

RESERVED**COURT NO: 2****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 611 of 2020**Thursday, this the 2nd day of March, 2023**“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”****“Hon’ble Maj Gen Sanjay Singh, Member (A)”**

No. JC-661941-F Ex-Nb Sub Nageshwar Jha (RT), S/o Sri (Late) Kusheshwar Jha, R/O :Vill & PO - Mahisi, Distt - Saharasa - 852216 (Bihar) Presently R/O - C/o Anju Kumari, Mohini Nagar, Parikrama Marg, Hari Sharan Seva Dham, Rajpur Khadar, Ward No. 4, Vrindavan, Dist – Mathura (UP)

..... Applicant

Ld. Counsel for the : **Shri Virat Anand Singh, Advocate**
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence (Army), South Block, New Delhi.
2. Chief of Army Staff, Integrated Headquarters, Ministry of Defence, South Block - III, New Delhi - 110011.
3. OIC Records, ASC Records (South), PIN- 900493, C/o 56 APO.
4. Commanding Officer, 890 AT Bn ASC, PIN - 905890, C/o 56 APO.

.....Respondents

Ld. Counsel for the
Respondents.

**:Shri Ashish Kumar Singh,
Central Govt 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 quash or set aside the Respondents Order of Dismissal dated 24.01.2012, confirmation by GOC-in-C dated 02.07.2012, SGCM proceedings, Respondents letters dated 05.03.2018, 04.01.2018 which are marked as Annexure A-1 (i) & A 1 (ii) (coll) respectively (Impugned Orders) and annexed to this Original Application.

(B) To issue order or directions to the respondents for reinstatement of the applicant with all consequential benefits.

(C) Any other relief as considered proper by the Hon’ble Tribunal be awarded in favour of the applicant.

2. Briefly stated, applicant was enrolled in Army on 23.03.2006 as a Religious Teacher. He deserted himself from service on 30.07.2007 and surrendered on 27.08.2009 after about 760 days. He was granted leave from 10.02.2010 to 26.02.2010 but he joined duty on 01.03.2010 and he was absent without leave for 4 days. On

20.06.2011 he again deserted from duty and he was apprehended on 14.08.2011. A Summary General Court Martial (SGCM) was held and applicant was awarded punishment of Rigorous Imprisonment for 2 years and dismissal from service. Applicant preferred representation against the punishment of imprisonment and dismissal. While confirming the sentence, Chief of Army Staff set aside remaining portion of punishment of 2 years Rigorous Imprisonment and confirmed punishment of dismissal from service being appropriate. He preferred revision petition which was rejected vide order dated 05.03.2018. It is in this perspective that the applicant has preferred the present Original Application for reinstating him in service.

3. Ld. Counsel for the applicant submitted that applicant was enrolled in Indian Army on 23.03.2006 as Religious Teacher. He was tried by SGCM from 26 December 2011 to 24 January 2012 on the following four charges:-

(a) First Charge was under Army Act Section (AA Sec), 38

(1) for absenting without leave from 890 AT Bn ASC, till he surrendered on 27 Aug 2009.

(b) Second Charge was under AA Sec 54 (b) for, "LOSING BY NEGLIGENCE IDENTITY CARD THE PROPERTY OF THE GOVERNMENT ISSUED TO HIM FOR HIS USE".

(c) Third Charge was under AA Sec 39 (b) for, "WITHOUT SUFFICIENT CAUSE OVERSTAYING LEAVE GRANTED TO HIM",

(d) Fourth Charge was under AA Sec 38 (1) for, "DESERTING THE SERVICE".

4. Learned counsel for the applicant submitted that applicant through oversight had left his identity card in his own village and the same received by Commanding Officer (CO) through Village Pradhan on 17 January 2010. However, still second charge for losing his Identity Card was preferred against the applicant. He was awarded punishment of two years rigorous imprisonment and dismissal from the service. He preferred Revision Petition which was dismissed by Chief of Army Staff (COAS) vide order dated 04.01.2018. Awarding punishment of 2 years RI and dismissal from service was beyond the power and authority of CO. Under Army Act Section 85, the CO can only award Severe Reprimand/Reprimand and stoppage of pay and allowances. The punishment awarded to the applicant is harsh, illegal and highly violative of Article 14 and 21 of Constitution of India. Learned counsel for the applicant submitted that Hon'ble Apex Court in ***Associated Cement Companies Ltd Vs PN Sharma*** AIR 1965 SC 1595 2 SCR 366 1 LLJ 433 observed that ***'Administrative Authorities or Bodies are mandated to act fairly***

and objectively and in many cases to comply with principles of Natural Justices”.

