

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No.8526/2011**

% **Date of Decision: 05.12.2011**

Signalman Kripa Shankar Tiwari Petitioner

Through Dr. H.B.Mishra, Advocate.

Versus

Union of India & Ors. Respondents

Through Mr. Anuj Aggarwal, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR.JUSTICE SUDERSHAN KUMAR MISRA

ANIL KUMAR, J.

*

CM No. 19263/2011

Allowed subject to just exceptions.

WP(C) No.8526/2011

1. The petitioner, has challenged the order dated 1st April, 2011 passed by the Armed Forces Tribunal, Principal Bench in T.A No.481/2009 titled as 'K.S.Tiwari v. Union of India & Ors' dismissing his petition seeking quashing of the Summary Court Martial (SCM) against the petitioner, whereby he was held guilty of having committed the offence under Section 64(c) of the Army Act and the sentence of six months rigorous imprisonment in civil prison and his dismissal from the service. The Tribunal also rejected his pray for directing the

respondents to hold a Military Medical Review Board to medically examine the petitioner so as to make the consequential recommendation to reinstate the petitioner.

2. The petitioner had joined the Army as Signelman on 2nd July, 1970 in the medical category AYE. The petitioner had completed the training at First Military Training Course, Jabalpur, M.P and was posted at 86, Infantry Brigade at the time of Indo-Pak war in 1970-71. Later on, the petitioner was posted to 4 T.T.R Jabalpur (M.P) for operator, Radio Key Board Training for advancement of service and on completion of the training he was posted to 1st Armoured Division Signal Regiment, Jhansi (M.P). In the course of his duties the petitioner was moved from Jhansi to Ambala.

3. The petitioner contended that after the demise of his father a property dispute had arisen in his family with his uncle who had a dishonest intention towards his share of the property and, therefore, he had sought discharge from the service when he was posted at Ambala. However, his plea for discharge from service was declined. Thereafter, the petitioner again sought discharge on compassionate grounds and also gave various reminders. The petitioner was however, not discharged from the service.

4. According to the petitioner, he had submitted another application for discharge during October/November, 1973 which infuriated his seniors and he was abused, beaten and tortured by the Unit Subedar Major on 3rd March, 1974. The petitioner was also produced before his Commanding Officer who instead of considering his grievances called him a mad man and had sent him to the Unit doctor for medical examination where he was forcibly administered medicines, injections and electric shocks. The petitioner was, thereafter hospitalized in the Mental Ward of Command Hospital, Chandigarh. There he was kept under psychiatric treatment and observation from 19th November, 1974 up to 7th December, 1974. On account of the petitioner's medical condition he was placed on lower medical category of CEE by a Medical Board for six months from his earlier medical category of AYE.

5. The petitioner contended that after his release from the Mental Ward on 7th March, 1975 he was produced before his Commanding Officer. A Summary Court Martial was held in which he was sentenced to undergo six months rigorous imprisonment in civil prison and he was also dismissed from service. The punishment awarded to the petitioner was communicated by letter dated 7th March, 1975 to his wife Smt. Lalita Tiwari at village and Post Office Garhmalpur, Thana Ratsar,

District Balia (U.P). The petitioner contended that he was not supplied any chargesheet, nor was any reasonable opportunity given to him to defend himself and in any case since he was in a state of unsound mind and had been placed in a lower category, therefore, he could not be tried by the Summary Court Martial.

6. The petitioner pleaded that the copy of the chargesheet and Court Martial proceedings were not provided to his wife, who had also made various representations. Certificate of service was, however, forwarded to wife of the petitioner stating, inter alia, that (i) "Dismissed from service on 7th March, 1975 in consequence of Summary Court Martial" and also (ii) "Not eligible for further employment for Government Services".

7. The petitioner, thereafter, allegedly made various representations, however, he did not receive any response. Subsequently, on account of medical treatment received by him he became a fit person. According to him, the alleged offences committed by him were under the state of unsound mind, as he did not know what was wrong and right at the time and thus the offences alleged against him could not be imputed to him as per provisions of Section 84 of the Indian Penal Code.

8. The petitioner received a communication dated 28th July, 1997 from the Additional Directorate General Discipline and Vigilance, DV-3, Adjutant General Branch, Army Headquarters advising him to submit a petition through the proper channel entailing filing of a representation dated 5th September, 1997 by him for redressal of his grievances. The communication dated 28th July, 1997 was also accompanied by the copy of the Summary Court Martial proceedings and a copy of the chargesheet. The petitioner in his representation dated 5th September, 1997 sought the quashing of Summary Court Martial proceedings and the sentence of rigorous imprisonment for six months and his dismissal from service. The petitioner after his representation dated 5th September, 1997 sent reminders dated 2nd February, 1998, 15th April, 1998 and 14th May, 1998, however, no action was taken by the Competent Authority. The petitioner, therefore, filed a writ petition being W.P(C) No.3599/1998 titled as 'Signalman Kripa Shankar Tiwari v. Union of India & Ors' in the High Court of Delhi at New Delhi.

