

(2010) 09 DEL CK 0192

In the Delhi High Court

Case No : Writ Petition (C) No. 6138 of 2000

Raghuraj Singh

APPELLANT

Vs

Col. A.K. Yadav (C.O.) and Others

RESPONDENT

Date of Decision : 28-09-2010

Acts Referred:

Army Act, 1950 — Section 164(2)
Army Rules, 1954 — Rule 22

Citation : (2010) 09 DEL CK 0192

Hon'ble Judges : J.R. Midha, J;Gita Mittal, J

Bench : Division Bench

Advocate : Asit Kumar Roy, for the Appellant; Ashwani Bhardwaj and Balaji Subramanian, as Amicus Curiae, for the Respondent

Final Decision : Allowed

Judgement

Gita Mittal, J.—By way of the present writ petition, the Petitioner assails the finding and sentence of the Summary Court Martial dated 8th September, 1999 and the order dated 26th June, 2000 passed by the Chief of the Army Staff rejecting his application u/s 164(2) of the Army Act, 1950 laying a challenge to the finding and sentence of the Summary Court Martial.

2. The undisputed facts giving rise to the present petition are briefly set out hereafter. The Petitioner was enrolled as an Education Instructor/Education Havildar on 18th April, 1988 with the Army Education Corps. On 5th April, 1988, he was transferred to 502 AD Gp (Self Propelled) Unit. A request for compassionate allotment of the accommodation was made by the Petitioner on 28th April, 1998 on the ground that his father was paralyzed and also for the reason that his wife was at an advanced stage of pregnancy. This request was not considered favorably.

3. The Petitioner submits that for want of accommodation, he was constrained to send his wife back to the village. On 11th May, 1998, for want of any medical facility in the village, his wife had miscarried the child. It was only thereafter that

on 25th May, 1998, an out of turn allotment of three months from the Group Commanders Pool was made in favour of the Petitioner.

4. The Petitioner submits that despite the same grounds subsisting on 1st March, 1999, he was asked in writing to vacate the said accommodation. It is the Petitioner's contention that he was willing to vacate the premises if alternative family accommodation was provided to him and that he had made a request on 28th March, 1999 to the Commander in this behalf. Despite the pendency of this request, the Petitioner was called to the adjutant officer on 31st March, 1999 and peremptorily told to vacate the quarter. Certain events are attributed to the Petitioner on 31st March, 1999 and 1st April, 1999 which led to the initiation of the proceedings against the Petitioner.

5. It is an admitted position before us that the Petitioner's wife was again at an advance stage of pregnancy in March, 1999 and on the date when he was asked to peremptorily vacate the said family accommodation without provision of any alternative accommodation.

6. On 6th April, 1999, the Commander of the unit conducted a hearing prescribed under Army Rule 22 against the Petitioner. It is on record before us that shortly thereafter on 10th April, 1999, the Petitioner was forcibly evicted despite the precarious condition of his family.

7. By an order dated 6th May, 1999, the Commanding Officer of the Petitioner's Unit directed trial of the Petitioner by Summary Court Martial. The Petitioner was arraigned pursuant to the chargesheet dated 24th May, 1999 whereby the following charges were levelled against him:

DISOBEYING IN SUCH MANNER AS TO SHOW A WILFUL DEFIANCE OF AUTHORITY, A LAWFUL COMMAND GIVEN PERSONALLY BY HIS SUPERIOR OFFICER IN THE EXECUTION OF HIS OFFICE

First Charge

AA Section 41(1)

In that he, At Mathura Cantt, on 31st March 99 when ordered by IC 4627X Major Avijit Nandi, Adjutant, to vacate the Government accommodation in compliance with instructions received by the individual to vacate the house by 10 March 99 (Vide 502 AD Gp (SP) letter No. 500 04/06/Q dated 01 Mar 99 and 50 104/19/Q dated 27th March 99), said "will not vacate the house till the time I get accommodation from the battery pool"

or words to that effect and did not vacate the accommodation as ordered.

