



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

% *Date of decision: May 8, 2024*

+ W.P.(C) 6555/2024, & CM APPLs. 27309/2024, 27310/2024,
27311/2024 & 27312/2024

(56) MURARI LAL SHARMA Petitioner
Through: Brig. Arun Srivastava, Adv.

versus

UNION OF INDIA AND ORS. Respondents
Through: Dr. Vijendra Mahndiyan, CGSC with
Mr. Arnav Mittal (Govt. Pleader),
Mr. Apurva Singh Mahndiyan and
Ms. Divyakshi Singh, Advs.
Ms. Archana Gaur, SPC with
Ms. Ridhima Gaur, Adv. with
Major Partho Katyanan.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE GIRISH KATHPALIA

V. KAMESWAR RAO, J. (ORAL)

CM APPL. 27309/2024,

Exemption allowed subject to all just exceptions.

Application stands disposed of.

CM APPL. 27312/2024

This application has been filed by the petitioner with the following prayers:

“It is therefore, most respectfully prayed that this Court may be pleased to:



- (a) Grant permission to petitioner for assistance of Next Friend under Order 32 CPC Rules 2 & 3; and/or
- (d) Pass any other order(s) as this Hon'ble Court may deem fit and proper in the interest of justice.”

For the reasons stated in the application, the same is allowed as disposed of.

W.P.(C) 6555/2024 & CM APPL. 27310/2024, CM APPL. 27311/2024

1. This petition has been filed by the petitioner through his next friend namely Lt. Col. (Retd) Sarvadaman Singh Oberoi with the following prayers:-

“I. Issue a writ/order/direction in the nature of mandamus or any other appropriate writ / order or direction that respondents make available for inspection the (Photostat) document dated 12.08.1992 referred to by HQ 6 (I) Armd Bde letter No. 1106/9/10 Gds/A dated 24.09.1992 relied upon to court martial the Petitioner on 31.10.1992 [ANNEXURE P-22/8] and/or;

II. Issue a writ/order/direction in the nature of mandamus or any other appropriate writ / order or direction that respondents make available for inspection the original document dated 10.08.1992 referred to in 10 GUARDS MECH letter No. CF/13678553A dated 28.08.1992 relied upon to court martial the Petitioner on 31.10.1992 [ANNEXURE P-22/4] and/or;

III. Issue a writ/order/direction in the nature of mandamus or any other appropriate writ / order or direction to set aside the proceedings, finding and sentence of the Summary Court Martial held against the petitioner on 31.10.1992 at Suratgarh (Rajasthan) on the grounds mentioned hereinabove, and/or

IV. Issue a writ/order/direction in the nature of mandamus or any other appropriate writ / order or direction to set



aside the Vice Chief of Army Staff Minute No. C/04429/DV-3 dated 14.06.1993 forwarded vide Army Headquarters letter No. C/04429/DV-3 dated 06.07.1993 on the grounds mentioned hereinabove, and/or

V. Issue a writ/order/direction in the nature of mandamus or any other appropriate writ / order or direction to set aside the Central Government ORDER No. C/08883/DV-3(B)/ 10066/D(AG) dated 30.01.2017 passed under S. 165 of the Army Act, 1950 on the grounds mentioned hereinabove, and/or

*VI. Issue a writ/order/direction in the nature of mandamus or any other appropriate writ / order or direction u/s 151 CPC that respondents shall restore the petitioner by restitution as envisaged in *Bansidhar Sharma v. State of Rajasthan*, (2019) 19 SCC 701 at SCC pp.707-709 paras 15-20 [ANNEXURE P-24/1]*

VII. Issue a writ/order/direction in the nature of mandamus or any other appropriate writ / order or direction under Article 51 that respondents shall restore the petitioner by restitution as envisaged in the International Instrument dated 16.12.1966 [ANNEXURE P-24/2]

VIII. Issue a writ/order/direction in the nature of mandamus or any other appropriate writ / order or direction under Article 51 that respondents shall restore the petitioner by restitution as envisaged in the International Instrument dated 16.12.2005 [ANNEXURE P-24/3]

IX. Issue a writ/order/direction in the nature of mandamus or any other appropriate writ / order or direction that respondents shall grant all consequential service /retirement benefits including rank, pay, pension, Ex-serviceman benefits etc, and/or

X. Issue a writ/order/direction in the nature of mandamus or any other appropriate writ / order or direction that respondents shall award cost to the applicant in the sum of INR 30,00,000 (Thirty lacs) for 31 years of untold suffering undergone by the Petitioner's family which has



been ruined by this illegal act of the Commanding Officer without any sanction whatsoever from the higher Commanders and/or

XI. Issue a writ/order/direction in the nature of mandamus or any other appropriate writ / order or direction that respondents shall take detailed corrective steps to humanize the entire court martial procedure in all the three Services, starting from inquiry to taking of evidence, engaging counsel and the court martial itself, which needs to be live streamed just as the other courts in India have now implemented and/or

