

Supreme Court of India

S.K. Jain vs Union Of India on 10 October, 2025

ALOK ARADHE, J.

1. This appeal is directed against impugned judgement dated 01.06.2012 and order dated 03.09.2012 passed in O.A. No. 445 of 2010 and R.A. No. 34 of 2012 by Armed Forces Tribunal (hereinafter referred to as “Tribunal”). The Tribunal by impugned judgment dated 01.06.2012 substituted conviction of appellant in respect of charge for alleged possession of ammunition and held him guilty of an act prejudicial to good order and discipline. The Tribunal convicted the appellant under [Section 63](#) of the Army Act, 1950 (hereinafter referred to as the “1950 Act”). The Tribunal by the impugned order dated 03.09.2012, dismissed the petition for review filed by the appellant. 16:25:19 IST Reason:

2. In order to appreciate the challenge of the appellant to the impugned judgment and order, relevant facts need mention, which are set out as under.

(I) FACTS

(a) The Charges

(c) Third Charge : Under [Section 63](#) of the Army Act “an act prejudicial to good order and military discipline for being in possession of cash amounting to Rs.28,000/- without any satisfactory explanation”. In that he, while performing his duties as Commandant, Northern Command Vehicle Depot, a sum of Rs.28,000/- was found in the possession of the applicant on 27.09.2008 without any satisfactory explanation.”

(b) Order of GCM

7. The appellant thereupon filed an original application in the O.A. No.157 of 2009 before the Tribunal. The Tribunal by an order dated 03.05.2010 directed Union of India to decide the post-confirmation petition filed by the appellant within a period of 45 days. The Tribunal granted the liberty to the appellant to approach the Tribunal in case the aforesaid petition was not decided. The Union of India failed to comply with the direction issued vide order dated 03.05.2010 passed by the Tribunal in O.A. No 157 of 2009.

8. The appellant thereafter filed another original application on 26.07.2010 namely, O.A. No.445 of 2010 before the Tribunal. The appellant in the said O.A. challenged the order dated 26.03.2009 passed by GCM, as well order dated 04.06.2009 by which his pre-confirmation petition was dismissed. The appellant sought reinstatement. During the pendency of the aforesaid original application, the Union of India by an order dated 09.11.2010 dismissed the post-confirmation petition filed by the appellant.

(c) The Judgment of Tribunal

10. The Union of India sought leave to appeal. The said application filed by the Union of India was dismissed on 09.07.2012 by the Tribunal. The appellant filed an application seeking review of the order dated 01.06.2012 passed by the Tribunal, in so far as the Tribunal upheld the substitution of conviction under [Section 63](#) of the 1950 Act in relation to charge No.2 and in so far as it imposed the punishment of compulsory retirement on the appellant. The Tribunal by an order dated 03.09.2012 dismissed the review application. The Union of India filed Civil Appeal (D) No. 9035 of 2013. The aforesaid appeal was dismissed on 06.05.2013.

However, the question of law was kept open.

11. The respondents implemented the judgment dated 01.06.2012 of the Tribunal, on 15.05.2013. The appellant on 22.06.2013 accepted the retiral benefits under protest and without prejudice to his rights.

12. The appellant filed a writ petition namely, W.P.(C) No.4064 of 2014 before the Delhi High Court against the judgment dated 01.06.2012 passed by the Tribunal, in so far as it relates to substitution of conviction under [Section 63](#) of the 1950 Act in relation to charge No. 2 and imposition of punishment of compulsory retirement of the appellant. The High Court by an order dated 20.03.2015, disposed of the writ petition with the liberty to take recourse of the remedy referred to by this Court in para 39 of its decision in [Union of India & Ors. v. Major General Shri Kant Sharma & Anr.1](#). The appellant filed a Review Petition seeking review of the order dated 20.03.2015. The said Review Petition was dismissed on 03.07.2015 by the High Court.

13. The appellant thereupon filed a miscellaneous application namely, M.A. No. 25 of 2016 before the Tribunal, along with an application for condonation of delay. In the aforesaid miscellaneous application leave to appeal was sought under [Section 31](#) of the 2007 Act. The Tribunal by an order dated 19.02.2016 granted the appellant leave to appeal on the (2015) 6 SCC 773 ground that case raised substantial questions of law of general public importance. The appellant thereupon has filed this appeal against judgment dated 01.06.2012 and order dated 03.09.2012 passed by the Tribunal. In the aforesaid factual background, this appeal arises for our consideration.

14. Learned counsel for the appellant submitted that even though the Tribunal has found that appellant is not guilty under [Section 3](#) and [Section 25 \(1-B\) of the Arms Act, 1959](#) i.e. he was not found in possession of the ammunition as described under the [Arms Act](#), yet it erroneously held that appellant is guilty of an act prejudicial to good order and military discipline under Section 63 of the 1950 Act. It is further submitted on the basis of material on record that the appellant could not be held guilty of any conduct contrary to military discipline and good order. It is contended that Tribunal grossly erred in imposing the punishment of compulsory retirement on the appellant which even otherwise is grossly disproportionate to the alleged misconduct. It is also urged that the Tribunal erred in dismissing the application seeking review of the judgment dated 01.06.2012. It is submitted that the impugned orders dated 01.06.2012 and 03.09.2012

in so far it upheld the substitution of conviction under Section 63 of the 1950 Act in relation to charge No.2 and imposition of punishment of compulsory retirement on the appellant, is liable to be quashed and set aside. However, it is pointed out that appellant has already attained the age of superannuation.