2025 INSC 1215

**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**
**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 628 OF 2016**

**S.K. JAIN** **... APPELLANT**

**Versus**

**UNION OF INDIA & ANR.** **... RESPONDENTS**

**J U D G M E N T**

**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.

**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

**3.** The appellant was commissioned into Army Ordnance Corps of Indian Army. He was, on 27.08.2006, promoted as Colonel (Selection Grade) and was posted as Commandant of Northern Command Vehicle Depot, (NCVD) Udhampur. The appellant was handling motorcycles (Royal Enfield) intake in the command after the inspection test. One Shri Sumesh Magotra, a contractor from M/s Vivek Motors, Udhampur, (complainant) met the appellant on 17.09.2008 in NCVD. The appellant demanded Rs.100/- per motorcycle for passing the same in the inspection test. The complainant after four days met Commanding Officer of Northern Command, Counter Intelligence Unit, and explained the difficulty faced by him. Thereafter, the complainant again met the aforesaid Commanding Officer between 20th to 23rd September, 2008 wherein he again narrated the harassment faced by him. The complaint disclosed to the Commanding Officer that he was under pressure to make a payment of Rs.10,000/- in cash to the appellant and was due to make payment on 27.09.2008. The complainant thereupon made photocopies of twenty currency notes of Rs.100/- denomination each which were included in hundred numbers of Rs.100/- denomination currency notes.

**4.** The complainant on 27.09.2008 between 10.00 AM to 10.15 AM went to office of NCVD where he handed over an envelope containing currency notes of Rs.10,000/-. A search was carried out by Board of Officers and during the search, the appellant was given an offer to frisk and search the Board of Officers team, which he declined. In the search, a white envelope containing hundred numbers of Rs.100/- denomination notes was found by Havildar D.K. Singh, which was kept under the computer table in the office of the appellant. The Board of Officers also found a sum of Rs.28,000/- kept in the briefcase of the appellant which was also kept in the office. The Board of Officers further found ammunition from the possession of the appellant. An investigation was carried out wherein a *prima facie* case was found against the appellant. He was thereafter arrested.

(a) **<u>The Charges</u>**

**5.** The appellant was tried by a General Court Martial (GCM). The proceeding before the GCM commenced on 18.12.2008 and concluded on 26.03.2009. The appellant was tried for the following three charges :-

> "(a) <u>First Charge</u> : Under Army Act Section 69, "Committing a civil offence, that is to say criminal misconduct contrary to Section 5(2) of Prevention of Corruption Act. 2006 (J&K) (Act No. XIII of 2006 Samvat). In that he, while performing the duties of Commandant. Northern Command Vehicle Depot, on 27.09.2008 the applicant abused his position as a Public Servant and obtained for himself a sum of Rs.10,000/- from Shri Sumesh Magotra.

(b) Second Charge : Under Army Act Section 69, "Committing a civil offence, that is to say being in possession of ammunition in contravention of Section 3 of the Arms Act 1959, contrary to Section 25(1-B) of the Arms Act, 1959. In that he, on 27.09.2008, the applicant was found in possession of the following ammunition without any authority.

| Description of Ammunition | Lot No. | Qty |
|---|---|---|
| 7.62 mm SLR | 8096 OFV | 04 rounds |
| | 8092 OFV | 01 rounds |
| 9 mm | ZZ 16 KF | 03 rounds |

(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**

**6.** The GCM by an order dated 26.03.2009 *inter alia* found the appellant guilty of charge No. 1 (corruption) and charge No. 2 (ammunition). However, the appellant was acquitted in respect of charge No. 3 (cash). The appellant was convicted and sentenced with a penalty of dismissal from service. The pre-confirmation petition filed by the appellant was rejected on 04.06.2009 by the Lieutenant General, General Officer Commanding-in-Chief Northern Command. The appellant filed a post-confirmation petition before the Union of India.

The same was not decided within the statutory period of 30 days.

