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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **Date of Decision:03.03.2020**
% **W.P.(C) 2475/2020 and C.M. No. 8631/2020**

EX NB RISALDAR DILBAG SINGH Petitioner

Through: Mr. Mohd. Azam Ansari, Adv.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Harish Vaidyanathan Shankar,
Advocate.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE SANJEEV NARULA

VIPIN SANGHI, J. (ORAL)

1. The petitioner has preferred this writ petition to assail the order dated 09.01.2020, passed by the Armed Forces Tribunal, Principal Bench, Delhi, whereby his original application assailing his dismissal from service vide order dated 30.12.2014 has been dismissed.

2. The petitioner seeks a direction for his reinstatement with all consequential benefits, including back wages, seniority, continuity of service, promotions, etc. by quashing and setting aside his 'Dismissal' vide order dated 30.12.2014, passed by the COAS. In the alternative, he prays that his dismissal from service be converted to 'Discharge' from service with effect from the date of his dismissal, with further direction to the respondents to release all his entitlements arising on account of 'Discharge'. Alternatively, he also seeks a direction to convert his 'Dismissal' to compulsory retirement/ removal from service from the date of his dismissal, with a direction to release all his pensionary/ retiral benefits arising out of

such discharge from service.

3. The petitioner was enrolled in the Army on 24.04.1994. His wife expired on 20.03.1998 due to consumption of a poisonous substance. A case of dowry death was registered against the petitioner while he was serving as a Sepoy. On 22.02.2001, the petitioner was convicted by the Sessions Court under Section 304B IPC and sentenced to undergo 7 years of rigorous imprisonment. He appealed against his conviction and sentence before the Punjab and Haryana High Court. On 02.05.2001, he was released on bail. He re-joined his duties on 04.05.2001. He continued to serve with the Army for the next 14 years. On 29.08.2013, the High Court dismissed the petitioner's criminal appeal and affirmed the sentence awarded to him. His appeal was dismissed by the Supreme Court as well. Consequently, his conviction and sentence attained finality. He surrendered himself on 17.01.2014, while on leave. After completion of his sentence, the petitioner was released from jail on 15.08.2015. In the meantime, he was dismissed from service vide order dated 30.12.2014. The said order of dismissal reads as follows:

***“ORDERS OF THE CHIEF OF THE ARMY STAFF FOR
DISMISSAL FROM SERVICE OF JC-235075A NAIB
RISALDAR DILBAG SINGH OF THE PRESIDENT'S BODY
GUARD***

1. WHEREAS, JC-235075A Naib Risaldar Dilbag Singh of the President's Body Guard was convicted by the Court of Additional Sessions Judge, Amritsar on 22 Feb 2001 on charges under Section 304B and Section 498A of the Indian Penal Code and Sentenced to undergo Rigorous Imprisonment for seven years. The Appeal CRA No.245-SB of 2001 filed by

the Junior Commissioned Officer in Hon'ble Punjab and Haryana High Court against his conviction has been dismissed on 29 Aug 2013 and he is undergoing the above said sentence of 'Rigorous Imprisonment for seven years' at Central Jail, Amritsar.

2. *AND WHEREAS, considering the nature and gravity of the offences for which JC-235075A Naib Risaldar Dilbag Singh has been convicted by the Criminal Court, his retention in the service is not desirable.*

3. *NOW, THEREFORE, in accordance with the powers vested in me under section 20(1) of the Army Act, 1950 read with Rule 17 of the Army Rules 1954, I hereby order 'dismissal from the service' of JC-235075A Naib Risaldar Dilbag Singh.*

Signed at New Delhi on this 30th Day of December 2014."

4. The case of the petitioner before the Tribunal was, and before us is, that upon grant of bail by the High Court on 02.05.2001 – at the time of admission of his appeal, he sought to re-join his duties while making a full and complete disclosure of the fact that he had been convicted under Section 304 B IPC by the Trial Court and that he had been granted bail by the High Court. The petitioner claimed that he was allowed to re-join his services and he continued to serve for the next about 14 years. In these circumstances, the dismissal of the petitioner under Section 20(1) of the Army Act read with Rule 17 of the Army Rules was unjustified, since the respondents could have taken a lenient view of the matter and, instead of dismissing the petitioner, could have discharged him, which would have had the effect of the petitioner becoming entitled to receive pension and other pensionary benefits for the length of service rendered by him, which was in excess of 15 years. The petitioner claimed that upon his release on bail, he submitted his

hand written letter dated 04.05.2001 to Colonel G.S. Malhi, who acknowledged the same and permitted the petitioner to re-join and directed that he be taken on the strength of the Unit.

