

(2006) 02 DEL CK 0109
In the Delhi High Court
Case No : Writ Petition (C) 568 of 1998

Sepoy Gurdev Singh

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 02-02-2006

Acts Referred:

Army Act, 1950 — Section 34, 35, 36, 37, 38

Citation : (2006) 02 DEL CK 0109

Hon'ble Judges : Mukul Mudgal, J;H.R. Malhotra, J

Bench : Division Bench

Advocate : Sanjeev Rajpal, for the Appellant; Sameer Aggrawal, for the Respondent

Final Decision : Dismissed

Judgement

Mukul Mudgal, J.—Rule was issued on 9th February, 1998. With the consent of the learned counsel for the parties, the writ petition is taken up for final hearing.

2. On 8th December, 1984, the petitioner was enrolled as Sepoy Ex. No. 15100548M G.N.R. (OPR) of 1889 LT Regiment. The petitioner went on leave with effect from 13th October, 1993 to 26th October, 1993 which leave was granted to him. On 24th October, 1993 the petitioner's sister died leaving behind her 5 minor children. On 26th October, 1993 the petitioner sought extension of leave. This extension was granted up to 1st November, 1993. But the petitioner did not rejoin his duties upon expiry of his leave but his wife send a letter/application for extension of leave for seven months with medical certificate Psychiatric disorder. The petitioner eventually rejoined his duties on 30th April, 1994. The petitioner was chargesheeted and his plea of guilt was recorded. On 11th May, 1994 pursuant to the summary court martial the petitioner was dismissed from service.

3. The learned counsel for the petitioner, Shri Sanjiv Rajpal has contended by relying on Section 39 of the Army Act, 1950 (in short the 'Act') that the

petitioner could not have been awarded the punishment of dismissal from service on the basis of the Section 39 of the Act and at best he could have been awarded a punishment of imprisonment for a term not more than 3 years. Section 39 of the Act reads as follows:-

39. Absence without leave. Any person subject to this Act who commits any of the following offences, that is to say,-

- (a) absents himself without leave; or
- (b) without sufficient cause overstays leave granted to him; or
- (c) being on leave of absence and having received information from proper authority that any corps, or portion of a corps, or any department, to which he belongs, has been ordered on active service, fails, without sufficient cause, to rejoin without delay; or
- (d) without sufficient cause fails to appear at the time fixed at the parade or place appointed for exercise or duty; or
- (e) when on parade, or on the line or march, without sufficient cause or without leave from his superior officer, quits the parade or line or march; or
- (f) when in camp or garrison or elsewhere, is found beyond any limits fixed, or in any place prohibited, by any general, local or other order, without a pass or written leave from his superior officer; or
- (g) without leave from his superior officer or without due cause, absents himself from any school when duly ordered to attend there, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to three years or such less punishment as is in this Act mentioned.

He submits by relying on the underlined portion of Section 39 of the Act that the punishment of dismissal from service is unsustainable as the the said provision did not warrant such punishment and only the punishment of imprisonment was provided u/s 39 of the Act.

4. The learned counsel for the respondents, Shri Sameer Agrawal submits that the perusal of Section 39 shows that upon a court martial the person subject to the Act is liable to suffer imprisonment for a term which may extend to three years or such less punishment as in this Act mentioned. He has relied upon Sections 71 to 72 of the Act which reads as follows:-

71. Punishments awardable by court-martials. Punishments may be inflicted in respect of offences committed by persons subject to this Act and convicted by court-martial, according to the scale following, that is to say -

- (a) death;
- (b) transportation for life or for any period not less than seven years;

(c) imprisonment either rigorous or simple, for any period not exceeding fourteen years;

(d) cashiering, in the case of officers;

(e) dismissal from the service;

(f) reduction to the ranks or to a lower rank or grade or place in the list of their rank, in the case of warrant officers; and reduction to the ranks or to a lower rank or grade, in the case of non-commissioned officers;

Provided that a warrant officer reduced to the ranks shall not be required to serve in the ranks as a sepoy;

(g) forfeiture of seniority of rank, in the case of officers, junior commissioned officers, warrant officers and non-commissioned officers; and forfeiture of all or any part of their service for the purpose of promotion, in the case of any of them whose promotion depends upon length of service;

(h) forfeiture of service for the purpose of increased pay, pension or any other prescribed purpose;

(i) severe reprimand or reprimand, in the case of officers, junior commissioned officers, warrant officers and non-commissioned officers;

(j) forfeiture of pay and allowances for a period not exceeding three months for an offence committed on active service;

(k) forfeiture in the case of a person sentenced to cashiering or dismissal from the service of all arrears of pay and allowances and other public money due to him at the time of such cashiering or dismissal;

(l) stoppage of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good.

72. Alternative punishments awardable by court-martial....Subject to the provisions of this Act, a court-martial may, on convicting a person subject to this Act of any of the offences specified in sections 34 to 68 inclusive, award either the particular punishment with which the offence is stated in the said sections to be punishable, or, in lieu thereof, any one of the punishments lower in the scale set out in section 71, regard being had to the nature and degree of the offence.

5. The learned counsel for the respondents submits that the scale of punishment as laid down u/s 71 of the Act shows that the punishment prescribed in Section 71(c) of the Act of imprisonment either rigorous or simple not exceeding 14 years is higher in the prescribed scale in Section 71 than the punishment of dismissal from service as prescribed in Section 71(e). Consequently he submits that it was open to that authority to award a lesser punishment of dismissal from service as compared to imprisonment which was done in the present case. He has also relied on the provisions of Section 72 of the Act to submit that upon conviction pursuant to a court martial the petitioner could be awarded

punishment(s) as indicated in Sections 34 to 68 of the Act or any of the lesser punishments as set out in the scale of Section 71 of the Act. Mr. Agrawal has submitted that the effect of the Sections 71 to 72 of the Act clearly is that the petitioner could have been awarded a lower punishment of dismissal from service instead of being granted as set out in Section 71 of the Act.

6. In our view the plea of the learned counsel for the petitioner is not sustainable because the words three years or such less punishment set out in Section 71 of the Act are required to be given a full effect to and it is evident that the lesser punishments as set out in Section 71 were awardable to a delinquent. Section 71 clearly shows that the imprisonment prescribed in sub- clause (c) of Section 71 is higher in scale than dismissal from service as prescribed in sub-clause (e) of Section 71 of the Act. Accordingly the plea of the petitioner cannot be accepted and stands rejected.

7. The learned counsel for the petitioner has thereafter submitted that the punishment was in any way too harsh as the overstay was occasioned by the psychiatric disorder. The coincidence of a psychiatric disorder which is said to have occurred as stated in the petitioner's wife's letter dated 1st November, 1993 on the date of the expiry of the petitioner's leave on 1st November, 1993, makes such a plea highly incapable of being believed and accordingly we are satisfied that the petitioner who overstayed his leave of six months was dealt with correctly. We have also taken into account the respondents' plea raised in their counter affidavit that the petitioner's track record of being absent without leave on two earlier instances for which absence he had already been punished on 14th March, 1990 and 25th June, 1993 respectively as a relevant circumstance for sustaining the awarded punishment.

8. In this view of the matter and taking into account the past record of the petitioner the petitioner's dismissal from service could not be said to be harsh and unsustainable. There is thus no merit in the writ petition.

9. Consequently the writ petition is dismissed and stands disposed of with no order as to costs.