**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) <u>The Judgment of Tribunal</u>**

**9.** The Tribunal vide judgment dated 01.06.2012, *inter alia,* held that there was no evidence to prove the demand or acceptance of bribe. Therefore, charge No.1 (corruption) was held to be not proved. The Tribunal further held that

conviction of the appellant under the Arms Act is not sustainable as the evidence did not support possession of ammunition without license. The Tribunal, however, invoked Section 15 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as "2007 Act") and Rule 62 (4) of the Army Rules (hereinafter referred to as the "Rules") and substituted the finding on the same charge and held the appellant guilty under Section 63 of the 1950 Act i.e. an act prejudicial to good order and discipline. The Tribunal on charge No. 3 (cash) affirmed the findings of GCM and upheld the acquittal of the appellant. The Tribunal modified the punishment of dismissal to that of compulsory retirement with all pensionary and retiral benefits. The Tribunal further directed that order be complied within 120 days failing which an amount of 12% will be levied on the sum due, till the date of payment. Accordingly, the original application preferred by the appellant was partly allowed.

**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 2007Act. The Tribunal by an order dated19.02.2016 granted the appellant leave to appeal on the

[1] (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.

**(II) <u>SUBMISSIONS OF APPELLANT</u>**

**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.

## (III) SUBMISSION OF RESPONDENTS

**15.** On the other hand, learned counsel for respondents submitted that Tribunal has not committed any error in applying Rule 62(4) of the Rules. It is contended that appellant was found in possession of ammunition unauthorisedly therefore he has rightly been convicted. It is further contended that substitution of finding is legally permissible under Section 15 of the 2007 Act, as the Tribunal is vested with the same power as GCM. It is also submitted that Tribunal has imposed the punishment of compulsory retirement which is proportionate to the gravity of offence committed by the appellant. It is therefore, prayed that appeal be dismissed.

## (IV) CONSIDERATION

**16.** We have considered the rival submissions made on behalf of the parties and perused the record as well as the written submission filed on behalf of the parties.

## (V) RELEVANT STATUTORY PROVISIONS

**17.** At this stage, it is apposite to take note of the relevant statutory provisions. The 1950 Act is an Act to consolidate and amend the law relating to government of the regular Army. Section 3(ii) defines the expression “civil offence” to

mean an offence which is triable by a criminal court. Chapter IV of the 1950 Act deals with conditions of service, whereas Chapter V deals with service privileges, Chapter VI of the 1950 Act deals with offences. Section 59 of the 1950 Act prescribes the offences relating to Court Martial, Section 63 deals with good order and discipline whereas Section 69 of the 1950 Act deals with civil offences. Section 70 of the 1950 Act provides that civil offences are not triable by Court Martial. Sections 63 and 69 and 70 of the 1950 Act, which are relevant for the purposes of the controversy involved in the instant appeal, are extracted below for the facility of reference :-

> "63.**Violation of good order and discipline.---**Any person subject to this Act who is guilty of any act or omission which, though not specified in this Act, is prejudicial to good order and military discipline shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years of such less punishment as is in this Act mentioned.
>
> XXX XXX
>
> 69. **Civil offences**. --Subject to the provisions of section 70, any person subject to this Act who at any place in or beyond India commits any civil offence, shall be deemed to be guilty of an offence against this Act and, if charged therewith under this section, shall be liable to be tried by a court-martial and, on conviction, be punishable as follows, that is to say,--
>
> (a) if the offence is one which would be punishable under any law in force

in India with death or with transportation, he shall be liable to suffer any punishment, other than whipping, assigned for the offence, by the aforesaid law and such less punishment as is in this Act mentioned; and

(b) in any other case, he shall be liable to suffer any punishment, other than whipping, assigned for the offence by the law in force in India, or imprisonment for a term which may extend to seven years, or such less punishment as is in this Act mentioned.

70.**Civil offences not triable by court-martial,--** A person subject to this Act who commits an offence of murder against a person not subject to military, naval or air force law, or of culpable homicide not amounting to murder against such a person or of rape in relation to such a person, shall not be deemed to be guilty of an offence against this Act and shall not be tried by a court-martial, unless he commits any of the said offences--

(a) while on active service, or
(b) at any place outside India, or
(c) at a frontier post specified by the Central Government by notification in this behalf."

## (VI) ANALYSIS

**18.** From careful perusal of Sections 69 and 70 of 1950 Act, it is evident that Section 69 which deals with civil offences is subject to provisions of Section 70 and provides that if any

person subject to provisions of this Act commits any civil offence, shall be deemed to be guilty of an offence under this Act and shall be charged under this Act and if charged under Section 69, shall be liable to be tried by Court Martial and shall, on conviction, be punishable with the sentence provided in Clauses (a) and (b) of Section 69 of the 1950 Act. Thus, Section 69 creates a legal fiction in so far as it pertains to commission of any civil offence by a person subject to provisions of the Act and provides that he shall be deemed to be guilty of an offence under the Act.