9. The writ petition filed by the petitioner was contested by the respondents, inter-alia, on the ground that the petition was highly belated as the petitioner was dismissed from service in 1975 and since the petition suffers from delay and laches it could not be entertained. It was subsequently contended on behalf of the respondents that it would

be difficult for the respondents to bring on record the evidence against the petitioner as the records pertaining to the petitioner had already been weeded out. From the available record it was submitted that the petitioner was punished under Section 64(c) of the Army Act, and sentenced to undergo imprisonment for six months and dismissed from service. It was also admitted that the petitioner was hospitalized and put for psychiatric treatment and he was placed in lower medical category of CEE by a Medical Board. The respondents further contended that even though the petitioner was categorized as CEE it was not sufficient to exonerate him of the charges leveled against him. According to the respondents, to take the benefit of Section 84 of the Indian Penal Code the petitioner was liable to prove legal insanity and not medical insanity and, therefore, reliance was also placed on the decision of the Supreme Court, in *Surendra Mishra v. State of Jharkhand*, JT 2011 (1) SC 83.

10. In the writ petition filed by the petitioner 'RULE' was issued on 11th February, 1999. However, on 9th October, 2009 the writ petition bearing W.P (C) No.3599/1998 was transferred to the Armed Forces Tribunal, Principal Bench bearing TA No. 481 of 2009.

11. Before the Tribunal on 7th December, 2009 a doctor, namely one Vaidya Basudev Tripathi was summoned to appear on 29th January, 2010. The doctor had appeared on the said date and he confirmed the medical certificates and filed his affidavit as well. Whatsoever record pertaining to the petitioner which could have been reconstructed was reconstructed and produced before the Tribunal. The Armed Forces Tribunal, Principal Bench after hearing the counsel for the parties and after perusing the record dismissed the petition on account of delay and latches by its order dated 1st April, 2011.

12. The petitioner has impugned the order dated 1st April, 2011 passed by the Principal bench, Armed Forces Tribunal contending, inter-alia, that the Summary Court Martial was conducted in total violation of the rules and regulations and that though an affidavit was filed by Dr. Basudev Tripathi, the medical certificate has been ignored by the Tribunal without any just reason. It is also contended that the Tribunal has erred in treating the writ petition of the petitioner which was transferred from the High Court to the Armed Forces Tribunal as an appeal and that it should instead have been treated as a petition under Section 14 of the said Act. The petitioner also contended that adverse inference ought to have been taken against the respondents for not producing the proceedings/summary of evidence and chargesheet

despite the directions given by the Tribunal. It has been pleaded that thus the violation of statutory provisions of the Army Act, 1950 and Army Rules, 1954 has been made out. The petitioner also asserted that the proceeding in which he was punished for the offences alleged against him, such a proceeding would be nonexistent in law, nor could the decision in the same be taken as he was of unsound mind at that time. The petitioner contended that the reliance by the Tribunal on the judgment of Surendra Mishra (Supra) was misplaced.

13. The petitioner emphasized that an insane man is *non-compos mentis* i.e. not of sound man and that the action of such a person who is not in control of his mind and is not guided by the rational thoughts of his brain, such a person cannot be punished for the acts committed by him in such a state of mind. The petitioner contended that there are two tests for determining legal insanity. The first is, 'whether by reason of unsoundness of mind the accused person was incapable of knowing the nature of the act he was doing' and secondly, 'whether by reason of unsoundness of mind the accused person was incapable of knowing that what he was doing was either wrong or contrary to law'. The presence of any of the abovementioned factors/ingredients are sufficient to demonstrate legal insanity.

14. This Court has heard the learned counsel for the parties in detail. Mr. Anuj Aggarwal, Advocate appeared for the respondents on advance notice and reiterated that the petition has been dismissed rightly on account of delay and laches as no sufficient cause has been made out and pleaded by the petitioner before the Tribunal justifying the same. According to him, even in the writ petition filed earlier before the High Court which was transferred to the Armed Forces Tribunal no sufficient ground was made out for the delay and laches. He also contended that even in the present writ petition filed against the order dated 1st April, 2011 of the Armed Force Tribunal, Principal Bench the petitioner has failed to explain the sufficient cause for delay of more than two decades.

