

FORM NO – 21
(See Rule 102 (1))

ARMED FORCES TRIBUNAL, KOLKATA BENCH

APPLICATION NO : TA 06 OF 2011 WP (S) 5427/2008)

THIS 13TH DAY OF DECEMBER, 2013

CORAM : Hon'ble Mr. Justice Raghunath Ray, Member (Judicial)
Hon'ble Lt. Gen. K.P.D. Samanta, Member (Administrative)

Sanjeev Kumar,
S/o Sri Upendra Singh,
R/o Vill. Prem Nagar, PO TELCO,
PS TELCO,
Dist. East Singhbhum - Jharkhand

..... Petitioner

-VS -

1. Union of India through the Chief of Army Staff,
South Block, New Delhi-110 011
2. The GOC-in-C, Headquarters,
Western Command, Chandi Mandir,
Chandigarh
3. The Commandant, Ordnance Depot,
Shakurbasti, New Delhi

..... Respondents

For the appellant : Mrs. Maitrayee Trivedi Dasgupta, Advocate
Mr. Amit Sharma, Advocate

For the respondents : Mr. S.K.Bhattacharyya, Advocate

O R D E R**Per Justice Raghunath Ray, Member (J) :**

A writ petition being No. WP(S 5427 of 2008 was originally filed before the Hon'ble Jharkhand High Court at Ranchi by Shri Sanjeev Kumar, Ex-Sepoy/AA of 316 Fd Ambala challenging the legality and validity of the punishment of dismissal from service imposed upon him in a SCM proceeding. In view of the provisions of Sec. 34(1) of the Armed Forces Tribunal Act, 2007 (in short AFT Act, 2007), the said writ petition subsequently stood transferred to this Tribunal vide order dated 10/6.12.2010 passed by a Single Bench of the said Hon'ble High Court and it has been re-numbered as T.A. No.06/2011 in this Tribunal accordingly. The writ petition so transferred to this Tribunal has been treated as an appeal u/s. 15 of the AFT Act, 2007, for all practical purposes and is being dealt with accordingly.

2. At the outset, it is pointed out that this TA/appeal was heard along with TA 08 of 2011 (Bijay Shankar Kumar –vs- UOI & Ors) since the facts are almost identical and the legal issues involved are intertwined and reliefs sought for are also identical. Both the appellants of TA 08/2011 (Bijay Shankar Kumar) and this TA 06/2011 (Sanjeev Kumar) while posted at Base Hospital, Delhi, were allegedly involved in the same incident of taking bribe of Rs. 29500/- from one civilian Shri Ashok Kumar Tuteja for securing employment for his son Shri Ankur Tuteja in the post of a Chowkidar in the Base Hospital, Delhi for which he had applied earlier. A common police complaint was filed against both the appellants by the said Ashok Kumar and on receipt of such intimation, the respondent authorities held a common court of inquiry against them in November 2005 in which charge could not be substantiated against both of them.

However, the competent authority did not agree with the finding of the court of inquiry and directed for taking disciplinary action against them. Like the appellant of TA 08/2011, the present appellant was also temporarily attached to Ordnance Depot, Shakurbasti for the purpose of holding summary court martial and the Commanding Officer of that unit (OD, Shakurbasti) held the court martial proceeding separately on 8th May 2008 on the basis of a charge sheet dt. 1.5.2008. He was found guilty and sentenced to be dismissed from service like the other appellant. The appellant has challenged the validity of the court martial proceeding itself on various grounds and prayed for quashing of the punishment order and also for reinstatement in service with all consequential benefits.

3. In both the appeals the respondents took identical stand in their counter affidavits. According to them, the appellant was involved in a very serious offence and, therefore disciplinary action by way of holding summary court martial was initiated against him under the direction of the competent authority and in the SCM proceedings the appellant was given reasonable opportunity to defend himself. On conclusion of the SCM, the appellant was found guilty and was punished by an order of dismissal from service. The SCM proceedings impugned was conducted after adhering strictly to the established procedural rules and regulations and order of dismissal from service passed thereupon does not suffer from any legal infirmity.

