

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Transferred Application No.02 of 2018**

Monday, this the 17th day of Jul, 2023

“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”
“Hon’ble Maj Gen Sanjay Singh, Member (A)”

Ex. No. 4065050 X, NK (Barber) Mohd. Yasin S/o Shri Hizamuddin,
Resident of 69/9, Firoz Nagar, Ghante Wali Gali No. 2, District :
Meerut.

-----Applicant

Ld. Counsel for the Petitioner: **Shri Manoj Kumar Awasthi, Advocate**

Versus

1. Union of India, through Ministry of Defence, New Delhi.
2. Commanding Officer Headquarters, Western Command,
Chandimandir.
3. Commanding Officer 14th Battalion Garhwal Rifle, C/o 56 APO.

..... Respondents

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

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

1. Civil Writ Petition No 15289 of 1992 has been received by this Tribunal by way of transfer under Section 34 of the Armed Forces Tribunal Act, from Hon’ble High Court of Judicature at Allahabad and renumbered as Transferred Application No. 02 of 2018. By means of the instant T.A., the petitioner has made the following prayers:-

- I. Issue a writ, order or direction in the nature of certiorari, quashing the order of dismissal dated 27.01.1992 (Annexure-5 to the writ petition).*
- II. Issue, a writ, order or direction in the nature as this Hon’ble Court may deem fit and proper in the circumstances of the case.*
- III. Award cost of the petitioner.”*

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 30.04.1982. He was awarded four red ink entries till 26.11.1991 for various offences. He was detailed on sentry duty on 27/28 Oct 1992 night. He took SLR Rifle Butt Number 120 Registered Number DB 1743 along with 5 rounds and hidden in bush. On 01/11/1992, applicant handed over the same to Sub Himmant Singh. A Court of Inquiry was held and applicant was tried by Summary Court Martial (SCM). He was awarded punishment of 9 months

Rigorous Imprisonment and dismissal from service w.e.f. 13.07.2002. He preferred representation against the order of dismissal which was rejected. Being aggrieved applicant filed instant T.A. to quash dismissal order and to re-instate him in service.

3. Ld. Counsel for the petitioner submitted that petitioner was enrolled in Indian Army on 20.04.1982. He was posted to 14 Garhwal Rifle Battalion. On 27/28.10.1991 theft of SLR Rifle from the unit line took place and petitioner was falsely implicated in the said theft. A Court of Inquiry was held and charge sheet was issued under Section 52-A of the Army Act by Commanding Officer (C.O.) of the unit and it was decided that the petitioner be tried by Summary Court Martial (SCM). SCM assembled on 27.01.1991 at 13.40 hrs. The petitioner was not given opportunity to cross examine the witnesses as provided under the Army Act and Rules. It is incorrect to say that the rifle was taken out on the indication given by the petitioner from the unit and was handed over to the JCO. Provisions of Army Rule 22 were not followed while conducting SCM as petitioner was not given opportunity to cross examine the witnesses and to make any statement in his defence. The interval between the giving of charge sheet and for his arraignment was less than 96 hours. Provisions of Army Rule 34 were also not complied with. The petitioner was forced to sign document/statement as such the total proceedings of the Court Martial is vitiated. Learned counsel for the petitioner pleaded

that punishment of dismissal awarded to petitioner be quashed and petitioner be reinstated in service.

4. Per contra, Id. Counsel for the respondents vehemently opposed the prayer of the applicant and submitted that petitioner was enrolled in Indian Army on 30.04.1982. He was tried by SCM on 27.01.1992 for an offence under Army Act Section 52 (a) for committing theft of property belonging to Government in that he at Meerut Cantt on night of 27/28 October 1991, while on sentry duty committed theft of self loading Rifle Registered Number DB 1743, Butt Number 120 along with the Bayonet scabbard, magazine and five rounds of 7.62mm ammunition given to Rifleman Soban Singh. He was awarded 9 months rigorous imprisonment in civil jail and dismissed from service with effect from 27.01.1992.

