

Reserved
Court No. 1

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

ORIGINAL APPLICATION No. 05 of 2019

Tuesday, this the 27th Day of October, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Ex L/Nk (Lineman) No 15678220A Ramjit Singh, Son of Ram Lakhan Singh, R/o Village- Korrakanak, Post – Korrakanak, Tehsil- Fatehpur, District- Fatehpur

..... Applicant

Ld. Counsel for the: **Dr. Aditya Kumar Trivedi, Advocate**
Applicant

Versus

1. Union of India, through Principal Department of Defence, Government of India, New Delhi.
2. The Chief of Army Staff, Army Head Quarters, South Block D.H.Q. P.O. New Delhi 110011, C/o 56 APO.
3. The Signal Officer in Chief, Sixth Floor, Sena Bhawan, New Delhi – 110011, C/o 56 APO.
4. The Commandant HQ 1 Signal Training Centre, Jabalpur (M.P.),- 482001, C/o 56 APO.
5. The Officer Incharge Record, Record Officer, Records Signals, Jabalpur, (M.P.)- 908770, C/o 56 APO.

6. Major General, General Officer Commanding, Head Quarters, Purva U.P. and M.P., sub Area, Allahabad – 21001, C/o 56 APO.
7. Captain/ The Commanding Officer 4 Air Formation Signal Regiment- 917704, Bamharauli, Allahabad, C/o 56 APO.

.....Respondents

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

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, 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 issue /Pass an order or direction to set aside the dismissal order dated 20.11.2015 passed by respondent No. 6 Major General, General Officer Commanding Headquarters Purva U.P. & M.P. Sub Area Allahabad and order dated 3.12.2015 passed by respondent No.7 and the orders dated 24.05.2017 and 3.11.2017 passed by Officer in charge Records.*

B. *To issue / Pass an order or direction to the respondents to reinstate the applicant with full back wages on the post of Lance Naik (Lineman) in Unit -4 AIR Formation Signal Regiment 917704 C/o 56 APO Bamharauli, Allahabad.*

C. To issue / Pass any other order or directions as this Hon'ble Tribunal may deem fit and proper under the circumstances of the case in favour of the applicant.

D. To allow this original application with costs.

2. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Army on 26.10.2002. He was implicated in criminal case under Section 147, 148, 149, 307, 323, 504 and 506 I.P.C. and charges were levelled against him by Trial Court, Additional Sessions Judge Court No 5, Fatehpur. During the pendency of trial of Criminal Case S.T. No 121 of 2020, applicant was granted bail and was taken back on duty. Applicant was convicted for life imprisonment and was sent to jail vide Sessions Judge Court No 4, Fatehpur order dated 10.07.2015. Being convicted in a Criminal Case with life imprisonment for the offences under Sections Section 147, 148, 149, 307, 323, 504 and 506 I.P.C applicant was dismissed from service by the respondents vide order dated 12.01.2016. The applicant sent representation for reinstatement in service but his representation was rejected. Being aggrieved, applicant has filed instant Original Application for reinstatement in service.

3. Learned counsel for the applicant submitted that the applicant was enrolled in the Army on 26.10.2002. He was granted 02 days casual leave from 10 July 2015 to 11 July 2015. He was implicated in criminal case under Section 147, 148, 149, 307, 323, 504 and 506 I.P.C. and charges were levelled against the applicant by Trial Court, Additional Sessions Judge Court No 5, Fatehpur on 10 July 2015. Applicant was convicted for life imprisonment and was sent to jail vide Sessions Judge Court No 4, Fatehpur order dated 10.07.2015. Applicant was dismissed from service with effect from 10.07.2015 by the respondents. Applicant was released on bail vide order dated 18.10.2016 passed by Hon'ble High Court, Allahabad in Criminal Appeal No 3713 of 2015, **Ramjit Singh and others versus State of U.P.** and conviction order of the applicant was suspended vide Hon'ble High Court Allahabad Order dated 21.12.2016. The applicant sent representation for reinstatement in service but his representation was rejected. Learned counsel for the applicant prayed that since the order of conviction of applicant was suspended by Hon'ble High Court, Allahabad, hence respondents be directed to reinstate the applicant in service.

