

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION No. 696 of 2020**Tuesday, this the 13th day of September, 2022**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**No. 14849494-W Sepoy/Dvr Vijay Amrit Singh, 5271 ASC
Battalion, ASC (MT), C/o 56 APO.

..... Applicant

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

Versus

1. Union of India, through its Secretary, MoD, New Delhi.
2. Chief of the Army Staff, Army HQ, New Delhi.
3. Officer-in-Charge, Army Service Corps (ASC) Records.
Bangalore.
4. Col. Mandeep Grewal, Director CAB, Chief of the Army
Staff, Secretariats, Army Headquarters, New Delhi-
110011.
5. Lt. Col. Jitendra Sharma, 795 ASC Bn (Air Maintenance)
C/o 56 APO.

.....**Respondents**Ld. Counsel for the : **Shri Asheesh Agnihotri,**
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 quash sentence of 28 days rigorous imprisonment awarded to the applicant on 31 Oct 2013, by Lt. Col Jitendra Sharma, CO 667 Coy ASC (TK Tptr) Type ‘C’ as contained in Annexure A-1 to this O.A.*
- (ii) To quash sentence of 14 days rigorous imprisonment awarded to the applicant on 10 Aug 2014, by Col Mandeep Grewal, CO, 531 ASC Bn as contained in Annexure A-2 to the O.A.*
- (iii) To quash rejection order of statutory complaint by the Chief of Army Staff dated 04 may 2016, as contained in Annexure A-3 to O.A.*
- (iv) Any other relief which Hon’ble Court may think just and proper may be granted in favour of the applicant.*
- (v) Cost the case may be allowed.*

2. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Army on 18.12.2006. He was tried summarily and was awarded Rigorous Imprisonment

(RI) three times. The applicant filed Statutory Complaint for setting aside punishments of RI awarded to him which was rejected. Being aggrieved, applicant has filed instant Original Application for quashing the punishments awarded to him.

3. Learned counsel for the applicant submitted that the applicant was enrolled in the army on 18.12.2006. Up to year 2012, nothing adverse was reported against the applicant. In the year 2013 Lt Col Jitendra Sharma took over command of the unit. Some supervisory staff reported against the applicant to Commanding Officer (CO). During July 2013, applicant was on night guard duty at main gate of the unit. He noticed a one tone vehicle full of teak wood being taken out of the unit by a driver. Despite applicant's efforts, driver did not stop the vehicle and took the wood out of the unit. Next day when the applicant reported the matter to the superior authorities, he was scolded by the CO. On 07.10.2013, the applicant was forcibly sent to Military Hospital Jhansi as a psychiatric case, but he was declared fit. Being annoyed CO awarded two punishments to the applicant within a short span of about two months. He sought interview of General Officer Commanding against the behaviour of the CO. Being annoyed, CO started finding faults on frivolous grounds for which he was again awarded

punishment. Applicant was charge sheeted by CO twice within one month. He was attached to another unit for summary trial. It is CO of the unit who can hold summary trial under Army Act Section 80. He was attached to 531 ASC Bn, whereas he was already charged and punished by his own CO on two charges in the same month. The witness reflected in the proceedings of trial was Sub Maj DP Singh, one and the same person in all the offences and trials. No disciplinary proceedings including a summary trial under Section 80 of the Army Act can be initiated against a person subject to Army Act, without complying mandatory provisions of AR 22. It clearly smacks of a frame work and bias attempt to harass a subordinate.

4. Having no alternative, once the applicant was posted out of this Unit, he submitted a statutory complaint dated 30.04.2016 to Chief of the Army Staff (COAS), New Delhi. The complaint was rejected by COAS vide letter dated 04.05.2016. He filed Original Application (O.A.) in Tribunal in September 2016. The O.A. was rejected with liberty to file afresh on the ground that CO was not made a party in the O.A. The applicant has filed this O.A. with the prayer to direct the respondents to quash illegal punishments awarded to him and to quash

rejection order of punishments dated 04.05.2016 passed by COAS.

