

RESERVED
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 421 of 2019

Monday, this the 16th day of October, 2023

Hon'ble Mr. Justice Ravindra Nath Kakkar, Member (J)
Hon'ble Vice Admiral Atul Kumar Jain, Member (A)

Army No 14429506 LNK (OPR) Dharendra Kumar Singh,
Son of Retd. Subedar Suresh Singh
Resident of 607 Mandakni Tower,
Vaishali Apartment, Sector 4 Vaishali,
Ghaziabad (UP)

..... Applicant

Ld. Counsel for the : **Shri Manoj Kumar Singh**, Advocate.
Petitioner

Versus

1. Union of India Through its Secretary Ministry of Defence Civil Secretariat, New Delhi.
2. General Officer Commanding in Chief, Eastern Command, C/o 99 APO.
3. Commanding Officer 1841 Light Regiment, C/o 99 APO (Siliguri) West Bengal.
4. Record Officer, Arty Record C/o 56 APO Nasik Road Cantt Maharashtra.
5. Corps Commander HQ 33 Corps (Arty), C/o 99 APO (Siliguri) West Bengal.

..... Respondents

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

ORDER

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

“(i) Issue an order or directions by which the impugned order dated 3.3.2017 by which the applicant has been discharge from service thereby converting the dismissal order dated 14.4.2016 into discharge order as contained in annexure no 1 to this O.A. may be quashed.

(ii) Issue an order or directions, by which the opposite parties may be directed to take the petitioner-applicant in service with effect from the date of dismissal of service dated 14.04.2016 for serving the nation and pay him the salary and other service benefits till his age of superannuation.

(iii) Issue an order or directions in the nature of for releasing the house hold articles of the applicant which has been detained by the opposite parties during the post at Akhnoor, Jammu and Kashmir during the period of 2011 to 2015.

(iv) Issue an order or directions in the nature of directions to the opposite parties to permit the applicant to assign the duty on the post of Hav and pay him salary and other service benefits regularly.

(v) Issue a direction to the respondents to pay the decent compensation to the applicant in view of the

harassment caused to him by the respondents in all these years.

(vi) Issue any other order or directions which this Hon'ble Tribunal may deem fit just and proper in the circumstances of the case be also awarded to the petitioner against the opposite parties.

(vii) To award the cost of this petition to the petitioner against the opposite parties.

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 28.07.1999. The applicant committed six offences during his service and his Summary Court Martial (SCM) was held from 09.04.2016 to 14.04.2016 by the Commanding Officer of 1841 Light Regiment on six charges under Army Act Action 56 (d) (Making a false accusation against a person subject to the Army Act knowing such accusation to be false), Army Act Section 39 (d) (Without sufficient cause failing to appear at the time fixed at place appointed for duty) and Army Act Section 41 (1) (Disobeying a lawful command given by his superior officer). The applicant pleaded 'Not Guilty' to all the charges and court accordingly proceeded to examine the witnesses. The court found the applicant 'Guilty' of all the charges and punishment of 'To be dismissed from service' was awarded to the applicant. The applicant submitted a petition dated 26.09.2016 to quash sentence passed by SCM and to reinstate him in service. The competent authority, i.e. General Officer Commanding-in-Chief,

Eastern Command considered the petition of the applicant sympathetically and converted punishment of dismissal into discharge vide direction dated 03.03.2017 taking into account his pensionable service. Thereafter, applicant submitted many applications and filed case in the Tribunal for reinstatement into service from the date of dismissal of service, i.e. 14.04.2016 and pay him the salary and other service benefits till his retirement from Army according to his original rank of Havildar/terms of engagement. The applicant has filed the present Original Application to reinstate him in service and pay him the salary and other service benefits.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 28.07.1999. The applicant completed his service tenure of approx 17 years having no complaint from any superior officers. The applicant while posted with 1841 Light Regiment was mentally and physically harassed by the officers/Commanding Officer of the unit, i.e. 1841 Light Regiment for not giving the promotion of Havildar to the applicant and his juniors were granted promotion to the next post which is quite illegal and contrary to the Articles 14 and 16 of the Constitution of India. Thereafter, without any mistake on the part of the applicant, SCM of the applicant started and applicant was awarded a very harsh punishment of 'Dismissal from service' by the SCM proceedings dated 14.04.2016. The applicant being aggrieved with punishment of

dismissal, submitted a letter to the Chief of the Army Staff on 05.04.2016 for injustice and excessive punishment awarded to him.

4. Learned counsel for the applicant further submitted that SCM proceedings were also not provided to the applicant as demanded/requested by the applicant, but only an information regarding punishment of dismissal was given to wife of the applicant vide letter dated 14.04.2016. Hence, the applicant preferred OA No. 180 of 2016 before this Tribunal which was decided on 29.07.2016 directing the respondents to decide statutory complaint of the applicant which was decided and dismissal order was converted into discharge by the GOC-in-C Eastern Command vide letter dated 03.03.2017. However, applicant was not taken into service to continue his service till the date of his superannuation, rather, the respondents sent him discharge book including PPO vide letter dated 01.02.2018. The opposite parties have committed manifest error of law in not considering the grievance of the applicant for remaining service as per terms of engagement while converting his dismissal into discharge. He pleaded that after passing the order dated 03.03.2017, applicant is entitled for the remaining service and pay and other promotional benefits on the post in question as well as the next promotional post with its service benefits.

