

RANDHIR SINGH

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v.

UNION OF INDIA & ORS.

(Criminal Appeal No.210 of 2017)

JULY 08, 2019

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**[DR DHANANJAYA Y CHANDRACHUD AND
INDIRA BANERJEE, JJ.]**

Army Act, 1950 – s.120 – Appellant enrolled in the 43 Armed Brigade and at the material time was posted as Acting Lance Dafadar – Allegation that in August, 2007 while on duty for cleaning the service area in the morning, the appellant entered the residence of a colleague and while his spouse was washing her son, placed his hands on her shoulder – Summary Court Martial (SCM)– Appellant dismissed from service – Armed Forces Tribunal (AFT) while holding that the charge was duly established, concluded that the punishment of dismissal being disproportionate be modified to discharge – Plea of appellant that convening of an SCM is by way of an exception where immediate action is necessary– Held: In the exercise of its appellate jurisdiction, Supreme Court would be circumspect in reassessing the evidence when the AFT duly applied its mind to the findings of fact – Power to order an SCM is a drastic power which must be exercised in a situation where it is absolutely imperative that immediate action is necessary, as enunciated by three judge Bench of Supreme Court in Union of India and Others v. Vishav Priya Singh [2016] 5 SCR 473 while interpreting s.120 – Sub-s.(2) of s.120 is prefaced by the words “when there is no grave reason for immediate action”– In the present case, though the incident took place on 11 August 2007, SCM took place on 22 May 2008– Convening of an SCM was contrary to law – Nearly 12 years have elapsed since the date of the incident – Appellant had nearly twelve years’ service when he was dismissed from service – Ends of justice would meet if the discharge of the appellant takes effect from the date on which he completes fifteen years of service so as to render him eligible for the grant of pension – Order of AFT modified – Arrears of pension be paid over to the appellant – Constitution of India – Art.142 – Practice & Procedure.

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A Appellant was enrolled in 1996 in the 43 Armed Brigade and at the material time was posted as Acting Lance Dafadar. It was alleged that in August 2007 while on duty for cleaning the service area in the morning, the appellant entered the residence of a colleague and while his spouse was washing her son, placed his hands on her shoulder. Summary Court Martial (SCM) was
B conducted and the appellant was dismissed from the service. Armed Forces Tribunal held that the charge was duly established, but concluded that the punishment of dismissal was disproportionate and the same be modified to order of discharge. Hence, the present appeal.

C Allowing the appeal, the Court

HELD: 1.1 In the exercise of its appellate jurisdiction, Supreme Court would be circumspect in reassessing the evidence when the Armed Forces Tribunal has duly applied its mind to the findings of fact. The submission of the appellant has also been
D duly assessed that the appellant had lodged a complaint in the past against the spouse of the victim for pilferage of petrol. It is not necessary for Supreme Court to enter upon the findings of fact since there is an independent ground on which the submissions of the appellant would be worthy of acceptance.
E Section 120 of the Army Act, 1950 was interpreted in the decision in Ex-Havildar Ratan Singh and subsequently in Vishav Priya Singh. In a review petition filed by the Union of India in Vishav Priya Singh, the earlier judgment was clarified on 16 February 2017. The clarification indicates that the requirement of recording reasons for convening a Summary Court Martial shall apply from
F 5 July 2016. However, the fundamental principle of law which has been enunciated is that the power to order an SCM is a drastic power which must be exercised in a situation where it is absolutely imperative that immediate action is necessary. Sub-section (2) of Section 120 is prefaced by the words “when there is no grave
G reason for immediate action”. In the present case, though the incident took place on 11 August 2007, the SCM took place on 22 May 2008. The convening of an SCM was contrary to law. Ordinarily liberty would have been granted to the respondents to pursue proceedings against the appellant in accordance with law. However, nearly twelve years have elapsed since the date of
H the incident. The appellant had nearly twelve years’ service when

he was dismissed from service. In this view of the matter, we are of the view that the ends of justice would be met if in the exercise of our jurisdiction under Article 142 of the Constitution of India, we order and direct that the discharge of the appellant shall take effect from the date on which he completes fifteen years of service so as to render him eligible for the grant of pension. The learned counsel appearing on behalf of the appellant has submitted that this would meet the ends of justice. We accordingly allow the appeal and modify the impugned order of the Armed Forces Tribunal in the above terms. The appellant shall stand discharged from service on the completion of the minimum pensionable service with the result that he would be entitled to the disbursal of his pensionary benefits in accordance with law. The arrears of pension shall be paid over to the appellant within a period of three months from the date of receipt of a certified copy of this order.[Paras 8, 10-15] [929-D-E; 930-C-D; 931-C, E-H; 932-A-D]

Union of India and Others v. Vishav Priya Singh
(2016) 8 SCC 641 : [2016] 5 SCR 473 – relied on.

