

**Reserved**

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

**TRANSFERRED APPLICATION No: 13 of 2018**

**Monday, this the 15<sup>th</sup> day of May, 2023**

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

**“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

Sanjay Kumar (Army No: 13960904A Ex. Havildar (reduced to rank of Sepoy/ Pharmacist), Son of Late Shri Bindeshwari Prasad, Resident of Village and Post Office: Samsa, District :Begusarai (Bihar).

.....**Petitioner**

Ld. Counsel for the : **Shri Yashpal Singh, Advocate**  
Petitioner

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. Chief of the Army Staff, Army Headquarters, DHQ PO New Delhi - 110011.
3. Army Medical Corps Records, Lucknow, through its Officer - in- Charge.
4. Military Hospital, Nasirabad, through its Commanding officer.
5. Commanding Officer, 64 Field Regiment, C/O 99 APO.

.....**Respondents**

Ld. Counsel for the : **Shri Shailendra Sharma Atal,**  
Respondents. **Central Govt. Counsel.**

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

1. Transferred Application No.10 of 2017 has been received by this Tribunal by way of transfer from AFT, Kolkatta vide order dated 13.11.2018 passed by Hon’ble AFT, New Delhi and registered as Transferred Application No. 13 of 2018. By means of the instant T.A., the petitioner had made the following prayers:-

*(a) Issue a writ, order or direction in the nature of CERTIORARI quashing the impugned the order / decision of the Chief of the Army Staff dated 22.05.2016, rejecting the petition of the petitioner preferred against the punishment awarded by the Summary Court Martial held at 64 Field Regiment from 18.12.2004 to 03.01.2005 and also the punishment.*

*(b) awarded by the Summary Court Martial finalized on 03.01.2005 (as contained in Annexure Nos. 1 and 2 to the writ petition), after summoning the original records.*

*(c) Issue a writ, order or direction in the nature of CERTIOARI quashing the discharge of the petitioner from Army service with effect from 11.02.2005 (FN) vide Movement Order No. 443/Coy/2005 dated 10.02.2005 issued by Military Hospital, Nasirabad (as contained in Annexure No. 3 to the writ petition), issued under the authority of Army Medical Corps*

*Records, Lucknow Signal No. 8002 dated 09.02.2005, after summoning the original records.*

*(d) Issue a writ, order or direction in the nature of MANDAMUS commanding the opposite parties to grant the promotion to the rank of Naib Subedar in terms of the promotion order dated 12.06.2002 (as contained in Annexure No. 4 to the writ petition) with all consequential benefits of arrears of difference in salary and seniority, etc.*

*(e) Issue any other writ, order or direction as may be deemed expedient in the interest of justice.*

*(f) Allow this writ petition with cost.*

2. Briefly stated facts of the case are that the petitioner was enrolled in Army on 01.12.1984. Hewas posted to Military Hospital Nasirabad and he served there from 04.04.1999 to 14.10.2002. On 03.06.2001 a Court of Inquiry (Col) was ordered to fix responsibility pertaining to medicine issue vouchers and petitioner was also included in Court of Inquiry. On the basis of Court of Inquiry, four officers were tried by General Court Martial (GCM), found guilty and punished. The petitioner was one of the prosecution witnesses in the GCM. Army Medical Corps (AMC) Records issued promotion order of the petitioner for promotion as Naib Subedar but he was not promoted due to involvement in disciplinary case. Summary of Evidence was recorded and petitioner was tried by Summary Court Martial (SCM) and he was awarded punishment of "Reduced to

Rank". The petitioner was locally discharged from service in the rank of Sep on 10.02.2005. The petitioner filed appeal to Chief of Army Staff against punishment awarded by SCM which was rejected vide order dated 22.05.2006. The petitioner then filed Writ Petition before the Hon'ble High Court of Judicature at Allahabad which was dismissed being not maintainable due to lack of jurisdiction. Being aggrieved, petitioner has filed instant T.A.

3. Learned counsel for the petitioner submitted that petitioner was enrolled in Army on 01.12.1984. He was posted in various units and establishments and was promoted to the rank of Naik and Havildar after completing the requisite training/ courses. He was posted to Military Hospital, Nasirabad on 04.04.1999 and he was discharged from service on 11.02.2005 vide order dated 09.02.2005.

