. IC-49490H Brigadier HS Sidhu, who harasses the applicant which brought the applicant in a position to face the departmental enquiry. In this regard petitioner moved his complains Dated 16.07.2018, which has already been forwarded for further proceedings and the acknowledgement of the same effect has been given to the applicant, but till date no proceedings has been convened against them.*
- “(iii) Issue/ pass any other order or direction has this Hon’ble Tribunal may deem fit in the circumstances of the case.*
- “(iv) Allowing this Original Application with cost in favour of the applicant.”*

2. Briefly stated facts of the case are that the applicant Subedar Nazaruddin TT made complaint dated 02.07.2018 that his pension documents have not been forwarded to record office by dealing clerk Hav Naresh Kumar. On 11.07.2018 Sep Shyam Nandan Pandey made allegation that dealing clerk, Hav Naresh Kumar made cutting in his documents. He was granted leave from 13.06.2018 to 12.07.2018. He was recalled to join duty but he did not join duty. On rejoining duty a counselling letter was issued to him with the warning to improve his discipline. Petitioner also complained against Sep Shyam Nandan and Capt Damandeep Singh, Officer Commanding, alleging various charges of harassment. The petitioner moved second application for ill treating a subordinate and award of illegal punishment dated 22.09.2018. A fresh Show Cause Notice dated 08.10.2018 was issued to petitioner regarding absent from duty. The petitioner made complaint against Capt Damandeep Singh, his Commanding Officer and Brig HS Sidhu to initiate departmental proceedings against them but no action was taken against him. Being aggrieved, petitioner has filed instant application to set aside order dated 22.09.2018 and to take action against said officers.

3. Submission of learned counsel for the petitioner is that Sub Nazaruddin T.T. made complaint against Hav Naresh Kumar dated 02.07.2018 that petitioner has not forwarded his pension document for processing of pension in time. A Show Cause Notice was issued

topetitioner vide letter No 521/SGS. Petitioner gave reply to Show Cause Notice vide letter dated 13.07.2018. On 11.07.2018 Sep Shyam Nandan Pandey made complaint against the petitioner that he made cutting in his documents. A show cause notice dated 13.07.2018 was issued to which petitioner replied vide letter dated 13.07.2018. A Third Show Cause Notice dated 13.07.2018 was issued to petitioner with allegation that he did not come back on call of the unit officer while he was on his part of annual leave which was granted from 13.06.2018 to 12.07.2018. Petitioner after coming back from leave replied the Show Cause Notice dated 13.07.2018 explaining the circumstances in detail. A Counselling letter dated 14.07.2018 was issued to the petitioner by which he was warned that if such action will be repeated in future then serious action will be taken up. The petitioner made complaint against Sep Shyam Nandan Pandey and Capt Damandeep Singh, alleging various charges of harassment. The petitioner opposed proceeding of court of inquiry through proper channel vide letter dated 19.07.2018 on the ground that Capt Damandeep Singh was also member of the same. New Bench of Court of inquiry was formed and convening order was issued against the petitioner. The petitioner moved second application on 03.09.2018 along with list of witness against his harassment. The petitioner through proper channel moved application dated 25.10.2018 to convening authority Brig HS Sidhu that Rule 180 of Army Rule and other relevant provisions are not being followed in inquiry violating the

rights of petitioner and also made allegation on all three members of the investigation team that they are escaping the guilty officer named Capt Damandeep Singh who harassed petitioner intentionally and Sep Shyam Nandan Pandey who made fake allegation. On 12.02.2019 tentative charge sheet for proceeding Summary of Evidence was given to the petitioner. JAG department reduced the charges and another charge sheet dated 17.09.2018 was given to the petitioner. Court Martial Proceeding was initiated against the petitioner. Two charges were levelled against the petitioner for which petitioner assured the Court that same will not happen in future. All other charges for which initial show cause notices was given to petitioner just to harass him. The petitioner made complaint against Capt Damandeep Singh and Brig HS Sidhu but till date no proceedings have been initiated against him. Learned counsel for the petitioner pleaded that punishment of Reprimand awarded vide order dated 25.09.2019 be quashed and appropriate disciplinary proceedings be initiated against Capt Damandeep Singh and Brig HS Sidhu who harassed the petitioner for which petitioner complained concerned authority vide letter dated 16.07.2018 which has been acknowledged but till date no proceedings have been convened against them.

4. Rebutting submissions made by applicant, learned counsel for the respondents submitted that complaint was received from Sub Nazarudeen TT against the petitioner for not forwarding pension

documents in time. Further Sigmn Shyam Nandan Pandey applied for Part II Order related documents in Company Officer but his documents were not processed by the petitioner on 12.05.2018. On 18.06.2018 when Sigmn Shyam Nandan Pandey went to Company Office and he found that there was over writing and cutting in his IAFF 958 and Children Education Allowance related documents. He also found that his Leave Encashment was published incorrect and late. When Sigmn Shyam Nandan Pandey checked his pay slip of June month, he found that his NRA and Transport allowances were also cancelled which he was receiving till 04.05.2018 which incurred heavy financial loss.

