

(2011) 11 DEL CK 0341

In the Delhi High Court

Case No : Writ Petition (C) No. 8093 of 2011

Naik Balakrishan Sharma

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 16-11-2011

Acts Referred:

Army Act, 1950 — Section 39, 40
Constitution of India, 1950 — Article 226

Citation : (2011) 11 DEL CK 0341

Hon'ble Judges : Sudershan Kumar Misra, J;Anil Kumar, J

Bench : Division Bench

Advocate : Archana Ramesh, for the Appellant; Ruchir Mishra, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner has challenged the order dated 5th May, 2011 passed by the Armed Forces Tribunal, Principal Bench in T.A. No. 275/2010, titled as "Ex. Naik Balakrishan Sharma v. Union of India & Ors.", dismissing the original application of the petitioner against the Summary Court Martial (SCM) proceedings, holding the petitioner guilty of having committed the offences under the Army Act Sections 40(c) and 39(a) and sentencing the petitioner i) to be reduced to rank; ii) to undergo rigorous imprisonment for three months; and iii) to be dismissed from service. The sentence was subsequently modified by the Govt. and the punishment of dismissal from service was remitted to discharge. The petitioner was also granted all the benefits flowing from the date of discharge.

2. Brief facts to comprehend the controversies are that the petitioner had enrolled as a Sepoy in the Corps of Electrical and Mechanical Engineering, and he was later on promoted to the rank of Naik.

3. According to the petitioner, he was sent on Temporary duty to the Central Ordinance Depot Agra on 5th March, 1999. While being on Temporary duty at the

said Ordinance Depot, he received a letter on 15th March, 1999 disclosing to him that the condition of the eyes of his mother had worsened, for which reason surgical operation was essential and required to be performed on the eyes of his mother as expeditiously as possible.

4. The petitioner contended that due to his domestic problem he had applied for 10 days casual leave w.e.f. 5th April, 1999 so that he could look after his mother and get her operated and could also complete some of his pending official tasks. The petitioner asserted that his superior officer, Subedar Shiv Ram, made an endorsement on the spare chit for leave, after verifying the veracity of the Inland Letter and medical documents regarding the impending eye operation of his mother.

5. The grievance of the petitioner is that despite the recommendation of leave by his superior officer, Subedar Shiv Ram, he was detailed to go for another Temporary duty to COD Cheoki for backloading a condemned Class V Generator set. According to the petitioner, he tried to reason out that since he had been granted casual leave, therefore, temporary duty could be given to someone else on rotation or he be allowed to do the said temporary duty after the 10 days of leave sought by him. In the opinion of the petitioner, it was logical as back loading a condemned Class V Generator was not that important in comparison to the petitioner attending to his mother for her eye operation, which required urgent attention, while in the latter case there were no time constraints.

6. The plea of the petitioner is that he had an argument on this aspect with JCO Subedar SC Das outside the office at that time and a young officer Captain Biju Jacob intervened and construed his statements and argument as "insubordinate language to a superior officer". According to the petitioner, he did not have any altercation or discussion with Captain Biju Jacob.

7. The petitioner categorically averred that he had asked the JCO Subedar SC Das as to who had asked him to deploy the petitioner and whether he was specifically asked to deploy the petitioner by name or if anyone else could be detailed.

8. The petitioner further contended that the officer, Captain Biju Jacob, made it a prestige/ego issue and construed it as insubordination and for this gave him three months rigorous imprisonment coupled with reduction to rank and dismissal from service. The petitioner sought interview of Commander 340 (Independent) Infantry Brigade to put across and clarify his simple grievance. However, the Commanding Officer did not forward his application to the Commander 340 (Independent) Infantry Brigade on one pretext or other. On 6th May, 1999 as the petitioner had insisted for an interview with the Commander, the Commanding Officer became angry and he was placed under arrest in the Unit Quarter Guard, which is a Unit Prison, vide letter dated 21201/CM. The petitioner contended that on such a simple matter close arrest was most unwarranted and uncalled for.