Ex Havildar Ratan Singh v. Union of India & Ors .
AIR 1992 SC 415 : [1991] 2 Suppl. SCR 370
– referred to.

Case Law Reference

[1991] 2 Suppl. SCR 370	referred to	Para 10
[2016] 5 SCR 473	relied on	Para 10

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 210 of 2017

From the Judgment and Orders dated 07.12.2015 and 08.07.2016 of the Armed Forces Tribunal, Chandigarh Regional Bench at Chandimandir in O.A. No. 154 of 2011 and in M.A. Nos. 1906 & 1907 of 2016 in O.A. No. 154 of 2011 respectively

Naresh Ghai, Naresh Kumar, Advs. for the Appellant.

Sanjay Jain, ASG, Anish Kumar Gupta, VVV Pattabhiram, Arvind Kumar Sharma, Chandra Shekhar Suman, Puneet Sheoran, Ms. Rimi Basu, Advs. for the Respondents.

A The Judgment of the Court was delivered by
DR DHANANJAYA Y CHANDRACHUD, J.

1 Admit.

2. This appeal arises from a judgment of the Armed Forces
B Tribunal at its Chandigarh Regional Bench dated 7 December 2015.
The appellant was enrolled on 29 October 1996 in the 43 Armed Brigade
and was at the material time posted as Acting Lance Dafadar¹. It is
alleged that on 11 August 2007 while on duty for cleaning the service
area in the morning, the appellant entered the residence of a colleague
and while his spouse was washing her son, placed his hands on her
C shoulder.

3 A Summary Court Martial² took place on 22 May 2008 during
the course of which evidence was recorded. The appellant was held
guilty and was dismissed from service. Among those who deposed during
the SCM were the victim and her husband.

D 4 The Armed Forces Tribunal, while holding that the charge had
been duly established, came to the conclusion that the punishment of
dismissal was disproportionate and should be modified to an order of
discharge.

5 Mr. Naresh Ghai, learned counsel appearing on behalf of the
E appellant has submitted that during the course of the evidence it emerged
that in the month of June or July 2007, the appellant had reported the
spouse of the victim for unauthorisedly removing petrol from a Maruti
Gypsy for which the latter was awarded a punishment. This was
specifically brought out in the course of the examination of the spouse of
F the victim in the SCM. Hence, it was urged that the entire incident is
fabricated and is only a reprisal for the appellant having reported the
misconduct on the part of the spouse of the victim.

6 On the question of law, it was urged that having due regard to
the provisions of Section 120 of the Army Act 1950 and the decision of
G this Court in **Ex Havildar Ratan Singh vs Union of India & Ors**³
and in **Union of India and Others vs Vishav Priya Singh**⁴, the

¹ “ALD”

² “SCM”

³ AIR 1992 SC 415

⁴ (2016) 8 SCC 641

convening of an SCM is by way of an exception where immediate action is necessary. Hence, it was urged on behalf of the appellant that there was no reason or justification to hold an SCM in May 2008 in respect of an incident that took place in August 2007. A

7 In response, Mr Sanjay Jain, the learned Additional Solicitor General submitted that on the merits of the charge of misconduct, both the victim and her spouse deposed in the course of the inquiry by the SCM. Hence, it was submitted that there is no occasion for this Court to review the pure findings of fact which have been affirmed by the Armed Forces Tribunal. Moreover, it was urged that the judgment in **Vishav Priya Singh** (supra) has since been clarified in the course of a review so as to be applicable on and from 5 July 2016, whereas the incident in question dates back to August 2007. B C

8 In the exercise of its appellate jurisdiction, this Court would be circumspect in reassessing the evidence when the Armed Forces Tribunal has duly applied its mind to the findings of fact. We have also duly assessed the submission of the appellant that in the present case, the appellant had lodged a complaint in the past against the spouse of the victim for pilferage of petrol. Be that as it may, it is not necessary for this Court to enter upon the findings of fact since there is an independent ground on which the submissions of the appellant would be worthy of acceptance. D E

9 Section 120 of the Army Act, 1950 provides as follows:

“120. Powers of summary courts- martial.

(1) Subject to the provisions of sub- section (2), a summary court- martial may try any offence punishable under this Act. F

(2) When there is no grave reason for immediate action and reference can without detriment to discipline be made to the officer empowered to convene a district court- martial or on active service a summary general court- martial for the trial of the alleged offender, an officer holding a summary court- martial shall not try without such reference any offence punishable under any of the sections 34, 37 and 69, or any offence against the officer holding the court. G

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A (3) A summary court- martial may try any person subject to this Act and under the command of the officer holding the court, except an officer, junior commissioned officer or warrant officer.