5. In this regard, the petitioner placed before the Tribunal the letter dated 04.05.2001, claimed to have been written by him. He also produced before the Tribunal, an affidavit of Colonel G.S. Malhi, who had by then retired as Major General, and who stated that the petitioner duly intimated him about the fact of his conviction and sentence of 7 years by the learned Sessions Court, Amritsar on 22.02.2001 and about the fact that he had been released on bail by the Punjab and Haryana High Court on 02.05.2001. He stated that since he was the Commanding Officer of the petitioner, he intimated all the facts to his superior officers higher in the chain, and ordered that the petitioner re-joins his duties and continues his job in the unit.

6. The submission of learned counsel for the petitioner is that the Tribunal has erroneously disbelieved the fact that the petitioner had sent the said communication dated 04.05.2001, even though the same was corroborated by the affidavit of Major General G.S. Malhi (retired).

7. We have perused the impugned order passed by the Tribunal. So far as the petitioner's submission that he had duly intimated the fact of his being convicted and sentenced, and of his release on bail by the High Court on 02.05.2001, is concerned, the respondents repeatedly claimed in their counter-affidavit that the petitioner had suppressed the said fact and not intimated to the respondents about his conviction. The Tribunal, while disbelieving the said plea of the petitioner, observed as follows:

“7. There is, however, a dispute as to whether the applicant informed the competent authorities regarding his conviction by the Trial Court and release on bail. Reliance has been placed by learned counsel for the applicant on Part II Order No 46 dated 16th May, 2001 which records:

"Handed over to Civil Police at Amritsar (PB) for investigation and trial for the offence under IPC Section 304 (b)/34. SORS wef 07th April, 1998".

8. The Other Part II Order No 61 dt 25th May, 2001 records:-

"Released on bail from civil custody (Central Jail, Amritsar, Punjab) on 02nd May 2001. Granted 7 days Casual Leave from 02nd May, 2001 to 8th May 2001. TORS wef 09th May 2001."

9. Learned counsel also referred to a letter dated 04th May, 2001 sent by him to the CO seeking permission to rejoin duty wherein he has given the details about the trial being faced by him and his conviction by the Sessions Court. In this letter he has also informed that he has been released on bail by Hon'ble High Court. There is a remark below this letter by Col GS Malhi : "Swr Dilbagh to rejoin and take him on strength.

10. However, so far as Part II Orders, as referred above, are concerned, the same does not show that the respondents were aware about the conviction of the applicant by the Sessions Court or his release on bail (by Punjab and Haryana High Court). As regards the letter dated 04th May, 2001, which is allegedly written by the applicant seeking permission to rejoin, the respondents filed an additional affidavit/ Surjoinder stating therein that the copy of the application produced by the applicant does not have any endorsement or marking of the concerned branch, date of receipt or the initial of the Second-in-Command (2IC) on the remark of the Maj Gen GS Malhi, which is procedure for the first sight dak in the Regiment and it is alleged that the original of this application does not form

part of the records held by the respondents. In view of the foregoing, it is not firmly established as to whether the respondents were aware of the conviction of the applicant by the Sessions Court before he was allowed to rejoin the duties. Otherwise, there was no plausible reason to the respondents to issue apprehension roll on 28.02.2014 when applicant failed to join duties or to convene court of inquiry on 18.03.2014 or to declare him deserter, then sending non commissioned officer to Tarantaran Police Station, house of the applicant and Central Jail, Amritsar and thereafter initiating proceedings for his dismissal. At the most, Part II Order reveals that he was handed over to the Police for investigation and trial for an offence under section 304 B IPC and after his release on bail from civil custody on 02nd May, 2001, he was granted 7 days Casual Leave from 02nd May 2001 to 08th May 2001.” (emphasis supplied)