4. Learned counsel for the applicant submitted that the applicant has challenged the dismissal order in the present Original Application on the ground that order of dismissal, being based on conviction only, is bad in law. In support, applicant has placed reliance on various judgements wherein it has been held that a Government servant cannot be dismissed from service merely on the reason that he has been convicted for an offence. Learned counsel for the applicant submitted that as per judgments, it is also held that while passing any order against a Government servant, based on conviction, the conduct of the Government servant needs to be taken into consideration. Considered of the applicant was not considered while dismissing applicant from service. Applicant was dismissed merely on reason of being convicted for an offence under Section 302 IPC.

5. Regarding conviction and sentence of life imprisonment, learned counsel for the applicant has contended that applicant preferred a Criminal Appeal against the order of conviction and sentences in the Hon'ble High Court, Allahabad and in the said appeal applicant has not only been enlarged on bail but sentences have also been suspended. Thus, he submitted that when in Criminal Appeal, applicant has been enlarged on bail

and sentences have been suspended then applicant could not be dismissed from service.

6. Applicant has also contended that neither in FIR nor in judgment rendered in Criminal Case any Specific Role as been assigned to the applicant. A general allegation regarding opening fire in which one got killed and two other got injured have been made against applicant and many others and this being the reason applicant has not only been enlarged on bail but sentences have also been suspended.

7. On the other hand, learned counsel for the respondents submitted that punishment awarded to the applicant is legally and technically correct. Original Application deserves dismissal on the following reasons being devoid of merit and lacking substance:-

(i) While on leave at home the applicant along with many others, armed with fire arms, went in a fair and opened fire indiscriminately with the result one person got dead and two persons got injured.

(ii) Going in fair along with others, all armed with fire arms, and opening fire indiscriminately in a crowded place

can in no way regarded good conduct more so when individual is an armed forces person.

(iii) In judgment rendered in Criminal Case in which applicant has been convicted with life imprisonment besides other sentences, applicant has been blamed for opening fire and, in view of this, it cannot be said that applicant has been dismissed from service based on conviction only and his conduct was not considered when he was dismissed.

(iv) As per rule position an armed forces person on being convicted for an offence may be dismissed from service. This being the rule position, order of dismissal from service passed against the applicant is not bad in law so that the same may be quashed.

(v) The ratio of law laid down in various judgments relied upon by the applicant also supports the order of dismissal rather than allowing applicant to be in service.

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

9. For better understanding of the position, regulation 423 of Regulations for the Army is quoted below:

*“423. **Conviction of Officers, JCOs, WOs and OR by The Civil Power –** The conviction of an officer by the civil power will be reported to the Central Government and that of a JCO to the Chief of the Army staff for such action as these authorities see fit to take. The conviction of a WO or OR will be reported to the brigade/sub area commander who will decide whether dismissal, discharge or reduction is desirable.*

The disciplinary authority may, if it comes to the conclusion that an order with a view to imposing a penalty on a Government Servant on the ground of conduct which had led to his conviction on a criminal charge should be issued, issue such an order without waiting for the period of filing an appeal or, if an appeal has been filed without waiting for the decision in the first court of appeal.”

10. The Apex Court in "Maj. (Retd.) Hari Chand Pahwa v. Union of India, 1995(1) Services Law Reporter, 703 has held as under:-

"The provisions of Regulation 16 (a) are clear. Even if it is assumed that the Pension Regulations have no statutory force, we fail to understand how the provisions of said Regulations are contrary to the statutory provisions under the Act or the Rules. The pension has been provided under these Regulations. It is not disputed by the learned counsel that the pension was granted to the appellant under the said Regulations. The Regulations which provided for the grant of pension can also provide for taking it away on justifiable grounds. A show cause notice was issued to the appellant, his reply was considered and thereafter the President passed the order forfeiting the pension and death-cum-retirement gratuity."

11. A bare reading of the above observations would make it clear that the Regulations which provided for the grant of

pension can also provide for taking it away on justifiable grounds.

12. In the instant case, applicant has shown a wrong conduct which cannot be expected from a disciplined soldier. We do not find any lacuna in the procedure adopted by the respondents to terminate the services of the applicant after his conviction in criminal case. The applicant is not entitled to the relief prayed in Original Application to quash his discharge order and to allow him to join duty.

13. We, therefore do not find any merit in the application to interfere with the impugned discharge order passed by the respondent authority in terminating the services of the applicant. Consequently, the application being devoid of merit is liable to be **dismissed**. Resultantly, O.A. is **dismissed**.

14. No order as to costs.

15. Pending applications, if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: October, 2021
ukt/-