
(2001) 04 KAR CK 0057
In the Karnataka High Court
Case No : Writ Petition No. 3896 of 2000

Thimmanna

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 10-04-2001

Acts Referred:

Army Act, 1950 — Section 116

Citation : (2002) 1 KarLJ 51 : (2001) 3 KCCR 165 SN

Hon'ble Judges : Chidananda Ullal, J

Bench : Single Bench

Advocate : G.G. Chagashetty and I.R. Biradar, for the Appellant; S.N. Rajendra, Additional Central Government Standing Counsel and Bhupendra Singh, Amicus Curiae, for the Respondent

Final Decision : Dismissed

Judgement

The Court

1. The petitioner in filing the instant writ petition had challenged the order dated 15-7-1989 passed by the respondent 2, copy as at Annexure-A to writ petition, in passing whereof, the respondent 1 had discharged the petitioner from the military services of the respondent 1 as he was found guilty in a summary Court-martial proceedings held preceding the above discharge order. The petitioner further prayed in the writ petition that the respondents be directed to reinstate the petitioner in service with all consequential benefits.

2. The respondents are represented by the learned Additional Central Government Standing Counsel, Sri S.N Rajendra. At the instance of the Court, Col. Bhupendra Singh (Retd.), a practising Advocate of this Court, had been requested to assist the Court. Accordingly, he had been appointed as Amicus Curiae in the case.

3. The learned Counsel for the petitioner, Sri Biradar, appearing along with Sri G.G. Chagashetty, while taking me through the petition averments, argued that

the petitioner had been dismissed from service by an order dated 15-7-1989, copy as at Annexure-A to writ petition. According to him, the petitioner was not served with copy of the charge-sheet and further the requisite records inasmuch as there was failure of justice before the respondent 1-Military Authority in conducting the summary Court-martial. It was also pointed out by Sri Biradar that in the earlier round, the petitioner had resorted to a writ petition in W.P. No. 36725 of 1997 before this Court seeking a writ of mandamus directing the respondents to supply necessary documents to his party and that this Court on 7-1-1999 allowed the said writ petition at the very stage of preliminary hearing and directed the respondents 2 and 3 to furnish the documents sought for by the petitioner. It was also pointed out by Sri Biradar that despite there being a direction of this Court, the respondents did not oblige the petitioner inasmuch as they did not supply the necessary records as directed by this Court and that thereafter it was the learned Counsel for the petitioner to issue a legal notice to the respondent 2, copy as at Annexure-G to writ petition. Sri Biradar had also submitted that there was an inordinate delay in filing the instant writ petition before this Court for the reason that the petitioner was suffering from mental disorder and furthermore the petitioner was not supplied with necessary records for filing the petition in time. Therefore, according to him, a case was made out for condonation of delay of 11 years in filing the instant writ petition.

4. I have to observe right here that the earlier writ petition in W.P. No. 36725 of 1997 that came to be disposed of with certain directions to the respondent is of less significance since the same came to be disposed of right at the stage of preliminary hearing.

5. The learned Additional Central Government Standing Counsel, Sri S.N. Rajendra, on the other side submitted that the respondents had filed detailed objection statement. According to him, the instant writ petition is liable to be dismissed on the sole ground of delay alone as the petitioner in no part of the petition had offered any explanation for the same. While drawing my attention to Annexure-R to R3 filed along with the objection statement, Sri Rajendra had also submitted that it was totally false on the part of the petitioner to say before this Court that he had not been served with necessary records, for it is clear from Annexure-R wherein it had been shown therein that the charge-sheet and other accompanying documents had duly been supplied to him before the summary Court-martial. He had specifically drawn my attention to the impression of the signature of the petitioner that was affixed in Annexure-R1 (the same in xerox) to the objection statement. It was also added by him that the petitioner herein had resorted to the instant writ petition by making false presentation. In support of his argument, Sri Rajendra had also cited before me a decision in Vidya Parkash Vs. Union of India (UOI) and Others, While taking me through the said decision. Sri Rajendra submitted that the facts and circumstances of the case in hand and the facts of the case in the reported case are similarly placed and in the reported decision, the Apex Court held that in a case where an army soldier absented himself from duty without taking any leave from the Authority

concerned inflicting of punishment of dismissal from service could not be said to be disproportionate to the charge or tainted with illegality as contemplated under the Army Act.

