

HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)

MONDAY, THE THIRTIETH DAY OF OCTOBER
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE SMT. JUSTICE P.MADHAVI DEVI

WRIT PETITION NO: 21746 OF 2023

Between:

Subedar Radha Krishna Tiwary (JC- 561608 N), S/o Shri Sidheswar Tiwary,
48 years, 16 BIHAR (A- Company), The Bihar Regiment, Mehdipatnam
Garrison, Hyderabad- 500028

...PETITIONER

AND

1. Union Of India, Through The Secretary, Ministry Of Defense DHQ PO, New Delhi- 110011
2. The Chief Of The Army Staff, Sena Bhavan New Delhi- 110001
3. The Record Officer, The Bihar Regiment Danapur Cantt Patna- 801503
4. The Commanding Officer, 16 Bihar The Bihar Regiment Mehdipatnam Garrison, Hyderabad - 500028
5. Colonel Ravikant, HQ UM and G Sub- Area, Pin- 908810 C/o 56 APO

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased a) To issue a writ of certiorari or a writ in the nature of certiorari or any other writ, direction or order, calling upon the Respondents to transmit to this Hon'ble Court entire record concerning the Summary Disposal of Charge stated to be conducted in the case of the Petitioner on 26 May 2022 b) To issue a writ of certiorari or a writ in the nature of certiorari or any other writ, direction or order, quashing the impugned Summary Disposal proceedings and the punishment of Severe Reprimand stated to have been awarded to the Petitioner on 26 May 2022, being illegal, unjust and arbitrary c) To issue a Writ of Certiorari or any other writ, direction or order, calling upon the Respondents to produce before this Hon'ble Court, the relevant Policy based on which Petitioners promotion to the rank of Subedar Major which was already released has been cancelled and whereby the award of punishment of Severe Reprimand as envisaged under the Army Act,

1950 has been linked to grant of promotion, consequent extension of service, grant of pay and allowances, pension, etc., of persons subject to Army Act, 1950, and quash the same being illegal, arbitrary, unjust and violative of the framework of punishments and award thereof, as envisaged under the Army Act, 1950 d) To issue a Writ of Mandamus or a writ in the nature of Mandamus or any other writ, direction or order, consequent upon granting of the reliefs mentioned in (b) and/or (c) above, directing the Respondents to grant all resultant benefits including grant of promotion to the rank of Subedar Major from original effective date of 01 July 2022 with all consequential service benefits including payment of arrears of pay and allowances applicable to the said rank together with interest @ 12(PERCENT) p. a. e) Without prejudice to the prayers made in (a) to (d) above, to remit or mitigate the punishment of Severe Reprimand to a lesser punishment having no effect on promotion of the petitioner, release and pensionary benefits f) To grant any such other relief, direction, or order or writ in favour of the petitioner deemed just and proper in the light of the facts and circumstances of the instant case and g) To award costs in favour of the Petitioner.

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay release of the petitioner from service due on 31st October, 2023 in the present rank of Subedar, pending disposal of the above main writ petition.

Counsel for the Petitioner: SRI CH.MALLIKARJUNA RAO
Counsel for the Respondents: SRI GADI PRAVEEN KUMAR, Dy. SOLICITOR
GENERAL OF INDIA

The Court made the following: ORDER

THE HONOURABLE SMT JUSTICE P.MADHAVI DEVI

W.P.No.21746 of 2023

ORDER:

In this writ petition, the petitioner is seeking a writ of certiorari to call for the entire record concerning the Summary disposal of the charge stated to be conducted in the case of the petitioner on 26.05.2022 and

- (i) to quash the impugned summary disposal proceedings and the punishment of Severe Reprimand stated to have been awarded to the petitioner on 26.05.2022; and also
- (ii) to set aside the order dated 31.05.2022 cancelling the promotion of the petitioner to the post of Subedar Major, as being illegal, arbitrary, unjust and violative of the framework of punishments; and also
- (iii) to issue a writ of mandamus directing the respondents to grant the reliefs benefit including grant of promotion to the rank of Subedar Major from 01.07.2022 with all consequential benefits including promotion, payment of arrears, pay

and allowances at the rate of interest 12% p.a.;

and also

(iv) to set aside the proceedings dated August, 2022 proposing to retire the petitioner w.e.f. 31.10.2023; and to pass such other order or order in the interest of justice.

