
(2013) 01 DEL CK 0017
In the Delhi High Court
Case No : W.P. (C) 128/2013

Roor Singh

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 09-01-2013

Acts Referred:

Citation : (2013) LabIC 2537

Hon'ble Judges : Sudershan Kumar Misra, J;S. Ravindra Bhat, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—This writ petition seeks quashing of the judgment and order of the Armed Forces Tribunal (Tribunal or AFT hereafter) dated 20.07.2010. The facts are that the petitioner was enrolled in the Army Corps of EME as CFN (Elect) and was serving with HQ 70 Mountain Brigade at the relevant time. On 31.10.1997, Summary of Evidence was recorded against the petitioner in respect of certain allegations, essentially dealing with his allegedly overstaying the leave granted to him, without sufficient cause. The following charges were framed against the petitioner:

First Charge:-

AA Sec 39(b)

WITHOUT SUFFICIENT CAUSE OVERSTAYING LEAVE GRANTED TO HIM

In that, he,

at field on having been granted leave of absence from 20 Aug 97 to 03 Sep 97 to his home station without sufficient cause, failed to rejoin at 213 Transit Camp on 04 Sep 97, on the expiry of the said leave, till he voluntarily rejoined 213 Transit Camp on 09 Oct 97.

Second Charge:-

AA Sec. 41(1)

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

In that, he,

at 0630 h, on 20 Oct 97, when ordered by No. 9086868P Nk Rashpal Dass, to proceed with "Quick Reaction Team to Srinagar said I shall not go, you can do nothing to me" and did not proceed with the Quick Reaction Team to Srinagar.

Third Charge:

AA Sec. 39(a)

ABSENTING HIMSELF WITHOUT LEAVE

In that he,

at field absented himself without leave from the unit lines from 1600 h to 2100 h on 23 Oct, 97.

Fourth Charge:

AA Sec 63

AN ACT PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE

In that, he,

at field on 23 Oct 97 went to Village CHAKH an out of bound area, as per Special BRO No. 800/1/Camp dt. 21 Jul 93.

2. The petitioner had denied the charges; consequently the petitioner was tried before a Summary Court Martial. On 30.11.1997, he was found guilty of all the charges made against him in the Summary Court Martial, and was dismissed from service. He challenged the dismissal order before the GOC-in-C, HQ Northern Command by filing an unsuccessful appeal. Thereafter, he filed a writ petition which was subsequently transferred to the AFT. The Tribunal in the impugned judgment and order dated 20.07.2010 dismissed the petition; thus, the petitioner filed this writ petition.

3. During the hearing, Mr. M.G. Kapoor, learned counsel for the petitioner restricted his arguments to challenging the conviction of the petitioner on the Second Charge. Before proceeding to the arguments, it is pertinent to supply the gist of the evidence (relevant for the Second Charge) recorded in the Court Martial proceedings.

4. W-1 Satpal stated that he was performing the duties of SJCO, HQ 70 Inf. Bde Camp. He testified that on 20th October 1997, in the morning, he ordered the CHM to detail a QRT by name to proceed to Srinagar the next day; that the next

morning (21st October), CHM reported to him that the petitioner had refused to go on QRT; that he thereafter called the petitioner to enquire into the reasons for his refusal, the petitioner stated that he would not go as coat parka had not been issued to him; that the petitioner stated "I will not go, you can do what you can"; that after this, he (W-1) took the petitioner to the Camp Comdt. who checked the CIO (Clothing Issue Register) and found that coat parka had been issued; the Camp Commandant then ordered the petitioner to proceed with the QRT. However, by the time the petitioner drew his weapon and BPJ (bullet proof jacket), the QRT had already left. W-1 asserted that the petitioner purposely did not join the QRT.

5. W-2 Maj. K.S. Sahrawat stated that at the relevant time, he was the Camp Commandant. He testified that on 20th October he was told by CHM Rishpal Dass and SJCO Satpal that the petitioner had disobeyed an order to go to Srinagar as part of QRT; that the petitioner was brought to him and gave excuses which he (W-2) found to be unacceptable, thus ordering him to go with the QRT which he still failed to do.

6. W-3 Rishpal Dass stated that he was working as the Officiating CHM at the relevant time. He said that "at about 0600h, the SJCO asked me to detail a QRT to move at about 0730h on 20 Oct 1997"; he carried out this derailment order and informed the petitioner, among others. He further stated that at about 0745h he found that the petitioner was not ready; that he (the petitioner) had not drawn his weapon and BPJ; the QRT had not marched by this time, therefore, he detailed another OR to go; that he reported this incident to the SJCO. He corroborated the version of SJCO Satpal as to why the petitioner refused to go, and about the petitioner being taken to the Camp Comdt. who ordered him to join the QRT, which the petitioner did not. The witness also stated that the Camp Comdt. had checked the CIO and found that a coat parka had been issued to the petitioner. The record, significantly, shows that the petitioner pleaded guilty to all four charges; also none of the witnesses were cross-examined. Further that the Clothing Issue Register was not produced as evidence during the SCM.

