* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 10th OCTOBER, 2025

IN THE MATTER OF:

\+ **W.P.(C) 840/2017**

SUB KRISHAN KUMAR .....Petitioner

Through: Mr. N. N. Chauhan, Advocate with Petitioner in person

versus

UNION OF INDIA & ORS .....Respondents

Through: Mr Vijay Joshi, CGSC
Major Anish Muralidhar, Army

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD
HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT

SUBRAMONIUM PRASAD, J.

1. The instant writ petition has been filed by the Petitioner with the following prayers:-

> *"(a) ISSUE A WRIT OF CERTIORARI OR ANY OTHER WRIT, Direction or Order quashing and setting aside the*
> *(b) impugned Punishment order dated 17.08.2010 (Annexure P- 1) "Severe Reprimand" awarded to petitioner on basis of Charge-Sheet dated 9.08.2010 (Annexure P-2) being illegal, arbitrary, afterthought, unjust, ineffective and not maintainable in law and facts and against the principles of natural justice as stated in the preceding paras, in the interest of justice;*
>
> *(c)ISSUE A WRIT OF CERTIORARI OR ANY OTHER WRIT or Order by quashing and setting aside the*

Discharge Order No.1523/T-4/24/CA-2(MP) dated 27.01.2012 (Annexure P-3) and Movement Order No.23602/Est dated 30.09.2012 (Annexure P-4) issued by 231 Field Workshop Coy EME being wrong, illegal, not in order, without jurisdiction, based on illegal and false punishment and without sanctioning of discharge by the competent authority under Army Rule;

(d) ISSUE A WRIT OF CERTIORARI OR ANY OTHER WRIT or order(s) for quashing and setting aside the discharge part-II Order No. 0/0274/02/2012 dated 1.10.2012 published by 231 Fd. Wksp. Coy. (617 EME Bn.) C/o 99 APO (Annexure P-5) and Discharge Book S. No. 01/2016 dated 13.02.2016 (Annexure P-6) issued to the petitioner on 18.02.2016 being false, wrong, incomplete, illegal, retrospective, not in order, without sanctioning of discharge by the competent authority under Army Rules and invalid;

(e) ISSUE A WRIT OF MANDAMUS OR ANY OTHER WRIT or Order (s) or direction directing the respondents to reinstate the petitioner in services with promotion to higher rank of Subedar Major as per the seniority of his batch mates and Honorary Captain and with all other consequential benefits till the actual age of superannuation i.e. 30.09.2017 with immediate effect;

(f) ISSUE A WRIT OF MANDAMUS OR ANY OTHER WRIT or Order (s) or direction directing the Respondents to pay interest at the rate of 24 % per annum on the overdue arrears of petitioner;

(g) ISSUEA WRIT OFMANDAMUS OR ANY OTHER WRIT or order(s) directing the respondents to pay compensation to the petitioner on account of non payment of salary or any other monetary relief to the petitioner for last 04 years, and causing humiliation, harassment, mental agony, non-clear of status, loss of

job, disability due to injury of Rt. Leg, lack of social services, lack of livelihood, unemployment, lack of standard of living including food, housing, clothes and false stigma on character.

(h) PASS such further order(s) as this Hon'ble Court may deems fit and proper in the facts and circumstances of the present case. ”

2. Shorn of unnecessary details, the facts of the case reveal that the Petitioner got enrolled with the EME Corps as a Craftsman in the year 1984. It is stated that the Petitioner was promoted to the rank of Naib Subedar on 01.03.2002 and further to the rank of Subedar on 1.11.2006.

3. Proceedings were initiated against the Petitioner alleging indiscipline. The case against the Petitioner is that *vide* Vehicle Depot Workshop, EME, Delhi Cantt. Movement Order No.23602/Est-1 dated 09.04.2009, he was ordered to proceed on attachment to HQ Technical Group EME, Delhi Cantt. but he did not do so. For the said act of disobeying a lawful command, the Petitioner was awarded the punishment of ‘severe reprimand’ under Section 41(2) of the Army Act, 1950.

4. Material on record indicates that the Petitioner was marched up to the Commanding Officer on a Tentative Chargesheet dated 04.09.2009 for three charges under Section 63 of the Army Act and two charges under Section 34(a) of the Army Act.

5. It is stated that since the Petitioner was attached to the HQ Technical Group EME, Delhi Cantt., the Commanding Officer of the Petitioner carried out the hearing of charge proceeding under Rule 22 of the Army Rules,1954 and the Tentative Chargesheet was read over to the Petitioner.