2. Brief facts leading to the filing of the present writ petition are that the petitioner was working as a Senior Junior Commissioned Officer i.e., Junior Commissioned Officer in the Unit of 16 Bihar ('A'-Company), Mehdipatnam Garrison, Hyderabad, which is the Unit of Indian Army functioning under the Ministry of Defence, Union of India. It is submitted that the petitioner was enrolled in the Indian Army in the year 1995 and in November, 2021, petitioner's name was cleared for promotion to the rank of Subedar Major after undergoing the relevant and prescribed tests for the same in the DPC proceedings. It is submitted that an unknown person has allegedly given a complaint against the Commanding Officer in the name of the petitioner and on the basis of the same, the Commanding Officer has enquired the petitioner as to why he had complained about him to the higher authorities. The petitioner submits that

he denied the same and that he was not aware of any such complaints. Thereafter on 14.02.2022 when the petitioner was returning from the interview conducted by the Commanding Officer after his successful completion of the promotion course, the petitioner was stopped and the mobile phone of the petitioner was seized by the security section personnel while proceeding from the office to the residence of the petitioner, stating that the same contained some social media applications, which were prohibited in the Indian Army. From 16.02.2022 to 01.03.2022, a Court of Inquiry was conducted into the said incident and after a detailed Court of Inquiry, it was observed that the petitioner's mobile phone contained 'Zoom' application and 'Share-Chat' application, which were not being used/logged in and further that an application of 'Messenger' was being used by the petitioner. On 02nd & 03rd May of 2022, the Commanding Officer of the petitioner called the petitioner to his office and informed him that the petitioner would be faced with Court Martial Proceedings and to avoid such circumstances, he asked the petitioner to submit his unwillingness for promotion due to the violation of social media restriction to which the petitioner

refused and subsequently, he was required to do the same by his Company Commander also, which he refused.

3. Learned counsel for the petitioner submitted that on 09.05.2022 the petitioner was again called to the office of the Commanding Officer and the petitioner was questioned about the social media violation and the petitioner once again submitted that he was unaware that 'Messenger' application was prohibited and requested the Commanding Officer not to deny him the promotion due to such a minor lapse on his part, but the Commanding Officer informed the petitioner that he will be called for a final charge trial and the petitioner was subsequently handed over a tentative charge sheet which, according to the petitioner contained vague and incorrect statements. Thereafter, in the first week of June 2022, the petitioner was verbally informed that his promotion to the rank of Subedar Major has been withheld. Since the petitioner was not served with any order, on 20.07.2022 the petitioner requested the Commanding Officer to inform him as to what was the punishment awarded to him. It is submitted that on 18.07.2022, the petitioner received a letter from the Lokpal of India which revealed that another pseudonymous complaint in

the name of the petitioner was received against his Commanding officer. The petitioner, however, denied it and requested the Unit authorities to take up the issue with the Lokpal of India to find out about the identity of the person writing such complaints in the name of the petitioner. It is submitted that during the last week of August, 2022, while the petitioner was on leave, the petitioner visited his Regimental Center Headquarters at Danapur, Bihar, where the petitioner learnt about the punishment awarded to him of 'Severe Reprimand' on 26.05.2022, because of which, his promotion has been cancelled. Challenging the same, the present writ petition has been filed.

4. Learned counsel for the petitioner submitted that Army Act, 1950 provided for both Summary proceedings as well as Court Martial proceedings for a mis-conduct and that the option is often left to the authorities though it is stated that it is the petitioner who has to choose the Summary proceedings or Court Martial proceedings. It is submitted that though a procedure has been prescribed under the Rules for conduct of Summary proceedings, the respondents have not followed the same in this case and did not pass the punishment order in the

presence of the petitioner as required under Rule 23 of Army Rules nor was it communicated to the petitioner. It is further submitted that 'Severe Reprimand' is a punishment which can be imposed both under the Summary proceedings as well as the Court Martial proceedings and therefore, it can be imposed only after following the prescribed procedure under the law. It is submitted that there is no recording of any evidence by any witnesses either on behalf of the respondents or the petitioner and the petitioner was pressurized to sign the statement allegedly forming the part of a Summary of evidence, without any date thereon and that the petitioner has categorically dated and signed pre-typed statement on 23.11.2022. It is submitted that there is no provision under which a Statement of Evidence is recorded after awarding of punishment on 26.05.2022. He submitted that thereafter, the petitioner got issued a legal notice to the respondents seeking redressal of his grievance against the illegal award of the punishment of 'Severe Reprimand' and seeking restoration of his promotion. It is submitted that thereafter, the petitioner has made a number of representations but with no result and apprehending that he is due for release from services of Junior Commissioned Officer w.e.f. 31.10.2023

on account of cancellation of his promotion as Subedar Major and on account of his completing 28 years of service as per policy, he has filed this writ petition on 10.08.2023.

