

**ARMED FORCES TRIBUNAL REGIONAL BENCH, LUCKNOW**

**Transferred Application No. 18 of 2012**

Thursday, the 15<sup>th</sup> of October, 2015

**Reserved**  
(Court No. 2)

**“Hon’ble Mr. Justice Abdul Mateen, Member (J)  
Hon’ble Lt. Gen. A.M. Verma, Member (A)”**

Ex No 2976584 MNK/I/Hav, Rishipal Singh, son of Sri Chhabi Nath Singh, resident of Village Santoshpur, Post Bhojpur, District Farrukhabad.

..... Applicant/petitioner

By Shri P.N. Chaturvedi, learned counsel for the applicant.

Versus

1. Union of India through the Secretary, Ministry of Defence, D.H.Q.P.O. New Delhi.
2. The Chief of Army Staff, Army Head Quarters, D.H.O. Post Office New Delhi.
3. The Commanding Officer, 23 Rajput Bn, C/o 56 APO.
4. Commanding Officer 11 Sikh Li. Regiment C/o 56 A.P.O.

.....Respondents.

By Shri Mukund Tewari, learned counsel for the respondents alongwith Capt Soma John, Departmental Representative.

**ORDER**

1. Civil Misc. Writ Petition No. 4201 of 2002 was received by this Tribunal from Allahabad High Court on 7.3.2012 and was renumbered as above.
2. The petitioner has prayed for quashing the sentence dated 26.2.1994, order dated 23.8.1999, which is rejection of his appeal by the Central Government and to reinstate the petitioner in service with arrears of pay and allowances.
3. Facts of the case are that on enrollment, the petitioner was posted to 23 Rajput on 7.8.1979. On joining the Unit, he started taking part in athletics. On 16.8.1993 when the Unit was in Dehradun, the petitioner alongwith five other athletes of 23 Rajput was on a practice run on road Dehradun-Sahastradhara at about 0645 hours. This group of six athletes boarded a bus approaching from Dehradun towards Sahastradhara. Since they did not have any money to pay for the tickets, they were asked to get down from the bus after about 3-4 minutes. The petitioner alongwith L/Hav Sultan Ram took a track going up to the hills while other athletes took another route for running. At that time, two school going girls, Miss Anju Devi and Miss Bina Devi, were passing by, who alleged that they had been criminally assaulted by two army personnel. An F.I.R was lodged by the parents of Miss Anju Devi, resident of village Nagal Hatnala against accused persons of 23 Rajput. A Court of

Inquiry was held and during the Court of Inquiry said victims Miss Anju Devi and Miss Bina Devi identified the petitioner and L/Hav Sultan Ram as persons who had misbehaved with and assaulted them on 16.8.1993. Thereafter the petitioner was tried by a District Court Martial (DCM) on the charge as follows:

**“CHARGE SHEET**

*The accused No.2976584M Nk (L/Hav) Rishipal Singh of 23 RAJPUT attached to 11<sup>th</sup> Battalion of 11 Sikh Light Infantry is charged with :-*

*Army Act  
Section  
69*

**COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, USING CRIMINAL FORCE TO A WOMEN WITH SINTENT TO OUTR/AGE HER MODESTRY, CONTRARY TO SECTION 354 OF THE INDIAN PENAL CODE.**

*in that he,*

*At dehradun, near village Nangal Hatnala on 16 Aug 93 used criminal force of Miss Anju Devi D/o Shri Alam Singh Kandari, by holding her hands, intending thereby to outrage her modesty.*

*Station : Dehradun*

*Date : 24 Jan 94*

*Sd/- x x x x  
RK Sharma  
Colonel  
Commanding Officer  
11 SIKH LI.”*

To be filed by DCM.

*Station : Dehradun*

*Date : 24 Jan 94*

*Sd/- illegible x x x  
K.P. Velaydhan  
Brigadier  
Commander  
42 Infantry Brigade.”*

4. The punishment awarded to the petitioner by the DCM was to be reduced to rank, R.I for six months and to be dismissed from service.