9. On 7th May, 1999, the petitioner submitted a statutory petition to the Brigade Commander which was, however, returned by letter dated 13th May, 1999. On 22nd May, 1999 the petitioner was further charged with absenting himself without leave from the Unit Quarter Guard allegedly from 15th to 19th May, 1999. Therefore the petitioner was tried by the Summary Court Martial on 30th May, 1999 and in light of the facts and circumstances and the evidence on record, it was concluded on the guilt of the petitioner on the charges framed against him. Thus, the petitioner was convicted and awarded the punishment of reduction in rank and rigorous imprisonment for three months and dismissal from service.

10. On 18th June, 1999, the Reviewing Authority remitted the unexpired portion of rigorous imprisonment, thus the three months of rigorous imprisonment was converted to 18 days of rigorous imprisonment. Aggrieved by order of the Summary Court Martial, the petitioner filed a writ petition bearing No. 2598/2001 before the Delhi High Court. During the pendency of the writ petition, the petitioner also filed a statutory petition dated 22nd December, 2003. On the statutory petition, the Chief of Army Staff remitted the sentence of dismissal to discharge effective from the date of the dismissal and entitling the petitioner to all the consequential benefits from the date of dismissal which was converted to discharge.

11. In the meantime, the writ petition filed by the petitioner was transferred to the Armed Forces Tribunal. The Tribunal considered the pleas and contentions of the petitioner and relied on the statement of PW1, Captain Biju Jacob, who had categorically narrated the entire sequence of incident. He had stated that on 25th March, 1999 he had received a tele-message from Cfn/MS R.P. Singh to detail somebody to escort the generator set from Banar to COD Chheoki and that on 26th March, 1999 at around 1400 hours, PW1 had been informed by SC Das that the petitioner had been detailed for the purpose. The petitioner, however, refused to comply with the orders and retorted in reply that "mai nahi jaoonga", which clearly amounted to insubordination falling within the ambit of Sec. 40(c) of the Army Act. The Tribunal also observed that the testimony of PW1 was fully corroborated by PW2, and therefore, the charge of insubordination was established. With regard to the charge that the petitioner absented himself without leave from the unit lines from 15th to 19th May, 1999, the testimony of PW 3 was relied on, who stated that even though he searched, the petitioner could not be located. This was supported by the testimony of PW4 as well. In spite of opportunity given to the petitioner, he did not cross examine any of the said witnesses. The Armed Forces Tribunal, in light of the facts and circumstances and on perusing the evidence on record, dismissed the petitioner's petition.

12. Against the order of the Tribunal, the petitioner has approached this court under its writ jurisdiction. The petitioner has challenged the punishment imposed upon him contending, inter-alia, on the grounds that he had performed the last

temporary duty on 8th March, 1999 and was even granted casual leave, however, inspite of this he was forced to do the temporary duty again on 26th March, 1999, entailing the petitioner to seek an interview with the commanding officer, which was reasonable in the facts and circumstances to air his grievances. The request of the petitioner was, however, declined. The petitioner thereafter requested for an interview with the next superior authority, Commander 340 (Independent) infantry Brigade which was also refused. The statutory complaint made by the petitioner was also returned which according to the petitioner was illegal and unfair on the face of it. The plea of the petitioner is that there was only heated discussion between him and JCO Subedar SC Das regarding cancellation of his name from the temporary duty or postponement of the temporary duty. The petitioner also asserted that the temporary duty was fictitious as the condemned generator class V had already been loaded on 19th March, 1999 and had been dispatched to COD Cheoki on 22nd March, 1999. According to him, back loading of the condemned generator did not have any specific time factor in comparison to his request to get his mother's eye operated, for which he had sought the leave which was even endorsed by the superior officers.

