

RESERVED**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Transfer Application No. 88 of 2013**Wednesday, this 1st day of March, 2017**Hon'ble Mr. Justice Devi Prasad Singh, Member(J)****Hon'ble Air Marshal Anil Chopra, Member(A)**

Ex No. 7430984 M.

Nk Birender Kumar,

Son of Sri Babu Lal Sharma,

Resident of Village – Basi Khurd,

P.O. Iradet Nagar, District Agra

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Petitioner

Versus

1. Union of India through Secretary,
Ministry of Defence, South Block,
D.H.Q. Post Office, New Delhi.

2. Chief of the Army Staff,
Army Headquarters, South Block,
D.H.Q. Post Office, New Delhi.

3. Commandant 509, Army,
Base Work Shop, Agra.

4. Officer-in-Charge,
Administration, 509
Army Base Work Shop, Agra.

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Respondents

Learned counsel appeared
for the petitioner

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Shri Rohit Kumar, Advocate

Learned counsel appeared
for the respondents

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Shri Anurag Mishra, Advocate
assisted by Maj Soma John,
OIC Legal Cell

ORDER**Per Air Marshal Anil Chopra (Member A)**

1. Being aggrieved with the order dated 21.02.1998 (Annexure-8 to the petition), by means of which the Chief of the Army Staff rejected the statutory petition of the petitioner preferred against the findings and sentence of Summary Court, the petitioner preferred a Writ Petition bearing No. 14539 of 1998 in the Hon''ble High Court of Judicature at Allahabad, which has been transferred to this Tribunal and now registered as Transfer Application No. 88 of 2013.

2. The factual matrix of the case is that the petitioner joined the Indian Army on 03.11.1987 in the Corps of Intelligence. He put in 9 years, 6 months and 25 days' service prior to his trial by Summary Court Martial. In the year 1995, the petitioner was posted at 1/3 Team Central Command Liason Unit, which was under the command of Col G.S. Mann, Commanding Officer, Central Command Liason Unit Lucknow, wherein he being a member of Intelligence Corps was to watch the irregularities in recruitments. During the month of November, 1994, a recruitment racket involving military officials and civilian touts was busted by the police in Agra. On complaints made by Hav/SKT MM Nayak, Nk Suresh Kumar, Niranjn Lal Sharma and Major Rajan Kochar to Station

Commandant, Agra Cantt, the matter was inquired into by the police, and the petitioner alongwith Ex Hav Surender Singh and Ex Maj Narender Pal was found to have been involved in the recruitment racket. Since the petitioner had indulged in acts prejudicial to good orders and military discipline, a disciplinary case was initiated against him and for finalization of the said case, he was attached to 509 Army Base Work Shop, Agra, vide HQ Meerut Sub Area Attachment Order No. 122399/AGRA/4/A2 dated 28 Sep 1995. On a *prima facie* case being made out in Court of Inquiry, Summary of Evidence was recorded and the petitioner was subjected to trial by Summary Court Martial held on 08 April 1997 and subsequent days, on the following charges:

First Charge *AN ACT PREJUDICIAL TO GOOD ORDERS AND*
AA Sec 63 *MILITARY DISCIPLINE*

In that he,
at Agra, on 12 Jan 95, improperly subjected
No. 6923259 F Hav/SKT MM Nayak and No.
6927898 H NK Suresh Kumar, both of COD
Agra, to interrogation.

First Charge *AN ACT PREJUDICIAL TO GOOD ORDERS AND*
AA Sec 63 *MILITARY DISCIPLINE*

In that he,
at Agra, on 04 Feb 95, improperly interrogated
Mr Niranjana Lal Sharma s/o Shri Bal Mukund
Sharma, a civilian.

