

**IN THE ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

TA/294/10
WRIT PETITION (CIVIL) NO.59/2007

**SWR RAJPAL SINGH
ARMY NO.15474139 M
S/O. SH. KISHNI, R/O.VILLAGE-JANU
POST OFFICE-MEROLY
TEHSIL & DISTT.-MATHURA (U.P.)**

THROUGH : SH. D.S. KAUNTAE, ADVOCATE

...APPELLANT

VERSUS

- 1. UNION OF INDIA
THROUGH ITS SECRETARY
GOVT. OF INDIA
MINISTRY OF DEFENCE
SOUTH BLOCK
NEW DELHI.**
- 2. THE CHIEF OF ARMY STAFF
SOUTH BLOCK, ARMY HEADQUARTERS
NEW DELHI.**
- 3. LT GENERAL
ADJUTANT GENERAL
ARMY HQ, NEW DELHI-11.**
- 4.(i) COMMANDANT
17, HORSE
C/O 56 APO**

**(ii) OFFICER COMMANDING
'A' SQN, 17 HORSE
C/O 56 APO**

**5. OFFICER INCHARGE
ARMoured CORPS RECORDS
AHMED NAGAR (MAHARASHTRA)**

**THROUGH : MS. BARKHA BABBAR, ADVOCATE WITH
LT COL NAVEEN SHARMA**

...RESPONDENTS

CORAM :

**HON'BLE SH. S.S.KULSHRESTHA, MEMBER
HON'BLE SH. S.S.DHILLON, MEMBER**

**J U D G M E N T
Dated : 13.05.2010**

1. This Writ Petition was brought in Delhi High Court for quashing the Summary Court Martial (SCM) proceedings whereby he was held guilty for overstaying of leave under Section 39(b) of Army Act and sentenced to dismissal from service vide the order dated 18.05.2005. This Writ Petition has been received on transfer after enforcement of Armed Forces Tribunal Act, 2007. It is said that in earlier Writ Petition (C) no.2931/2006 "SWR Rajpal Singh Vs. UOI & Ors.", the opportunity was given to appellant to get his grievances ventilated by making statutory complaint under Section 164 (2) of the Army Act to the appropriate authority. The appellant as per the liberty accorded to him, made representation to the appropriate Authority, but it was rejected. It is said that a fresh cause of action accrued to the appellant for challenging

the Summary Court Martial (SCM) proceedings and sentence so awarded. From the side of Union of India, main objection was taken that second innings was not permissible on the basis of the principle of res judicata. The Summary Court Martial (SCM) proceedings and whatever the punishment awarded by appropriate authority was under challenge in the Writ Petition (C) no.2931/2006 before Delhi High Court and they were affirmed. Now the present proceedings with regard to his conviction and sentence duly confirmed by the Delhi High Court are not maintainable.

2. We have gone through the materials on record including the judgment of the Delhi High Court in Writ Petition (C) no.2931/06 and the relevant portion of the judgment which affirmed the Summary Court Martial (SCM) proceedings including the sentence may be extracted herein under:

In the present case, the summary court martial proceeding was initiated against the petitioner and after completion of the same, an order was passed dismissing the petitioner from service. In terms of the statement made by the respondent, when the record of the said summary court martial was forwarded to the next higher authorities for confirmation, the said competent authority reduced the sentence of dismissal from service to that of discharge by exercising powers under Section 162 of the Army Act. Stand taken by

the respondent before us is also supported by circular issued by the respondent on 17.07.1999 which makes it clear that the respondents are empowered to reduce the sentence of dismissal into discharge and that the aforesaid conversion of dismissal into discharge from service by the competent authority under the Army Act. Section 162 apart from being a beneficent provision, is totally independent and cannot be fettered by the provisions of the Army Rules.

3. From the aforesaid observations made by the Delhi High Court, only conclusion could be drawn that Delhi High Court held the impugned Summary Court Martial (SCM) proceedings to be valid and also confirmed those proceedings including the sentence. **This Tribunal court cannot sit in appeal against judgment of Delhi High Court merely because in the operative portion of the judgment an option to make representation under Section 164 (2) was left open.** The order of the Division Bench in the Writ Petition (C) no.2931/06 unless set aside in appeal, was binding and conclusive in all subsequent proceedings between the parties. The principle of res judicata is also applicable to criminal proceedings and it is not permissible in the subsequent state of the same proceedings, or in subsequent proceedings, to convict or acquit a person for an offence in respect of which an order for conviction or acquittal has already been recorded. [See (i) *Pritam Singh Vs. State of Punjab* AIR 1956

S.C. 415; (ii) Bhagat Ram Vs. State of Rajasthan AIR 1972 S.C. 1502; (iii) AIR 1973 S.C. 2131]

4. In view of the aforesaid discussion we are of the view that present appeal is not maintainable and barred by the principle of res judicata. Accordingly appeal is dismissed.

S.S.DHILLON
(Member)

S.S.KULSHRESTHA
(Member)

PRONOUNCED IN THE OPEN COURT
TODAY ON DATED 13.05.2010