

**ARMED FORCES TRIBUNAL CHANDIGARH REGIONAL BENCH AT
CHANDIMANDIR**

T.A No.230 of 2010
(arising out of CWP No. 17640 of 2007)

Jaswinder Singh	...	Applicant
Vs		
Union of India and others	...	Respondents

**ORDER
06 .05.2010**

Coram : Justice N. P. Gupta, Judicial Member.

Lt Gen N S Brar (Retd), Administrative Member.

For the Petitioner(s) : Mr. Rajiv Kataria, Advocate

For the respondent(s) : Ms Geeta Singhwal, Sr.Panel Counsel

Lt Gen N.S.Brar

This petition has been transferred from the Hon'ble Punjab and Haryana High Court and is taken up as an application under Section 14 and 15 of the Armed Forces Tribunal Act 2007.

The case of the petitioner, Ex Havaldar Jaswinder Singh, is that on 21.08.04 while posted at Nasirabad he had found Lance Naik Dete Shankar Baburao and Sapper Tepugade Deepak Pandurang of his unit having sexual intercourse. When confronted L Nk Dete Shankar Baburao admitted to what they were doing but stated to the petitioner that if the matter was reported he would consume poison. On 24.08.04 having moved with the advance party to Nachna, the petitioner once again found the two individuals engaged in the unnatural act. He strongly reprimanded both of

them. On 09.09.04 there was an altercation between the same two individuals and L Nk Dete Shankar Baburao told Subedar Babu Ram that he had consumed poison. L Nk Dete Shankar Baburao falsely claimed that the petitioner had forced himself upon him and indulged in an unnatural act. Consequent to preliminary inquiries the petitioner was charge sheeted for 'Disgraceful conduct of an unnatural kind and an act prejudicial to good order and military discipline' under Section 46 and 63 of the Army Act. He was tried by a summary court martial (SCM) on 16.10.04 and awarded dismissal from service. An appeal filed on 04.12.04 under Section 164 of the Army Act was partly allowed by the GOC in C Southern Command who remitted the sentence of dismissal to that of discharge on 16.06.05. On 18.07.05 GOC in C Western Command recalled the earlier order of 16.06.05. The petitioner's request for pension was declined in light of the restored sentence of the SCM. The petitioner seeks setting aside of the findings and sentence of the SCM being vague, unreasoned and arbitrary. He also claims finality of the order remitting his sentence and the subsequent recall and restoration of the award of the SCM as illegal.

Heard the learned counsels for the parties and perused the records. Written statement on behalf of the respondents has been filed.

Devoid of and putting aside the merits, conduct and findings of the SCM, the learned counsel for the petitioner argued that the petitioner had filed a petition under Section 164 of the Army Act against the sentence of the SCM. The sentence was mitigated and the award of dismissal was reduced to one of discharge by the GOC in C Southern Command who was empowered to do so under Section 179 of the Army Act. This was final and

could not be recalled and the original sentence of the SCM restored by the Chief of the Army Staff. He therefore claimed that the petitioner be deemed to have been discharged from the date of award of the SCM.

Learned counsel for the respondents stated that the petition was addressed to the COAS and therefore should have been disposed of by him. It was incorrect for any intermediate authority to pass any orders on the petition.

Army Act 179 reads as under

179. Pardon and remission.- When any person subject to this Act has been convicted by a court-martial of any offence, the Central Government or (the Chief of the Army Staff) or, in the case of a sentence, which he could have confirmed or which did not require confirmation, the officer commanding the army, army corps, division or independent brigade in which such person at the time of conviction was serving or the prescribed officer may –

- (a) either with or without conditions which the person sentenced accepts, pardon the person or remit the whole or any part of the punishment awarded; or
- (b) mitigate the punishment awarded; or
- (c) commute such punishment for any less punishment or punishments mentioned in this Act :

Provided that a sentence of transportation shall not be commuted for a sentence of imprisonment for a term exceeding the term of transportation awarded by the court; or

- (d) either with or without conditions which the person sentenced accepts, release the person on parole.

It is quite clear that the authorities mentioned in Section 179 of the Army Act are competent to remit the sentence of any court martial. In

the light of the above we allow this petition to the extent that the order of GOC in C Southern Command remitting the sentence from dismissal to discharge is valid. Recalling of this order and all subsequent orders being illegal are quashed. The petitioner is deemed to have been discharged from service from the date of the conclusion of the SCM. Naturally he is entitled to all consequential benefits due on being discharged from service.

There shall be no order as to costs.

[Justice N. P. Gupta]

[Lt Gen N S Brar (Retd)]

May 06, 2010
RS