ARMED FORCES TRIBUNAL CHANDIGARH REGIONAL BENCH
AT CHANDIMANDIR
****

T.A No.220 of 2011
(Arising out of CWP No.5515 of 1993)

Balkar Singh … Petitioner
v.
Union of India and another … Respondents

ORDER
09.12.2011

Coram: Justice N. P. Gupta, Judicial Member

Lt Gen N. S. Brar (Retd), Administrative Member

For the Petitioner : Mr. S.S.Johal, Advocate

For the Respondents : Col. (Retd) M.S.Jaswal, CGC

This writ petition was filed by the petitioner in the High Court of Punjab and Haryana on 06.05.1992, a second round of litigation, seeking to challenge the Court Martial Proceedings and claiming reinstatement.

The petitioner was tried for the charge under Section 41(2) of the Army Act, being disobeying lawful command given by the Superior Officer, in that he, at field on 30.01.1991, at 1830 hours when ordered by 2nd Lt. Rahul Duggal, Officiating Company Commander of the same regiment to go back to his Company location at Gauri Sagar, did not do so. The second charge was under Section 42 (e) of the Army Act, being neglecting to obey regimental orders, in that he, at field on 30.01.1991 between 1830 to 1945 Hrs neglected to obey the Battalion daily Orders,

Part I No.20 dated 09.09.1980 by entering the Amguri village which had been placed out of bond by the said order. After recording of Summary of Evidence, and complying with the requisite formalities, the petitioner was arraigned before the Summary Court Martial, and on 26.03.1991, he pleaded guilty to both the charges. The plea was duly recorded after complying with the provisions of Rule 115 (2) of the Army Rules, and pleaded for mercy. Learned Court Martial awarded the punishments, being to suffer rigorous imprisonment for one year, and to be dismissed from service, and to be deprived of appointment of Lance Naik. Aggrieved of it, the petitioner submitted the petition under Section 164 (2) and 179 of the Army Act, being Annexure 13. That having not been decided, the petitioner is said to have approached the High Court vide C.W.P No. 1769 of 1992, which was disposed of on 22.10.1992 and the matter was remitted to the Chief of the Army Staff for consideration and decision, expressing hope, that in view of the fact that in spite of the order of remission, the petitioner had to undergo full sentence of one year, as the order of remission was probably not conveyed to the Jail Authorities. Thereafter, the petition under Section 164(2) has been disposed of vide order dated 20.08.1993. Seeking to challenge all these, the present petition has been field, though this order Annexure 23 is not specifically under challenge.

Arguing the petition, the learned counsel for the petitioner submitted that verification made in the affidavit filed in support of the reply is not in accordance with law, being neither in accordance with DSR nor CPC inasmuch as, the record of Amguri was not available at Chandimandir to the Officer verifying the affidavit.

The next submission made was that the order of the High Court was Annexure 15 had not been complied with, as fresh order had not been passed, as directed by the High Court.

The next submission made is, that from Annexure 10, it is clear that the petitioner had to undergo full term of imprisonment, despite the fact that his term of imprisonment was remitted by four months.

Then, challenging Annexure 23, it was submitted that this order has been passed by the Vice Chief of the Army Staff , and under Section 162 of the Army Act, while on the face of language of Section 162, the same is not attracted, and the Vice Chief of the Army Staff had no powers. Then, the learned counsel submitted that from a look at pages 27 and 28 of the Paper Book, it is clear that the Court Martial had not assessed the petitioner guilty, still he has been punished as above. Then, it was submitted that the entire proceedings were farce, rather paper proceedings, completed within a short time, and thus the petitioner was actually not tried by Summary Court Martial.

Learned counsel for the respondents, on the other hand, supported the impugned action.

We have gone through the material placed on record, and have also heard the learned counsel for the parties.

At the outset, we may observe that copies of the documents produced by the petitioner, along with the Writ Petition, does include many documents, which are not reliable or correct, inasmuch as, in our view, they contain material mistakes, may be typographical, or accidental, but then, what are the correct versions of the documents, is not available. We asked the learned counsel to make available the reliable versions thereof, which must have been available with the petitioner, who has produced the typed

copies in the Writ Petition, but the learned counsel flatly declined to be in possession of them. In that view of the matter, we are at a pain of not believing them on the face value. In this sequence, Annexure 23 is a document, which is assailed on the ground of the order having been passed under Section 162, and Section 162 being not applicable, while on the face of it, it appears that it has been passed on the petition of the petitioner filed under Section 164 (2), and the order must have been passed under Section 164 (2), but in absence of reliable copy, it cannot be believed to have been passed under Section 162. Obviously, Section 162 has no application. Then, nothing has been shown to us as to how the Vice Chief of the Army Staff was lacking jurisdiction to decide the petition filed by the petitioner under Section 164 (2).

Then, so far as verification of the affidavit of the respondents filed in support of reply, is concerned, it would suffice to say that the reply is based on record, and is not based on any information based on personal knowledge, and the learned counsel for the respondents submits that the relevant record is readily available in the Court today itself. In that view of the matter, we need not go into any alleged deficiency in verification.

So far as compliance of High Court order is concerned, fresh speaking order has been passed being Annexure 23. In that view of the matter, we do not find any non-compliance of the order of the High Court, apart from the fact that the grievance raised in this regard in the Writ Petition, is in Para 22, about the order having not been passed till filing of the Writ Petition, more than six months having elapsed. Now, since the order has been passed, and no time frame having been given in the High Court’s order, nothing turns on that.

So far as the remission of sentence is concerned, we have on record two documents, Annexures 21 and 22, and it appears that there was some doubt, as to, out of many persons with respect to whom, the order of remission was passed, and unless that was clarified, it could not be conveyed to the Jail Authorities. Obviously, till the communication is sent to the Jail Authorities, they could possibly not release the petitioner.

Then, the order of remission is said to have been passed on 13.01.1992 only, of which clarification was sought on 10.02.1992, and the petitioner had been released on 13.03.1992 itself. In that view of the matter, this also does not help the petitioner in any manner.

Then, vide Annexure 23, deciding the petitioner's petition under Section 164 (2), the punishment of dismissal had been converted into discharge already. Obviously, the petitioner would get consequential benefits.

Then, so far as Summary Court Martial assessing the petitioner guilty is concerned, a look at page 24 of the Paper Book shows that the petitioner had pleaded guilty to both the charges, which plea is duly recorded, with proper compliance of Army Rule 115 (2) and in the petition filed under Section 164 (2), or at any other earlier moment, the petitioner is not shown to have disclosed, or contended, anything wrong, in recording the plea of guilty, or about his having pleaded not guilty, or about any illegality in the Court Martial proceedings in the sense of it being a hush-hush proceedings, or a farce proceedings. Of course, at this belated hour, the petitioner may have grown wiser, to cook up the stories on advices available from various corners, but they cannot be allowed to travel in our mind, for the purpose of vitiating the Court Martial proceedings, which

otherwise are not vitiated. Since the petitioner had pleaded guilty, he was found guilty on that basis, and was punished.

So far as interference in the sentence of imprisonment is concerned, a look at Annexure 23 shows, that the Authority had interfered with the sentence of dismissal only on humanitarian grounds, and so far as other part is concerned, he had clearly held as under:-

"However, I reject the petition for all other purposes."

Since the petitioner has already served the sentence, we do not find any ground to interfere in that also.

The petition, thus, has no force and is dismissed.

[Justice N. P. Gupta]

[Lt Gen N. S. Brar (Retd)]

09.12.2011
RS