

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Transfer Application No. 700 of 2010 along with T.A. No. 699 of 2010 and T.A. No. 701 of 2010 (Decided)**Thursday, this the 25th day of May, 2023**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**
“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”

Smt. Poonam Srivastava widow of Late Anand Kumar Srivastava,
Desh Deepak S/O Late Anand Kumar Srivastava, Miss Reshu D/o
Late Anand Kumar Srivastava and Miss Divya D/o Late Anand
Kumar Srivastava, All Resident of: Village & Post: Jarhi Police
Station: Maharajganj, Faizabad

..... Applicant**Ld. Counsel for the Applicant : Col Ashok Kumar, (Retd) and
Shri Rohit Kumar, Advocate.**

Versus

1. Union of India, through Secretary of Defence, New Delhi.
2. Director General of Medical Services (Army) D.G.M.S 3 (D),
Army Headquarters, D.H.Q., Post Office, New Delhi - 110011
3. Commandant A.M.C. Centre & School, District Lucknow.
4. Colonel Records, Army Medical Corps, District Lucknow.
5. Commander, Officers Training School, A.M.C. Centre &
School, District Lucknow.
6. Commanding Officers, (Admn. Battalion), A.M.C. Centre &
School, District Lucknow.

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

ORDER (ORAL)

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

1. The instant Transferred Application has been filed on behalf of the applicant under Section 226 & 227 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-

- “(i) Issue a writ, order, or direction in the nature of certiorari to quash the chargesheet dated 22nd January 2001, contained in Annexure No. 17 to the writ petition by summoning the records.
- (ii) Issue a writ, order of direction in the nature of certiorari quashing the order for summary Court Martial dated 22nd January 2001, contained in Annexure No. 16 to the writ petition by summoning the records.
- (iii) Issue a writ, order or direction in the nature of mandamus commanding the opposite parties to not to initiate Summary Court Martial vide Letter dated 22nd January 2001 contained in Annexure No. 16 to the writ petition.
- (III-A) To issue a writ, order or direction in the nature of certiorari quashing the impugned order by way of which the petitioner has been reduced to the rank of the Sepoy/soldier from the Rank of Naik.
- (III-B) To issue a writ, order or direction in the nature of mandamus commanding the opposite parties to not to reduce the rank of petitioner to the Rank of Sepoy/soldier from the rank of Naik, as contained in Annexure No. 19.
- (iv) Issue a writ, order or direction deems fit and proper may be passed I the consequence of the case.

- (v) *any other relief or reliefs deems fit and proper in the consequence of the case.*
- (vi) *Cost of the proceeding may also be awarded.*

2. Brief facts of the case are that the husband of the applicant was enrolled in the Indian Army on 15.06.1983. While serving with AMC Centre and School Lucknow in the rank of Naik (Nk,) he applied for premature discharge which was sanctioned in June 2000. In the meantime a complaint was registered against the husband of the applicant. A Court of inquiry was ordered to investigate allegations made regarding accepting of illegal gratification by husband of the applicant. Summary of evidence was recorded and husband of the applicant was found blame worthy. Premature discharge of husband of the applicant was cancelled. Summary Court Martial (SCM) was held and husband of the applicant was awarded punishment of 'Reduce to Rank'. Applicant has filed this Transferred Application with the prayer to cancel punishment of reduce to rank.

3. Learned counsel for the applicant submitted that husband of the applicant while serving with AMC Centre and School Lucknow in the rank of Nk applied for premature retirement on completion of 17 years of service in terms of Gazette of India, Notification 9 dated 01.03.1986. His discharge was sanctioned and he was issued PPO No S/024067/20000 dated 01.06.2000. All of sudden just one day before premature retirement of the husband of the applicant, his discharge

order was cancelled. Husband of the applicant was informed that complaints from number of people have been received against him for illegally taking money. A Court of Inquiry was ordered and charge sheet was issued levelling two charges. First charge under Section 64 (e) of Army Act was for directly accepting a gratification as a reward for procuring enrolment of a person in the service. In that he at Lucknow on 18.02.1999 while posted to Adm Battalion AMC Centre and School accepted a sum of Rs. 37,500/- from Jaswant Singh of the same unit as a motive for procuring enrolment of Shri Onkar Chand a civilian. Second Charge was levelled under Army Act Section 63, An act prejudicial to good order and military discipline in that he at Lucknow on 06 June 2000, improperly borrowed a sum of Rs. 40,000/- from Naresh Singh of Records AMC Lucknow, contrary to Par 337 of the Regulations for the Army, Revised Edition 1987 which prohibits borrowing and lending between persons subject to Army Act 1950. He was tried by SCM held from 26.01.2001 to 06.02.2001 on both the charges. In the first charge, he was found not guilty. In second charge he was found guilty and was awarded punishment of reduction to rank. Since, the husband of applicant had completed terms of service and had completed 18 years of service on his reduction to rank of Sepoy, his discharge order was issued and he was directed to discharge from service wef 31.07.2000. His discharge was cancelled due to involvement in disciplinary case. Husband of the applicant was brought on strength of Officers Training School Lucknow vide Record

Office, AMC letter dated 25.10.2000. Husband of the applicant filed Writ Petition No 509 of 2001 (S/S) before High Court, Lucknow Bench Lucknow with the prayer to set aside punishment of reduce to rank of Sepoy from the rank of Naik which has been transferred to this Tribunal and has been re-numbered as T.A. No 700 of 2010. Learned counsel for the applicant pleaded that husband of applicant was implicated in false cases, hence punishment of reduction to rank from Naik to Sepoy be quashed.