5. Learned counsel for the applicant further submitted that perusal of the SGCM proceedings and connected documents reveal that applicant was tried by SGCM convened by General Officer Commanding 25 Infantry Division under the provision of Army Act Section 112 (b). As per Army Act Section 118, SGCM shall have power to try any offence punishable under the Army Act and to pass any sentence authorised thereby. Army Act Section 85 deals with summary disposal of cases against Junior Commissioned Officers and therefore, not applicable to the case in hand. Under the scheme of the Army Act and Army Rules, the procedure on conviction under Army Rule 64 is required to be followed after the accused is found ‘Guilty’ by the Court, wherein before deliberating on the sentence, the evidence and Record of general character, age, service, distinguished conduct and previous convictions etc of the accused is taken on record. Learned counsel for the applicant pleaded that punishment of dismissal awarded to applicant may be set aside and applicant be reinstated in service with all consequential benefits.

6. On the other hand, learned counsel for the respondents submitted that applicant was enrolled in Army on 23.03.2006. He absented himself from duty on number of occasions. The applicant absented himself from 30.07.2007 and voluntarily reported at Depot

Coy ASC Centre on 27.08.2009 after a period of 760 days. The applicant held on supernumerary strength of Depot Coy ASC Centre, South, Bangalore was reverted back to his parent unit i.e. 890 AT Bn ASC on 27.08.2009 but he failed to report his unit in time and he was apprehended from a Mandir in Naushera, District- Rajouri (J&K). Disciplinary proceeding was initiated against him on 14.09.2011. SGCM was held and applicant was placed under close arrest under provisions of Defence Service Regulation Para 392 (k) and applicant was arraigned for all four charges. Applicant was found guilty for three charges and he was awarded punishment to suffer rigorous imprisonment for two years and to be discharged from service. The confirmation authority on 02.07.2012 remitted the unexpired portion of sentence of two years Rigorous Imprisonment awarded by the Court. Accordingly, promulgations were carried out and the applicant was dismissed from service with effect from 14.07.2012. The applicant submitted a petition dated 05.10.2015 which was dismissed by Chief of Army Staff (COAS) vide order dated 04.01.2018 after due consideration being devoid on merit. Learned counsel for the respondents submitted that in view of factual position applicant is not entitled for reinstatement in service. He pleaded that instant OA may be dismissed due to being devoid of merit and lacks of substance.

7. We have heard, learned counsel of both the parties and perused to documents available on record.

8. The moot question before us to decide is 'whether the applicant is entitled to relief of reinstate in service'.

9. Rule 22(1) is an investigation stage and on the basis of the statements of the witnesses, heard by the C.O. He has to form an opinion whether the case has to be proceeded with. It is clear from the rules that the statements of the witnesses so heard are not used in the subsequent proceedings. This fact finds support from the provisions of the Army Order 7/2000, wherein it has been provided that it is not necessary that all the witnesses of the prosecution should be heard under Rule 22(1). If the Commanding Officer is prima facie satisfied after hearing some of the witnesses that matter deserves to be proceeded against him, then there is no requirement under Rules or Army Order to further record the evidence of all the witnesses. Thus, the purpose of the Legislature to hear the prosecution witnesses under Rule 22(1) is very limited.

10. It is clear from the record that the applicant was posted in field area on active service. The main allegation against him was that he absented himself without leave, therefore, in this case, urgent and immediate action was required, accordingly, SGCM was convened

and keeping in view the facts and the aforementioned legal position, the convening of SGCM cannot be said to be in violation of the Army Act or the Rules because record itself justify such resort.