4. As already stated, the facts of both the appeals i.e. TA 6 of 2010 and TA 8 of 2010 are inter-related. However, the minor difference that is noticed is that while in TA 8 of 2011, the appellant Bijay Shankar Prasad was issued with the final charge-sheet dt. 1.5.2008 in which there were two counts of charges framed u/ss. 63 and 39(a) of the

Army Act whereas in this appeal, the appellant Sanjeev Kumar was charged with three counts of charges u/s 63 and u/s 39(a) of the Army Act. However, on a close scrutiny it is evident that the first and second charges u/s 63 of the Army Act are virtually the same. So far as the other charge u/s 39(a) of Army Act is concerned, it appears that the period of AWL is same in respect of both the appellants. There is also another difference i.e. regarding date of enrolment. The present appellant Sanjeev Kumar was enrolled in the Army as Sepoy on 30.10.1996 whereas in the appellant of other appeal i.e. TA 8 of 2011 was enrolled on 28.6.1996.

5. During the course of hearing, Id. advocates for both sides agreed that the facts and points of law involved in both the appeals are almost the same with a very minor variation and as such, they adopted the same arguments which were advanced in TA 8 of 2011. Similar case laws were also cited in this case as well.

6. In view of the agreed submission of both parties as above, we are of the considered opinion that a detailed discussion/analysis of facts and law made in TA 8 of 2011 need not be repeated in the instant appeal which can well be governed by our findings and decisions recorded at in aforementioned TA 8 of 2011. Therefore, no separate discussion/analysis of legal and factual aspects are necessitated in the facts and circumstances of the present appeal and as such, we hold that the instant appeal is governed by our findings in TA 8 of 2011.

7. In the result, TA No.06 of 2011 stands allowed with the following directions :-

- i) The SCM proceeding impugned holding the appellant guilty of the charge under Section 63 & 39(a) of Army Act and inflicting punishment of dismissal from service thereupon is hereby set aside.
- ii) Consequently impugned order dated 03-03-2009 (A7) passed by the C.O.A.S. rejecting the statutory appeal of the appellant also stands quashed.
- iii) Even though the appellant is admittedly guilty of the charge under Section 39(a) of the Army Act, trial of this offence through a SCM is considered severe and in such view of the matter, the appellant be awarded summary punishment of seven days' detention, as specified in clause (b) of Section 80 of the Army Act subject to set off under Sec. 169A of Army Act, if any.
- iv) The appellant under sentence is directed to surrender before the appropriate Army Authorities to serve out sentence within three weeks positively.
- v) On such surrender within the stipulated period of time, the appropriate Army Authorities shall ensure execution of sentence in terms of Section 169(3) of the Army Act forthwith.
- vi) The appellant shall be deemed to have been discharged from service w.e.f. 30th October, 2011 on completion of 15 years of qualifying service for being entitled to pension in the Indian Army.
- vii) The appellant shall be deemed to have completed his qualifying pensionable service on the date of his discharge.
- viii) The appellant shall be entitled to all retiral/pensionary benefits admissible under rules on completion of pensionable service.

- ix) The pension sanctioning authority shall proceed to sanction pension in terms of foregoing directions with utmost expedition preferably within four months from the date of receipt of this order.
- x) The PCDA(P), Allahabad shall issue PPO in favour of the appellant and thus ensure release of monthly pension and allied pensionary benefits as expeditiously as possible but not later than 4 months from the date of communication of this order to the appropriate pension sanctioning authority.
- xi) No arrears of salary however, shall be paid to the appellant for such notionally extended period of service.
- xii) The arrears of pension w.e.f. 1st November 2011 shall also be worked out and paid to the appellant within six months from the date of pronouncement of this order, in default thereof the arrears of Pension shall carry interest @8% per annum for non-payment of arrears within the period stipulated in our order.
- xiii) There will be no order as to costs.
8. Let the Departmental file pertaining to SCM proceedings in original be returned to the respondents under proper receipt.
9. Let a plain copy of this order be furnished to the parties free of cost on observance of usual formalities.

(LT. GEN. K.P.D.SAMANTA)
ADMINISTRATIVE MEMBER

(JUSTICE RAGHUNATH RAY)
JUDICIAL MEMBER