

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BENCH NAINITAL)**

Transferred Application No. 1 of 2014

Monday, this the 5th day of September, 2022

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

Sarbeswar Pattanaik (No. 13971466H Ex Hav/SKT)
S/o Sri Fakir Charan Pattanaik
R/o Vill – Gualipur, PO – Radhua,
Distt – Jagatsinghpur (Orrisa)

.... **Petitioner**

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

Versus

1. Union of India, through the Chief of Army Staff, Army Headquarters, New Delhi.
2. Commander, Dehradun Sub Area, Dehradun.
3. Commanding Officer, Military Hospital, Roorkee.
4. Officer Commanding 4 (O) Medical Company, NCC Burla, Sambalpur (Orrisa).
5. Officer-in-charge AMC Records, Lucknow.

... **Respondents**

Ld. Counsel for the Respondents : **Shri Rajesh Sharma**,
Central Govt Counsel

ORDER

1. The petitioner, being aggrieved with District Court Martial and punishments awarded to him, preferred C.WP No. 1612 of 2006 before the Hon'ble High Court of Uttarachal at Nainital, which has been transferred to this Tribunal and has been registered as T.A.

No. 1 of 2014. By means of this T.A. petitioner has prayed for the following :-

- (I) A writ, order or direction in the nature of certiorari quashing the impugned orders dated 31.03.2001 passed by the District Court Martial (DCM), by which the petitioner has been sentenced to be 'reduced to ranks', 'to suffer Rigorous Imprisonment (RI) for six months and to be dismissed from the service, dated 28.05.2001 passed by Commander Dehradun Sub Area, by which having earlier considered the pre-confirmation petition on merits and remitted the unexpired 'punishment', in the confirmation order improperly curtailed the said remittance to only the unexpired RI, and dated 02.05.2002 passed by the Chief of Army Staff (COAS), by which the petitioner's statutory petition has been arbitrarily rejected without explaining the various points raised therein.
- (II) A writ, order or direction in the nature of mandamus commanding the respondents to reinstate the petitioner into service with all consequential benefits of salary, seniority and promotion, within a period to be specified by this Hon'ble Court.
- (III) Any other writ, order or direction as the Hon'ble Court may deem fit and proper in the facts and circumstances of the case to secure the ends of justice.
- (IV) Award costs in favour of the petitioner."

2. Brief facts, as borne out from the Transferred Application is that petitioner was enrolled in the Army on 02.01.1987. AMC Records informed MH Roorkee that ACR for the year 1995-96 of the petitioner was found to be doubtful nature and further requested to investigate the whole case. A Court of Inquiry was assembled at MH Roorkee wherein it was found that petitioner had himself forged his ACR of 1995-96. The applicant was found guilty and punishments awarded by Court Martial 'to be reduced to the ranks', 'to suffer Rigorous Imprisonment for six months', and 'to be dismissed from the service' was passed after approval of the competent authority. Being aggrieved, the applicant has pleaded that he be reinstated into service with all consequential benefits of salary, seniority and promotion.

3. Learned counsel for the petitioner submitted that petitioner was enrolled in the Army on 02.01.1987. The petitioner was posted to 4 (O) Medical Company National Cadet Corps (NCC), Burla, Sambalpur (Orissa) from 26.06.1994 to 04.11.1996 wherein Shri M. Ram was the senior civilian clerk and petitioner was appointed Canteen NCO of the unit CSD Canteen where Shri M. Ram was involved in selling of CSD stores in civil market and when petitioner objected, he started harassing the petitioner in various ways and threatened him dire consequences. Due to personal enmity with the petitioner, ACR covering the period from 01.10.1995 to 30.09.1996 was filled by Shri S Ram. AMC Records informed MH Roorkee that ACR for the year

1995-96 of the petitioner was found to be doubtful nature and further requested to investigate the whole case . The petitioner was asked to explain the reason how his ACR of 1995-96 has not been initiated by IO, Major CS Pardhan and his signature has been forged including the rubber stamp of IO. In reply applicant submitted that at the time of initiation of ACR he had left the unit and reported at MH Roorkee. In reply he stated that he had signed the blank ACR form for the year 1995-96 and handed over to Civil Clerk M Ram who was performing the duties of Senior Clerk.