4. Learned counsel for the petitioner submitted that duties of NCO in charge Pharmacist were prescribed in Standard Operating Procedure (SOP) prepared by Commanding Officer (CO) of Depot. The procedure for compliance of indent was also prescribed by CO of Depot, which was lastly reviewed on 27.04.1971. As NCO In charge Group, his responsibilities were to ensure correct receipt and issue of stores as per supporting documents, safety of stores, issue of stores as per ledger and correct accounting procedure for receipt and issue of stores.

5. Petitioner was posted at 38 Advance Medical Stores Depot from 08.01.1996 to 03.04.1999. After 2 years of posting of petitioner from 38 Advance Medical Stores Depot Military Hospital, Nasirabad, a complaint was received in the year 2001 with regard to certain issue vouchers of medicines supplied to the Indian Military Training Team (IMTRAT) Bhutan. A Court of Inquiry was ordered vide convening order dated 03.06.2001 to investigate irregularities committed in issuance of medicines and to fix responsibilities pertaining to medicine issue vouchers prepared at the Depot and the petitioner was also included in Court of Inquiry. The statement of petitioner was recorded as Witness No 3. The Court of Inquiry had examined records held in the Depot and authorities were aware of alleged irregularity. Finding of Court of Inquiry was submitted to convening authority on 01.11.2001. Attachment order of four officers for disciplinary purpose was issued vide order dated 27.03.2002. Officers were tried by GCM, found guilty and punished. The petitioner was one of prosecution witness in the GCM held against the erring officers. The petitioner was summoned as a prosecution witness in GCM of 4 officers and he appeared and gave his statement. In the meantime, promotion order for promotion of petitioner to the rank of Nb Sub was issued on 30.05.2002. Military Hospital Nasirabad informed to AMC Records, Lucknow vide letter dated 01.06.2002 that petitioner was involved in disciplinary case, though no disciplinary case was pending against the petitioner till

01.06.2002. Promotion of the petitioner was withheld vide AMC Records letter dated 01.07.2002 and the petitioner was superseded for promotion. It has been held in the case of Ramesh Chander Versus GOC in C, Northern Command and Others, reported in 1977 (2) SLR 864 (J&K) that *'The cancellation of order of promotion or keeping that order in abeyance on account of some pending inquiry would amount to imposing of punishment on the petitioner before the case is actually established against him. The power to withhold the actual grant of promotion to petitioner or to cancel the promotion already granted is a power, which curtails his rights and the constitutional protection available to him and has to be exercised strictly in accordance with law. The officer may or may not be found guilty as a result of inquiry and the cancellation of promotion on account of some pending inquiry would amount to punishing him anticipation'*. Commander 61 (Independent) Sub Area accorded the sanction on 06.01.2003 for attachment of petitioner to 32 Field Regiment, Binagur for disciplinary action. On 25.01.2003 tentative charge sheet was issued to the petitioner and on 30.01.2003, Summary of Evidence was recorded against the petitioner from 03.03.2003 to 24.04.2003 as per Rule 22 (1) of Army Rules 1954. A perusal of Summary of Evidence reveals that no evidence has come on record on the basis of which some blame could be attributed to the petitioner. Petitioner was intimated that SCM will be held to try him for the offences as framed in charge sheet. In tentative charge

sheet dated 30.01.2003, total 13 charges under Section 52 (f) of Army Act 1950 were mentioned, in the charge sheet dated 14.12.2004, two charges were framed against the petitioner. The total loss cause to the State, in the charge sheet amounts to Rs. 2,412.00 only.

6. Learned counsel for the petitioner submitted that while awarding punishment of reduction to rank proper procedure was not followed and Section 122 of Army Act 1950 was not complied with. Since the alleged offence took place some times during the years 1998 – 1999 and came to the knowledge of authorities at least on or before 03.06.2001, the trial of petitioner could not have commenced after 03.06.2004 and the trial of petitioner held from 18.12.2004 to 03.01.2005 is without jurisdiction.

