

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

+ **W.P.(C) 3849/2013**

EX-SWR GIRDHARI LAL YADAV Petitioner
Through: **Mr.Rajiv Sharma & Ms. Monica
Negi, Advocates**

versus

UNION OF INDIA & ORS. Respondents
Through: **Ms. Barkha Babbar & Mr. M.P.
Singh, Advocates for UOI**

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR
HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER
09.09.2014

KAILASH GAMBHIR, J. (ORAL)

1. Aggrieved by the order dated 13.12.2011 passed by the Armed Forces Tribunal, Principal Bench, New Delhi, the petitioner has filed the instant writ petition under Article 226 of the Constitution of India to seek the following reliefs:-

"a) *Issue a writ of certiorari to:-*

- i. Summon original records of the case, inclusive of original SCM proceedings, court of inquiry and hearing of the charge as per Army Rule 22;*
- ii. Quash judgment dated 13.12.2011 Annexure P-1, passed by The Armed Forces Tribunal (Principal Bench), upholding the*

- SCM proceedings;*
- iii. Quash SCM proceedings Annexure P-2 dated 03 August, 1983; and*
 - iv. Quash the Order of Vice Chief of Army Staff dated 27.04.1993 Annexure P-5.*
- b) Issue a writ of mandamus, thereby commanding the Respondents to reinstate the petitioner in service w.e.f. 03 August 1983, with all consequential benefits flowing there from, as are applicable to his batchmates.*
- c) Issue a writ of mandamus, thereby commanding the Respondents to grant service pension and all such retiring benefits to the petitioner in the peculiar facts and circumstances of the case, as applicable and granted to his batchmates.*
- d) Issue any other appropriate writ, order or direction as may be deemed just and proper in the unusual facts and circumstances of the instant case."*

2. The case of the petitioner is that he was enrolled in the Army in May, 1983. On the intervening night of 26th /27th July, 1983 he was on guard duty at 2 Army Brigade Combined Officers Mess at Babina Cantt. and during the said night he was alleged to have committed two offences under Sections 36(b) and 36(d) of the Army Act. On 30.07.1983 he was given the chargesheet for his Summary Court Martial (in short 'SCM') and in these proceedings the petitioner himself pleaded guilty to the charges framed against him. Based on his admission of guilt for both the

charges, the petitioner was held guilty to the charges framed against him and was sentenced to undergo rigorous imprisonment for a period of four months in civil custody and was ordered to be dismissed from service. The charges which were framed against the petitioner are as under:-

"Charge under Section 36(b) of the Army Act

*BREAKING INTO A HOUSE IN SEARCH OF
PLUNDER*

in that he,

At C/o 56 APO on night 26 July 83 between 2220 h and 2230 h, while performing duty at 2 Armd Bde Combined Offrs Mess guard, broke into the house of IC-16786F Maj PJS Sandhu of the same Regt in the search of plunder.

"Charge under Section 36(d) of the Army Act

*WITHOUT ORDERS FROM HIS SUPERIOR
OFFICER LEAVES HIS GUARD*

in that he,

At C/o 56 APO on night 26/27 July 83 between 2220 hrs and 0030 hrs, when on sentry at the 2 Armd Bde Combined Offrs Mess guard, quitted the said guard without leave."

3. Aggrieved by the said order of punishment, the petitioner had filed an appeal under Section 164 of the Army Act and vide order dated

27.04.1993 the same was rejected. The petitioner, thereafter, had filed a writ petition bearing W.P.(C) No.4446/1996 which was later transferred to the Armed Forces Tribunal, Principal Bench, New Delhi and the learned Armed Forces Tribunal (in short 'AFT') vide order dated 13.12.2011 dismissed the petition finding no substance in the same.

