

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Court No. 2**Original Application No. 206 of 2013**

.... the day of September, 2015

“Hon’ble Mr. Justice Abdul Mateen, Member (J)
 Hon’ble Lt. Gen. A.M. Verma, Member (A)”

No. 14600969F Hav Clk Suresh Kumar Pal, son of Sri Ganesh Prasad Pal,
 resident of Village Nasirpur, Post Uttaragauri, Tehsil Lalganj, District Rae
 Bareilly.

Applicant

By Shri Rohit Kumar, counsel for the applicant.

Versus

1. Chief of Army Staff, South Block, DHQ PO, New Delhi-110 011.
2. Commandant-cum-Chief Records Officer, EME Centre and Records,
 Secunderabad.
3. Union of India through Secretary, Ministry of Defence, DHQPO,
 New Delhi-110 011.

..... Respondents.

By Shri Bhanu Pratap Singh Chauhan, learned counsel for the respondents,
 along with Capt. Ridhishri Sharma, Departmental Representative.

ORDER

1. This Original Application has been filed by the applicant seeking the
 following reliefs :-

“(a) Quash the rejection order of Chief of Army Staff dated 10 May 2013 rejecting the statutory petition of the applicant dated 08 Aug 2011, with all the consequential benefits to the applicant (Annexure A-1 refers).

(b) Quash the proceedings and sentence of Summary Court Martial proceedings inflicted on 16 Apr 2005 with all the consequential benefits to the applicant,

(c) To issue any other order or direction considered expedient and in the interest of Justice and equity,

(d) Award cost of the petition.”

2. The facts of the case, in brief, are that the applicant was enrolled in the Indian Army on 25.11.1986 in the Corps of EME. While serving with 627 EME Battalion, he was tried by Summary Court Martial (SCM) from 16.4.2005 on the following charges :-

.....

3. The punishment awarded in SCM was reduction to rank, one year's R.I. and dismissal from service with effect from 16.4.2005. Aggrieved against, the applicant filed Writ Petition No. 10180 of 2006 before the Hon'ble Allahabad High Court, which was ultimately transferred to this Regional Bench at Lucknow of the Armed Forces Tribunal and was registered as Transferred Application No. 332 of 2010. This T.A. No. 332 of 2010 was ultimately decided on 4.8.2011 by this Tribunal with the direction to the Chief of the Army Staff (COAS) to decide the fresh statutory petition of the applicant. Accordingly, the applicant filed a statutory petition on

8.8.2011 which, ultimately, resulted into rejection by the competent authority. Aggrieved against the aforementioned rejection order dated 8.8.2011, the applicant has filed the present Original Application (O.A.). By the time the applicant has already served the sentence of one year's R.I.

4. The applicant was represented by Shri Rohit Kumar.

5. The applicant states that a Court of Inquiry was ordered by the OC Troops, 272 Field Workshop Company, EME, vide its Part I order No. 131/03 to investigate the differences in posting and leave in respect of the applicant. The Corps assembled on 26.6.2003 but the applicant claims that he was not present and his signatures were not obtained on the proceedings. Army Rule 180 had not been invoked. Sub. Major S.J. Iyappam was a witness in this Court of Inquiry, yet he was also detailed as a Presiding Officer of another Court of Inquiry subsequently. The applicant quotes from the Court of Inquiry in an attempt to establish that the Court of Inquiry was "manufactured".

6. Another Court of Inquiry was ordered of which Sub. Major S.J. Iyappam was a Presiding Officer to investigate how did the applicant availed 30 days' extra leave. The applicant claims that the Presiding Officer and the members of this Court of Inquiry were under "command influence" and "resultant command performance".

7. The applicant pleaded that Army Rule 22 read with Army Order 24/94 was not complied with. He was not allowed to call any defence witness. Learned counsel for the applicant cited cases where punishments

had been set aside for non-compliance of Army Rule 22. The summary of evidence was recorded in which Sub. Major S.J. Iyappam did not depose as a witness. Prior permission of DJAG of Corps/Command HQ had not been obtained, which is violation of para 459 of the Regulations for the Army. The applicant claims that the trial should have been conducted by DCM and not by SCM. The applicant further claims that the charge-sheet was handed over to him on 4.4.2005 whereas the trial commenced on 5.4.2005 at 1600 hours, thereby the provisions of Army Rule 33(7) and Army Rule 34(1) were not complied with. It has also been claimed that during the trial he was not allowed to have any defence counsel. In view of such infirmities, the applicant prays that the reliefs sought for by him be granted.

8. The respondents are represented by Shri Bhanu Pratap Singh Chauhan, learned Standing Counsel, along with Capt. Ridhishri Sharma, Departmental Representative.