6. It is stated that the Petitioner did not accept the charges stating that all

the charges are false and baseless and he wants to fight the case in a civil court.

7. Material on record further indicates that prosecution witnesses were heard along with the evidence produced by them and the proceedings were carried out in the presence of two independent witnesses. It is stated that the Petitioner refused to make a statement or call any witnesses in his defence.

8. Material on record also indicates that the Commanding Officer of the Petitioner directed Lt. Col. A K Singh to record the Summary of Evidence in respect of the Petitioner in the presence of independent witnesses.

9. It is stated that a total of eight prosecution witnesses recorded their statements in the presence of the independent witnesses however, the Petitioner herein refused to sign the same. It is stated that PW-1 to PW-7 were cross-examined by the Petitioner herein.

10. It is stated that the statement of the Petitioner was duly recorded after cautioning under Rule 23(3) of the Army Rules and the statements of DW-1 to DW-8 were recorded. It is stated that the Petitioner again refused to sign the same in the presence of independent witnesses.

11. It is stated that a copy of the Summary of Evidence along with the Chargesheet under Section 41(2) of the Army Act were supplied to the Petitioner on 09.08.2010, which was duly received by the Petitioner in the presence of two independent witnesses. In the chargesheet dated 09.08.2010, the Petitioner was charged with only the offence of disobeying a lawful command given by his superior officer under Section 41(2) of Army Act. The other four charges as mentioned in the Tentative Chargesheet were dropped.

12. It is stated that the Summary Trial proceedings were conducted on

17.08.2010 as per the procedure given under Army Rule 26 and the Petitioner pleaded 'not guilty' to the charge. It is also stated that the Petitioner submitted a list of defence witnesses out of which only witnesses whose evidence was relevant to the charge were heard. It is stated that the Petitioner was found 'guilty' of the offence under Section 41(2) and was awarded the punishment of 'severe reprimand' on 17.08.2010.

13. Subsequently, the Petitioner was promoted to the rank of Subedar Major on 28.09.2010 and was granted extension of service *vide* Order No. 01/1346/2010. However, since the Petitioner had been awarded the punishment of 'severe reprimand' under Section 41(2) of the Army Act, he was debarred from getting extension of service from 2010 to 2013 as per Annexure-I to Appendix 'A' of the Army HQ Letter No. B/33098/AG/PS-2(c) dated 21.09.1998, which debars an individual from getting extension of service for a period of three years for offences under Sections 41(1) and 41(2) of the Army Act. Consequently, the Petitioner was ordered to be discharged on completion of his terms of engagement w.e.f. 30.09.2012 (AN) *vide* EME Records Letter No. 1523/T-4/24/CA-2(MP) dated 27.06.2012 due to drop in discipline criteria and the extension of service granted to the Petitioner became inoperative.

14. When the Petitioner returned to his Unit on 15.09.2012 (AN) from EME Depot Battalion for refusing to sign his advance pension claim documents, he was discharged locally from service on 30.09.2012 (AN) *vide* EME Records (CA-2) Signal No. A-4168/T-4/CA-2(MP) dated 18.09.2012.

15. The Petitioner has therefore approached this Court challenging the order of punishment dated 17.08.2010, whereby the punishment of 'severe reprimand' was imposed on the Petitioner. The Petitioner has also

challenged the order of discharge dated 27.01.2012, even though he had been granted extension of service on 28.09.2010. It is also stated that the order of discharge has not been validly sanctioned by the Competent Authority empowered to discharge the Petitioner as per Rule 13(3) of the Army Rules.

16. Learned Counsel for the Petitioner submits as under:-

i. The disciplinary proceedings which have been conducted against the Petitioner are contrary to law.

ii. The entire recording of summary evidence was carried out behind his back without giving him proper opportunity.

iii. The Movement Order was never given to the Petitioner and therefore there is no question of the Petitioner having disobeyed an order, which was not served on him at all. In any event, after having granted extension of service on 28.09.2010, the Petitioner could not have been discharged prematurely.

iv. On 09.04.2009, the Petitioner was not allowed to enter the Vehicle Depot Workshop, EME, Delhi Cantt., and he was assaulted in which the Petitioner received severe injuries and the leg of the Petitioner got fractured, for which purpose even though complaints have been filed, but no Staff Court of Inquiry was conducted against the assailants and since high officials were involved, even a Review Medical Board was not conducted.