7. The petitioner was not found guilty of First Charge under Section 52 (f) of the Army Act, 1950, but he was allegedly found guilty of second charge under Section 63 of the Army Act, 1950 and the punishment of “reduced to ranks” was awarded to the petitioner. The sentence awarded by SCM was promulgated on 03.01.2005. For the same offence, JCO incharge was awarded the punishment of Severe Reprimand only. The petitioner preferred an appeal dated 19.04.2005 against the punishment of “Reduced to Rank” which was rejected vide order dated 22.05.2006.

8. Further, Section 122 of the Army Act, 1950 deals with prescribed period of limitation for trial which was not followed in the instant case. For ready reference same is reproduced as under:-

*“122 Period of Limitation for Trial- (1) Except as provided by sub Section (2), no trial by court martial of any person subject to this Act for any offence shall be commenced after the expiration of a period of three years and such period shall commence:-*

*(a) On the date of offence; or*

*(b) Whether the commission of the offence was not known to the person aggrieved by the offence or to the authority competent to initiate action, the first day on which such offence comes to the knowledge of such person or authority, whichever is earlier; or*

*(c) Where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the authority competent to initiate action, whichever is earlier.*

*(2) The provisions of sub Section (1), shall not apply to a trial for an offence of desertion or fraudulent enrolment or for any of the offence mentioned in Section 37.*

*(3) In the computation of the period of time mentioned in Sub Section (1), any time spent by such person as a prisoner of war or in enemy territory, or in evading arrest after the commission of offence, shall be excluded.*

*(4) No trial for an offence of desertion other than desertion on active service or of fraudulent enrolment shall be commenced if the person in question, not being an officer, has*

*subsequently to the commission of the offence, served continuously in any exemplary manner for not less than three years with any portion of the regular Army.”*

9. The alleged irregularity was related to 38 Advance Medical Stores Depot where the petitioner was posted with effect from 08.01.1996 to 03.04.1999. From perusal of Section 122 of the Army Act, 1950, which is mandatory, no trial by court martial of any person subject to the Army Act for any offence shall be commenced after the expiration of a period of three years and as such issue of charge sheet on 14.12.2005 and holding of SCM from 18.12.2004 is wholly illegal, without jurisdiction. Since the alleged offence took place during the years 1998-1999 and came to the knowledge of the authorities at least on or before 03.06.2001, the trial of the petitioner could not have commenced after 03.06.2004 and the trial of petitioner was held from 18.12.2004 to 03.01.2005 is without jurisdiction. During Summary of Evidence, PW-1, PW-2, PW-6, PW-7 and PW-9 have categorically deposed that Periodical stock verification of the stores was carried out by stock verification boards and no surplus/ discrepancy was found. The charge of **‘improper alteration of entries’** without any ‘intention’ may amount to clerical or human error, but it may not be equated with the term **‘act or omission prejudicial to good order and military discipline’**. The punishment awarded to the petitioner is grossly disproportionate as petitioner had already completed more than 20 years of unblemished

service except the impugned punishment. The punishment of **'Reduction in Rank'** shortened his length of service even in the rank of Hav. Learned counsel for the petitioner pleaded that punishment of "Reduced to Rank" awarded to the petitioner be quashed and petitioner be reinstated in service with all consequential benefits.

10. On the other hand, learned counsel for the respondents submitted that petitioner was enrolled in AMC on 01.12.1984. He was promoted to the rank of Hav on 09.07.1996. Promotion cum posting in respect of petitioner from Military Hospital Nasirabad to 161 Military Hospital was issued vide order dated 30.05.2002. On receipt of information that petitioner was involved in disciplinary case, AMC Records vide letter dated 01.07.2002 intimated Military Hospital Nasirabad that NCO was not eligible for promotion to the rank of Nb Sub/Pharm due to his involvement in disciplinary case in terms of AO 20/81 and petitioner superseded for promotion. On finalization of Court of Inquiry, the petitioner was attached to 32/64 Fd Regiment. 13 tentative charges under Section 52 (f) of Army Act 1950 were framed against the individual vide tentative charge sheet dated 25.01.2003. Charges were heard by CO 32/64 Fd Regt on 30.01.2003 under Rule 22 of Army Rules 1954. On conclusion of hearing of charges, the commanding officer ordered to record S of E. Final charges were framed against the individual under Section 52 (f) and 63 of Army Act 1950, by Lt Col HS Parmar, Officiating CO 64