9. On behalf of the respondents it has been stated that the only of Court of Inquiry, which formed the basis for initiating disciplinary proceedings against the applicant, assembled on 18.12.2003, in which Army Rule 180 was invoked. As regards Sub. Major S.J. Iyappam being the Presiding Officer of a Court of Inquiry, the respondents stated that he was so detailed after completion of the first Court of Inquiry which had commenced on 26.6.2003. The charge under Army Rule 22 read with Army Order 24/94 was complied with in totality and there is no anomaly. Calling of witness was dispensed with in this case since Army Rule 180 had been invoked in

the Court of Inquiry. The charges on which the applicant was tried had documentary evidence which were brought before the SCM by Lt. Col. C. Hari Charan, who deposed before the court as P.W. 6. The prosecution witnesses were cross-examined by the applicant during the trial.

10. As regards advice from the higher HQ, the pre-trial documents were sent to the DJAG of Corps HQ for perusal and advice, consequent to which GOC 27 Mountain Division, gave his directions to the effect that the applicant be tried by SCM. The applicant was handed over a copy of the charge-sheet and Summary of Evidence on 2.4.2005. Thus, the provisions of Army Rules 34(1) and 33(7) were complied with in totality as the trial commenced on 5.4.2005 at 1600 hours. The respondents, therefore, prayed that the Original Application be dismissed, lacking merit.

11. Heard both the sides and scrutinized the documents.

12. Indeed, there were three course of Inquiries ordered by the respondents. The Court of Inquiry, based on the charges framed, assembled on 18.12.2003. The Court of Inquiry proceeding, in any case, are not admissible as evidence, as provided in Army Rule 182, which reads as under :-

“182. Proceeding of Court of inquiry not admissible in evidence. – The proceedings of a Court of inquiry, or any confession, statement, or answer to a question made or given at a Court of inquiry, shall not be admissible in evidence against a person subject to the Act, nor shall any evidence respecting the proceedings of the Court be given against

any such person except upon the trial of such person for willfully giving false evidence before that Court:

Provided that nothing in this rule shall prevent the proceedings from being used by the prosecution or the defence for the purpose of cross-examining any witness.”

However, we have read the Court of Inquiry, assembled on 18.12.2003, and find that Army Rule 180 had been invoked and, therefore, there is no infirmity.

13. The charges under the provision of Army Rule 22 read with Army Order 24/94 were heard on 7.5.2004 and thereafter the documents for pre-trial advice was sent to HQ, 27 Mountain Division, vide letter dated 19.11.2004. the GOC, 27 Mountain Division, vide his direction dated 24.2.2005 directed that the applicant be tried by SCM. Hence, the allegation made by the applicant with regard to Army Rule 22 and not seeking pre-trial advice are rejected. The Summary of Evidence was recorded from 19.6.2004 to 25.7.2004, in which statements of seven witnesses were recorded. Thereafter additional Summary of Evidence was recorded from 9.11.2004 to 10.11.2004, in which additional statement of witness no. 2, viz. Lt. Col. C. Hari Charan, was recorded. We also note that the applicant made a statement during both the Summary of Evidence and additional Summary of Evidence. He also cross-examined some witnesses which establish that he was given full opportunity to defend himself.

14. The SCM commenced on 5.4.2005 and finally the sentence was announced on 16.4.2005. The applicant had pleaded 'not guilty'. During the trial 10 witnesses were examined and the applicant too made a statement. We find that during the trial Lt. Col. C. Hari Charan produced the documentary evidence and P.W. 1 and P.W. 2 in their testimonies brought out the irregularities committed by the applicant, which go on towards proving the charge. The relevant extracts of the statements of P.W. 1, viz. Sub. Clk. Abhai Rai Singh, are extracted below for ready reference :-

..... pages 55 to 63 marked portions.

P.W. 2, viz. Major Kasun Gosai, in his statement stated as follows :

..... pages 72 to 74 marked portions.

15. A reading of the statements of these two witnesses as also documentary evidence and statements of other witnesses clearly established that the charges against the applicant were proved beyond reasonable doubt. We find no infirmity in the investigation and the trial by SCM.

16. The applicant had 18 years and 141 days of service in his credit on 16.4.2005 and this was his first offence for which he was being tried. Prior to that he had not been awarded any punishment warranting red ink entry. He was Havildar when this SCM was conducted. We are of the view that the punishment awarded to the applicant was too harsh and it deprived him of a dignified living after having served in the Army for over 18 years. We are, therefore, of the view that the applicant deserved more lenient punishment which would have allowed him to receive pension.

17. While holding the trial to be legally valid, the punishment awarded to the applicant appears to be too harsh. Accordingly, the O.A. is allowed in part. The punishment of dismissal from service is hereby quashed. However, the punishment of reduction in rank is upheld. In view of above, the applicant will be deemed to have been discharged from service with effect from 16.5.2005 in the rank of Sepoy and will be entitled to all the consequential retiral benefits. The respondents are directed to implement the order within three months from the date of receipt of a certified copy of this order. There will be no order as to costs.

(Lt. Gen. A.M. Verma)
Member (A)

(Justice Abdul Mateen)
Member (J)

PG.