(4) A summary court- martial may pass any sentence which may be passed under this Act, except a sentence of death or transportation, or of imprisonment for a term exceeding the limit specified in sub- section (5).

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(5) The limit referred to in sub- section (4) shall be one year if the officer holding the summary court- martial is of the rank of lieutenant colonel and upwards, and three months if such officer is below that rank.”

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10. These provisions were interpreted in the decision in **Ex-Havildar Ratan Singh** (supra). Subsequently in **Vishav Priya Singh** (supra), a three judge Bench of this Court, while interpreting Section 120, has observed thus:

D “19. Section 116 of the Act empowers the CO of any Corps, Department and Detachment of the regular Army to hold an SCM and specifically states that he alone shall constitute the Court. Sub-Section (2) then prescribes that the proceedings shall, however, be attended through-out by two other persons specified therein. However, such persons are not to be sworn or affirmed.

E Unlike Sections 113, 115 and 114, where composition of the Court-Martial concerned is prescribed to consist of at least three officers, it is the CO alone who constitutes the Court under Section 116 in respect of SCM. Further, under Rules 39 and 40 of the Rules, CO of the accused, or of the Corps to which the accused belongs is specifically disqualified for serving on a GCM or DCM and composition of a GCM ought to compose of officers of different corps or departments. However, no such restriction applies to SCMs and in fact the CO himself must constitute the Court. The Act has thus given drastic power to one single individual, namely, the CO who alone is to constitute the Court.

F No doubt, this power comes with restrictions insofar as the power to award sentence is concerned in terms of sub-Sections (4) &(5) of Section 120. However even with such restrictions the power is quite drastic. The reason for conferment of such power is obvious that in order to maintain discipline among the soldiers and

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units, the CO must have certain special powers, for it is the discipline which to a great extent binds the unit and makes it a cohesive force. A

20. The High Court of Delhi was therefore completely correct in observing that such power must be exercised rarely and when it is absolutely imperative that immediate action is called for. The satisfaction in that behalf must either be articulated in writing or be available on record, specially when the matter can be considered on merits by a tribunal, with the coming into force of the Armed Forces Tribunals Act, 2007.” B

11. In a review petition⁵ filed by the Union of India, the earlier judgment was clarified on 16 February 2017 in the following terms: C

“..... the requirement, as stipulated in aforesaid paragraphs 20 and 33, of recording reasons for convening Summary Court Martial, shall apply on and with effect from the date of the Judgment namely from 05.07.2016. Except for this clarification, we are satisfied, that no case for review of the judgment dated 05.07.2016 has been made out.” D

12. The above clarification indicates that the requirement of recording reasons for convening a Summary Court Martial shall apply from 5 July 2016. However, the fundamental principle of law which has been enunciated is that the power to order an SCM is a drastic power which must be exercised in a situation where it is absolutely imperative that immediate action is necessary. Sub-section (2) of Section 120 is prefaced by the words “when there is no grave reason for immediate action”. In the present case, though the incident took place on 11 August 2007, the SCM took place on 22 May 2008. The convening of an SCM was contrary to law. E F

13. Having come to this conclusion, we would have ordinarily granted liberty to the respondents to pursue proceedings against the appellant in accordance with law. However, nearly twelve years have elapsed since the date of the incident. During the course of his submissions, the learned Additional Solicitor General submitted before the Court that at this point of time, it may be difficult to find witnesses to conclude the inquiry and hence, no useful purpose would be served and it would not be practicable to hold the inquiry. G

⁵Review Petition No 3927 of 2016

A 14. The appellant had nearly twelve years' service when he was dismissed from service. In this view of the matter, we are of the view that the ends of justice would be met if in the exercise of our jurisdiction under Article 142 of the Constitution of India, we order and direct that the discharge of the appellant shall take effect from the date on which he completes fifteen years of service so as to render him eligible for the grant of pension. The learned counsel appearing on behalf of the appellant has submitted that this would meet the ends of justice.

B 15. We accordingly allow the appeal and modify the impugned order of the Armed Forces Tribunal in the above terms. The appellant shall stand discharged from service on the completion of the minimum pensionable service with the result that he would be entitled to the disbursal of his pensionary benefits in accordance with law. The arrears of pension shall be paid over to the appellant within a period of three months from the date of receipt of a certified copy of this order. No costs.

C 16. Pending application(s), if any, shall stand disposed of.

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