8. The Tribunal is the last Court which is entitled to marshal and appreciate evidence. In judicial review, this Court is not called upon to re-appreciate the evidence, particularly when the view taken by the Tribunal is a plausible view. Even otherwise, we are satisfied that the Tribunal correctly came to the conclusion that there was no official communication by the petitioner with regard to his conviction by the Trial Court under Section 304B IPC and about the fact that he was released on bail by the High Court on 02.05.2001 in his appeal against his conviction. In any event, the Tribunal has proceeded to consider the issue whether the order of dismissal passed by the competent authority is liable to be converted into discharge, even if one were to assume that the petitioner had communicated to the respondents, the factum of his conviction under Section 304IPC, and merely on the ground that he had continued to render service for about 14 years even after his conviction. The Tribunal has observed as follows:

“12. We have carefully gone through the judgement passed by Hon'ble High Court of Punjab and Haryana in SC Arora's case (supra). In this case Hon'ble High Court was considering the provisions of Punjab Police Rules, 1934 and Punjab Civil Services (Punishment and Appeal) Rules, 1970. The relevant portion of the judgement so far as is relevant to the present purpose is reproduced as under:-

"No doubt, Rule 16.2 of the Punjab Police Rules, 1934, stipulates that an official convicted and sentenced to imprisonment on a criminal charge shall be dismissed, however, second proviso to this very rule gives discretion to the punishing authority to impose lesser punishment than that of dismissal "in an exceptional case involving manifestly extenuating circumstances': It would, thus, show that though the normal rule is dismissal, but at the same time if the circumstances are exceptional which disclose extenuating features, the punishing authority can impose punishment other than that of dismissal as well. Of course, in such a case, the punishing authority has not only to record the reasons which would obviously reflect how it is exceptional involving manifestly extenuating circumstances, but punishing authority is also supposed to take prior approval of the next higher authorities."

13. As such, even as per this judgement the normal rule in case of conviction of a criminal charge is dismissal and it is only in exceptional circumstances that a lesser punishment can be imposed. In the instant case, there are no exceptional circumstances which warrant lesser punishment.

14. Even Devraj case (supra) does not help the applicant, because in that case there was leakage of question papers. As per the report of the CBI, the petitioner was also responsible in the leakage. However authorities chose not to proceed against

him to hold a court martial. Subsequently, on the basis of CBI inquiry, a charge sheet was filed in a criminal court in which apart from the petitioner, four other persons were arraigned. Criminal proceedings initiated against the petitioner resulted in his discharge. Despite that his services were terminated. Challenge was laid before the Hon'ble Supreme Court against the termination. Keeping in view the facts and circumstances of the case, the termination order was set aside and the appellant in that case was ordered to be reinstated. Things are entirely different in the instant case. Conviction of the applicant by the Sessions Court stands upheld up to Hon'ble Supreme Court. The other judgements relied upon by the learned counsel for the applicant also does not help him as the same were rendered on the factual matrix appearing in those cases. That being so, there is no justification in interfering with the order of dismissal of the applicant from service passed by COAS and the same deserves to be upheld.”

9. The submission of learned counsel for the petitioner is that there are numerous examples where persons who were convicted of varied offences were shown sympathetic consideration, and their dismissal was converted into discharge. In this regard, the following instances were relied upon by the petitioner:

“(i) Ex-Commodore Sukhjinder Singh Vs UOI (Judgment annexed with this written submission). In this case, a very serious crime of developing intimate relationship with a foreign lady, was committed and petitioner was dismissed from service. However, Pension was granted by this Hon'ble Court holding pension is the property of employee and also observing that 14 dismissed officers were granted pension.

(ii) Ex-Cdr Satyvir Singh Payal Vs UOI (Judgment annexed with this written submission). In this case also, there was a very serious charge of moral turpitude of misusing CV (concession voucher for railway tickets). But yet again this Hon'ble Court

granted Pension and Gratuity holding that pension is a "PROPERTY".

*(iii) Ex-Sgt RK Sutar Vs UOI (Judgment annexed with this written submission). In this case also a heinous crime of 'Molestation of 6 year Old Child' was committed but when comes to pensionary benefits, Ld. AFT Chennai was lenient and granted pensionary benefits by converting dismissal into discharge and against this, UOI's appeal to Supreme Court was also dismissed on 07.03.2014 in D. No. 4860/2014, as Hon'ble Supreme Court did not interfere in **"Pension Matter" being "Property"**.*

(iv) There were total 35 charges against Cpl Madan Kumar of Air Force in which he was convicted in 19 charges; was also granted pensionary benefits by this Hon'ble Court in O.A. No. No. 318 of 2013 vide judgment dated 17.10.2016 by converting dismissal into discharge for the purpose of granting pensionary benefits. Cpl Madan Kumar was even habitual offender having multiple punishment entries in his service record. Judgment of above OA No. 318/2013 is also annexed with this written submissions.