5. The petitioner was represented by Shri P.N.Chaturvedi. He submits that on 16.8.1993, the petitioner was on a practice run alongwith L/Hav Sultan Ram, Nk Babu Ram, Sep Suresh Singh, Sep Santosh Singh and Sep Chhatar Pal Singh. The petitioner was wearing a track suit trouser of blue colour with white strips and T-shirt. It is alleged that at about 0645 hours Miss Anju Devi and Miss Bina Devi were allegedly assaulted by two persons near village Nangal Hatnala, for which the petitioner was falsely charged. The F.I.R was also lodged in which the name of the petitioner alongwith all his practice run colleagues appears. He was attached to 11 Sikh Light Regiment on 21.8.1993. The petitioner claims that the aforesaid girls were called for identification parade during the Court of Inquiry, but they did not recognize him. The petitioner states that on filing of F.I.R and wide publicity of this case, the Chief of Army Staff General B.C.Joshi spoke to GOC of the Division at Dehradun on 17.8.1993 and directed that the persons responsible must be given exemplary punishment. According to the petitioner, the record

of identification at the end of Court of Inquiry was fabricated to suit the requirement of the prosecution. The Court of Inquiry proceedings were not held as per law. The identification parade was not conducted as prescribed and the girls were pressurized to identify the petitioner. After announcement of the punishment awarded to the petitioner by DCM the petitioner filed an appeal before the Chief of the Army Staff and the Government of India on 10.7.1996. The appeal was rejected by the respondent no. 1 i.e. the Secretary, Ministry of Defence on 23.8.1999. The respondent no. 2 also rejected the appeal on 30.8.1999.

6. The petitioner states that his son died on 21.8.1999 in a motor accident and his house and field crops were submerged in River Ganga in his village; consequently he was mentally disturbed and lived in a very poor condition. He further states that the victims i.e. Miss Anju Devi as also her friend Miss Bina Devi did not recognize him during the trial and the entire case is said to have been based against him on identification by these two girls. There is no other eye-witness to this incident. The petitioner says that he did not commit any crime; he did not misbehave with the aforesaid girls. According to the evidence that has come in DCM proceedings, the person who had caught hold of the hand of Miss Anju Devi was in vest and short whereas the petitioner was in a track suit. The petitioner says that he was nowhere within even 1 km distance of the scene of alleged incident.

7. The respondents were represented by Shri Mukund Tewari,

learned Standing Counsel, duly assisted by Capt Soma John, Departmental Representative. The respondents reiterated the basic facts of the case. According to them, after the accused alighted from the bus, they saw these two girls Miss Anju Devi and Miss Bina Devi on the route. The girls claimed that they were assaulted by the petitioner and his colleague L/Hav Sultan Ram. The petitioner and his colleague L/Hav Sultan Ram were wearing vests and shorts on 16.8.1993. An F.I.R was lodged. The Court of Inquiry was ordered. Thereafter the petitioner was tried by the DCM. The respondents say that the girl i.e. Miss Anju Devi had stated that the man who held her hand threatened to kill her if she did not stop shouting. The Summary of Evidence was recorded from 23.9.1993 to 8.10.1993, in which all the five other colleagues confirmed that the petitioner was wearing vest and short on 16.8.1993. During the Summary of Evidence, Miss Anju Devi identified the petitioner as the man who held her hand on 16.8.1993. All provisions of law were strictly followed during the investigation and the trial by DCM. The respondents state that the punishment awarded was just and legal since during the identification parade, sixteen army personnel including the petitioner and five other persons of 23 Rajput alleged to be involved in this incident were seen by the girls, who identified the petitioner and L/Hav Sultan Ram as the persons who committed the crime.