AN ACT PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE Second Charge AA Section 63 In that he, at Mathura Cantt, on 31 March 99, detailed at Human Resources Development Centre HQ 1 Corps, was found in Police Lines, Mathura Cantt at 1120 hours during parade time.

USING INSUBORDINATE LANGUAGE TO HIS SUPERIOR OFFICER

Third Charge

AA Section 40(C)

In that he, at Mathura Cantt, on 31 March 99 on being ordered to move to the Quarter Guard with the Regimental Police by IC/4627X Major Avijit Nandi of the same Regiment, said "There is no requirement of calling the Regimental Police. I am standing here, do whatever you can" or words to that effect.

WITHOUT SUFFICIENT CAUSE FALLING TO APPEAR AT THE TIME FIXED, AT THE PLACE APPOINTED FOR DUTY

Fourth Charge

AA Section 39(d)

In that he, at Mathura Cantt, on 01 April 99, failed without sufficient cause to appear at 0630 hours at Physical Training ground, the place appointed for physical training parade.

RESISTING AN ESCORT FROM APPREHENSION

Fifth Charge

AA 42 (c)

In that he, at Mathura Cantt, on 01 April 99 resisted arrest by JC-255524L Subedar Rajbir Singh, JA, of the same Regiment, sent to apprehend him from his house and said, "I will not move now. Challenge in the writ petition is confined to his post in the Director General of the Force Boarder Road Organization.

This is time to take rest." and refused to move without the escort.

8. The Petitioner's wife is stated to have delivered a child on 24th April, 1999 .

9. The Respondents conducted the Summary Court Martial against the Petitioner between 31st May, 1999 to 8th September, 1999. On 8th September, 1999, the Court Martial returned the finding of innocence of the Petitioner so far as the first charge was concerned, whereas he was found guilty of the second to fifth charges. So far as the sentence was concerned, the Petitioner was awarded punishment of forfeiture of five year service for the purposes of promotion, forfeiture of five years past service for the purposes of pension and severe reprimand. The sentence imposed on the Petitioner was confirmed by the Chief of the Army Staff by the order dated 10th December, 1999.

10. It has been pointed out that during the pendency of the writ petition, on 30th April, 2008, the Petitioner was discharged from service on account of his being a low medical category.

11. The Respondents have opposed the writ petition pointing out that the

Petitioner was given an opportunity to explain as to why he was not vacating the family accommodation. The Petitioner was bound to have obeyed the command of the adjutant to attend the physical training and that the charges against him were established on record in the evidence of the ten prosecution witnesses who were examined in support of the charges.

12. In the instant case, the Petitioner had expressed grave difficulty in vacating the family quarter without availability of any other accommodation to house his wife who was to deliver shortly. It has been pointed out that the Petitioner was suffering severe constraints on account of the fact that his wife had already suffered a miscarriage on account of want of medical facility when the Petitioner was compelled to send her to the village again for want of accommodation. It has been explained that the circumstances and reasons in which the Petitioner was requesting the Respondents for accommodation, and his dire need remained unchanged from the 25th May, 1998 when the Petitioner had been first allotted the accommodation till he was peremptorily told to vacate and that his request for alternative accommodation was not only reasonable but was justified and deserved urgent and favourable consideration. It has been submitted that the Respondents acted totally unreasonably so far as the Petitioner was concerned and that the entire action against the Petitioner fails to take into consideration the humanitarian aspect of the matter essential for good administration and maintenance of army discipline. It has been submitted that the authoritarian and unsympathetic attitude with which the Petitioner was treated is clearly in violation of his rights and ought not to be tolerated.

13. On the other hand, we find that even though the Respondents were not reasonable in not considering the Petitioner's request for alternative accommodation, however, the Petitioner has failed to follow the directions issued to him and has also not reported at the directed place despite specific command. In this behalf, the Petitioner also did not take recourse to the channel of representation and grievance redressal which was available to him under the Army Act, 1950 and the rules prescribed thereunder. For this reason, so far as the findings of the Summary Court Martial on the charges for which the Petitioner stood tried are concerned, we are of the view that the same are premised on the evidence which was led before the court and deserve no interference.