13. Regarding his absence without leave, the petitioner contended that he was under arrest in the Quarter Guard from 6th May, 1999 by letter bearing no. 21201/CM. The petitioner relied on the said letter to contend that he has a strong alibi to prove that at the time of his alleged absence without leave, he was under arrest and that he couldn't possibly be punished for the same. The petitioner has also relied on the medical documents to prove the factual existence of the eye problem of his mother, Smt. Ramvati Devi, for which he had sought 10 days leave.

14. This Court has heard the learned counsel for the petitioner in detail and has also perused the entire record. With regard to the first charge framed against the petitioner of using insubordinate language to his superior officer, the Tribunal has placed reliance on the testimonies of PW1 and PW2 and held that it has been proved. The petitioner himself has substantiated the statements of the said witnesses. The petitioner has not denied the fact that he had an argument with SC Das with regard to the postponement of the temporary duty which was assigned to him, or for sending another officer in his place. According to him, treatment of his mother's eye was more important than off loading the condemned generator and the temporary work which was assigned to him could be postponed. During the Summary Court Martial proceedings, the petitioner did not cross examine the said witnesses inspite of the opportunity given to him, which was specifically noted by the Commanding Officer. In the facts and circumstances, the inferences drawn are probable and cannot be termed to be perverse or based on no evidence. The petitioner does not deny the fact that he had an argument with his superior officer, but has only justified the same in light of the medical ailment of his mother, and has therefore attempted to show it in the light of a disagreement rather than insubordination. The petitioner has also

asserted that the temporary duty was fictitious as the condemned generator class V had already been loaded on 19th March, 1999 and had been dispatched to COD Cheoki on 22nd March, 1999, however, he has been unable to produce any document in support of this claim and therefore the same has to be rejected. In the circumstances, the inferences drawn by the respondents cannot be held to be based on no evidence or perverse in any manner. This Court in exercise of its powers under Article 226 of the Constitution of India has no jurisdiction to go into the correctness or the truth of the charges by reappreciating the evidence led before the respondents. It also cannot substitute the findings of the Disciplinary Authority with its own findings. It cannot sit in appeal over the findings of the Disciplinary Authority and assume the role of the Appellate Authority. It cannot interfere with the findings of fact arrived at in the disciplinary proceedings except in a case of mala fides or perversity i.e. where there is no evidence to support a finding or where a finding is such that no person acting reasonably and with objectivity could have arrived at such a finding or where reasonable opportunity has not been given to the delinquent to defend himself or it is a case where there has been non application of mind on the part of the Inquiry Authority or if the charges are vague or if the punishment imposed is shocking to the conscience of the Court.

15. With regard to the second charge of absenting himself without leave, the petitioner has relied on the letter bearing No. 21201/CM which stipulates that the petitioner was placed under arrest with effect from 6th May, 1999 and therefore, according to the petitioner, it affords a strong alibi regarding the time he was allegedly absent without leave. On the other hand, the Tribunal has relied on the testimony of PW3 and PW4 while concluding on the guilt of the petitioner. On perusing the Summary Court Martial proceedings, it transpires that the petitioner had not only declined from cross examining the said witnesses but had also stated nothing in his defense with regard to the second charge, nor had he submitted the letter bearing no. 21201/CM nor had he produced any witnesses. Thus, reliance on the said letter in defense to contend that he was quarter guard is an after thought. Regardless of it, this does not account for the time specified in the second charge for being absent without leave i.e. 15th to 19th May, 1999. The said letter only states that the petitioner was put under quarter guard with effect from 6th May, 1999. Thus, it has not been established that the petitioner was not released till 15th or thereafter. The Tribunal has also rejected the plea of the petitioner that his absence is on account of close custody, in light of no evidence supporting the same. Therefore, this Court does not find any perversity, or illegality in the order of the Tribunal.

16. No other point has been urged on behalf of the petitioner. In the circumstances, the petitioner is not entitled for any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

The writ petition in the facts and circumstances is without any merit and it is therefore, dismissed.