8. Heard both sides and scrutinized the records.

9. Before we proceed to appreciate the evidence on record, it would be relevant to quote the finding of DCM, which is as follows:

*“The court finds that accused No 2976584M Nk(L/Hav) Rishipal Singh of 23 Rajput attached to 11<sup>th</sup> Battalion of the Sikh Light Infantry is Guilt of charge. It is on record that on 16 Aug 93 the accused dressed in running short and vest, near village Nagal Hatnala on Dehradun – Sahastradhara Road, alongwith other five teammates had boarded a bus going towards Sahastradhara. Testimony of Miss Anju Devi (PW-3) confirms and inspires confidence that the man who caught hold of her hand, was one of the six men in athletic sports dress whom she had seen alighting from the bus at the upper road tracks junction and had later, at, the identification parade identified as the accused. She has also confirmed at the trial that she had identified the accused at the summary of evidence and at the identification parade on her own accord.*

*In this regard the testimony of Col Rakesh Berry (PW-14) and Col NK Sharma PW-15) have revealed that a deviation in the procedure was followed; during the identification parade, it was conducted in an absolutely fair manner to the accused and hence the result of the identification parade is relied upon.*

*There is nothing on record to show that the accused was a falsely implicated during the identification parade.*

*The court observed that the evidence of P.W.-9, P.W.-10, PW-11, PW-12 and PW-13 are full of variations*

*over their previous statements and therefore cannot be relied upon.*

*The circumstantial evidence on the record like hearing of cries of 'Bachao-Bachao' by P.W.10 and P.W.11, debussing of leaves no doubt as to presence of accused at the site of the incident.*

*Further, the fact that the accused followed P.W.3 along the track upto fields and held her by hands and also threatened her to stop shouting otherwise he will kill her established, that the accused committed his act with intent to outrage the modesty of Miss Anju Devi (PW-3)."*

10. The principal issue here in this case is the identification of the petitioner as the person who allegedly was responsible for misbehaving with the victim i.e. Miss Anju Devi on 16.8.1993. During the trial by DCM, which was held from 31.1.1994 to 26.2.1994, Miss Anju Devi, who was examined as P.W.3, did not recognize the petitioner as the person who had committed this crime. She categorically stated, "*Now, I cannot recognize the person who caught my hand.*" After sixteen prosecution witnesses had been examined, Miss Anju Devi was recalled and was examined again. During this re-examination, she identified the place on a sketch where this incident had taken place. She was once again asked by the Court to identify the person who had caught hold of her hand. Miss Anju Devi looked around and stated that she did not recognize any person in the Court to be the one who had held her hand on 16.8.1993 whereas the petitioner was present in the Court. Thereafter



her attention was drawn to her statement during the Summary of Evidence in which she had recognized the petitioner as the person who had caught hold of her hand. In reply, she stated that she could not identify the person who held her hand as six months have elapsed since the incident occurred.

11. The friend of Miss Anju Devi i.e. Miss Bina Devi was also examined during the trial as P.W.4. While narrating the incident in which she and her friend Anju Devi were allegedly caught by two army personnel, she stated that she could not recognize the person who was holding Miss Anju on that date and she also stated that he was not present in the Court. She further stated that both the persons were putting on blue necker and banian.

12. There is only one other person who can be said to be an eye-witness i.e. Sri Deshraj of village Nagal Harnala, who was examined as P.W.2. During the trial, he stated that on the day of occurrence, he was in field when he heard the sound of shriek which sounded like “Bachao-Bachao” (help-help). Then he ran towards the direction of the shriek and found one man holding the hand of the girl. This witness also says that he heard the sound of two persons, one was saying to the other, “Doosri Kidhar Gayee” (where is the other girl gone). The witness says that he saw only one person whereas he heard only the voice of the other. He further states that since he had seen the man holding the hand of the girl from a distance, he could not specify his build-up and body

figure.

13. There is thus some question mark about the identification of the petitioner as the person who allegedly caught hold of Anju Devi's hand on 16.8.1993.