5. On the other hand, learned counsel for the respondents submitted that applicant and his wife created chaos in the unit as they frequently used to break chain of reporting and reach GOC residence on all irrelevant issues. He was given opportunity to prepare for ACC entrance examination and therefore, granted 50 days part of Annual Leave as desired by him but he did not qualify the ACC. In October 2013, applicant was ordered to proceed to 508 Base Workshop, Allahabad for official duty. The applicant refused to go stating that he would go only if suitable family accommodation is allotted there. The applicant was directed to come for interview of CO to be held in October, 2013. He ran away from the unit and reached office of Deputy GOC, HQ, 31 Armd Div without informing anyone in the unit. The Dy GOC called the answering respondent of the unit to his office and enquired about the behaviour of the applicant. The unit was put to shame due to behaviour of the applicant. The applicant telephonically called answering respondent and threatened him that he will leave the unit if any disciplinary action is initiated against him. The applicant was summarily tried

and was awarded 28 days RI on 31.10.2013 under Army Act 1950 and Army Rule 1954.

6. The applicant was sent to 508 Army Base Workshop, Allahabad on temporary duty. He was returned from Workshop with remarks on Movement Order that ***“the individual is being returned to unit since he is unwilling to perform the duty in the Workshop”***. In January 2014, the applicant was again told to come to the office of the 2-I-C for interview. He ran away from unit and forcibly entered in premises of HQ 31 Armd Div. A Court of Inquiry was held and applicant was awarded 14 days RI by the CO 531 ASC Bn. In September, 2014 while posted to 667 Coy ASC, he was awarded another punishment of 28 days RI. He was sent for psychiatric test due to his abnormal behaviour with unit peers in the unit. The Officers, JCOs and Other Ranks of the unit have undergone mental stress due to chaos created by the applicant in the unit. He has disrespect to his seniors including JCOs and Other Ranks. He loses his temper soon. He did not take interest in his trade work for which he was being paid. Learned counsel for the respondents submitted that applicant was awarded punishments commensurate to his offence as per Army Act and Army Rule

and prayed that instant O.A. has no substance being devoid of merit and is liable to be dismissed.

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

8. The question before us to decide is 'whether punishments awarded to applicant are liable to be quashed?'

9. We would like to quote SCC 2010 Vol.V Page 775 Administrator, Union Territory of Dadra and Nagar Haveli Vs. Gulabhia M. wherein Hon'ble Supreme Court held that while exercising power of judiciary the High Court should not interfere with the discretion exercised by the disciplinary authority except in case if a punishment imposed, shocks the conscience of the Court or Tribunal. Ordinarily a Court or Tribunal would not substitute its opinion on reappraisal of facts. The relevant portion is reproduced as under :-

"14. The legal position is fairly well settled that while exercising the power of judicial review, the High Court or a Tribunal cannot interfere with the discretion exercised by the disciplinary authority, and/or on appeal the appellate authority with regard to imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the court/tribunal. The exercise of discretion in imposition of punishment by the disciplinary authority or appellate authority is dependent on host of facts such as gravity of misconduct, past conduct, the nature

of duties assigned to the delinquent, responsibility of the position that the delinquent hold, previous penalty, if any, and the discipline required to be maintained in the department or establishment he works. Ordinarily the court or a tribunal would not substitute its opinion on reappraisal of facts.”

10. In the instant case, the circumstances have been proved beyond reasonable doubt against the applicant and it leads to the only conclusion that applicant is an undisciplined soldier. Proper enquiry was held and applicant was awarded punishments after ascertaining the facts. Applicant has shown a wrong conduct which cannot be expected from a disciplined soldier. No lenient view may be taken where misconduct relates to superior officers. Armed Forces personnel are expected to be disciplined not only in their official life but also in personal life. Country reposes faith in the members of the Armed Forces to be disciplined and fair in their lives while serving the Nation. Therefore, we are of the considered view that there is no illegality, irregularity leading to miscarriage of justice in awarding the punishments of RI to the applicant. Army Act and Army Rule were followed and there was no illegality that can vitiate the proceeding. The applicant is not entitled to the relief prayed in Original Application to quash sentence of RI.

11. We, therefore do not find any merit in the application to interfere with the order passed by the respondent authority and awarding punishments of RI. Consequently, the application being devoid of merit is liable to be dismissed. Resultantly, O.A. is **dismissed**.

12. No order as to costs.

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

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

Dated: 13 September, 2022

Ukt/-