4. The main grievance raised by the petitioner in this writ petition is that he had never pleaded guilty to the said charges and this fact can be well established from the fact that respondent No.3 had failed to adhere to Army Rule 115 (2) which envisaged that before recording the plea of guilty, it is for the Court conducting the SCM to inform the employee about the general effect of that plea and in particular the meaning of the charge to which he has pleaded guilty and also advise him to withdraw that plea if it appears from the summary of evidence that the accused ought not to plead guilty. This procedure, laid down under Section 115 (2) of the Army Rules, was not followed by the respondents in the said SCM proceedings, and as per the petitioner, non-adherence to the said procedure provided under Section 115(2) of the Army Rules vitiated the said SCM proceedings.

5. Mr. Rajiv Sharma, the learned counsel for the petitioner

vehemently contended that the learned AFT had not considered this vital aspect of the matter and had dismissed the writ petition filed by the petitioner premised on the acceptance of the said two charges by the petitioner by pleading guilty to the same. To a question raised by the Court: why the said SCM proceedings were not challenged by the petitioner with the required urgency before the Chief of the Army Staff or by approaching the Writ Court, the stand taken by the learned counsel for the petitioner was that after the said order of SCM proceedings, the petitioner became mentally distressed and left his family at home and it was on 15.09.1990 that he was arrested by the police while begging at Patnipura Cross Road, Indore. The learned counsel for the petitioner also submitted that the petitioner filed a writ petition to challenge the SCM proceedings which was later decided by the learned AFT after the Armed Forces Tribunal Act came into force in the year 2007. The learned counsel for the petitioner, however, gives no explanation as to why the said SCM proceedings were not challenged by the petitioner for such a long period from the year 1983 onwards. In the absence of any evidence to show that he was suffering from any mental disorder during the said period, the learned AFT has decided the OA filed by the petitioner on

merits and not merely on the ground of delay and laches on the part of the petitioner in approaching the court. The learned AFT had perused the original service record of the petitioner to satisfy itself that the signatures as were appearing in the SCM were that of the petitioner. After having perused the record, the learned AFT found and satisfied itself that the statement of admission of guilt in the summary of evidence did bear the signatures of the petitioner and it was he alone who had signed the same. The learned AFT thus found that the petitioner had taken a false stand that he had never signed the SCM proceedings to admit his guilt. The learned AFT also considered the evidence produced on record in the SCM proceedings to satisfy itself with regard to the sufficiency of evidence to connect the petitioner with the commission of the crime. On both the charges, the learned AFT found that the said charges against him stood fully proved based on the evidence produced on record by the prosecution.

6. It is a settled legal position that in proceedings under Articles 226 and 227 of the Constitution of India, the High Court cannot sit in appeal to re-appreciate the findings recorded by the competent Tribunal. The jurisdiction of the High Court is supervisory and not appellate. It is only

where the order passed by the Tribunal is manifestly illegal, irrational or perverse, interference of the High Court may be justified otherwise not. In the present case, we do not find any illegality or perversity in the order passed by the learned AFT.

7. The contention of the petitioner that Rule 115 ((2) of the Army Rules was not adhered to by the Court conducting SCM proceeding does not find favour with us. Firstly because the petitioner took a false stand that he had never signed the plea of his guilt and this falsity was proved during the AFT proceedings when it had summoned the petitioner's original service record for comparison of his signatures in the record with that of the SCM proceedings. Secondly the petitioner never challenged the SCM proceedings neither sought redressal before the Chief of the Army Staff nor did he avail the writ jurisdiction. The petitioner has also not placed on record any documentary evidence to show that any missing report was lodged to the police nor has he brought any medical record to show that he was affected by any mental ailment.

8. It is trite that where writ petitioner approaches the High Court after a long delay, the reliefs prayed by him may be denied on the ground of delay and laches since they are relevant factors for the exercise of

equitable and discretionary jurisdiction under Articles 226 and 227 of the Constitution of India.

In view of the above, there is no merit in the present petition and the same is dismissed accordingly.

KAILASH GAMBHIR, J.

NAJMI WAZIRI, J.

SEPTEMBER 09, 2014

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