14. However, we find substance in the contentions of learned Counsel and learned amicus curiae so far as the challenge to the sentence which was imposed on the Petitioner on grounds of proportionality. It needs no elaboration that it is open to the court to effect a review of the punishment imposed which is challenged on the ground that the same is grossly disproportionate to the gravity of the established misconduct and that such punishment should be set aside.

15. In *Santosh Kumar Sur v. Union of India and Ors.*, this Court in para 105 at page 56 has followed a judgment of Hon'ble Supreme Court *B.C. Chaturvedi Vs. Union of India and others*, wherein the Supreme Court held as follows:

The High Court/ Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

The supreme Court has thus in exceptional cases, permitted the court to substitute a punishment which was awarded by the disciplinary authority, by appropriate punishment. This of course has to be effected as an exception. One of the circumstances wherein recourse to such procedure would be permissible is a case where there has been a long delay since the initiation of the disciplinary proceedings. In the instant case, the charges relate to an alleged occurrences in the early part of the year 1999. Of course, a period of almost eleven years has elapsed.

16. We had put a query to learned Counsel for the Respondents as to whether the Petitioner would be entitled to promotion in case if the punishment of forfeiture of service was set aside. We also called upon learned Counsel for the Respondents to explain the impact of setting aside the order of forfeiture of service for the purposes of computation of the pension. Today, Major Rahul Soni has handed over in court a copy of the communication dated 26th September, 2010 placing before us the criteria for promotion of JCO/NCO. It has further been pointed out that pursuant to a judgment dated 7th November, 2008 in Civil Appeal No. 658/2008 of the Supreme Court and the judgment dated 20th November, 2008 of Delhi High Court, a communication dated 27th December, 2008 was addressed to the Petitioner giving him an opportunity to rejoin service for the reason that he has been earlier boarded out on account of his being a low medical category. The Petitioner has informed the Respondents by a letter dated 15th January, 2009 that he was not interested in reinstatement in the army.

17. From a perusal of the communication dated 26th September, 2010 and in view of the letter dated 15th January, 2009 from the Petitioner, it is evident that no benefit so far as the service of the Petitioner is concerned, would enure to him even if the punishment of forfeiture of five years service for the purpose of promotion is set aside.

18. In view of above discussion and having regard to the dire circumstances which the Petitioner was placed in March/April, 2009 when pressure was being put upon him to vacate allotted accommodation without availability of any alternative accommodation and in view of the precarious condition of his wife which merited sympathetic consideration, we are of the view that the punishment imposed upon the Petitioner was grossly disproportionate to the gravity of charges. The same has been imposed without taking into consideration of any of the extenuating circumstances which the court martial was bound

to have taken into view while imposing the sentence.

19. In view thereof, we reject the challenge to the findings of the court martial dated 8th September, 1999 as have been sustained by the order dated 26th June, 2000 by the Chief of the Army Staff. So far as the sentence which was imposed on the Petitioner is concerned, we are of the view that the punishment of severe reprimand as well as forfeiture of five years service for the purposes of promotion, do not call for any interference and the challenge to the same is also hereby rejected. However, it is directed that the order of punishment directing forfeiture of five years past service for the purposes of pension shall hereby stand set aside and quashed.

20. In view of the above, the Respondents are directed to pass orders with regard to any financial benefit which may enure to the Petitioner on account of this punishment having been set aside. Orders in terms thereof shall be passed within a period of six weeks from today and communicated to the Petitioner. The financial benefits which may enure to the Petitioner shall be released within a further period of four weeks thereafter

21. Before parting with the case we wish to record our appreciation for the valuable assistance rendered by Mr. Balaji Subramanian, Advocate who was appointed as amicus curiae to facilitate consideration of the present matter.

The Secretary, Delhi High Court Legal Services Committee is directed to pay fees as per the applicable rules for conducting a writ petition to Mr. Balaji Subramanian, Adv. appointed as amicus curiae within a period of eight weeks from today.

This writ petition is allowed to the above extent.