6. As I see, para 14 of the said judgment, the Court had observed as hereunder:

"14. Chapter 6 of the Army Act specifies the offences and also the punishments for such offences. Section 39(a) specifies that to be absent without leave constitutes an offence and Section 71(e) of the said Act provides dismissal from service as one of the punishments for such an offence. The appellant undoubtedly absented himself from duty without taking any leave from the lines as required under the Army Act. The appellant was charge-sheeted for the said offence and he was tried by a summary Court-martial convened by the Commanding Officer and after giving him due opportunity it was held that the appellant was previously punished also for the offence of absence from duty on four occasions and there was a red ink entry. Considering all this in the summary Court-martial proceedings he was convicted and sentenced to the punishment of dismissal from service. The submission that the punishment is disproportionate to charge is wholly unsustainable. The summary Court-martial constituted by Major P.S. Mahant after considering the evidence has found the appellant guilty of the alleged charge and awarded the said punishment in accordance with the provisions of the Army Act. As such the said order of dismissal cannot be challenged as disproportionate to the charge or as one tainted with illegality".

7. At one stage of the argument, it appeared to me that the award of punishment of dismissal from service of the petitioner was disproportionate and it is for that reason, I sought for assistance of Col. Bhupendra Singh (Retd.), an Advocate now practising before this Court after his retirement from his military service to find out whether the punishment of dismissal of petitioner from military service was in any way disproportionate. Such a course was opted by me for the reason that he had retired from active military service as Colonel and as such he would be of good assistance to Court to come to a just decision in the case. I should say that he did assist the Court well on the point. While drawing my attention to Sections 116 and 120(4) and (5) of the Army Act, it was pointed out by the Amicus Curias that the petitioner herein came to be subjected for a summary Court-martial and as per the said provisions, the Commanding Officer of the Unit of the petitioner had authority in law to hold summary Court-martial. It was further pointed out by him that the petitioner herein had earlier suffered punishment of imprisonment on two occasions for similar offences and as such the award of punishment of dismissal of the petitioner from service for the offence he had committed for the third time could not be said as disproportionate.

8. During the course of the argument, Col. Bhupendra Singh placed reliance on Ranjit Thakur Vs. Union of India (UOI) and Others, . While taking me through para 9 of the judgment, he had pointed out that the judicial review, generally speaking is not directed against the decision but it is directed against the decision making process.

9. Therefore, according to the learned Amicus Curiae, the award of punishment of dismissal of the petitioner from service could not be said as disproportionate. He had also brought to my notice that in para 448 in the Regulation for the Army (1987 Revised Edition) it had been set out therein the table of punishment in respect of summary Court-martial and from the said table of punishments set out there below, it is clear therefrom that in addition to the imprisonment in case of repenting of the offence, dismissal of the delinquent from the services is also permissible. To summarise, the Col. Bhupendra Singh, submitted that it could not be said that in the instant case in hand, the punishment awarded to the petitioner who admittedly an offender for the third occasion was disproportionate.

10. I do not think that it is necessary for me to go into the merit of the case in the instant case, though the learned Amicus Curiae, Sri Bhupendra Singh appointed by Court as well as the learned Additional Central Government Standing Counsel, Sri Rajendra had argued the case on merits too to justify the inflicting of punishment of removal of the petitioner from the military service keeping in mind the discipline to be maintained in the Army.

11. Admittedly, in the instant case in hand, the petitioner had approached this Court after 11 long years. According to the learned Counsel for the petitioner, the delay of 11 years had caused for twin reasons, firstly, that the petitioner was not keeping well as he was stated to be suffering from mental disorder and secondly, that he was not supplied with necessary records. On filing the objection statement by the respondents, the second contention put forth by the petitioner appears to be false, for, by filing Annexure-R, it is demonstrated before Court that the petitioner herein was supplied with charge-sheet and other necessary records before subjecting him for summary Court-martial.

12. Let apart in filing the writ petition, the petitioner though contended that he was mentally ill, he had not produced even a scrap of paper before Court in that regard. All the more, it had emerged in the pleadings that the petitioner was arrested by Kalwol Police at Bombay, though there was controversy whether the police had arrested him on their own or the petitioner had surrendered to police on his own as the petitioner came to be proclaimed as an offender under the Army Act by the Military Authority for the above offence he had committed.

13. On going through the petition averments, it is also clear that in no part of the averments thereof the petitioner had explained valid reason or reasons for long delay of 11 years in filing the instant writ petition. Since the petitioner was guilty of delay and laches inasmuch as he had approached this Court after 11 long years, that too with false presentations, I think this writ petition has to be dismissed on the point of delay alone. Even otherwise there appears to be no case on merit. That I say in consideration of the above arguments addressed both by the learned Additional Central Government Standing Counsel, Sri Rajendra and the learned Amicus Curiae, Col. Bhupendra Singh.

14. In that view of the matter, the instant writ petition stands dismissed on the

point of delay. No cost.

15. Now a fee to be fixed to the learned Amicus Curiae, Col. Bhupendra Singh, who is appointed by the Court as such. That fee I fix at Rs. 750.00. I also record here the words of appreciation for the assistance he had rendered in the case. Let the above fee be appropriated towards the concerned Head of Account, i.e., "2014-Administration of justice, 114-Legal Adviser-Counsel, 01-Advocate General-Payment of professional and special services".