15. The Tribunal while dismissing the petition had relied on *Sawaran Lata & Ors v. State of Haryana*, JT (2010) 3 SC 602 holding that while considering the question of delay and laches it should be seen whether the matter has attained finality. The Tribunal relied on paragraphs 7 and 8 of the said decision which are as under:-

7. A Constitution Bench of this Court, in *Aflatoun and Ors. v. Lt. Governor, Delhi and Ors.* AIR 1974 SC 2077, while dealing with the issue, observed as under:

“...to have sat on the fence and allowed the government to complete the acquisition on the basis that notification under Section 4 and the declaration under

Section 6 were valid and then to attack the notification on the grounds which were available to them at the time when the notification was published, would be putting a premium of dilatory tactics. The writ petitions are liable to be dismissed on the ground of laches and delay on the part of the petitioner.”

8. Same view has been reiterated by this Court observing that acquisition proceedings should be challenged before the same attain finality, in *State of Mysore v. V.K. Kangan* AIR 1975 SC 2190; *PT. Girdharan Prasad Missir v. State of Bihar* (1980) 2 SCC 83; *Bhoop Singh v. Union of India* AIR 1992 SC 1414; *State of Orissa v. Dhobei Sethi and Anr.* (1995) 5 SCC 583; *State of Maharashtra v. Digambar* AIR 1995 SC 1991; *State of Tamil Nadu v. L. Krishnan* AIR 1996 SC 497; and *C. Padma and Ors. v. Dy. Secretary to Govt. of Tamil Nadu and Ors.* (1997) 2 SCC 627.

16. The learned counsel for the petitioner has contended that on the advice of the Additional Director General (Discipline & Vigilance) the petitioner had submitted the petition on 5th September, 1997 and that repeated reminders were also sent requesting an action in the matter. Since there was no response from the respondents, therefore, the petition had been filed by the petitioner without losing any further time in July, 1998 and, therefore, the cause of action in the case of the petitioner would start from 5th September, 1997 when the representation was made by the petitioner.

17. The learned counsel for the respondent has relied on C.Jacob v. Director of Geology and Mining and Anr, 2008 (10) SCC 115 to contend that it was held by the Supreme Court that the department can reject a stale case on the ground of delay alone without examining merits of the case. It was further held that the reply given to an individual by the department on his representation does not give rise to fresh cause of action or acknowledgement of jural relationship. In the instant case, the employee was terminated 18 years back and he made a representation after 18 years and filed a petition before the Administrative Tribunal which was disposed off. Pursuant to the directions given by the Administrative Tribunal to dispose of the representation within four months, the representation was declined. On the basis of the order passed on the representation which was passed pursuant to the directions of the Tribunal, it was held by the Supreme Court that the staleness of the claim of the employee was not considered and a detailed speaking order was passed in favour of the employee. The Supreme Court had set aside the order of the Tribunal holding that where an employee reappears after two decades he cannot be treated as having continued in service, nor can he be given the benefit of qualifying service for pension. This has not been disputed that the petitioner was dismissed after Summary Court Martial on 7th March, 1975. Even if the petitioner was of unsound mind, though no evidence

to such a fact has been produced by the petitioner nor alleged, it is not disputed that the wife of the petitioner had made a representation against the dismissal of the petitioner in 1995. No cogent reason has been disclosed for waiting for more than two decades before filing a writ petition in the High Court which was later on transferred to the Armed Force Tribunal and which was dismissed by the Tribunal on account of delay and laches. Perusal of the petition which was decided by the Tribunal reveals that no cogent or sufficient reason had been given which would have entitled the petitioner for condonation of delay and would have rectified the lacunae of laches. Even in the present writ petition, filed by the petitioner challenging the order of the Tribunal, no sufficient grounds have been made out which will entitle the petitioner for relief after the delay of more than two decades. In *C. Jacob v. Director of Geology and Mining (Supra)* in para 9 the Supreme Court had held as under:-

“9. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any ‘decision’ on rights and obligations of parties. Little do they realize the consequences of such a direction to ‘consider’. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to ‘consider’. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of

representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.”

18. The order of the Tribunal dismissing the petition of the petitioner by order dated 1st April, 2011 is based on the correct appreciation of the facts and law and it has not been demonstrated that it suffers from any irregularity or illegality or any such perversity which will entitle the petitioner to invoke the jurisdiction of this Court under Article 226 of the Constitution of India. The writ petition in the facts and circumstances is without any merit and it is, therefore, dismissed. Parties are, however, left to bear their own cost.

ANIL KUMAR, J.

SUDERSHAN KUMAR MISRA, J.

DECEMBER 05, 2011
‘k’