5. Learned counsel for the petitioner submitted that the punishment of 'Severe Reprimand' though appears to be a minor punishment, it has resulted to be severely excessive in the case of the petitioner when compared to the alleged misconduct of using 'Messenger' App on his smart phone and has a disastrous effect on his service and the rest of his life. It is submitted that though 'Severe Reprimand' is considered as a minor punishment in service, it has cascading effect on his service as he has not only lost his promotion as Subedar Major and an extension of service by four years, but he is also being made to retire immediately after completion of 28 years of service thereby losing not only further service of 4 years but also its consequential effect on his pension. Therefore, he submitted that the impugned order of punishment and also cancellation of promotion be set aside and the respondents be directed to give promotion to the petitioner as Subedar Major from the date of his entitlement. He further submitted that a total of five personnel were found to be having prohibited social media

applications in their mobile phones during the surprise check conducted on 14.02.2022 and except for the petitioner, all the other personnel were given only a 'Warning'/'black ink entry' which have negligible effects on further career prospects, promotion, etc. He, therefore, prayed for the relief claimed in the writ petition.

6. As regards the objections of the respondent that the petitioner has not availed the alternative remedies under the Army Rules, the learned counsel for the petitioner submitted that the petitioner has brought to the notice of the higher authorities about the illegalities committed in the Summary proceedings vide his legal notice dated 27.12.2022, but no action was taken thereon except verbally informing him in their week of May 2023 to submit an application against the punishment of 'Severe Reprimand' and the petitioner immediately submitted a non-statutory complaint on 19.05.2023 and thereafter again on 28.06.2023 and on 17.07.2023 requested for relevant documents, but all the documents requested by the petitioner were not supplied to him. He submitted due to the haste exhibited by the authorities in awarding him with the punishment and in denying him the

vital documents, he has no hopes of getting any justice from his organization and therefore he has approached this Court for justice.

7. Learned Standing counsel for the respondents, however, opposed the above contentions of the petitioner and submitted that writ petition itself is not maintainable as under Rule 26 of the Army Rules, there is a provision of appeal, review and revision before the officers of Indian Army itself and the petitioner without availing such remedies, approached this Court. He has further drawn the attention of this Court to the procedure followed by the respondents in the Summary proceedings to submit that the respondents have not violated any of the procedures or principles of natural justice. He submitted that at every stage of the procedure, the petitioner was present and therefore, he was well aware of the punishment awarded to him. Further, he submitted that the Army is a very disciplined force and on every day during parade, the soldiers are being made aware of the restrictions imposed on them and their movements and the petitioner being the Subedar was aware of all the restrictions and has intentionally violated the same and therefore, the minor punishment of 'Severe

Reprimand' has been imposed on him and the same should not be interfered with. He has drawn the attention of this Court to the various documents filed along with the counter affidavit filed on 12.10.2023 to support his argument.

8. Having regard to the rival contentions and the material on record, this Court finds that the first and foremost issue that has to be decided is whether this writ petition is maintainable against the orders of the respondents. Though there is an Armed Forces Tribunal formed to look into the service matters of the army personnel, the petitioner being a Junior Commissioned Officer and the writ petition is filed against the punishment awarded to him, this Court is of the opinion that this writ petition is maintainable before this Court. Learned counsel for the petitioner, on the earlier occasion, has referred to various orders of the Armed Forces Tribunal wherein they have refused to entertain the applications of the officers such as the petitioner herein and the respondents have not been able to controvert the same by any decision to the contrary. In view of the above, this Court is of the opinion that this writ petition is maintainable.

9. As regards the alternative remedy being available to the petitioner, this Court finds that the petitioner has approached this Court because according to him, the Summary proceedings have not been conducted properly or as per the provisions of the Army Rules and therefore, there is a violation of the statutory provisions and also the principles of natural justice and therefore, this Court is satisfied that in spite of there being an alternative remedy under Rule 26, this Court can entertain the writ petition at this stage.