**19.** From careful scrutiny of Section 63 of the 1950 Act, it is axiomatic that the same applies to an act or omission which is not specified in the Act but is prejudicial to good order and military discipline. Thus, Section 63 applies to an act or omission which is not specified in the 1950 Act.

**20.** Now we may advert to 2007 Act. Section 15 of the 2007 Act deals with jurisdiction, powers and authority in the matters of appeal against Court Martial. Section 15(4) provides that Tribunal, in case it finds (i) finding of the Court Martial is legally not sustainable for any reason whatsoever (ii) findings involves wrong decision on the question of law (iii) there was material irregularity in the course of trial resulting in miscarriage of justice, shall allow an appeal against conviction by a Court Martial. The first proviso to Section 15(4) provides that Tribunal may dismiss the appeal where it considers that no miscarriage of justice is likely to be caused

or actually has resulted to the appellant. Section 15(6)(a) & (b) of the 2007 Act, which is relevant as reproduced below :-

> "15. **Jurisdiction, powers and authority in matters of appeal against court martial** :-
> (6) Notwithstanding anything contained in the foregoing provisions of this section, the Tribunal shall have the power to—
>
> (a) substitute for the findings of the court martial, a finding of guilty for any other offence for which the offender could have been lawfully found guilty by the court martial and pass a sentence afresh for the offence specified or involved in such findings under the provisions of the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957) or the Air Force Act, 1950 (45 of 1950), as the case may be; or
>
> (b) if sentence is found to be excessive, illegal or unjust, the Tribunal may—
>
> (i) remit the whole or any part of the sentence, with or without conditions;
>
> (ii) mitigate the punishment awarded;
>
> (iii) commute such punishment to any lesser punishment or punishments mentioned in the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950), as the case may be".

**21.** Thus, under Section 15(6) (a) & (b) of the 2007 Act, the Tribunal is empowered to substitute the finding of Court Martial which includes the disciplinary proceedings under

the Act and also to interfere with the sentence if the same is found to be excessive, illegal or unjust and to mitigate the punishment awarded. The power under Section 15(6) (a) & (b) of the 2007 Act can be exercised only if following two conditions are fulfilled :-

> (i) The accused could have been lawfully found guilty of the substituted offence by the original court-martial based on the evidence presented during the trial.
>
> (ii) The tribunal may also pass a new sentence for the substituted offence.

**22.** It is noteworthy that Section 15(6) of the 2007 Act is in *pari materia* with Section 162 of the 1950 Act and is akin to Section 222 of Code of Criminal Procedure 1973 which permits conviction for a lesser or cognate offence on the same set of facts. The legislative intent appears to be unambiguous. The object of Section 15(6) of 2007 Act is that where the evidence sustains a different, though related offence, the appellate forum is not denuded of power to render a lawful finding merely because the chargesheet mentions another provision.

**23.** The scope of interference in an appeal under Section 30 of the 2007 Act is well settled. This Court in appellate jurisdiction under Section 30 of the 2007 Act would be slow in interfering with the substituted punishment, unless the order passed by the Tribunal is found to be arbitrary,

unreasonable or capricious. (See : **Union of India & Ors.** v. **R. Karthik[2]).**

**24.** In the backdrop of aforesaid statutory provisions and scope of interference in an appeal under Section 30 of the 2007 Act, we may advert to the facts of the case in hand. The appellant, at the relevant time, was posted as Commandant of NCVD, Udhampur. He was tried by GCM on three charges namely, (i) civil offence under Section 5(2) of J&K Prevention of Corruption Act, 2006 read with Section 69 of the 1950 Act i.e. with regard to alleged acceptance of Rs.10,000/- from complainant Shri Sumesh Magotra (ii) civil offence under Section 3 of Arms Act, 1959 read with Section 25(1B) and Section 69 of the 1950 Act i.e. with regard to alleged possession of ammunition -7.62 mm SLR -5 rounds and 9 mm Ball-3 rounds and (iii) act prejudicial to good order and military discipline under Section 63 of the Act i.e. with regard to unexplained possession of Rs. 28,000/-. The GCM vide finding and sentence dated 26.03.2009 found the appellant guilty of charge Nos. 1 and 2. However, the appellant was acquitted of charge No.3. The GCM while dealing with charge No.2, took into account the statements of prosecution witnesses namely, Col. S.A. Kulkarni (PW-1), Col. V.K. Bahuguna (PW-3), PW-10 and Lt. Col. Avinash Thakur (PW-11) and held that aforesaid statements of witnesses establish the recovery of carton of ammunition from steel chest located in the office of the appellant. The Board of Officers