11. The arguments of the learned counsel for the applicant that the procedure was not strictly complied with while conducting SGCM and on the strength of this submission, he has submitted that the subsequent proceedings were void. So far as infirmities and irregularities in the procedure are concerned, it does not vitiate the trial or subsequent proceedings. The applicant will have to show that his defence has been prejudiced by lapses in following the procedure, only then he can get the benefit. In the instant case, no such argument has been advanced before us that the applicant's defence has been prejudiced by irregular attachment order. In the case of **Major G.S. Sodhi**, Hon'ble Supreme Court has observed in para 21 as under :

"It must be noted that the procedure is meant to further the ends of justice and not to frustrate the same. It is not each and every kind of defect preceding the trial that can affect the trial as such."

12. The aforesaid view expressed by the Hon'ble Supreme Court in the case of **Major G.S. Sodhi** (supra) has again been followed by the Hon'ble Apex Court in the case of **Union of India & ors vs. Major A. Hussain** [1998] (1) SCC 537], wherein the Hon'ble Apex Court has observed as under :

“In G.S. Sodhi's case this Court with reference to Rules 22 to 25 said that procedural defects, less those were vital and substantial, would not affect the trial. The Court, in the case before it, said that the accused had duly participated in the proceedings regarding recording of summary of evidence and that there was no flagrant violation of any procedure or provision causing prejudice to the accused.”

13. At this juncture, we would like to quote Rule 149 of the Army Rules, which reads as under :

“149. Validity of irregular procedure in certain cases,—

Whenever, it appears that a court-martial had jurisdiction to try any person and make a finding and that there is legal evidence or a plea of guilty to justify such finding, such finding and any sentence which the court-martial had jurisdiction to pass thereon may be confirmed, and shall, if so confirmed and in the case of a summary court-martial where confirmation is not necessary, be valid, notwithstanding any deviation from these rules or notwithstanding that the charge-sheet has not been signed by the commanding officer or the convening officer, provided that the charges have, in fact, before trial been approved by the commanding officer and the convening officer or notwithstanding any defect or objection, technical or other, unless it appears that any injustice has been done to the offender, and where any finding and sentence are otherwise valid they shall not be invalid by reason only of a failure to administer an oath or affirmation to the interpreter or shorthand writer; but nothing in this rule shall relieve an officer from any responsibility for any wilful or negligent disregard of any of these rules.”

14. A perusal of the aforesaid rule shows that the Court Martial would not be held to be invalid, even if there was an irregular

procedure where no injustice was caused to the accused. During course of argument, learned counsel for the applicant has nowhere argued that the applicant's defence has been prejudiced by any such irregularity in the procedure. Hon'ble Supreme Court in the case of **Major A. Hussain** has also observed as under :

“ When there is sufficient evidence to sustain conviction, it is unnecessary to examine if pre-trial investigation was adequate or not. Requirement of proper and adequate investigation is not jurisdictional and any violation thereof does not invalidate the court martial unless it is shown that accused has been prejudiced or a mandatory provisions has been violated. One may usefully refer to Rule 149 quoted above.”

15. On perusal of above judgments and record it appears that applicant was tried by SGCM convened by General Officer Commanding 25 Inf Div under the provisions of Army Act Section 112 (b). As per Army Act Section 118, SGCM have power to try any offence punishable under the Army Act and to pass any sentence authorised thereby. Finding of the sentence was confirmed by General Officer Commanding in Chief, Northern Command on 20.07.2012 who while confirming the sentence had also remitted the unexpired portion of the sentence of two years rigorous imprisonment awarded by the Court. Certain punishments were awarded to the applicant while he was posted in field area, that does not make them 'Field Punishments'. Under Army Act and Army

Rules, the procedure on conviction under Army Rule 64 is required to be followed after the accused is found 'Guilty' by the Court, wherein before deliberating on the sentence, the evidence and record of general character, age service, distinguished conduct and previous convictions etc of the accused is taken on records. Such evidence was duly taken on record through Court followed by opportunity to the applicant to address the court in mitigation of punishment. Thus, there was no violation of Army Rules.

16. The proceedings of SGCM 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 of which the applicant was found 'Guilty' and his past soiled record of service, wherein he was punished twice 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 SGCM and finding recorded on the basis of the evidence is also in accordance with the material on record.

17. Thus, we are of the view that the applicant has failed to prove his case and hence, we have no valid reason to interfere with the denial of reinstatement in service to the applicant. 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.

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

19. No order as to costs.

(Maj Gen Sanjay Singh)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated : 02 March, 2023
Ukt/-