17. *Per contra,* learned CGSC appearing for the Respondents submits as under:-

i. The Petitioner who was serving as a Subedar, is guilty of disobeying the orders, inasmuch as he disobeyed the Movement Order

No.23602/Est-1 dated 29.04.2009.

ii. The Petitioner did not report to the HQ Technical Group EME, Delhi Cantt., as ordered and after conducting a proper enquiry, the Petitioner was awarded the punishment of 'severe reprimand'.

iii. When the Petitioner's services were extended, the authority extending the services was not made aware of the order of 'severe reprimand' against the Petitioner.

iv. On the retirement of the Petitioner, all pension documents were prepared and he was advised to sign them but the Petitioner refused to sign those documents and therefore the Respondents are not responsible for the loss of pensionary benefits to the Petitioner.

18. Heard the learned Counsel for the parties and perused the material on record.

19. In Syed Yakoob v. K.S. Radhakrishnan & Ors., **1963 SCC OnLine SC 24,** the Apex Court has laid down the limits of the High Court's jurisdiction to issue a writ of *certiorari* under Article 226. The relevant paragraphs are reproduced below:

> "***7.*** *The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an*

opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v.Syed Ahmad Ishaque (1955) 1 SCR 1104 Nagandra Nath Bora v. Commissioner of Hills Division and Appeals Assam (1958) SCR 1240 and Kaushalya Devi v. Bachittar Singh AIR 1960 SC 1168.

8. *It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; hut it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and*

scope of the legal provision which is alleged to have been misconstrued or contravened."

20. Further restricting the interference of High Courts in a properly convened court martial that has carried out proceedings in accordance with the procedure prescribed, the Apex Court in Union of India and Ors. v. Major A. Hussain, **1998 (1) SCC 357**, has observed as follows:

> "**22.** *We find the proceedings of the General Court-Martial to be quite immaculate where trial was fair and every possible opportunity was afforded to the respondent to defend his case. Rather it would appear that the respondent made all efforts to delay the proceedings of the court-martial. Thrice he sought the intervention of the High Court. Withdrawal of the defence counsel in the midst of the proceedings was perhaps also a part of his plan to delay the proceedings and to make that a ground if the respondent was ultimately convicted and sentenced. Services of qualified defending officer were made available to the respondent to defend his case, but he had rejected their services without valid reasons. He was repeatedly asked to give the names of the defending officers of his choice but he declined to do so. The court-martial had been conducted in accordance with the Act and Rules and it is difficult to find any fault in the proceedings. The Division Bench said that the learned Single Judge minutely examined the record of the court-martial proceedings and after that came to the conclusion that the respondent was denied reasonable opportunity to defend himself. We think this was a fundamental mistake committed by the High Court. It was not necessary for the High Court to minutely examine the record of the General Court-Martial as if it was sitting in appeal. We find that on merit, the High Court has not said that there was no case against the respondent to hold him guilty of the offence charged.*

23. *Though court-martial proceedings are subject to judicial review by the High Court under Article 226 of the Constitution, the court-martial is not subject to the superintendence of the High Court under Article 227 of the Constitution. If a court-martial has been properly convened and there is no challenge to its composition and the proceedings are in accordance with the procedure prescribed, the High Court or for that matter any court must stay its hands. Proceedings of a court-martial are not to be compared with the proceedings in a criminal court under the Code of Criminal Procedure where adjournments have become a matter of routine though that is also against the provisions of law. It has been rightly said that court-martial remains to a significant degree, a specialized part of overall mechanism by which the military discipline is preserved. It is for the special need for the armed forces that a person subject to Army Act is tried by court-martial for an act which is an offence under the Act. Court-martial discharges judicial function and to a great extent is a court where provisions of Evidence Act are applicable. A court-martial has also the same responsibility as any court to protect the rights of the accused charged before it and to follow the procedural safeguards. If one looks at the provisions of law relating to court-martial in the Army Act, the Army Rules, Defence Service Regulations and other Administrative Instructions of the Army, it is manifestly clear that the procedure prescribed is perhaps equally fair if not more than a criminal trial provides to the accused. When there is sufficient evidence to sustain conviction, it is unnecessary to examine if pre-trial investigation was adequate or not. Requirement of proper and adequate investigation is not jurisdictional and any violation thereof does not invalidate the court-martial unless it is shown that the accused has been prejudiced or a mandatory provision has been violated. One may usefully refer to Rule 149*

quoted above. The High Court should not allow the challenge to the validity of conviction and sentence of the accused when evidence is sufficient, court-martial has jurisdiction over the subject-matter and has followed the prescribed procedure and is within its powers to award punishment."