7. The main argument on behalf of the petitioner was that while the SJCO had ordered detailing of QRT by name to Srinagar the next morning (21st October), the CHM ordered the QRT to leave on 20th morning itself. It was contended that CHM's command was illegal as it was contrary to the order of the SJCO (a superior authority). Moreover, it was urged that the petitioner had a justified ground for not joining the QRT i.e. that he did not possess coat parka. It was submitted that in the month of October, at a distance of 14 km from Srinagar on Leh road, the weather was extremely cold; and thus the petitioner's reason was justified. It was moreover pointed out that the W-2 the Camp Comdt. did not corroborate the allegation; the CIO showed that the coat parka had, in fact, been issued to the petitioner. It was also argued that the absence of the CIO record vitiates the finding against the petitioner on the Second Charge. It was argued that by the time a coat parka was issued and the petitioner withdrew his weapon

and BPJ, the QRT had already left, and therefore, the petitioner was not at any fault. His case, thus, was that the petitioner was wrongly convicted of the Second Charge. Counsel also contended that, whether or not the conviction for the Second Charge was valid, the punishment awarded to the petitioner was disproportionate.

8. Counsel for the respondents, on the other hand, defended the petitioner's dismissal from service. It was contended that the ingredients for the offence u/s 41, Army Act, 1950 were clearly made out. He submitted that orders were given to the petitioner not just by CHM, but also by the SJCO and the Camp Comdt., all of whom were "superior officers"; that their command(s) was lawful; and the petitioner wilfully disobeyed the same which is clear from what he said. His conduct, therefore, showed wilful defiance of authority. He further contended that even if the petitioner's version is believed that he did not have coat parka, his refusal to join the QRT falls within the ambit of Section 41. The atmosphere of discipline, it was urged, must be maintained, and a superior officer's order, however harsh it may be, must be carried out if it is lawful; in any case, an attempt to carry out the command given must be made. The petitioner's outright refusal to not join the QRT immediately, therefore, amounted to disobedience of the orders of superior officer.

9. This Court has considered the submissions. The petitioner was charged with, and convicted u/s 41(1). It reads as:

(1) Any person subject to this Act who disobeys in such manner as to show a wilful defiance of authority any lawful command given personally by his superior officer in the execution of his office whether the same is given orally, or in writing or by signal or otherwise shall on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

10. A bare reading of the provision would reveal the following conditions for its fulfilment:

- a. The accused is subject to this Act.
- b. The accused disobeys a lawful command given by his superior officer personally.
- c. Such command was given during the execution of his office.
- d. The disobedience shows wilful defiance of authority.

There is no dispute about requirements (a) and (c). The petitioner falls within the persons stipulated u/s 2, who are subject to the Act, and CHM, the SJCO and the Camp Comdt. were all officers superior to him in terms of Section 3(xviii). It is also clear that the order given to the petitioner related to a matter pertaining to military duty - he was asked to join the QRT (an emergency unit) leaving for Srinagar.

11. As regards requirement (b) and (d) (mentioned above), this Court is in agreement with the submission of the respondents. The order given by CHM NK Rishpal Dass was a lawful order. This is, in our opinion, despite the fact that SJCO Satpal stated in his deposition that he had asked Rishpal Dass to detail a QRT for proceeding to Srinagar the next morning i.e. 21st October (and not immediately, on 20th October, as told/ordered by Rishpal Dass). Also, the possession or not of coat parka is immaterial to the lawfulness (legality) of the order. Firstly, two out of three witnesses stated that the CIO showed the issuance of coat parka to the petitioner. Secondly, even if the petitioner's version, that he did not possess coat parka, is to be believed, he was still obligated to obey the command to join the QRT. It was not for the petitioner to impose conditions for carrying out a lawful command given by a superior officer. His doing so, and thereafter refusing to join the QRT plainly depicts that his action was intentional, which amounts to wilful defiance of authority. In light of the above discussion, this Court is of the view that there exists no error apparent on the face of the record. Even as regards the punishment awarded, since the same is not shockingly disproportionate, no interference is called for. In parting, however, we are of the opinion that if the petitioner applies for compassionate allowance, in terms of the rules or regulations applicable to such class of employees, the same should be considered on its merits, and in accordance with law. The writ petition is, accordingly, dismissed.