14. There is yet another piece of document which is relevant in this case. Anju Devi, who was the victim in this case, filed an affidavit on 15.1.1995 and said that later on when she was called for identification parade, she did not recognize anyone. Thereafter, she was called once again after a few days. There were two persons present at that time and she and Bina Devi were told that these were the two persons who had misbehaved with her on 16.8.1993. She had then stated that she did not recognize them. Thereafter she was called again and threatened to identify Rishipal Singh as the person who had allegedly committed that crime. She was very scared and under pressure identified the petitioner during the identification parade as the person who had misbehaved with her. Thereafter she was called again for statement during the Court Martial and asked to identify, which she was not able to and said that she was terrified during the incident and was not in a position to recognize the person. She went on to say in this affidavit that because of her wrong statement, Rishipal Singh and Sultan Ram were punished. This filled her feelings of remorse as it was because of her statement that innocent persons have been punished. She stated in this affidavit that she and her friend Bina Devi did not recognize anyone on 16.8.1993 and

the statement given by her during the Court Martial was under threat and pressure. She stated that she had no complaint against these persons, who were not responsible for the alleged incident.

15. Next we turn to the statement given by Maj Alok Joshi, 23 Rajput, examined as P.W.7 during the trial. He stated that he was informed on 16.8.1993 by DAAG HQ 42 Infantry Brigade that one Jawan of the Unit had been caught by villagers near village Kulhan for eve-teasing. This witness informed the Commanding Officer. He sent one officer and Subedar Major of his Unit to visit the site and bring the Jawan back to the Unit. This witness also went to the village. On reaching village Kulhan, he found that Sep Suresh Singh of his Unit was locked up in a room in a school. He assured the villagers that disciplinary action would be taken against the culprits. The villagers informed him that some army men had misbehaved with the two girls. They gave him five names besides Sep Suresh Singh. This witness told the Court that while he was there, Lt Col K.L.Verma, DAAG HQ 42 Inf. Bde also reached the site. He gave an assurance in writing that the culprits would be punished and it was only then that the villagers allowed Sep Suresh Singh to go. Thereafter Sep Suresh Singh was taken to the police station and after completing the formalities, he was brought back to the Unit in the evening the same day.

16. The narrative that emerges is that the athletes of 23 Rajput were on practice run on 16.8.1993. The petitioner, who was one of them, was

wearing a blue-coloured vest and black coloured track suit, as stated by P.W.9 Sep Babu Ram, who was part of the unit athletic team. After they got down from the bus, they started running towards unit location. There happened an incident in which two girls-Anju Devi and Bina Devi were assaulted by two persons. This incident gained wide publicity and one member of his team was caught by the villagers. Because of the wide publicity of the incident, the authorities in the army hierarchy would have been under pressure to punish the offender. The victim girls were unable to identify anybody and were perhaps pressurized to identify these two persons.

17. There are thus two pieces of evidence which go against the identification of the petitioner as the alleged offender; firstly, the victim girl Miss Anju Devi did not recognize him during the trial and later on through an affidavit stated that she had identified the petitioner during the identification parade under pressure. In that affidavit, she had also stated that the petitioner had nothing to do with the incident dated 16.8.1993. The second piece of evidence is that the girls stated that the person who caught hold of hand of Miss Anju Devi was wearing short and vest. The petitioner stated that he was wearing track suit trouser and T-shirt. P.W.9 Babu Ram has stated that the petitioner was wearing a black-coloured track suit and blue-coloured vest. Therefore, it appears that the person who held Anju Devi's hand was not the petitioner but somebody else. There is no doubt that the incident which took place on

16.8.1993 was unfortunate and the offender of this incident deserves exemplary punishment. However, we are of the view that the charge against the petitioner that he was the one who committed this crime has not been proved and, therefore, the petitioner deserves to be given relief.

18. Accordingly, we partly allow this T.A. The finding and the sentence of DCM conducted from 31.1.1994 to 26.2.1994 are hereby quashed. The rejection of the petitioner's appeal by the Central Government vide their letter dated 23.8.1999 as well as the letter of ADG DV-3 dated 30.8.1999 are also quashed. We clarify that this letter of ADG DV-3 dated 30.8.1999 is not the rejection of petitioner's petition by the Chief of the Army Staff but is a letter conveying the decision of the Government India, vide their letter dated 23.8.1999. We direct that the petitioner be considered to be notionally in service till he attains the service entitling him to get pension and thereafter he will be paid pension and all other retiral benefits. No order as to costs.

**(Lt. Gen. A.M. Verma)**  
**Member (A)**

**(Justice Abdul Mateen)**  
**Member (J)**

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