21. The Apex Court in B.S. Hari v. Union of India & Ors., **(2023) 13 SCC 779** reiterated that the High Court, while exercising jurisdiction under Article 226 of the Constitution, is empowered to examine whether the findings recorded are based on any rational evidence or whether the proceedings stand vitiated by perversity, arbitrariness, or procedural unfairness. The constitutional power of judicial review is not fettered by technicalities and may be invoked where injustice is apparent on the face of the record.

22. At this juncture, it is apposite to refer to Section 41 of the Army Act under which the Punishment Order has been issued to the Petitioner, which reads as under:-

*"**41. Disobedience to superior officer.***

(1) Any person subject to this Act who disobeys in such manner as to show a wilful defiance of authority any lawful command given personally by his superior officer in the execution of his office whether the same is given orally, or in writing or by signal or otherwise, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

(2) Any person subject to this Act who disobeys any lawful command given by his superior officer shall, on conviction by court-martial.

> *if he commits such offence when on active service, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and*
>
> *if he commits such offence when not on active service, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned."*

23. Material on record indicates that there was a Movement Order No.23602/Est-1 dated 09.04.2009, which is annexed as Annexure P-4 to the present writ petition. Since the Petitioner disobeyed the Movement Order, disciplinary proceedings were initiated against him.

24. The Petitioner was posted at Vehicle Depot Workshop EME, Delhi Cantt. on 05.04.2004. He was residing with his family in the government accommodation. His wife passed away on 23.06.2004, for which a case for medical negligence was filed by the Petitioner against the doctors at Army Hospital (Research & Referral), Delhi Cantt. Since the demise of his wife, the Petitioner has been maintaining an anti-organization behaviour.

25. The summary evidence indicates that eight prosecution witnesses and eight defence witnesses were produced.

26. PW-4, Naib Subedar, S N Jha, has deposed that he was performing the duties of Head Clerk and he prepared the Movement Order as per the directions of the Commanding Officer and HQ Delhi area.

27. PW-5, Havildar Jagdish Singh, has deposed that the duty NCO told him that the Petitioner refused to take the Movement Order.

28. PW-6, Havildar Devender Singh, in no uncertain terms stated that he was Company Champion on 09.04.2009 and the Head Clerk told him to give

the Movement Order to the Petitioner. He deposed that he gave the Movement Order to the Petitioner. The Petitioner saw it and returned the Movement Order after reading the same. PW-7 has been duly cross-examined by the Petitioner.

29. PW-7, Lt. Col. Vinod Nair, who was the Commanding Officer, has deposed about various incidents of misbehaviour of the Petitioner and stated that whenever the Petitioner was asked to move out on permanent posting, he would come out with allegations against the Officers/individuals/unit and claim he was not inclined to go out because of the government accommodation. He has categorically stated that the Petitioner was issued a Movement Order on 09.04.2009, which the Petitioner refused to accept and did not report to HQ Technical Group EME, Delhi Cantt. as directed.

30. There are eight defence witnesses who were also examine and therefore, this Court is of the opinion that the contention raised by the Petitioner that the proper enquiry was not conducted in accordance with the Army Rules, is not correct. The statements of all the witnesses were recorded and their signatures duly taken however, the Petitioner himself refused to sign them. The Petitioner has put questions to various witnesses which have also been duly recorded. The fact that video recordings were been taken, is not a ground which will vitiate the entire proceedings.

31. Material on record indicates that after the demise of his wife, the Petitioner had been continuously defying orders. Looking at the misconduct, the punishment of ‘severe reprimand’ cannot be said to be disproportionate. As such, the misconduct against the Petitioner has been validly proved. It is well settled that in the proceedings such as the Summary Trial conducted in the present petition, the scope of interference by the High Courts in exercise

of powers under Article 226 of the Constitution of India, is restricted only to lawfulness of the decision making process.

32. In view of the above, this Court is not inclined to interfere with the Impugned Order. However, it is well settled that pension is not a bounty or a charity, but are deferred wages. It is for the Petitioner to complete his pension formalities and the Respondent is directed to once again give the pension papers to the Petitioner within a period of six weeks from today and after completion of the necessary formalities by the Petitioner, the Petitioner be given pension from the date of his superannuation, within a period of four months from today.

33. With these observations, the writ petition is disposed of along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

VIMAL KUMAR YADAV, J

OCTOBER 10, 2025
hsk/AP