

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION No. 421 of 2021**Wednesday, this the 02nd day of October, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)No. 15196285N Gnr (DMT) Bajrang Singh Parihar (removed),
S/o Shri Raj Bahadur Singh, R/o Vill-Nimri, Karyawali,
Chakarnagar, Distt-Etawah (UP)-206121.

..... Applicant

Learned counsel for the : **Shri Ravi Kumar Yadav**, Advocate
Applicant

Versus

1. The Union of India Rep by the Secretary, Govt of India,
Ministry of Defence, South Block, New Delhi-110011.
2. The Chief of the Army Staff, Integrated Headquarters of
MoD (Army), Post-DHQ, New Delhi-110011.
3. The Officer-in-Charge, Artillery Records, Nasik Road
Camp, PIN-908802, C/o 56 APO.
4. The Commanding Officer, 342 Field Regiment, PIN-
926342, C/o 56 APO.
5. PCDA (P) (Army), Draupadi Ghat, Allahabad (UP)-
212114.

.....Respondents

Learned counsel for : **Shri Sunil Sharma**, Advocate
the Respondents. Central Govt. Counsel

ORDER

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

- (a) *To quash and set aside the respondent No 4 letter No CF/15196285N/63/A dated 04 Jul 2020 (Annexure A-1 and impugned order of instant O.A.) wherein applicant was discharged/removed from service with effect from 04 Jul 2020.*
- (b) *To issue/pass an order or direction of appropriate nature to the respondents to re-instate the applicant in service along with back wages and other consequential benefits from the date on which applicant was removed from service.*
- (c) *Any other relief as considered proper by the Hon'ble Tribunal be awarded in favour of the applicant.*

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 15.04.2013 as Gunner (Driver/Mechanical Transport). After completion of military training, he was posted to 59 Field Regiment w.e.f. 15.06.2014. In the year 2016, while posted with 342 Field Regiment he was instructed by Subedar Major to perform helper duty with Major Shiva Saigal which he denied. Thereafter, Gnr Sher Singh was detailed as helper of Major Saigal. In the year 2017, applicant got married and brought his wife Smt Richa at allotted quarter No. P 278/7 on 08.03.2018. Gnr Sher Singh (applicant's friend) also brought his wife Sakshi Devi to unit quarter No. T 117/12 which was in close proximity of the area where the applicant was residing with his wife. Since marital relationship between Sher Singh and Sakshi were not cordial, they were counselled by Battery

Commander Maj Shiva Saigal and Lt Col Abhiram Bose, Second-in-Command to resolve the differences.

3. Applicant's wife and Mrs Sakshi became close friends during family welfare meet and both used to go to market and hospital together on several occasions. On experiencing some intimate moments of applicant with his wife Sakshi Devi, L/Nk Sher Singh informed the Battery Commander and on one day when L/Nk Sher Singh was on duty the applicant was caught red handed with Smt Sakshi Devi in quarter No T 117/12 in the intervening night of 21/22 May 2018. Thereafter, Smt Sakshi Devi attempted to commit suicide by cutting her wrist and consuming phenyl. Later, she was hospitalised and became normal. A convening order was issued to investigate the circumstances under which the applicant was found inside the married accommodation of L/Nk Sher Singh. During the course of summary of evidence which was recorded by Lt Col Abhiram Bose under Section 69 of the Army Act, 1950, Smt Sakshi Devi declined to make any statement but in Court of Inquiry (C of I) proceedings the charge was admitted by the applicant and Smt Sakshi Devi also confessed to have entered into an illicit relationship with the applicant. Earlier, the applicant was charged under Section 63 of the Army Act, 1950 on 18.08.2018 as he was found improperly in possession of a blanket pertaining to Hav Permil Kumar and he was awarded 21 days rigorous imprisonment on 04.12.2018.