First Charge *AN ACT PREJUDICIAL TO GOOD ORDERS AND*
AA Sec 63 *MILITARY DISCIPLINE*

*In that he,
at Agra, on 07 Feb 95, improperly carried out a
physical search of MR-133 M Major Rajan
Kochar, the Medical Officer of BRO, Agra.*

3. On conclusion of Summary Court Martial, the petitioner was held guilty for all the three charges as aforesaid and awarded punishment of one year's rigorous imprisonment as well as dismissal from service. Aggrieved, the petitioner preferred a statutory petition before the Chief of the Army Staff, which was rejected on 17.06.1997. However, in review of the aforesaid sentence awarded by Summary Court Martial, the Reviewing Authority remitted the sentence of RI for one year, but the punishment of dismissal from service was maintained vide order dated 31.07.1997. The second appeal preferred by the petitioner against his aforesaid punishment was too rejected by the Chief of the Army Staff on 21.02.1998. Feeling aggrieved, the petitioner preferred the writ petition before the Hon'ble Allahabad High Court as mentioned above, which on transfer to this Tribunal is before us for adjudication.
4. We have heard learned counsel for the petitioner Shri Rohit Kumar and Shri Anurag Mishra, learned counsel for the respondents, assisted by Maj Soma John, OIC Legal Cell and perused the record.

5. At the very outset, learned counsel for the petitioner submits that alongwith the petitioner, two other army personnel mentioned above, namely, Ex Maj Narender Pal and Ex Hav Surender Singh were also charge-sheeted and subjected to Court Martial proceedings for the same charges. On being held guilty they were awarded similar punishments, against which they filed petitions before the Armed Forces Tribunal, Principal Bench, New Delhi. Their cases have been decided by the Armed forces Tribunal, Principal Bench, New Delhi, vide judgment/orders dated 11.05.2011 and 07.04.2015 respectively, copies whereof have been placed on record respectively as Annexure-1 to the counter reply dated 30.08.2014 filed by the petitioner against the supplementary affidavit filed by the respondents and Annexure SA-1 to the supplementary affidavit filed by the petitioner dated 29.04.2015. Learned counsel for the petitioner submits that since the case of the petitioner is identical to the cases of Maj Narender Pal and Ex Hav Surender Singh, he is also entitled to the same relief. Learned counsel for the respondents does not dispute the above proposition.

6. We have gone through the judgments rendered by the Armed Forces Tribunal, Principal Bench, New Delhi in the cases of Ex Hav Surender Singh and Maj Narender Pal. It would be relevant to quote the

observations and order made by a co-ordinate Bench of the Tribunal in the case of Maj Narender Pal, which is as under:

“8. The offence does not in any way affect the social order. Offences like atrocity, offences against women, misappropriation of public money, etc involve moral turpitude which has great impact on social order and public interest. Further, the charges against the appellant do not in any way run against the societal interest. In the given circumstances, the sentence of dismissal from service is harsh and is not commensurate to the gravity of the offence.

9. In the given circumstances, while confirming the findings of Summary Court Martial, the sentence of dismissal from service is modified and the appellant shall be deemed to have been released from service from the date he attained the pensionable service and he shall be entitled to all pensionary benefits with no back wages. The appeal is partly allowed accordingly.”

7. The case of Ex Hav Surender Singh being identical was also decided by the Principal Bench, Armed Forces Tribunal, New Delhi on 07.04.2015, granting the similar relief to him. On careful consideration of the matter, we find nothing on record to deviate from the view expressed by the Principal Bench of the Tribunal at Delhi in the cases of Maj Narender Pal and Ex Hav Surender Singh (supra), which are identical. We are, therefore, of the view that the petitioner is entitled to the same reliefs as have been given to Maj Narender Pal and Ex Hav Surender Singh.

8. Accordingly, the petition is partly allowed. While confirming the findings of Summary Court Martial, the sentence of dismissal from service is modified and the petitioner shall be deemed to have been discharged from service from the date on which he would have earned pension and other post-retiral benefits. The petitioner shall be paid arrears of pension and post-retiral benefits within four months from today. If the amount payable to the petitioner, as directed above, is not paid within the time stipulated, he shall be entitled to interest at the rate of 9% per annum till the date of payment.

There would be no order as to costs.

(Air Marshal Anil Chopra)
Member (A)

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

Dated: March, 2017

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