

2024:PHHC:130551-DB



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-25011-2021
Reserved on: 16.09.2024
Pronounced on: 30.09.2024

Jagjot SinghPetitioner

Versus

Union of India and OthersRespondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Argued by: Mr. S.M.Tripathi, Advocate
for the petitioner.

Mr. Parvesh K. Saini, Advocate
for the respondent – UOI.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner herein prays for setting aside the order dated 06.08.2015 (Annexure P-6), as passed by the learned Armed Forces Tribunal concerned, whereby his claim for grant of service pension, besides his espousal qua the setting aside of his conviction and punishment awarded to him, rather has been declined.

Factual Background

2. The petitioner was enrolled in the Army on 23rd Feburary, 1970 and was recruited in Sikh Regiment. He deserted from the unit line without permission on 10th June, 1984. The petitioner was tried by the GCM under Section 37(b) of the Army Act for committing an offence on 10th June, 1984 and subsequently he was apprehended at

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Shatru Bridge (Allahabad) on 11th June, 1984. The GCM after holding trial, on 27.09.1985 awarded the hereinafter extracted sentences to the petitioner.

- i. Reduced to the ranks.
- ii. Rigorous imprisonment of 8 years in civil prison.
- iii. Dismissal from service.

The said verdict of GCM remained unchallenged.

3. The petitioner earlier approached this Court by way of filing CWP No. 11944 of 2010. The said writ petition was disposed of vide order dated 09.07.2010 with a direction to respondents to consider the claim of the petitioner, if so permissible under the rules, in accordance with law.

4. Thereafter, vide letter dated 12.12.2011 (Annexure -P4A), the respondents rejected the claim of the petitioner.

5. Feeling aggrieved from the afore dis-affirmative order, the petitioner filed O.A., before the learned Armed Forces Tribunal concerned, praying for grant of service pension and other consequential benefits w.e.f. 27.09.1985 and with a further prayer that the conviction and punishment awarded to him, be set aside for non compliance vis-a-vis the mandatory and obligatory provisions of Army Act/Rules. The said application became dismissed by the Tribunal concerned, vide order dated 06.08.2015.

6. Feeling dis-satisfied from the order passed by the learned Armed Forces Tribunal concerned, the petitioner has filed thereagainst the instant writ petition before this Court.

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7. For the reasons to be assigned hereinafter, this Court finds merit in the writ petition and is constrained to allow it.

8. Though the verdict passed by the GCM after holding trial, on 27/09/1985, whereby the petitioner was awarded the (supra) sentences, rather remained unchallenged by him. However, though therebys, an estoppel is created against the petitioner against his challenging the said verdict. Nonetheless, the effect of no challenge being made to the awarding of punishment (supra) by GCM, on 27.09.1985, does not estop the petitioner from contending, that the ordained procedure, for his becoming convicted and dismissed from service, rather became derogated or became departed from.

9. Since it was but imperative upon the respondents concerned, to discharge the onus of proving that there was no gross departure from the established procedure relating to the errant conduct of the present petitioner becoming inquired into. However, *prima facie*, it appears that there is no such material on record, suggestive that there was complete adherence to the procedure ordained by law, in the conducting of the proceedings against him and/or in the consequent thereto imposition of punishment (supra) upon the present petitioner.

10. Resultantly the omission (supra) does not yet disqualify the petitioner from claiming that the proceedings as became drawn against him rather were vitiated, but on account of lack of adherence being made to the relevant statutory norms and/or therebys there being breach to the principles of *audi alteram partem*.

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11. Therefore, though the said exercise was required to be undertaken by the learned Armed Forces Tribunal concerned. However, the said has not been undertaken by it, though it was imperatively required to be undertaken, for ultimately a well conclusion becoming made, that the impugned order was based upon complete adherence being made, thus to the statutory norms and/or to the principles of natural justice.

12. In sequel, this Court after allowing the writ petition, deems it fit and appropriate to quash the impugned order and to remand the *lis* to the learned Armed Forces Tribunal concerned, to after eliciting all the relevant records relating to the proceedings drawn against the petitioner, to fathom therefroms, whether the statutory norms become adhered to, besides whether the rules of natural justice become followed.

13. If ultimately, the said procedures become evidently departed, thereupon, the learned Armed Forces Tribunal concerned, may consider passing such orders, as deemed fit in accordance with law. The decision, on remand by the learned Tribunal concerned, shall positively be made within a period of six months from today.

14. Disposed of alongwith all pending application(s), if any.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

30.09.2024
kavneet singh

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No