(v) Ashok Vs UOI (Judgment annexed with this written submission). Again a very serious charge where the individual was deserter for 3 years from 25.05.2006 to 25.02.2009 but still pension was granted by Ld. AFT, Regional Branch, Kochi.

(vi) Ex-Nk Manoj Kumar Mishra Vs UOI and Ors (Judgment annexed with this written submission). In this case also, there was a serious charge as Naik Manoj was 11 months deserter from 01.11.2009 to 15.09.2010 and was also 4 times AWL in his service career previously yet, pension was granted by this Hon'ble Court.

(vii) S Muthu Kumaran Vs UOI (Judgment annexed with this written submissions). In this case a heinous crime of 'Fraudulent Recruitment Racket and obtaining illegal gratification' was committed but when comes to 'Pensionary

Benefits', Hon'ble Supreme Court was lenient & held as under in para 11 of judgment dt 17 Jan 2017:-

11.....In the facts and circumstances of the present case, we are inclined to modify the punishment of dismissal from service into discharge from service. The modification of the sentence of dismissal from service into that of discharge will not change the position of the appellant, so as to claim any re-instatement into service. Even if he was discharged from service, in lieu of dismissal from service, the appellant cannot seek for any employment or re-employment into the Army. Therefore, there would not be any grievance for the respondents in the event of punishment of dismissal being modified into that of discharge. At the same time, interests of justice would be served as the appellant would get the benefits like gratuity and other attendant benefits for the service rendered by him and the appellant would also get an opportunity to lead honourable life in the society.

(h) Hon'ble Supreme Court in Major G.S. Sodhi Vs UOI (1991) 2 SCC 371 held as under:

“Service Law – Retiral Benefits – Army Officer dismissed from service by Court Martial. No punishment of forfeiture of pension or other service benefits inflicted by Court Martial – Held, dismissed officer entitled to entire pension, gratuity and provident fund under the rules – Dismissal.”

(i) Hon'ble Supreme Court in Lt. Col. (TS) Harbans Singh Sandhu Vs UOI and Ors (2002) 1 Supreme Court Cases 427, held as under:-

“The petitioner, an army officer, had put in about

27 years of service, but on the eve of his retirement was posted as Camp Commandant of the NCC Camp. During this last leg of his career, he was charged with misappropriation and making false complaints against his superior officers. A general court martial acting under the army act, tried him and imposed a punishment under Section 71(d) of the army act 1950. He was cashiered. No further penalty was imposed under section 71 clause (h). These are agreed facts.So he filed the present writ petition to compel the Government to pay him what is due by way of gratuity and pension. This was his property and could be taken away except by due process of law.....We direct the respondent to pay the said sum within three months today. Accordingly, we allow the writ petition with costs”.”

10. We have considered the aforesaid submission of learned counsel for the petitioner. In our considered view, neither of the instances cited by the petitioner compares with the case of the petitioner, who has been convicted of a very serious and heinous offence of causing dowry death of his wife within seven years of marriage, which led to his conviction under Section 304 B IPC. We find that the Tribunal has taken note of the facts and circumstances of the case, which led to the petitioner's conviction. The sum and substance of evidence against the petitioner was that he forced his wife to consume a poisonous substance in the presence of other witnesses. The factual background – duly established, was that the petitioner repeatedly demanded dowry in the form of a scooter from his wife and in-laws. The Trial Court also found that the petitioner was cruel towards his wife, since he did not take her with him to his place of posting.

11. Each fact situation calls for a graded response depending on the facts of the case. In the present case, the conviction of the petitioner, as aforesaid, is in respect of a very serious and heinous offence, which does not compare with any of the cited offences. We may also observe that outcomes based on different fact situations do not constitute binding precedents, since, it is the principle of law/ ratio of the case, which constitutes a binding precedent and not the outcome of the case. If in a case like the present also, this Court were to interfere and convert the dismissal into discharge, there would hardly be any other case which would justify the punishment of dismissal from service. The object of punishing delinquent employee is not merely to inflict the punishment on the employee, but also to discipline others in the organization. We are, therefore, not inclined to interfere with the impugned order.

12. Dismissed.

VIPIN SANGHI, J.

SANJEEV NARULA, J.

MARCH 03, 2020

N.Khanna