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documented the recovery of three round 9 mm ball ammunition and 7.62 mm ball ammunition. Material exhibit (ME-2) produced before the GCM tallied with the details. The GCM also noted that an expert witness namely, Major S.B. Mishra (PW-13) corroborated the presence of ammunition. The GCM, on the basis of evidence of aforesaid witnesses, material exhibit (ME-2) and the opinion of the expert as well as the appellant's own explanation that the ammunition had been there for long, concluded that the possession of ammunition without license stood proved and therefore the appellant was found guilty of charge No.2 framed under Section 69 of the 1950 Act read with Arms Act, 1959.

**25.** The Tribunal vide judgment 01.06.2012, *inter alia* held that there is no evidence to prove charge No.1. The Tribunal upheld the finding of acquittal of the GCM in respect of charge No.3. The Tribunal in respect of charge No.2, which related to recovery of ammunition from the appellant, held that the same was identified as old vintage stock and was found in the drawer of the office of the appellant. The Tribunal on perusal of expert evidence held that though ammunition was aged and potentially not hazardous but was still capable of discharge. The Tribunal, however, found that there was no evidence of motive or of unlawful purpose attributable to the appellant. The recovery of old ammunition is indicative of neglect and failure to adhere to standing instructions governing disposal of surplus or aged ammunition. It was further held that strict application of

Arms Act via Section 69 of the 1950 Act was inappropriate and the facts established, supported culpability of the appellant under Section 63 of the 1950 Act, an act prejudicial to good order and military discipline reflecting the failure on the part of appellant to follow mandatory procedure for disposal and accounting of old ammunition. The Tribunal, therefore, set aside the conviction under Section 69 of the 1950 Act and substituted the conviction of the appellant with Section 63 of the 1950 Act. The Tribunal therefore, substituted the penalty of dismissal from service to compulsory retirement with all retiral benefits.

**26.** The concurrent findings of fact with regard to recovery of ammunition from the possession of the appellant, have been recorded after meticulous appreciation of evidence on record. The witnesses namely, PW-1, PW-3 and PW-10 and PW-11 have established the recovery of carton of ammunition from the office of the appellant. The material exhibit (ME-2) also proves the factum recovery of ammunition from appellant. The expert witness namely, Sep. S. Nayak (PW-9) has also found that ammunition was capable of discharge. The appellant in his statement also did not dispute the recovery of ammunition. It is noteworthy that the aforesaid findings of fact which are concurrent in nature have not been assailed before us on the ground that same are perverse. The factual foundation brought on record at the trial, clearly discloses an act or omission on the part of the appellant which is prejudicial to good order and military discipline. The twin

condition for invocation of Section 63 of the 1950 Act referred to supra are fulfilled in the instant case. The appellant on the basis of the facts proved, could lawfully have been convicted under Section 63 of the 1950 Act.

## (VII) CONCLUSION

**27.** The scope of interference in an appeal with the order passed by the Tribunal is limited. This Court in appellate jurisdiction would interfere if the order is shown to be arbitrary, unreasonable or capricious. The Tribunal under Section 15(6) of the 2007 Act, which contains a *non-obstante* clause, has power to substitute the finding of Court Martial, a finding of guilty of any other offence for which offender could have been lawfully found guilty by Court Martial and may pass a sentence afresh. In the instant case, the Tribunal in exercise of its power under Section 15(6) of 2007 Act, on the established fact of recovery of ammunition from the possession of the appellant, has taken a lenient view in favour of the appellant and has modified the punishment from dismissal to compulsory retirement with all pensionary and retiral benefits. The Tribunal has exercised its discretion under Section 15(6) of the 2007 Act in a manner which is both just and proportionate, balancing the disciplinary needs of service with fairness to the individual. The Tribunal has acted strictly within the statutory framework. The aforesaid exercise of discretion, therefore, does not call for any interference in this appeal. The Tribunal did not commit any error in rejecting the petition for review filed by the appellant.

**28.** For the aforementioned reasons, we do not find any merit in this appeal. In the result, same fails and is hereby dismissed.

**.....J.**
**[J.B. PARDIWALA]**

**.....J.**
**[ALOK ARADHE]**

**NEW DELHI,**
**OCTOBER 10, 2025.**