
(2012) 12 DEL CK 0290

In the Delhi High Court

Case No : Writ Petition (C) 5529 of 2012

Ex. Gnr. Satyaveer Singh

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 07-12-2012

Acts Referred:

Army Act, 1950 — Section 39(b)

Citation : (2012) 12 DEL CK 0290

Hon'ble Judges : Pradeep Nandrajog, J; Manmohan Singh, J

Bench : Division Bench

Advocate : S.R. Kalkal, for the Appellant; Barkha Babbar, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—The petitioner admits of having been granted annual leave from August 5, 1994 till September 6, 1994, requiring him to join his unit on September 7, 1994. The petitioner admits that he did not report back for duty and remained absent for 40 days till he rejoined duties on October 17, 1994. Taking cognizance of the absence the Commanding Officer, as per record produced before us, conducted proceedings pertaining to the hearing of the charge envisaged by Army Rule 22 on October 25, 1994 at 12:15 Noon.

2. We find from the record that the petitioner has signed the proceedings and thus the grievance in the writ petition that no hearing of the charge took place is incorrect inasmuch as the record would reveal that on said date Sub.(DS) Mohan Lal and Hav. Sharad Chand were orally examined by the Commanding Officer and were declined to be cross-examined by the petitioner requiring the Commanding Officer to direct that evidence be reduced to writing.

3. The tentative charge sheet with respect to which hearing of the charge proceedings were held reads as under:-

4. The record produced would reveal that on the next date i.e. October 26, 1994 Maj. A Biswas commenced recording of evidence and examined Hav. Shard

Chand and Sub.(DS) Mohan Lal who deposed as per the tentative charge i.e. the petitioner proceeding on leave till September 6, 1994 and voluntarily joined back on October 17, 1994.

5. The petitioner was thereafter called upon to make a statement if he desired but after being made aware of his right not to make any statement and was cautioned that whatever he would state would be taken down in writing and may be read against him.

6. The petitioner thereafter made a statement which reads as follows:-

1. No. 14391055K TA Satyaveer Singh of 1002/100 Field Regiment states :

2. I was granted leave from 06 Aug to 06 Sep 94, however on expiry of leave, I did not feel like rejoining duty so I overstayed leave granted to me. Thereafter when I felt guilty I decided to rejoin the unit. I thus returned to the unit on 17 Oct. 94.

3. The above statement has been read over to me in the language I understand and I sign it as correct.

7. Beneath the statement the signatures of the petitioner have been obtained.

8. Suffice would it be for us to highlight that during recording of evidence the justification given by the petitioner was that he did not feel liking rejoining duty and thus he over stayed the leave granted to him, but thereafter he felt guilty and decided to rejoin the unit.

9. The petitioner never claimed he or his mother being unwell.

10. The record produced would reveal that taking cognizance of the record of evidence the Commanding Officer decided to convene a Summary Court Martial and drew up a charge sheet on November 12, 1994 which was served upon the petitioner and he was notified that the trial would commence on November 14, 1994.

11. The Summary Court Martial Trial proceedings record would reveal that it commenced at 09:45 hrs and finished at 09:55 hrs on November 14, 1994. The petitioner entered a plea of guilt.

12. Alleging that the proceedings which took place on November 14, 1994 were a farce it is pleaded that following mandatory action by the Commanding Officer at the time of Summary Court Martial Trial is mandated by law:-

(a) The Commanding Officer take oath or affirmation as per Army Rule 109 as Court and interpreter.

(b) AR 111 arraignment of the accused

(c) AR 112 objection by the accused to charge.

(d) AR 115 General plea of guilty or not guilty.

- (e) AR 116, procedure after plea of guilty.
- (f) AR 123 procedure on conviction.
- (g) AR 124 sentence.
- (h) AR 127 clearing of Court
- (i) AR 130 memorandum to be attached to proceedings.

13. Now, the oath which the Commanding Officer takes as per Army Rule 109 would hardly consumed a minute and keeping in view the charge framed against the petitioner, which we note is the same which was framed when record of evidence was directed to be prepared, the arraignment would last for not more than a minute and if the petitioner entered a plea of guilt, which he did as a matter of fact, the only thing which was required to be done was to explain to the petitioner the consequences thereof as per Army Rule 115 (2), which would hardly last for about a minute.

14. The officer concerned was thereafter obliged to look into the recording of evidence, which we find consist of only three sheets, statements made by Hav. Sharad Chand and Sub.(DS) Mohal Lal which span less than 100 words each and the statement made by the petitioner, as noted by us hereinabove, consisting of less than 70 words.

15. We do not find the proceedings to be a sham. From the record we find that after he entered the plea of guilt the petitioner signed the same.

16. We wonder what defence the petitioner could have projected at the Summary Court Martial in view of his statement made at the recording of evidence.

17. That he remained unauthorisedly absent for 40 days is a matter of fact inasmuch as the petitioner does not claim that his leave was extended. Thus, the prosecution was to establish nothing. It was for the petitioner to have stated a matter of fact which justified his over staying leave, or to put it differently to have stated a fact, which upon being proved, would have evidenced that the absence was not wilful but was on account of certain compelling circumstances which prevented the petitioner to report back for duty.

18. The petitioner never stated any such fact, much less attempted to make good the same.

19. Thus, we ignoring the pleas and the documents relied upon in the writ petition to the effect that the mother of the petitioner was unwell and this became his compulsion not to report back for duty and that he had sent a telegram to his Commanding Officer praying that leave be extended.

20. We note that the petitioner was enrolled in the Army as a combatant soldier on September 6, 1985 and since the year 1992 had been showing deviant behaviour evidenced by the fact that on October 6, 1992 and December 3, 1992 he was punished for offence under Army Act, 39 (a) and confined to lines for 14

days. On December 22, 1992 likewise being convicted for offence under the same Section he was sentenced imprisonment for 2 months. On May 24, 1993, punished for an offence u/s 39 (b) of the Army Act, he was imprisoned for two months and lastly on December 27, 1993 on being convicted for an offence punishable u/s 39 (b) of the Army Act he was imprisoned for 28 days.

21. Record would reveal that the petitioner was a habitual deserter, in that had a habit of over staying leave. There were as many as five red ink entries in his service record.

22. The issue has been discussed thread bare by the Armed Forces Tribunal as per its impugned decision dated July 21, 2010 and we find no infirmity therein as also no infirmity in order dated May 30, 2012 dismissing RP 16/2012 filed by the petitioner seeking review of the decision dated July 21, 2010.

23. We would highlight that issues of discipline are of paramount importance in the Armed Forces and repeated deviant behaviour, if condoned, is likely to set bad example for others. The writ petition is dismissed but without any order as to costs.