

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI
(Court No.2)**

**T.A NO. 485 of 2009
Writ Petition (C) No.2811 of 1999**

IN THE MATTER OF:

SEP/SKT S.R. Bhadu**APPLICANT**
Through : Mr. K.S. Bhati, counsel for the applicant

Vs.

UNION OF INDIA AND OTHERS**RESPONDENTS**
Through: Mr. Ajai Bhalla, counsel for the respondents

CORAM:

**HON'BLE MR. JUSTICE MANAK MOHTA, JUDICIAL MEMBER
HON'BLE LT. GEN. M.L. NAIDU, ADMINISTRATIVE MEMBER**

JUDGMENT

Date: 22.09.2011

1. This WP(C) No.2811/1999 was filed in the Hon'ble Delhi High Court on 5.5.1999 and was transferred to the Armed Forces Tribunal on 9.12.2009.

2. The applicant vide this WP(C) has prayed for quashing of the finding, conviction and sentence of the District Court Martial (DCM) order dated 17.10.1998, also quash his dismissal from service and prayed for consequential relief.

3. While arguing the case, the Ld. Counsel for the applicant submitted that the case is very old and he has already been dismissed

from Army services. The applicant has also undergone 15 months of the sentence (over 14 months detention in civil prison and 71 days in pre-trial custody) and is presently on bail. Therefore, balance of the sentence may be condoned and reduced to the period already undergone. He further submitted that he does not challenge the conviction awarded by the DCM and prayed that he be set free.

4. Facts of the case are that the applicant was enrolled in the Army on 30 Jun 95. On 02 Jan 98, an incident took place. There are allegations against the applicant that he caused injury by hitting with an iron rod on the neck of the then Maj Chhatar Singh and thereby committed penal offence under Section 325 IPC. Consequently, a DCM was convened from 4.9.98 to 17.10.98 in which the applicant was tried as the accused under Sec.69 of Army Act 1950 read in conjunction with Sec. 325 and Sec. 323 of the IPC. The applicant was found guilty and vide order dated 17.10.1998 sentenced to dismissal from service and to suffer two years of Rigorous Imprisonment.

5. Petitions, filed under Section 164(1) and (2) of the Army Act 1950 against the findings and sentence of the DCM were rejected. The applicant then approached the Hon'ble Delhi High Court on 5.5.1999. The applicant also submitted CM No.7682/99 praying for suspension of sentence. His Lordship directed on 11 Aug 99 that the applicant

should file representation for the same remedy to the competent authority under Sec.182 of the Army Act 1950.

6. The representation was preferred by the applicant on 18 Aug 1999. Since no action was forthcoming from the competent authority, his Lordship vide his order dated 5.11.1999 disposed off CM No.12859/99 by suspending the sentence of rigorous imprisonment observing that the applicant had already undergone more than 14 months of imprisonment and 71 days of pre-trial custody. Thereafter the case was transferred to this Tribunal.

7. After release of the applicant from the prison on 15 Nov. 1999, there was no communication between the applicant and his counsel. The AFT issued notices to the applicant but evoked no response and hence a non-bailable warrant was issued on 19 Mar 2011. On 13 Apr 2011, the applicant moved an application for cancellation of the NBW. He stated that after his release from prison, he had been busy in tilling his fields in the remote area of Rajasthan. He being illiterate was not aware of the legal requirements and since his elder brother was looking after his case, he was unaware of the requirement of his presence during the hearings and his absence from the Courts was not intentional. The applicant requested for cancellation of the NBW. He presented himself before the AFT.

8. The Ld. Counsel for the applicant argued that the applicant is a poor farmer hailing from a remote village in Rajasthan. He was illiterate and did not understand the legal requirements. He was truly repentant for his act and does not wish to contest the conviction. He has been on bail from 15 Nov 1999 and to date there has been no adverse report against him. He is busy looking after his fields and his family. He has already suffered over 15 months in prison and 71 days in pre-trial custody and this period of custody is also provided to be set off from original period of sentence already undergone. His request is to condone the unexpired portion of his imprisonment.

9. The learned counsel for the respondents did not contest the facts nor the circumstances of the applicant. He argued that the offence was serious under which the applicant was tried by the DCM.

10. Having heard both the parties and examined the facts of the case, though the applicant now has not challenged the conviction, but we have gone through the concerned proceedings and we do not find any infirmity or irregularity in the order of conviction. Thus, the conviction order is maintained. We have considered the submissions made in reference to sentence. Considering the fact that he has already undergone 15 months of his sentence and 71 days of pre-trial custody, and that the applicant is not seeking quashing of the conviction and dismissal from service; we are of the opinion that,

looking to the rural background of the family of applicant and that he is looking after agriculture to maintain his family. Therefore, at this stage it is not in the interest of justice to send him back to jail. The ends of justice have been met by retaining the sentence to the period already undergone. The applicant has been suitably chastised. He has been on bail since Nov. 1999, by this time he has undergone 15 months of the sentence and 71 days of pre-trial custody which is also liable to be set off against imprisonment. Nothing adverse has been reported after release on bail on 15.11.1999. In view of the foregoing and considering the facts and circumstances of the case, we maintain the conviction but mitigate the sentence of imprisonment to the period already undergone in prison and 71 days of pre-trial custody.

11. In the result, the conviction and the order of dismissal from service is maintained. His sentence of imprisonment is reduced to the period already undergone in prison and the period remained in pre-trial custody. He is not required to surrender or to serve the remaining part of sentence. Bail bonds are cancelled.

12. The TA is partially allowed. No order as to costs.

(M.L. NAIDU)
(Administrative Member)

(MANAK MOHTA)
(Judicial Member)

Announced in the open Court
on this 22nd day of September, 2011