XII. Issue a writ/order/direction in the nature of mandamus or any other appropriate writ / order or direction that Respondent No. 1 shall set up a “Court Martial Fund” with a corpus of INR 100,00,00,000 (One hundred crores) so as to humanize the entire court martial procedure in all the three Services, starting from inquiry to taking of evidence, engaging counsel and the court martial itself, which needs to be live streamed and/or

XIII. Pass any other order as this Hon'ble Court may deem fit and proper in the interest of justice.”

2. The facts as noted from the petition are that the petitioner was enrolled in the Army on March 07, 1979 as a Sepoy. During his service, proceedings were initiated against him through Summary Court Martial (‘SCM’, for short) which held him guilty for the offence under Section 63 of the Army Act, 1950 (‘Act of 1950’, for short), leading to his dismissal along with the imposition of three months of rigorous imprisonment.

3. It appears that subsequently, the order of the dismissal was modified to that of discharge vide order dated June 14, 1993. It also appears that the petitioner filed a Civil Writ Petition 1319/94 titled as ***Murari Lal Sharma v. Union of India and Ors.***, before the High Court



of Rajasthan, Jaipur Bench. The same was dismissed on February 22, 1995, on the ground of lack of jurisdiction. It is also noted that another writ petition was filed by the petitioner being **CWP 75/1996** titled as **Ex. Lance Nayak Murari Lal Sharma v. Union of India & Ors.**, before this Court. The same was withdrawn by the petitioner with liberty to resort to an alternative remedy under Regulation 113 A of the Pension Regulation for the Army, 1961. Thereafter, a contempt petition being 298 of 2009 was also filed by the petitioner in **CWP 75/1996**. Suffice to state, the said contempt petition was also withdrawn by the petitioner vide order dated March 24, 2009 with a liberty to resort to an alternate remedy.

4. Thereafter, the petitioner also approached the Government of India on November 13, 2011, by filing a Special Appeal under Section 165 of the Act of 1950. The same was replied to on March 12, 2014, to the effect that Special Appeal under Section 165 of the Act of 1950, is not available to the petitioner and therefore, his appeal could not be processed. The same resulted in filing of O.A. 203/2014, before the Armed Force Tribunal, Principal Bench, New Delhi ('AFT', for short). The AFT vide its judgment/order dated October 30, 2015, directed the respondents to dispose of the Special Appeal of the petitioner under Section 165 of the Act of 1950. As a result, the Central Government decided the Special Appeal of the petitioner and passed an order dated January 30, 2017, dismissing the same. It is the submission of Mr. Oberoi that the same was dismissed by the respondents without even examining the original records.



5. Though, certain other litigations were initiated by the petitioner, suffice to state that O.A. (Appeal) 3330/2023 filed by him under Section 15 of the Armed Forces Tribunal Act, 2007 ('Act of 2007) was also dismissed by the AFT vide order dated November 3, 2023, on the ground of being hopelessly barred by delay and laches.

6. The Tribunal was of the view that the aforesaid O.A. has been filed on the cause of action which arose on October 31, 1992, when the petitioner was imposed with the penalty of dismissal from service as well as, three months of rigorous imprisonment and order passed by the respondents on June 14, 1993, whereby the punishment of dismissal from service was modified to that of discharge.

7. The plea of Mr. Oberoi is primarily the same as was advanced before the AFT by the then counsel of petitioner to the effect that as the petitioner was suffering from wrongful conviction/the fraud having been played and the same is a conscious wrong, the O.A. was within the realm of limitation.

8. Suffice to state that after noting the aforesaid plea of the petitioner as well as the respondents to the effect that as the petitioner has been discharged from service before completing the qualifying period of service i.e., 15 years and the fact that he is a non-pensioner, in accordance with Regulation 595 of the Defence Service Regulations for Army 1987, as the records of the petitioner are beyond 25 years and the same have been destroyed, the AFT dismissed the OA being filed beyond the period of limitation prescribed under Section 22 of the Act of 2007.



9. We agree with the aforesaid conclusion of the AFT. More so, when the earlier round of litigations initiated by the petitioner, specifically, under Section 14 of the Act of 2007 being OA 945/ 2018 and RA 4/ 2023, have been dismissed on merit, the appeal under Section 15 of the Act of 2007, would also be hit by the principles of *res judicata*. Be that as it may, even it is assumed that the petitioner was within his right to file the appeal under Section 15 of the Act of 2007, the cause of action having arisen in the year 1992-1993, it is too late in the day for us to entertain the petition after 6952, 3683 and 165 days delay (as noted from the application being CM NO. 27310/2024, seeking condonation of delay). Moreover, there is no prayer challenging the order of the AFT dated November 3, 2023.

10. Therefore, the present petition along with pending applications being without any merit, is dismissed. No Costs.

V. KAMESWAR RAO, J

GIRISH KATHPALIA, J

MAY 08, 2024/ds