4. The C of I found the applicant guilty of the offence of adultery and opined strict disciplinary action against the applicant. Show Cause Notice dated 15.04.2020 was served on the applicant and on receipt of reply he was removed from service by the order of Commander, 11 Artillery Brigade dated 03.07.2020. Accordingly, he was removed from service under Section 20 of the Army Act, 1950 read with Rule 17 of the Army Rules, 1954 w.e.f. 04.07.2020. Against his discharge from service the applicant submitted representation dated 08.10.2020 through his counsel which was replied vide letter dated 17.12.2020 intimating him that a dismissed soldier cannot be re-instated into service. It is in this perspective that this O.A. has been filed for his re-instatement into service or alternatively grant service pension.

5. Learned counsel for the applicant submitted that the applicant is a leading sports person and won laurels to the Regiment by winning silver medal during inter unit competitions. He further narrated the following story:-

"The applicant was living in service quarter No P 278/7 w.e.f. 08.03.2018. L/Nk Sher Singh brought his wife Sakshi Devi and started to live at service quarter. Both families became familiar to each other within a short span of time. Applicant from his wife Richa came to know from Smt Sakshi Devi that there is a marital disharmony between L/Nk Sher Singh and Smt Sakshi. L/Nk Sher Singh wanted to marry with a girl in his relation with whom he had affairs but he was aware that he could not do this

without taking divorce from his wife. Earlier L/Nk Sher Singh with ultimate motive to get divorce had inflicted false allegations on Mrs Sakshi about sexual relationship with Sakshi's cousin. The matter was placed before relatives and village elders and it was found false. Owing to this L/Nk Sher Singh was not bringing Mrs Sakshi who was constrained to live at her maternal house. After few months, parents along with Mrs Sakshi came to unit and met with unit authorities and explained the matter of matrimonial disharmony. Thereafter, unit authorities counselled them and allotted service quarter wherein L/Nk Sher Singh and Smt Sakshi started to live in."

6. Learned counsel for the applicant further submitted that the applicant and Smt Sakshi Devi were having brother-sister relations but he was trapped in a plan made by L/Nk Sher Singh to get divorce from Sakshi Devi. He further submitted that when Smt Sakshi Devi (witness No 1) has deposed in favour of the applicant, then no action should have been initiated against him, but the C of I proceeded against him and ordered punishment under Section 69 of the Army Act, 1950. It was further submitted that Smt Sakshi Devi was made to give statement against the applicant under influence of respondents and he was implicated in a false case on the basis of misrepresented facts and was removed from service without keeping the facts in mind that the lady has deposed in his favour. He submitted that Army Rule 180 was not invoked. In support of his contention learned counsel for the applicant has cited the Hon'ble Supreme Court order dated

25.08.1982 passed in the case of ***Lt Col Prithi Pal Singh Bedi etc vs Union of India & Ors***, AIR 1982 1413. Learned counsel for the applicant has further relied upon the Hon'ble Supreme Court pronouncement in the case of ***State of UP & Ors vs Maharaja Dharmander Prasad Singh***, 1989 2 SCC 505 and stated that influenced deposition are against the law. The learned counsel has further relied upon order dated 14.09.2016 passed by AFT (RB), Kolkata in O.A. No. 103 of 2013, ***Flt Lt Ishan Sharma vs UOI & Ors*** and submitted that adultery should not be viewed so seriously as to lead the dismissal or even graver punishments. Applicant's learned counsel further submitted since the Hon'ble Supreme Court judgment vide its order dated 27.09.2018 passed in ***Joseph Shine vs Union of India***, has decriminalised the offence of adultery, the respondents action by passing removal order of the applicant is not valid. Thus, the respondents action took away the right to livelihood of the applicant and hence violated Article 21 of the Constitution of India. He pleaded for re-instatement of the applicant into service by quashing the impugned order dated 04.07.2020 by which he was illegally and arbitrarily removed from service.

7. On the other hand, learned counsel for the respondents submitted that the applicant was enrolled in the Army on 15.04.2013 and while posted with 342 Field Regiment he was caught red handed in adultery with his colleague's wife Smt

Sakshi. It was further submitted that in the night of 21/22 May 2018 when L/Nk Sher Singh was on guard duty, the applicant went to his family quarter to meet his wife when she was alone. In this regard the respondents contention is that no person in ordinary course would ever enter in the house of another person especially when the lady is alone in the house. Applicant had violated the basic decency/moral expected of a soldier by voluntarily entering the bedroom of a lady when she was alone there.