5. On the other hand, Ld. Counsel for the respondents submitted that applicant while posted to 1841 Light Regiment was found to have a lackadaisical attitude towards discharging his duties for which he

was punished with 7 days RI on 15.11.2002. The applicant was punished on 31.03.2015 for being absent from duty on 22.02.2015 and awarded punishment of 'Severe Reprimand'. The allegations of taking liquor from his subordinates and having illicit relations were investigated and disciplinary action was initiated against the applicant. The unit of the applicant was to move on permanent relief from Akhnoor to Sevoke for which applicant was told to vacate his quarter for handing over to the relieving unit but applicant refused to vacate the occupied accommodation. On 14.08.2015, applicant absented himself from unit and went to Northern Command, Udhampur to meet the President Regional AWWA alongwith his wife and children without taking prior appointment and absented himself without leave. The applicant was apprehended at Malpur TCP by the military police. On 20.08.2015, applicant's wife again went to Udhampur to seek interview of President Regional AWWA in which she made allegations that her personal belonging have been thrown out from her house. The allegations made by wife of the applicant were investigated by HQ 16 Corps and were found to be false. Applicant's wife also requested for grant of leave to her husband to facilitate their despatch from unit for which he was granted 14 days leave, however, applicant refused to proceed on leave. The applicant did not vacate accommodation occupied by him at Akhnoor and therefore, a board of officers got his accommodation vacated. The applicant was marched up to Commanding Officer on 16.09.2015 for his offences. Consequently, Summary of Evidence was recorded and SCM was

conducted from 9th to 14th April 2016. The applicant was found guilty on account of all charges and was awarded punishment of 'Dismissal from service' on 14.04.2016.

6. Learned counsel for the respondents further submitted that so many complaints/petitions were sent unnecessarily by his wife Smt. Sweekriti Kumari and his father Shri Suresh Singh to GOC 16 Corps, GOC-in-C Northern Command, Chief of the Army Staff and President Central AWWA, IHQ of MoD (Army) levelling several allegations which were investigated and found to be false and baseless. The applicant refused to take possession of Charge Sheet, Court of Inquiry and Summary of Evidence to prepare his defence prior to his commencement of SCM proceedings but later he complained that he was not given these documents. The proofs of the same have been forwarded to the concerned authority including Arty Records vide letters dated 27.08.2016 and 01.11.2016. The applicant also refused to sign on any proceedings during the conduct of SCM. The applicant was counselled by his superiors including Commander 16 Corps Arty Brigade and Brig Arty HQ 33 Corps, however, applicant remained adamant and refused to mend his ways and showed utter disregard to the laid down rules, norms and customs of service/Indian Army.

7. Learned counsel for the respondents further submitted that applicant was dismissed from service following the laid down process, rules and regulations. Since, his dismissal from service has already been converted into discharge and applicant is in receipt of service

pension, hence, he is ineligible for any further relief as prayed in the Original Application and therefore, applicant cannot be reinstated into service. He pleaded for dismissal of Original Application being bereft of merit.

8. We have heard learned counsel for both sides and perused the material placed on record.

9. In the present case, applicant committed six offences on different charges under Section 56 (a), 39 (d) and 41 (1) of Army Act, 1950 during the service. The applicant was tried by SCM and was awarded sentence of 'Dismissal from service' by the SCM on 14.04.2016. The applicant preferred statutory appeal dated 26.09.2016 before the competent authority which was allowed and considering the length of pensionable service, GOC-in-C, Eastern Command converted punishment of dismissal into discharge vide direction dated 03.03.2017 to enable the applicant to get service pension. Thereafter, applicant has been issued discharge book and he is in receipt of service pension as per PPO issued to him.

10. Through, in the present Original Application, applicant has prayed for reinstatement into service to the post of Havildar from the date of dismissal from service, i.e. w.e.f. 14.04.2016 and to pay him the salary and other service benefits till his age of superannuation in the rank of Havildar.

11. We find that applicant was dismissed from service by the SCM for committing six different offences vide order dated 14.04.2016, however, taking a lenient view with regard to well being of his family, punishment of dismissal was converted into discharge vide GOC-in-C, Eastern Command direction dated 03.03.2017. Since, his dismissal from service has already been converted into discharge and applicant is in receipt of service pension, hence, he is ineligible for any further relief as prayed by him.

12. We also find that applicant was negligent towards his duties and discipline. During his service, the applicant committed six offences on different intervals for which he was awarded punishments for his irresponsible attitude and indisciplined nature towards his duty. Even after giving repeated warnings/counselling, the applicant did not show any improvement in his personal/military discipline and conduct. There being no other option, being a habitual offender, the applicant was dismissed from service on 14.04.2016 after holding Summary Court Martial. Though, taking a lenient view on the petition preferred by the applicant, punishment of dismissal was converted into discharge by the GOC-in-C, Eastern Command vide direction dated 03.03.2017. Hence, the reliefs prayed by the applicant in the Original Application are not substantial as he has already been granted relief enabling him to get service pension by converting his dismissal into discharge and therefore, applicant is not entitled any further relief.

13. In view of the above, we do not find any irregularity or illegality in holding SCM and award of punishment of dismissal and further its conversion into discharge by the competent authority and grant of service pension in the rank of Naik. The juniors of the applicant were promoted to the rank of Havildar as per their seniority and eligibility, hence, no injustice has been done to the applicant. There is no violation of Articles 14 & 16 of the Constitution of India also as alleged by the applicant.

14. The Original Application is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

15. No order as to costs.

16. Pending Misc. Application(s), if any, shall stand disposed off.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated: October, 2023
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