

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

**Court No- 1**

**ORIGINAL APPLICATION No. 281 of 2016**

Tuesday this the 26<sup>th</sup> October, 2021

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

No. 18003811L Spr / Gunner Ravinder Singh, 52 Engineer Regiment, PIN – 914052 C/o 56 APO.

..... Applicant

Ld. Counsel for the : **Shri KK Misra, Advocate.**  
Applicant

Versus

1. Union of India through its Secretary, Ministry of Defence, New Delhi -110011.
2. Chief of the Army Staff, Army Headquarters, New Delhi.
3. Records, Bengal Engineer Group and Centre, Roorkee.
4. Commanding Officer, 52 Engineer Regiment, Pin - 914052, C/o 56 APO.

.....Respondents

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

- (i) To direct the respondents to allow the applicant to join his duty with immediate effect.
- (ii) Any other relief which the Hon’ble Tribunal may consider appropriate may be granted in favour of the applicant.
- (iii) Cost of the application be awarded to the applicant.

2. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Army on 23.03.2009. While on leave, he was implicated in criminal case under Section 302 I.P.C. and charges were levelled against him by Sessions Court, Gurdaspur. During the pendency of trial of Criminal Case applicant was granted bail and joined his duty. The applicant sent representation for reinstatement in service but his representation was not replied. Being aggrieved, applicant has filed instant Original Application for reinstatement in service.

3. Learned counsel for the applicant submitted that the applicant was granted 10 days leave from 21.07.2011 to

30.07.2011. The applicant reached his home on 21.07.2011. On 22.07.2011 at about 6.30 PM during a trifling dispute over an agricultural field's boundary at the applicant's village, there was a scuffle between the applicant's father, Sri Gurnam Singh and father's elder brother Sri Kulwant Singh, which escalated to the extent of fathers elder brother Kulwant Singh getting seriously injured in the exchange of criminal force. After the incident, while Shri Kulwant Singh was being taken to the hospital in a serious condition, he died enroute to Shri Gurnanak Dev Hospital, Gurdaspur. The applicant was not present at the place of occurrence. On 23.07.2011, an FIR was registered at Ghoman Police Station against four persons namely, Gurnam Singh, the applicant's father, Nachhattar Singh, elder brother, the applicant and Sukhjinder Singh Alias Abbi for allegedly committing the offence under Section 302 of IPC. After the inquiry conducted by Dy SP, Batala, the applicant along with Nacchatar Singh were found innocent and against remaining two the charge sheet was filed in the court under Section 302 IPC. Since there was no role of the applicant, hence neither he was arrested nor was he charge sheeted. On expiry of leave, he joined his duty back on due date i.e. 31.07.2011. In the year 2014, applicant along with his brother

was summoned and charge sheeted under the same Sections of IPC. The applicant attended the court as an accused, as he was granted bail without being arrested. As the applicant was granted bail during the course of trial, he remained on duty with his unit throughout. Trial concluded on 22.12.2015 and two persons including the applicant were found guilty. On 24.12.2015, applicant was awarded the sentence of life imprisonment by the Sessions Court. In January 2016 applicant submitted an appeal for bail in Hon'ble High Court of Punjab and Haryana at Chandigarh. Appeal was admitted and sentence of the applicant was suspended by Hon'ble High Court on 09.05.2016 and applicant was released from jail. Applicant having been released on bail ought to have been allowed to join his duty and taken on strength of the unit to which he belonged immediately on his reporting there. During entire duration neither service of the applicant was terminated nor suspended. On release from jail applicant reported to his unit for duty on 23.05.2016 but he was not allowed to join duty. He was directed to deposit his Identity card in the unit. Applicant wrote number of letters to allow him to join duty but no communication was received from the respondents. Learned counsel for the applicant prayed that since the order of

conviction of applicant was suspended by Hon'ble High Court, Chandigarh, hence respondents be directed to reinstate the applicant in service.

4. On the other hand, learned counsel for the respondents submitted that applicant on availing leave, joined his duty at 52 Engineer Regiment. Neither he nor his unit 234 Armoured Engineer Regiment informed about the applicant's involvement in Criminal case even after the judgment of Sessions Court, Gurdaspur dated 24.12.2015. It is pertinent to mention that the certificate of non involvement in any disciplinary case/ civil court case was also endorsed in Paragraph 7 of Movement Order of the applicant. Applicant was overstayed leave granted to him from 21.12.2015 to 22.12.2015 and did not rejoin the unit. After an inquiry details about the case were obtained and unit came to know that applicant was found guilty and awarded rigorous imprisonment for life and fine of Rs. 25,000/-. The applicant submitted representation for suspension of sentence which was allowed by Hon'ble High Court of Punjab and Haryana and applicant was granted bail. On 16.05.2016, applicant approached Bengal Engineer Group and Centre, Roorkee that he has been released on bail but did not inform that he has already been convicted by the Sessions Court, Gurdaspur and

that his conviction was not obliterated. A case was taken up as per paragraph 423 of Regulation for the Army 1987 for discharge/dismissal of the applicant from the service. Applicant neither produced the copy of judgment nor deposited his Identity Card. If the conviction is not obliterated, any action taken against a Government servant on misconduct which led to his conviction by the court of law does not lose its efficacy merely because appeal court has suspended the execution of sentences but not obliterated. Case of the applicant was processed vide letter dated 08.07.2016 for dismissal/ discharge from the service being undesirable soldier since he was convicted for murder under Section 302 of Indian Penal Code (IPC). Sanction was obtained from General Officer commanding 18 Infantry Division and the applicant was discharged from service and cannot rejoin duty being an undesirable soldier. 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 his father and brother involved in conflict with the result one person got dead.

(ii) Involvement in conflict resulting in death of a person can in no way be regarded as good conduct more so when the individual is an armed forces person.

(iii) In a judgment rendered in a Criminal Case in which the applicant has been convicted with life imprisonment, it cannot be said that the applicant has been dismissed from service based on conviction only and his conduct was not considered when he was dismissed.

(iv) As per the rule position, an armed forces person on being convicted for an offence may be dismissed from service. This being the rule position, an 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 the applicant to be in service.

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

6. 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.”*

7. 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."*

8. 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.

9. 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.

10. 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**.

11. No order as to costs.

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

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

Dated: 26 October, 2021  
Ukt/-