FdRegt. The first charge laid under Section 52 (f) of Army Act 1950 for "SUCH AN OFFENCE AS IS MENTIONED IN CLAUSE (F) OF SECTION 52 OF THE ARMY ACT WITH INTENT TO DEFRAUD". The second charge was under Army Action Section 63 (alternative to first charge) AN OMISSION PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE". The petitioner pleaded "Not Guilty" of the first charge but "Guilty" for second charge and he was sentenced "To be reduced to ranks". The petitioner filed petition dated 19.01.2005 and 19 Jun 2005 against findings and sentence of SCM. The same were rejected by Chief of the Army Staff vide order dated 22.05.2006. Consequent to reduction of rank of petitioner from Hav to Sep, his continuation in service was considered not in order since the petitioner had completed more than 20 years of service. Accordingly, petitioner was locally discharged from service wef 10.02.2005 (AN). Learned counsel for the respondents pleaded that all the procedures were followed while conducting SCM and petitioner is not entitled for any relief. He submitted that instant T.A. has no substance and is liable to be set aside.

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

12. In the instant case the petitioner was issued posting cum promotion order dated 30.05.2002 for posting from Military Hospital Nasirabad to 161 Military Hospital. AMC Records, Lucknow

intimated Military Hospital Nasirabad vide letter dated 01.07.2002 that petitioner was not eligible for promotion to the rank of Nb Sub due to involvement in disciplinary case in terms of AO 20/81. A Court of Enquiry was convened to investigate irregularities committed in issuance of medicines which submitted its report on 01.11.2001. Subsequently, four officers were tried and punished by a General Court Martial in which petitioner was prosecution witness. SCM of the petitioner commenced on 18.12.2004 and concluded on 03.01.2005. Charge sheet containing 2 charges under Section 52 (f) and 63 of Army Act 1950 was issued alleging loss caused to the State exchequer of Rs. 2,419.00. Petitioner was found Guilty for second charge under Section 63 and he was awarded punishment of **'Reduction in ranks'**.

13. One feature borne from the record is that Hav/Pharmacist SP Shukla who was also tried by SCM for the similar offence committed at Depot who was also prosecution witnesses against the 4 officers tried and punished by General Court Martial, had filed Writ Petition No 1572/2005 (S/S) challenging his discharge from service consequent upon awarding of punishment by SCM. The aforesaid writ petition was allowed by High Court of Judicature at Allahabad, Lucknow Bench vide order dated 12.04.2006 and Ex Hav SP Shukla was reinstated in service with all consequential benefits. Union of India filed Special Appeal before the Hon'ble Apex Court against the judgment and order passed by Allahabad High Court,

Lucknow Bench challenging the Court order which was allowed vide order dated 24.10.2007 and judgment and order passed by Allahabad High Court, Lucknow Bench was set aside. Then Ex Hav SP Shukla further approached this Tribunal with the prayer to promote him to the rank of Nb Sub and to re-instate him in service which was rejected vide this Tribunal order dated 12.07.2022.

14. In the instant case also the petitioner was awarded punishment of "Reduction to Ranks" and consequent to reduction of rank of petitioner from Hav to Sep, his continuation in service was considered not in order since the petitioner had completed more than 20 years of service. Accordingly, petitioner was discharged from service wef 10.02.2005 (AN). Further, Ex Hav SP Shukla was also awarded punishment of Reduction of ranks for the similar offence and the Hon'ble Apex Court rejected the order of reinstatement in service passed by High Court Allahabad, Lucknow Bench, hence petitioner also cannot be reinstated in service. Therefore, no illegality has been caused by issuing the discharge order. Further, the competent authority has clearly mentioned in its order that the acts of petitioner has brought disrepute to the Army and is prejudicial to Army Discipline. We are of the view that the conviction of the petitioner for such offence renders his further retention in the Army highly undesirable.'

15. In view of the above, we are of the considered opinion that due procedure was adopted for petitioner's discharge from service which needs no interference and T.A. is liable to be dismissed.
16. Accordingly, O.A. is **dismissed** on merit.
17. No order as to costs.
18. Miscellaneous applications pending, if any, shall stand disposed off.

**(Vice Admiral Atul Kumar Jain) (Justice Ravindra Nath Kakkar)**

**Member (A)**

**Member (J)**

Dated :15 May, 2023

Ukt/-