10. The next issue to be considered is whether the disciplinary proceedings against the petitioner were conducted in accordance with the Army Rules. The Rule 23 of Army Rules provides for Summary proceedings and as per the documents filed by the learned standing counsel along with the counter affidavit, the petitioner was put on notice about the charges against him and a statement was also recorded from him that he does not wish to proceed under the Court Martial procedure. Though the tentative charge sheet and the recorded proceedings before the Commanding Officer (under Army Rule-22), dated 09.05.2022 are signed by the petitioner and also the letter dated 24.05.2022 stating that he does not want any defence witness

for Summary tried from his side and the State of Evidence dated 25.05.2022, the impugned order or the proceeding dated 26.05.2022 is not signed by him. The Form-I is dated 25.05.2022 and in the said proceedings, the petitioner allegedly states that he does not desire to make any statement and also does not elect to be tried by Court Martial. This Court finds that the said proceedings are only signed by the Colonel i.e., the Commanding Officer and it is not counter signed by the petitioner, whereas the earlier proceedings dated 09.05.2022, 25.05.2022 are signed by the petitioner as well as the Commanding Officer. Therefore, though it appears that the petitioner was aware of the proceedings against him and also that the procedure prescribed under the Summary proceedings has been followed by the respondents till 25.05.2023, the final order of punishment does not seem to have been passed in his presence nor was it communicated to the petitioner. An order would be deemed to have been passed not only on the Commanding Officer putting his signature to the same, but also only when it is communicated to the concerned employee to enable him to pursue his legal remedies. There is no evidence, what-so-ever produced before this Court to demonstrate that

the punishment order has been communicated to the petitioner. In view of the same, this Court is of the opinion that the petitioner's contention that he has not received the punishment order has to be accepted. The cancellation of the promotion order consequent to the punishment order is also not in accordance with law. Before cancellation of an order of promotion, a notice ought to have been given to the petitioner. The communication dated August, 2022 to the petitioner that he would be discharged from service w.e.f. 31.10.2023 on completion of the required number of years as a Subedar, is also consequently not in accordance with Rules. However, as pointed out by the learned standing counsel for the respondents, there is a provision under Rule 23 of Army Rules to appeal to the higher authorities, provided the punishment order is in accordance with the prescribed procedure.

11. In view of the same, this Court deems it fit and proper to set aside the punishment of 'Severe Reprimand' dated 26.05.2023 and also the consequential order cancelling the promotion order. The respondents shall continue the petitioner's services as Subedar and are at liberty to follow the prescribed procedure under the Army Rules if they intend to proceed

against the petitioner and another officer of the rank of Commanding Officer of the petitioner shall conduct the proceedings and shall take a decision uninfluenced by the earlier observations of the authorities. The respondents shall also take into consideration the observations of this Court that the 'Severe Reprimand' issued to the petitioner though may appear to be innocuous, has a drastic effect on his service and therefore, it is clearly excessive and the respondents shall take a lenient view in this matter as was done in the case of other similarly placed persons and also shall take a decision on consequential promotion order.

12. Accordingly, this writ petition is allowed. There shall be no order as to costs.

13. Miscellaneous petitions, if any, pending in this writ petition, shall stand closed.

SD/-P.PADMANABHA REDDY
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

- To
1. The Secretary, Union Of India, Ministry Of Defense DHQ PO, New Delhi- 110011
 2. The Chief Of The Army Staff, Sena Bhavan New Delhi- 110001
 3. The Record Officer, The Bihar Regiment Danapur Cantt Patna- 801503
 4. The Commanding Officer, 16 Bihar The Bihar Regiment Mehdipatnam Garrison, Hyderabad - 500028
 5. Colonel Ravikant, HQ UM and G Sub- Area, Pin- 908810 C/o 56 APO
 6. One CC to SRI CH.MALLIKARJUNA RAO, Advocate [OPUC]
 7. One CC to SRI GADI PRAVEEN KUMAR, Dy. SOLICITOR GENERAL OF INDIA [OPUC]
 8. Two CD Copies

PSK.

V. S.

CC TODAY

HIGH COURT

DATED:30/10/2023

ORDER

WP.No.21746 of 2023



ALLOWING THE WRIT PETITION
WITHOUT COSTS.

(10) VW
30/10/23