8. Learned counsel for the respondents further submitted that after the incident, C of I was conducted in which the applicant admitted that he was having illicit relationship with Smt Sakshi Devi and Smt Sakshi Devi also confessed to have entered into an illicit relationship with the applicant. The C of I held the applicant guilty for committing an offence under Army Act Section 69. Learned counsel for the respondents further submitted that the adherence to the provisions of the Army Act is one of the modes through which the highest standard of military discipline is maintained and achieved. It was further submitted that winning of silver medal by the applicant has no correlation with the offence committed by him and his removal from the Army. The learned counsel further submitted that the Brigade Commander being the competent authority after considering the report of C of I, recommendations of Commanding Officer, and the reply of the

applicant passed order dated 03.07.2020 for removal of the applicant from service w.e.f. 04.07.2020 under the provisions of Section 20 of the Army Act, 1950 read with Army Rule 17. He pleaded for dismissal of O.A. mentioning that when applicant and Smt Sakshi Devi confessed their guilt during C of I proceedings, punishment awarded to the applicant is legally sustainable.

9. Heard Shri Ravi Kumar Yadav, learned counsel for the applicant and Shri Sunil Sharma, learned counsel for the respondents and perused the record.

10. The applicant was enrolled in the Army on 15.04.2013. While posted with 342 Field Regiment the applicant developed illicit relationship with Smt Sakshi, wife of his colleague L/Nk Sher Singh. In that he in night of 21/22 May 2018 was caught in bedroom of Smt Sakshi by L/Nk Sher Singh and Maj Shiva Saigal, Battery Commander. C of I was convened in which applicant and Smt Sakshi Devi confessed having illicit relationship. For convenience sake, extract of statement in respect of Smt Sakshi Devi and the applicant are reproduced as under:-

Statement of Smt Sakshi Devi

x x x x 'At about 0100 h on the intervening ni of 21-22 May 18, I rang up Mrs Richa, W/o Bajrang Singh but she was not taking the call. So at about 0130 h on 22 May 18, I rang up Bajrang and spoke to him. After that he came to my house at about 0240 h and we were sitting in my house, he came close to me and started some sexual advances. Immediately I stopped him saying 'you are a married man and should not behave like this'. But he was not listening to my requests and forced upon me.

At about 0330 h my husband Sher Singh along with few people came and pushed the door. Immediately we, Bajrang and I hid behind the doors of our bathroom. Thereafter, Bajrang went out of the house along with Sher Singh and others. I locked myself in the bathroom, slit my wrist and neck with a razor blade and then drank phenyl." x x x x x x.

Statement of Bajrang Singh Parihar

"Question No 2-This implies that the missed call was a signal for Mrs Sakshi to open the door and that you had gone to her house intentionally.

Ans-Yes, that is correct.

Question No 3-As per your statement, it started as a one-sided affair. When do you think it became mutual.

Ans-From 15th May onwards.

Question No 7-Do you feel guilty for what happened between you and Mrs Sakshi Devi.

Ans-Yes I do, but if I am guilty, then so is she. I hold both of us equally responsible for what happened."

11. From the aforesaid it is apparent that both applicant and Smt Sakshi Devi were having illicit relationship which being an offence in the Army under Section 69 of the Army Act, 1950, he was removed from service under Section 20 of the Army Act, 1950 read with Army Rule 17.

12. Having perused the C of I proceedings and statements of all 09 witnesses we find that the Brigade Commander, being competent authority has rightly issued order dated 03.07.2020 for his removal from service, which for convenience sake is reproduced as under:-

"ORDER BY COMMANDER 11 ARTILLERY BRIGADE IN RESPECT OF NO 15196285N GUNNER (DRIVER MECHANICAL TRANSPORT) BAJRANG SINGH PARIHAR OF 342 FIELD REGIMENT

1. I have considered the reply dated 16 June 2020 to the Show Cause Notice No 302301/CF/BSP/A dated 15 April 2020 submitted by No 15196285N Rank Gunner (Driver Mechanical Transport) Name Bajrang Singh Parihar Unit 342 Field Regiment issued by me, together with the report of the

Court of Inquiry and recommendations of Commanding Officer.