4. On the other hand, learned counsel for the respondents submitted that husband of the applicant was enrolled in Army Medical Corps (AMC) on 15.06.1983. He was promoted to the rank of Naik on 01.09.1997. While posted at Adm Bn, AMC Centre & School, Lucknow he applied for premature retirement from service which was sanctioned vide AMC Records letter dated February 2000. As per discharge order he had to be struck of strength on 01.08.2000. He was transferred to depot coy on 18.07.2000 for final settlement of his claim. A complaint dated 24.07.2000 from Hav Narain Singh of AMC Records Lucknow against the husband of the applicant was received alleging that he was indulged in gratification cases of enrolment in army. It was further alleged that husband of the applicant had taken a sum of Rs. 40,000/- for enrolment of his relatives. Further, a similar complaint was also made by Hav Jaswant Singh on 30.07.2000. Discharge order of husband of the applicant was withheld by AMC Records vide order dated 31.07.2000 i.e. one day before his struck of

strength. A Court of Inquiry was held and Summary of Evidence was recorded. Sufficient evidence was found available against husband of the applicant. The husband of the applicant was kept under close arrest for further investigation on 15.12.2000. SCM of husband of the applicant was held between 26.01.2001 to 06.02.2001 and he was awarded punishment of reduction to rank.

5. Learned counsel for the respondents further submitted that as the husband of the applicant was completing 18 years of service on his reduction of rank of Sepoy, a discharge order was issued directing to be discharged from service wef. 31.07.2000. In the meantime, various complaints were further received against husband of the applicant alleging that he had illegally taken money from number of persons for procuring enrolment in army. Civilian witnesses who made allegations against husband of the applicant were called and matter was investigated by Officiating Commander, Officers Training School Lucknow. In order to prevent the husband of the applicant from tempering evidence, he was placed under closed arrest vide order dated 21.05.2001. Since, husband of the applicant was completing his normal contractual period of service in the present rank of Sepoy, a case was taken up with AMC Records for local discharge on completion of contractual period. Section 123 of Army Act, 1950 was invoked and trial of husband of the applicant by SCM continued which concluded on 28.08.2001. The husband of the applicant was found guilty on all four charges levelled against him and he was awarded

punishment of Rigorous imprisonment for one year and dismissal from service. The husband of the applicant submitted appeal dated 18.09.2001 to General Officer Commanding in Chief, central Command Lucknow under Section 164 (2) of the Army Act 1950 for setting aside finding and punishment awarded by the SCM. The said appeal was rejected vide order dated 09.01.2002 being devoid of merits. Learned counsel for the respondents submitted that husband of the applicant has committed number of offences and his SCM was held twice. In First SCM he was awarded punishment of Reduction to Rank for which he has filed instant T.A. with the prayer to set aside punishment of reduction to rank and in Second SCM he was awarded punishment of Dismissal from service and Imprisonment for one year in civil Jail. The Second T.A. was allowed by this Tribunal vide order dated 12.10.2015 and husband of the applicant was allowed to retire from service wef 31.07.2001 with all consequential benefits. Learned counsel for the respondents pleaded that instant petition has no substance hence, liable to be dismissed.

6. We have heard learned counsel for the parties and perused the documents available on record.

7. On perusal of documents available on record, it transpires that in addition to instant T.A., the applicant had filed two more petitions. The details are as under:-

(a) Husband of the applicant filed writ petition No 642 of 2002 (S/S) before High Court Lucknow Bench, Lucknow which was transferred to this Tribunal and re-numbered as T.A. No 699 of 2010. By means of this application, applicant had prayed to quash punishment of rigorous imprisonment and to set aside dismissal order passed by SCM. This petition was decided by the Tribunal vide order dated 12.10.2015 and respondents were directed to discharge the husband of the applicant from 01.08.2001 with all consequential benefits.

(b) The husband of the applicant filed another Writ Petition No 6850 (S/S) of 2000 before High Court Lucknow Bench, Lucknow with the prayer to release him from close arrest and to cancel his premature retirement. The said petition was transferred to this Tribunal and re-numbered as T.A. No 701 of 2010. In this petition interim order was passed to release husband of the applicant from close arrest. Now this petition has become infructuous.