5. On 25.06.2018, Senior JCO of 416 Engr Bde Sig Section called Hav Naresh Kumar on mobile while he was on part of annual leave and recalled him from leave stating reason that two written complaints were received against him . Petitioner joined duty on termination of leave on 13.07.2018. A Show Cause Notice was issued by Officer Commanding 416 Engr Bde Sig Sec for not reporting on duty when called by his superior officer. Petitioner submitted his reply to Show Cause Notice. On 14.07.2018 a counselling letter was issued to petitioner for not rejoining back from leave when called by unit on account of two written complaints against him. He was cautioned that if such actions are repeated in future, then serious disciplinary action will be taken against him.

6. On 16.07.2018 a convening order was issued by Officer Commanding 416 Engr Bde Sig Section to conduct a Court of Inquiry against petitioner to check the authenticity of manhandling of Sigmn Shyam Nandan Pandey by the petitioner as brought out through complaint submitted by Sigmn Shyam Nandan Pandey personal application dated 11.07.2018. The petitioner forwarded a written complaint against Sigmn Shyam Nandan Pandey to Officer Commanding that Sigmn Shyam Nandan Pandey instigated petitioner for slapping and abusing him. The petitioner also submitted written complaint against Officer Commanding to Chief Signal Officer, HQ Central Command alleging ill treating of a subordinate. On 19.07.2018, petitioner forwarded a letter to Officer Commanding opposing proceedings of Court of Inquiry to change the siding officer Capt Damandeep Singh and Member No 1 (i.e. Sub Nazarudeen TT in the convening order.

7. On complaint of petitioner against Officer Commanding, he was intimated to follow administrative channel as issues raised by him were administrative matter. On 25.09.2019, charge sheet containing two charges was readout to petitioner during proceedings of Summary Court Martial. Petitioner pleaded "Guilty" on charges framed against him and accepted his mistake and he was awarded punishment of "Reprimand". Learned counsel for the respondents pleaded that instant O.A. is liable to be dismissed being devoid of merit.

8. Heard learned counsel for the parties and perused the material placed on record.

9. In the instant case, petitioner was posted to 416 Engr Bde Sig Section as Clerk Staff Duty. He was issued counselling letter by Officer Commanding for not joining back from leave when recalled on account of two written complaints. Two written complaints were received against the petitioner. First complaint was received for not timely forwarding pension documents of Sub Sub NazaruddinT.T. He was only clerk in the unit. Being clerk, it was charter of duty of petitioner to assist Sub NazaruddinTT in preparing and timely processing of all personal documents of individuals posted with 416 Eng Bde Sig Section which he failed to discharge. Second complaint against the petitioner was received from Sigmn Shyam Nandan Pandey for over writing and wrong publication of Part II Order and when Sigmn Shyam Nandan Pandey enquired about the matter, petitioner slapped and abused him. On perusal of pay slip of Sigmn Shyam Nandan Pandey for the month of June 2018, it was revealed that he was in heavy financial loss due to cancellation of Part II Order for grant of NRA, Children Education Allowance and Transport allowances which he was receiving till 04.05.2018. The petitioner submitted application to Officer Commanding 416 Engr Bde Sig Sec with the prayer to change Presiding Officer (i.e. Capt Damandeep Singh) and Member No 1 (i.e. Subedar Nazarudeen TT) in the convening order. Accordingly, a fresh

detailment was made vide order dated 12.10.2018 and Lt Col Babita Yadav was detailed as Presiding Officer and Maj AK Bharadwaj was detailed as Member 1. On 25.09.2019, the charge sheet containing two charges was readout to petitioner during proceeding of Summary Court Martial. Petitioner pleaded "Guilty" for the offences. He accepted his mistake and assured the Court that he will not repeat any act of indiscipline in future. He also requested the court to take a lenient view. Now petitioner has filed this O.A. with the prayer to quash punishment of reprimand and take action against Capt Damandeep Singh, Officer Commanding, 416 Engr Bde Sig Section and Brig HS Sidhu, BdeCdr. Petitioner was awarded punishment of reprimand vide impugned order dated 25.09.2019 for the offences committed by him which has lost its efficacy as on date. Petitioner was informed that issue raised by him regarding disciplinary acting against Officer Commanding and Bde Cdr was an administrative matter, hence he was advised to follow administrative channel.

10. After careful perusal of the allegations made in the petition and the proceedings of the Summary Court Martial, we are of the view that instant petition has no substance and cannot be said to be calling for any interference by this Tribunal. In view of the foregoing, we find that petitioner does not deserve any sympathy once he pleaded guilty for the charges labelled against him. There is no substance in the grounds taken by the applicant.

11. We, accordingly, hold that there is no merit in the O.A. filed by the petitioner and as such the O.A. is liable to be **dismissed**.

12. The petition is accordingly **dismissed**.

13. No order as to costs.

(Vice Admiral Atul Kumar Jain) **(Justice Ravindra Nath Kakkar)**
Member (A) **Member (J)**

Dated: 11 July, 2023
UKT/-