4. A Court of Inquiry was assembled at MH Roorkee wherein a hand writing expert was hired to substantiate the allegation that petitioner had himself forged his said ACR of 1995-96. The Court of Inquiry was finalised and Officiating Commandant, MH Roorkee directed that disciplinary action be initiated against the petitioner. Based on the directions of the unit C of I, disciplinary action was taken against the petitioner. Being aggrieved by the arbitrary directions of Offg Commandant, MH Roorkee on Court of Inquiry, the petitioner submitted a Statutory Complaint to give him time to show his defence. The forensic report has proved that ACR form in question and the portion which was supposed to be in the petitioner hand writing was correctly in his hand writing and signatures of Maj CS Pradhan (IO) and Col PKK Raju, RO were not in the petitioner hand writing. Thereafter, applicant submitted another statutory complaint dated 12.04.1999 but the Commanding Officer directed the

petitioner for recording of Summary of Evidence alongwith a Tentative Charge Sheet under Army Act Section 57. 'Attempting to obtain for himself an advantage by making a document containing a false statement'. Thereafter, a Charge Sheet dated 15.11.2000 was handed over to the petitioner stating that 'In an ACR made by him knowingly making a false statement', having received a blank ACR form for the period from 01.10.1995 to 30.09.1996 for his signatures, falsely initiated and reviewed the said ACR by making entries purporting to be by Maj CS Pradhan, the IO and Col PKK Raju, the RO on which the same day, without examination of the case on file, Commander Dehradun Sub Area directed that petitioner to be tried by a District Court Martial (DCM).

5. A Staff Court of Inquiry was held to ascertain the truth which was finalised under the directions of the General Officer Commanding in Chief, Central Command in which the prime suspect was Shri M Ram and the truth as to who forged the documents in question have been established. Vide letter dated 28.11.2000 punishments awarded by Court martial was issued and sentence of 'to be reduced to the ranks', 'to suffer Rigorous Imprisonment for six months', and 'to be dismissed from the service' was passed without considering that applicant has already completed 14 ½ years of service. The petitioner submitted a pre-confirmation petition in which commander Dehradun Sub Area vide his order dated 25.05.2001 directed to remit unexpired portion of RI awarded by the court. Thereafter, applicant submitted a

statutory petition dated 15.10.2001 which was not decided by the Chief of the Army Staff. Therefore, applicant filed CMWP No. 42172/2001 before the Hon'ble Allahabad High Court in which the Court vide its order dated 13.12.2001, directed to the Chief of the Army Staff to decide petition of the applicant within three months. The Chief of the Army Staff rejected the statutory petition of the applicant in a very arbitrary manner vide order dated 02.05.2002. Being aggrieved with arbitrary rejection of his petition, the petitioner filed another CMWP No. 30555/2002 before the Hon'ble Allahabad High Court which was dismissed by the Court being non maintainable.

6. Learned counsel for the petitioner pleaded that since the petitioner was on leave during the period when blank ACR was received in the unit and he has not forged his ACR as alleged and his statutory petition has been arbitrarily rejected by the respondents, therefore, petitioner be reinstated into service with all consequential benefits of salary, seniority and promotion.

7. Learned counsel for the respondents submitted that petitioner was posted to 4 (O) Med Coy NCC Burla, Sambalpur (Orissa) and reported to MH Roorkee on 04.11.1995 on permanent posting. From there he proceeded on 15 days casual leave to bring his family and visited his previous unit. The ACR covering the period from 01.10.1995 to 30.09.1996 of the petitioner was not initiated at 4(O) Med Coy NCC, Burla. The previous unit of the petitioner, 4 (O) Med Coy NCC forwarded two copies of blank ACR forms to MH Roorkee

vide letter dated 15.11.1996 for obtaining signatures of the petitioner covering the period from 01.10.1995 to 30.09.1996 for initiation of ACR by Maj CS Pradhan, IO. The ACR form was never sent back to his previous unit from MH Roorkee as the NCO managed to mislead the authorities and destroyed ACR form. A forged letter dated 07.12.1996, signed by Company Commander was forwarded to 4(O) Med Coy NCC, Burla stating that ACR form has been destroyed by MH Roorkee.

