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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.12806 of 2011
Date of Decision: 16.02.2015.**

Dalip Chand

.....Petitioner

Vs.

Union of India & others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present: Mr. D.S. Patwalia, Senior Advocate with
Mr. Salil Sabhlok, Advocate
for the petitioner.

Mr. I.P.S. Doabia, Advocate
for respondents No.1 to 3.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

SURYA KANT, J. (ORAL)

The petitioner assails the order dated 30.07.2010 (Annexure P-12) passed by Armed Forces Tribunal, Regional Bench Chandigarh at Chandimandir (hereinafter referred to as 'the Tribunal') whereby his Original Application challenging the proceedings of the General Court Martial (for short 'GCM') which culminated into his dismissal from service, coupled with rigorous imprisonment, has been dismissed.

[2]. The petitioner joined the Indian Army as a Sepoy on 06.12.1962. He got promotions upto the rank of Naib Subedar which

he held while he was Incharge of POL Stocks Dump in the Supply Depot at Patiala.

[3]. The petitioner was chargesheeted on 20.07.1982 on two counts namely (i) that he shifted kerosene superior barrels from the stock of Kero superior to the stock of 70 MT with intent to distort the evidence in contravention of the instructions that no one would enter the POL/Dump and that (ii) between the period 10.02.1981 to 18.04.1981 he performed his duties negligently causing loss to the tune of ₹15,810/-.

[4]. General Court Martial proceedings were held in which the petitioner was found guilty of both the charges. Consequently, he was sentenced to rigorous imprisonment for two years and was ordered to be dismissed from service. The General Officer Commanding, however, vide order dated 01.08.1984 opined that the finding of guilt arrived at by GCM in respect of the second charge was not fully supported by the evidence on record and that re-assembly may call a witness to get the evidence of the value of the items on record.

[5]. It appears that such an evidence was then recorded and the finding on charge No.2 was also reaffirmed against the petitioner.

[6]. The General Officer Commanding-in-Chief, Western Command vide order dated 20.12.1984, however, did not confirm the finding of GCM on the first charge but confirmed the finding of that Court on the second charge. He then also confirmed the sentence

but remitted the unexpired portion of the sentence of rigorous imprisonment.

[7]. The appeal/revision etc. submitted by the petitioner were declined.

[8]. The aggrieved petitioner approached this Court by way of CWP No.9262 of 1987 which was converted into criminal writ petition No.150 of 2005. On the establishment of the Armed Forces Tribunal, the said petition was transferred to the Tribunal who has vide impugned order dated 30.07.2010 dismissed the same, upholding the finding of the GCM and consequential sentence/punishment awarded to the petitioner.

[9]. Learned counsel for the parties were heard on 22.09.2014 for a while and the matter was adjourned with a direction to the respondents to produce the following record:-

- (i) The order dated 23.01.1985 referred to in Para 9 of the writ petition.
- (ii) The entire service record of the petitioner.
- (iii) The Court Martial proceedings.

[10]. Mr. Doabia, learned counsel for the respondents today has filed an affidavit explaining that the record of the GCM proceedings has since been destroyed in terms of Rule 146 of the Army Rules, 1954, after expiry of maximum retention period of seven years. As regards the service record of the petitioner it is stated that efforts are being made to locate the same. The respondents are not sure about the availability of the original record of order dated 23.01.1985.

[11]. In these circumstances, we have heard learned counsel for the parties at some length and gone through the record.

[12]. The petitioner's contention that after the General Officer Commanding declined to confirm the finding of guilt in respect of second charge as no evidence was produced to substantiate the said charge, cannot be accepted in the light of his own admission mentioned in the 'Grounds of Revision' etc. It does appear that the witnesses were produced and he was again held guilty of the second charge.

[13]. At the same time there is nothing on record to suggest that the petitioner was guilty of causing loss of ₹15,810/-. There is every possibility that on the basis of the evidence led subsequently, the total loss allegedly caused by the petitioner was less than ₹15,810/-.

[14]. The other aspect is that the petitioner had served about 22 years before he was found guilty or dismissed from service. The brief summary of service record relied upon by Mr. Doabia suggests that except reprimanding him in the year 1964 there was nothing adverse against the petitioner in subsequent years except the subject-inquiry and the consequential punishment.

[15]. The third relevant fact is that the petitioner was put in the permanently low medical category 'BEE' w.e.f. 1980 which was held to be attributable to Military Service.

[16]. The cumulative effect of these factual events, coupled with the fact that the record of GCM proceedings has not been produced

to confirm that there was indeed any evidence to establish charge No.2 and if so to what extent, we are of the considered view that the matter requires reconsideration by the Tribunal for the limited purpose to mitigate the punishment awarded and or to commute the punishment to any lesser punishment which may entitle the petitioner to seek 'disability pension' at this old age. Such a power has been expressly vested in the Tribunal under Section 50(6)(b) of the Armed Forces Tribunal Act, 2007.

[17]. Consequently and for the reasons afore-stated, we allow this writ petition in part, set aside the operative part of the order passed by the Tribunal i.e. the finding with regard to the guilt of the petitioner is not interfered with, however, adequacy of sentence awarded to the petitioner is directed to be reconsidered in the light of the express power conferred upon the Tribunal and for the reasons noticed above.

[18]. The parties are directed to appear before the Tribunal on 30.03.2015.

(SURYA KANT)
JUDGE

February 16, 2015
Atik

(RAJ MOHAN SINGH)
JUDGE