

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

RESERVED
(Court No. 1)
List-A

Original Application No. 324 of 2013

Wednesday, the 01st day of March, 2017

“Hon’ble Mr. Justice D.P. Singh, Member (J)
Hon’ble Air Marshal Anil Chopra, Member (A)”

No. 7776917Y Ex Hav (now Sep) Prabodh Nath Tiwari, son of
Late R.K. Tiwari, resident of village Bariarpur, P.S. Husenabad,
Tehsil-Bansdih, District Ballia (UP.)

.....Applicant

By **Shri Rohit Kumar**, Ld. Counsel for the applicant.

Versus

1. Chief of Army Staff, DHQ PO, New Delhi.
2. Commandant cum Chief Records Officer, Corps of Military
Police Records, Bangalore.
3. Union of India through Secretary, Ministry of Defence,
DHQ, PO, New Delhi.

.....Respondents

By **Shri R.K.S. Chauhan**, Ld. Counsel for the respondents
assisted Major Soma John, Departmental Representative.

ORDER**Per Hon'ble Mr. Justice Devi Prasad Singh, Member (J)**

1. Being aggrieved with the impugned order of discharge, the applicant has preferred the present O.A. under Section 14 of the Armed Forces Tribunal Act, 2007.
2. We have heard Shri Rohit Kumar, Ld. Counsel for the applicant and Shri R.K.S.Chauhan, Ld. Counsel for the respondents assisted by OIC, Legal Cell and perused the record.
3. The applicant was enrolled in the Indian Army on 27.10.1990. While working at different places, he was promoted to the rank of L/Nk, Nk and thereafter Hav. He was enrolled in the provost unit. He was punished for an offence under the Army Act Section 40 (b) for using threatening language to his superior officer at Allahabad on 29.10.2011. The allegations against the applicant is that during course of interview with the Officer Commanding Lt Col Ranjit Chako, he threatened him for dire consequences using the words, "*Hamare pas Hathiyar aur Ammunition rahata hai, aur hum mar bhi sakte hain aur mar bhi sakte hain*" or words to that effect. It is placed on record that the applicant/accused pleaded guilty to the charge. The hearing of charge took place in accordance with Army Rule 22 carried out by Col Sanjay Shah, SM, the then Commanding Officer of 4

RAPID (Strike) Provost Unit on 02.01.2012 on tentative charge sheet. Four prosecution witnesses were examined, but the applicant alleged to decline to cross-examine these witnesses. Also it is alleged that he declined to make any statement or call witness in defence.

4. The Summary Court Martial proceeding was held in accordance with Section 116 of the Army Act, 1950 (in short, referred to as Army Act) read in conjunction with Rule 106 to Rule 125 of the Army Rules, 1954 (in short, referred to as Army Rule) and the applicant was declared 'guilty' with sentence to 'reduced to rank from Hav to Sep'. A copy of the Summary Court Martial proceeding has been filed as Annexure CA-1.

5. The representation submitted by the applicant to General Officer Commanding, 4 RAPID Strike against the finding and sentence of Summary Court Martial was rejected by impugned order dated 15.03.2012. Thereafter the applicant was discharged from service under Rule 13 (3) Item III (i) of the Army Rules on completion of terms of engagement of service limits. Applicant has been granted service pension in the rank of Sepoy at the rate of Rs. 7,145/- per month with effect from 01.06.2012 for life. The death-cum-retirement gratuity and commutation of pension has been sanctioned vide order dated 23.08.2012 along with other terminal benefits. Copy of letter

dated 23.08.2012 has been filed as Annexures 4 and 5 to the counter affidavit. A statutory petition dated 22.09.2012 was submitted by the applicant under Section 164 (2) of the Army Act to Chief of the Army Staff against the sentence of Summary Court Martial has been rejected by order dated 30.10.2013. It is pertinent to mention that statutory complaint preferred by the applicant was rejected by the authority concerned in pursuance of order dated 30.07.2013 passed by this Tribunal.

6. While assailing the impugned order of discharge, it is submitted by Ld. Counsel for the applicant that applicant has completed almost 24 years of service plus 2 years in general extension and the charges alleged against the applicant under Section 40 (b) of the Army Act were frivolous and punishment awarded by Summary Court Martial on 03.03.2012 was for extraneous reasons. Submission of Ld. Counsel for the applicant is that the applicant has been made to suffer double jeopardy, inasmuch as, on one hand the applicant has been reduced to rank and other hand, on account of reduction to inequivalent rank of Sepoy, the applicant has been discharged on 30.05.2012. It is further submitted that while dismissing the statutory complaint, Chief of the Army Staff observed that promulgation of sentence could have been avoided. It is submitted that provisions contained in para 473 of the Defence

Regulations have not been complied with. The use of JC-819627W Nb Sub (MP) Manoj Kumar Singh as friend of accused is not sustainable. The summary of evidence is undated and plea of 'guilty' as observed by Chief of the Army Staff could have been converted into 'not guilty'. The trial commenced on 1200 hours on 03.03.2012 and concluded after one hour. It has also been submitted that Summary Court Martial could not have been resorted to since no immediate action was required in this connection.

7. On the other hand, Ld. Counsel for the respondents vehemently argued that there is no denial of use of ill-tempered language to superior officer which includes threat to assassinate a senior by army weapon. It is also submitted that since the use of threatening language has not been disputed and guilt has been admitted, it is not a fit case where the Tribunal should interfere.