8. The instant case relates to Writ Petition No 509 of 2001 (S/S) filed by husband of the applicant before High Court, Lucknow Bench Lucknow with the prayer to set aside punishment of reduce to rank of Sepoy from the rank of Naik which has been transferred to this Tribunal and has been re-numbered as T.A. No 700 of 2010. In this case a complaint dated 24.07.2000 was received against the husband

of the applicant from Hav Narain Singh of AMC Records Lucknow alleging that husband of the applicant was indulged in gratification cases of enrolment in army. It was further alleged that husband of the applicant had taken a sum of Rs. 40,000/- for enrolment of his relatives. Further, a similar complaint was also made by Hav Jaswant Singh on 30.07.2000. A Court of Inquiry was ordered and Summary of Evidence was recorded. Civilian witnesses were called and investigation made by Officiating Commander of Officers Training School, AMC Centre & School, and only after prima facia case was established, the disciplinary action was taken. Full opportunity was given to husband of the applicant to protect himself and at every stage of investigation, provisions of Army Rule 180 were complied with, which provides for full opportunity to the accused to make any statement, call any witness and cross examine any witness for his defence or to produce any evidence for his defence. SCM punished the husband of the applicant under Section 63- An act prejudicial to good order and military discipline for improperly borrowing money from Hav Narain Singh of AMC Records, Lucknow contrary to provisions contained in Para 337 of Regulations for the Army 1987 (Revised). Sufficient evidence was found available against husband of the applicant. Since husband of the applicant was involved in a disciplinary case, his discharge order was withheld by AMC Records vide letter dated 31.07.2000. SCM of husband of the applicant was held between 26.01.2001 to 06.02.2001 for two charges; First for

directly accepting a gratification as a reward for procuring enrolment of a person in service which is punishable under Section 64 (e) of the Army Act 1950 and second for an act prejudicial to good order and military discipline i.e. borrowing and lending money as prohibited under para 337 of Regulations for the Army 1987 (Rev) which is punishable under Section 63 of the Army Act 1950. First allegation made by Hav Jaswant Singh was not substantiated and the charge was dropped by SCM. Husband of the applicant was found guilty of second charge for accepting money, violating laid down norms of army service and he was awarded punishment of "To be reduced to rank". As per provisions of Army Act 1950, any person subject to this Act is liable to be dealt as per rule in vogue. Release/ discharge and even pension withheld and forfeited if any fact emerges to the knowledge of competent authority and proved at any time before or after release/retirement. Husband of the applicant was tried by SCM from 26.01.2001 to 06.02.2001 and he was found to have committed an offence under Army Act 1950, Section 63, an act prejudicial to good order and military discipline contrary to provisions of Para 337 of Regulations for the Army which prohibits borrowing and lending money by the persons subject to Army Act 1950. The fact of receiving money from the complainant has also been accepted by the petitioner in his own statement in SCM and only after having been found him guilty, he was awarded punishment of reduction to rank under the provisions of Section 71 (f) of Army Act, 1950.

9. Further, written complaints dated 02.05.2001 and 21.05.2001 were received against husband of the applicant. In the said complaints, it was reported that husband of the applicant had illegally taken money from them for procuring enrolment in army. Court of Inquiry was held and Summary of Evidence was recorded. Husband of the applicant was tried by SCM from 21.07.2001 to 28.08.2001 and he was found guilty for all four charges levelled against him. The husband of the applicant was awarded punishment of Rigorous imprisonment for one year in civil jail and dismissal from service. He was given in custody of Superintendent of District Jail Lucknow on the same day i.e. 28.08.2001. Provisions contained in Rule 16A and 16B of Army Rule are applicable to officers only. Since husband of the applicant was a Non Commissioned Officer, the said provisions were not applicable to him.

10. All the circumstances which we have discussed earlier have been proved beyond reasonable doubt against the husband of the applicant and when all these circumstances are weighed together, it leads to the only conclusion that husband of the applicant is the person who borrowed money against the policy of Army. No other conclusion on the basis of these circumstances can be arrived at. Therefore, in view of discussions made above, we are of the considered view that there is no illegality, irregularity leading to miscarriage of justice in conducting SCM and awarding the

punishment of reduce to rank from Nk to Sepoy. While awarding the punishment of reduce to rank, all the procedures were followed and no illegality that can vitiate the proceeding could be brought to our notice. Keeping in view the seriousness of offence committed, the punishment awarded, cannot be considered to be disproportionate.

11. Thus, we are of the view that the applicant has failed to prove his case and hence, we have no valid reason to quash the punishment of reduction to rank awarded by SCM to the husband of the applicant. In this view of the matter, we are of the considered opinion that the applicant is not entitled to relief as claimed.

12. We are of the view that the findings recorded by the SCM are in accordance with law and based on correct appreciation of evidence. T.A. lacks merit and deserves to be dismissed.

13. Accordingly, T.A. is **dismissed**.

14. No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 25 May, 2023
Ukt/-