

Court No. 1
RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No 36 of 2017

Wednesday, this the 20th day of October, 2021

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

No. 15336138L Hav Clerk (SD) Venugopal P
S/o Late Purushothaman Pillai
Posted at Station Headquarter Lekhapani (Assam)
Presently attached at Specialist Training Battalion (Depot)
BEG & Centre Roorkee

..... Applicant

Ld. Counsel for the Applicant: **Shri V.P. Pandey**, Advocate

Versus

1. The Union of India, through the Secretary, Ministry of Defence, New Delhi-110011.
2. The Chief of Army Staff, Integrated Headquarter, Ministry of Defence (Army), South Block, New Delhi-110011.
3. Officer Incharge Records, Record Office, Bengal Engineer Group Roorkee PIN – 247667.
4. Commandant Bengal Engineer Group & Centre, Roorkee, PIN-247667.
5. Commanding Officer, No. 2, Training Battalion, Bengal Engineer Group & Centre, Roorkee, PIN-247667.

..... Respondents

Ld. Counsel for the Respondents : **Shri Asheesh Agnihotri**,
Central Govt Counsel.

ORDER

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- “(i) Issue/pass an order or direction directing the respondents not to initiate any disciplinary proceeding/second trail for

same offence as the punishment of severe reprimand and 14 days pay fine awarded to the applicant has been set aside and quash the show cause notice dated 20 Dec 2016.

- (a) To set aside/quash the order dated 27 Jan 2017 passed by Commandant Bengal Engineer Group & Centre Roorkee.
- (ii) Issue/pass an order or direction directing the respondents to promote the applicant from the rank of Havildar to Naib Subedar from the date when he is due for promotion with other consequential benefits.
- (iii) Any other relief as considered proper by this Hon'ble Tribunal be awarded in favour of the applicant.
- (iv) Cost of the appeal be awarded to the applicant.”

2. The factual matrix on record is that the applicant was enrolled in the Army (Bengal Engineer Group) on 20.01.1999. He was promoted to the rank of Havildar on 01.01.2007 and was nominated to undergo promotion cadre course w.e.f. 24.09.2012 to 15.12.2012 at BEG & Centre, Roorkee and successfully passed the promotion cadre. On receipt of result of promotion cadre, Part II Order to this effect was published and promotion board was assembled vide convening order dated 18.01.2013 which was finalised on 02.02.2013. During the said promotion cadre, an alleged incident of collection of money as bribe by participants of cadre course to pass the said course was reported and was investigated by a Court of Inquiry convened vide BEG & Centre Roorkee convening order dated 15.12.2012. The applicant and other NCOs were found blameworthy of collecting money and depositing the collected amount with Hav/Clk Sanjay Sharma of

Group HQ Coy, BEG & Centre, Roorkee who was also attending the said cadre, with a motive to pass the said course using unfair means.

3. We have heard learned counsel for the parties and have perused the record.

4. In a Court of Inquiry held against applicant and others on various charges under Section 63 of the Army Act, 1950, all were found guilty and were discharged from service.

5. Against discharge, only applicant filed a statutory complaint which was allowed by the General Officer Commanding Incharge due to discharge being violative of Rule 180 of the Indian Army Rules. No direction to initiate fresh Court of Inquiry was given.

6. The Area Commander, based on the order of General Officer, Commanding, set aside discharge of other armed forces personnel and also initiated fresh Court of Inquiry against all.

7. In fresh Court of Inquiry, all involved were again held guilty and discharged from service against which applicant and one more have filed separate O.A. in this Tribunal and one had filed the O.A. in AFT (PB), New Delhi vide O.A. No. 175 of 2014, ***Hav Vinod Kumar V vs. Union of India and Others***, decided on 21.09.2015.

8. The O.A. filed in AFT (PB), New Delhi has been dismissed holding Court of Inquiry being an administrative proceeding, it cannot be equated with court martial.

9. In the present O.A. the applicant has challenged the discharge order mainly on two grounds :-

- (i) Second Court of Inquiry being hit with principle of Double Jeopardy as provided in Section 121 of the Army Act, the discharge order should be set aside.
- (ii) Second Court of Inquiry being initiated after three years of the date of commission of others, the same is hit under Section 122 of the Indian Army Act.

10. In reply, it is contended that :

- (i) Court of Inquiry being an administrative proceeding is different from court martial and therefore, cannot be equated with court martial as held in O.A. No. 175 of 2014, **Hav Vinod Kumar V** by AFT (PB), New Delhi. Therefore, principle of Double Jeopardy as provided in Section 121 of the Indian Army Act is not applicable in the matter.
- (ii) Limitation is also not applicable in the matter, as provided in Section 122 of the Indian Army Act, as Limitation is applicable in court martial, not in Court of Inquiry.

11. We find that Original Application deserves to be dismissed on following reasons :-

- (i) The earlier discharge order had been dismissed being violative of Rule 180, not on merit.
- (ii) Court of Inquiry being an administrative proceeding is not like court martial and therefore, Section 121 of Indian Army Act is not attracted.

(iii) Limitation is applicable in court martial, not in administrative proceeding, therefore, Section 122 is also not applicable.

(iv) There is no infirmity in the discharge order.

(v) In similar matter, AFT (PB), New Delhi has dismissed the O.A.

12. In the result, Original Application is **dismissed**.

13. No order as to costs.

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

Dated: October, 2021

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