5. Since his enrolment on 30.04.1982, appellant was awarded four punishments till 26.01.1992 under Army Act Section 63 for using insubordinate language to a civilian, under Army Act Section 39 (B), for overstaying leave, under Army Act Section 39 (d) for failing to appear in time for duty and under Section 39 (f) for missing from unit lines without sufficient cause. Sub Himmat Singh was detailed as Officer in Charge Rear Party while Battalion (Bn) proceeded for OP Rakshak. The JCO was supervising Bn at the rear location and petitioner was detailed on sentry duty on 27/28 October 1991. The petitioner stole Rifle Number 120 Registered Number DB 1743 . The

allegation against Sub Himmat Singh allegedly having enmity against the petitioner is concocted and an afterthought. The summary of evidence recorded in respect of petitioner is proof of detailed investigations. Charge Sheet was issued on 21.01.1992 at 1550 hrs more than 96 hours in advance before the trial to enable him to prepare his defence in the presence of Lt A Roy, Sub Maj Kunwar Singh and Sub Mahipal Singh. The petitioner was given full opportunity to cross examine all the witnesses. The charge sheet was made on the basis of Summary of Evidence and not on the basis of Court of Enquiry. Learned counsel for the respondents pleaded that instant T.A. has no substance and is liable to be out rightly rejected.

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

7. The moot question before us to decide is whether impugned order of dismissal dated 27.01.1992 passed by SCM is liable to be quashed and petitioner is entitled to be reinstated in service?

8. In the instant case, petitioner was tried by SCM on 27.01.1992 for an offence under Army Act Section 52 (a) for committing theft of Rifle with the bayonet scabbard, magazine and five rounds of 7.62 mm ammunition given to Rifleman Soban Singh. He was awarded punishment of 9 months Rigorous Imprisonment in civil jail and dismissal from service with effect from 27.01.1992. Further, he was

awarded four punishments till 26.01.1992 for various offences. No complaint of any nature was made by the petitioner against Sub Himmat Singh prior to theft of rifle and ammunition. Hence, the allegation against Sub Himmat Singh allegedly having enmity and grievance against the petitioner is an afterthought. It is proved from Summary of Evidence that the petitioner had hidden SLR Rifle, ammunition and bayonet belonging to Government property while on sentry duty and scabbard from 28.10.1991 till 0959h on 01.11.1991. He handed over said rifle to Sub Himmat Singh on 01.11.1991. He was issued a Charge Sheet on 21.01.1992, more than clear 96 hrs in advance in presence of Lt A Roy, Sub Maj Kunwar Singh and Sub Mahipal Singh. The appellant was given full opportunity to cross examine all the witnesses. The charge sheet was made on the basis of Summary of Evidence and not on the basis of Court of Enquiry. Before pleading 'Guilty or Not Guilty' the petitioner was explained the meaning of the charge to which he pleaded 'guilty'. He was explained the charge in Hindi. The provisions of Army Rule 115 (2) have been complied with. The statement of petitioner was received as per Army Rule 54. Maj PK Hrishikesh, friend of accused, Sub Jagat Singh and Nb Sub Satendra Singh attending the trial and all witnesses were present in the Court. Petitioner in his statement during the recording of Summary of Evidence and trial has clearly stated that he took Sub Himmat Singh with him to locate the stolen SLR Rifle and handed it over to him after

taking it out of tall grass near the old CSD Canteen building of the unit. Legal procedure was adopted as per Army Rule 22 and hearing of charge was carried out by C.O. in the presence of accused on 28.12.1991. The petitioner was given full opportunity to cross examine any of the witness on 28.12.1991. Petitioner signed the documents only after the contents of statements were explained to him in the language he understands in the presence of Maj PK Hrishikesh and two JCOs attending the trial throughout. Earlier also he was awarded four red ink entries for various offences. The appellant has shown a wrong conduct which cannot be expected from a disciplined soldier. We do not find any lacuna in the procedure adopted by the respondents to dismiss him from service and awarding RI. The ratio of law laid down in various judgments relied upon by the respondents also supports the order of dismissal rather than allowing appellant to be re-instated in service.

9. All the circumstances discussed above have been proved beyond reasonable doubt against the appellant and when all these circumstances are weighed together, it leads to the only conclusion that appellant is the person who had stolen the SLR Rifle and hidden in the bush. There is no substance in the grounds taken by the appellant. Therefore, in view of discussion made above there is no illegality and irregularity leading to miscarriage of justice in conduct of SCM. The SCM has followed all the procedural safe guards prescribed for and no illegality that can vitiate the proceeding could be brought to our notice.

The punishments awarded to the appellant are as per recommendation of Court. Taking into consideration gravity of offence and punishment was approved by the competent authority, there seems no arbitrariness and illegality in awarding punishments of RI and dismissal from service.

10. 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 appellant does not deserve any sympathy once he pleaded guilty for the charges labeled against him.

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

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

13. No order as to costs.

(Maj Gen Sanjay Singh)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated: 17 July, 2023
Ukt/