8. Learned counsel for the respondents further submitted that while processing the ACR of the petitioner for promotion to JCO rank, a doubt had arisen in the Record Office, AMC Lucknow regarding the authenticity and correctness of the ACR for the year 1995-96 due to grammatical mistakes and language of pen picture. Therefore, Record Office asked confirmation from 4(O) Med Coy NCC to verify the signatures of IO and RO and confirm whether these were authentic as per their records. 4(O) Med Coy NCC informed AMC Record Office that ACR for the year 1995-96 had not been initiated by 4(O) Med Coy NCC and the signatures of IO and RO alongwith rubber stamp were forged.

9. Learned counsel for the respondents further submitted that petitioner was directly beneficiary of the forged ACR for the purpose of his further promotion as an above average ACR of 4 marks was essential for him as he was superseded for the rank of JCO based on his previous ACRs. The ACR for the year 1995-96 was despatched to

AMC Record Office during casual leave period of the petitioner which he managed to do during his visit to his previous unit while on casual leave. On this, a Court of Inquiry was held at MH Roorkee to investigate the initiation of ACR for the year 1995-96. After detailed investigation by typewriting expert and criminologist and hand writing expert, it was found that petitioner himself initiated his ACR, signed at column of IO and RO and despatched it to AMC Record Office during his casual leave. Based on Summary of Evidence, petitioner was tried by District Court Martial and was sentenced, 'to be reduced to the ranks', 'to suffer RI for six months' and 'to be dismissed from service'. The petitioner challenged DCM proceedings and submitted his petition dated 15.10.2001 to Chief of the Army Staff which was rejected vide order dated 02.05.2002. Thereafter, petition filed WP No. 30555/2002 before the Hon'ble Allahabad High Court which was disposed off by the Court vide order dated 13.12.2001. The petitioner also filed another Writ Petition before the Hon'ble High Court which was dismissed being non maintainable. The punishments awarded to the petitioner by DCM are according to Army Act and Army Rules which was confirmed by the competent authority. Hence, the petitioner is not entitled for the reliefs claimed in the petition.

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

11. In the instant case, we find that petitioner proceeded on permanent posting from 4(O) Med Coy NCC, Burla to MH Roorkee on

04.11.1996 and managed to initiate his ACR for the year 1995-96 during his casual leave by visiting his previous unit which was proved/confirmed by Civil Clerk M Ram and Maj CS Pradhan during recording of Summary of Evidence. The Court of Inquiry held at MH Roorkee to investigate the initiation of ACR for the year 1995-96 has opined that after detailed investigation and reports by typewriting expert and criminologist and hand writing expert, it was found that petitioner has forged in his ACR and therefore, he is blameworthy. The hand writing expert and Typewriting expert have also proved that marks/gradings allotted in the ACR form and pen picture written recommending the petitioner for further promotion belongs to petitioner only and not of IO or RO which specifically established that petitioner has himself initiated his ACR, signed at column of IO and RO and despatched it to AMC Record Office during his casual leave and thus, handing writing, signatures of IO and RO alongwith rubber stamp were forged.

12. During investigation, it has also been proved that neither petitioner has any enmity with civilian clerk S Ram nor has S Ram written ACR form of the petitioner for the year 1995-96 as alleged by the petitioner. The punishments awarded to the petitioner were as per recommendation of Court taking into consideration gravity of offence which was approved by the competent authority, therefore, there seems no arbitrariness and illegality while awarding punishments, 'to

be reduced to the ranks', 'to suffer RI for six months' and 'to be dismissed from service'.

13. In view of the above, we do not find any irregularity or illegality neither in conduct of DCM nor in award of punishments to the petitioner. Since, the petitioner was dismissed from service as per Army Act and Army Rules and policy letters on the subject, there is no violation of the principle of natural justice. The O.A. deserves to be dismissed. It is accordingly **dismissed**.

14. No order as to costs.

15. Pending Misc. Applications, if any, shall be treated to have been disposed of.

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

Member (A)

Member (J)

Dated: September, 2022

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