2. *I have concluded that on merits of the case, further retention in service of the No 15196285N Rank Gunner (Driver Mechanical Transport) Name Bajrang Singh Parihar Unit 342 Field Regiment would not be in the interest of the service for the following reasons:-*

(a) *Attempt to pilfer government property for which punishment was awarded to you through summary trial on 18 August 2018. This act of commission places your integrity under question.*

(b) *Entering into an extra marital affair with a brother soldier's wife on 22 May 2018 within the confines of a family quarter where other families including young children were staying. The breach of trust and moral failing arising out of such an act is detrimental to the feeling of trust, camaraderie and brotherhood existing amongst the Armed Forces fraternity. This immoral act of yours has had an adverse impact on the social/family fabric and morale of other soldiers in the combat unit. The soldiers of a unit are willing to unquestioningly lay down their lives for the nation due their implicit belief 'Iman and Izzat' along with a feeling of brotherhood amongst soldiers fostered within the Regiment. Any breach of moral character or trust would irrevocably degrade this important belief/feeling and thereby the fighting potential.*

3. *Therefore, No 15196285N Rank Gunner (Driver Mechanical Transport) Name Bajrang Singh Parihar Unit 342 Field Regiment will be removed from service with effect from 04 July 2020 under the provisions of Army Act Section 20 read in conjunction with Army Rule 17."*

13. After discharge from service, the applicant had preferred petition dated 08.10.2020 to Chief of the Army Staff for his re-instatement into service, which was disposed of by Artillery Records vide letter dated 17.12.2020 in the following words:-

"1. Refer your petition dated 08 Oct 2020 address to the Chief of Army Staff received by this office vide IHQ of MoD (Army) letter No A/10150/Legal/LN/COAS/177/Arty-10B dated 04 Nov 2020.

2. It is intimated that you were enrolled in the Regiment of Artillery on 15 April 2013 and dismissed from service with effect from 04 Jul 2020 under the Army Act Section 20 read with Army Rule 17 after rendering 07 years, 02 months and 18 days service.

3. It is also intimated that there is no any provision/rule under which a person dismissed under Army Act Sec 20 can be re-instated/rejoin Army service. Therefore, the conditions do not

make you eligible to re-instate in the Army service as you have already been dismissed from service under Army Act Sec 20."

14. Contention of the applicant that Army Rule 180 was not invoked is not sustainable on the ground that the applicant was given full opportunity to cross examine the witnesses which in fact he did during C of I proceedings as given in Para 10 above. We also find that citations referred by learned counsel for the applicant are either based on different facts and circumstances or are not acceptable/applicable to the Armed Forces where every soldier is subject to Army Act/Rule.

15. Applicant has contended that the latest judgment on adultery delivered by the Hon'ble Apex Court provides help to the applicant as Section 497 of Cr.P.C. has been abolished vide order dated 27.09.2018 passed in writ petition No 194 of 2017. In this regard we have observed that although the Hon'ble Supreme Court vide order dated 27.09.2018 passed in Writ Petition (Criminal) No 194 of 2017, **Joseph Shine vs UOI & Ors** has struck down Section 497 of the Cr.P.C. saying that it is violative of Articles 14, 15 and 21 of the Constitution, but in that judgment it was held that the Armed Forces must have some kind of mechanism for disciplinary proceedings against officers for adultery. It was further held that in uniformed services, there has to be discipline. With this in view, the aforesaid order of the Hon'ble Supreme Court does not render any help to the applicant.

16. Thus, from the aforesaid, an inference may be drawn that the applicant was rightly removed from service and respondents' action for his termination from service needs no interference.

17. The O.A. is accordingly, **dismissed**.

18. No order as to costs.

19. Miscellaneous application(s), pending if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 02.11.2022
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