8. On behalf of the prosecution Lt Col Ranjit Chako appeared and stated that in November 2011 when the Commanding Officer was proceeding on Officers-Mess, Hav P.N. Tiwari approached the Commanding Officer to sanction leave between November 2011 to December 2011, which was declined. It has been stated that under the instruction of the Commanding Officer, no authorized leave for a month could

have been sanctioned to an incumbent except ten days casual leave. The applicant has been recommended five days casual leave, but he refused to avail the sanctioned leave. Nb Sub (Clk) Intaj Ali tried to pacify the applicant quoting Rules and Orders which the applicant declined to hear. When the Commanding Officer (PW-1) asked the applicant not to use ill-tempered language, the applicant repeated, to quote, "*Hamare pas Hathiyar aur Ammunition rahata hai, aur hum mar bhi sakte hain aur mar bhi sakte hain*". According to Ld. Counsel for the applicant, the applicant/accused asked a question with regard to entries of leave to which Lt. Col Ranjit Chako explained. The relevant portion from the statement of Lt Col Ranjit Chako (PW-1) is reproduced as under :

"As per Army Rule 23 (2) the accused was given opportunity to cross examine the witness and he asked following questions:-

(a) The accused questions that initially he was granted three days Casual Leave and entries to that effect were made in AB-64 and even leave certificate was prep.

IC-49634A Lieutenant Colonel Ranjit Chako replies that :-

When the Havildar/MP Prabodh Nath Tiwari requested for leave and knowing that he was on compassionate posting all endeavors were made by the office to prepare his leave documents earliest and the fact that he had 10 days of leave balance which he was to avail twice was lost sight of. On realization that he was to be sent two times more, i.e. once in

November, 2011 and once in December 2011, the fact was rectified and he was sanctioned five days leave and verbally intimated in the presence of Senior Junior Commissioned Officer, Company Head Clerk and Company Havildar Major that he could rejoin at an earlier date if his requirement was met before termination of scheduled leave. I hereby produce copy of relevant portion of AB-64 (Exhibit 'C'). I also hereby produce copy of leave certificate which was prepared for granting him five days Casual Leave (Exhibit 'D')".

A plain reading of the aforesaid statement recorded by the Officer shows that the applicant was given opportunity to cross-examine but he posed only one question to Lt Col Ranjit Chako to which he replied correctly and no further cross-examination was done.

9. MP Ashok Kumar was produced as PW-2 during the Summary Court Martial. He verified applicant's efforts for sanction of leave. PW-3 Nb Sub Mohd Intaj Ali who reprimanded the applicant not to use ill-tempered language (supra), has stated that he had heard the threat given by the applicant to the Commanding Officer. Applicant has not cross-examined this witness and signed the statement recorded.

10. PW-4 is Hav Dipak Kumar Roy who confirmed the threatening language used by the applicant. The applicant has made statement during Summary Court Martial proceedings which has been recorded and is on record under his signature.

11. A perusal of Summary Court Martial proceedings shows that during course of proceedings, a notice was sent to the applicant on 24.02.2012 and charge sheet is of the same date. The proceedings have been signed by the applicant after arraignment of the accused whereby he admitted the guilt in his own handwriting. With regard to proceeding of plea of guilty, the applicant stated that he was in instable mental condition at the time when he had spoken in ill-tempered language. He stated that he did not intend to call any witness. After conclusion of trial, the applicant was awarded sentence (supra). The handwritten letter dated 15.03.2012 by the applicant is on record in which he seems to have admitted to have given threat to the Commanding Officer in pursuance to which he has been sentenced and punished in the manner stated hereinabove. A perusal of the order passed by Chief of the Army Staff shows that a detailed and reasoned order has been passed in three pages with the finding that applicant pleaded guilty in unequivocal terms and maintained the plea of guilty at every stage.

12. Finding has been recorded by Chief of the Army Staff that since the applicant has pleaded guilty, there appears to be no prejudice caused to the applicant and he has been paid entire service benefits after reverting him to the rank of Sepoy.

13. We have gone through the record as well as pleading on record. The fact borne out from the record is that the threat given by the applicant to the Commanding Officer, has not been disputed. While preferring the O.A. the applicant has not come forward with the pleading that he has not given the threat (supra) to his own superior officer. Even in his own handwriting he has admitted that he had used threatening language to his Commanding Officer and with regard to it, he felt to be sorry.

14. In a disciplined force like the Army, threat given to superior officer is a serious misconduct and amounts to insubordination. In case a member of the Armed Forces threatens his superior officer(s) because of denial of leave, it shall amount to breakage of command and control of the Armed Forces and may warrant dismissal in appropriate case. In the present case, the applicant has been given lesser punishment though he deserved to be punished more severely.

15. Section 158 of the Evidence Act provides that facts which have been admitted, require no proof. Section 158 of the Evidence Act is reproduced as under:

“158. What matters may be proved in connection with proved statement relevant under section 32 or 33.- Whenever any statement, relevant under section 32 or 33 is proved, all matters may be proved, either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness

and had denied upon cross-examination of the truth the matter suggested.”

16. The applicant has not only admitted the guilt during Summary Court Martial proceedings but repented his action while submitting the letter in his own handwriting after Summary Court Martial proceedings. It shall be futile exercise of power conferred on the Tribunal if the Tribunal interferes in such a matter where guilt has not only been admitted by the applicant during Summary Court Martial but he has given in his own handwriting through letter accepting that he had given threat to his Commanding Officer and tendered apology.

17. In view of the above, we do feel that it is not a fit case where Tribunal should interfere, that too under the teeth of order of reversion in rank which seems to be mild punishment imposed upon the applicant by the respondents and he has been paid his all pensionary benefits of the rank to which he has been reverted.

18. Having regard to our observations made hereinabove; no case for interference is made out.

19. O.A. is **dismissed** accordingly.

No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

(Justice D.P. Singh)
Member (J)

Date: Mar 2017
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