

Ex. Sgt. Prem Kumar Vs. Union of India and Others

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Court : Armed forces Tribunal AFT Principal Bench New Delhi

Decided On : May-16-2012

Judge : Manak Mohta, Judicial Member & the Honourable Mr. Lt. Gen. M.L. Naidu, Administrative Member

Appeal No. : O.A. No.227 of 2010

Appellant : Ex. Sgt. Prem Kumar

Respondent : Union of India and Others

Judgement :

1. The applicant filed this O.A. on 08.04.2010. Vide this O.A. the applicant has prayed for setting aside of the order dated 06.06.2008, the order of dismissal from service and order dated 04.02.2009 i.e. the order of rejection of the petition of the applicant. He has also prayed for reinstatement in service with all consequential benefits.

2. Brief facts of the case are that the applicant was enrolled in the Indian Air Force on 23.07.1990. Thereafter, he was posted to various units and formations and was serving in Headquarters Western Air Command (Hqwac) on 09.01.2006. He was married to one Mrs. Reena Tripathi and was living in married service quarters in Subroto Park, New Delhi. As they had no issues, therefore, they had moved a petition under Section 13B of the Hindu Marriage Act for dissolution of marriage by mutual consent before the learned District Judge, Tis Hazari on 26.02.2008, which

was granted on 21.07.2008 (Annexure A-I).

3. It is further contended that one Sh. Suresh Yadav, who was a distant relative of the applicant made complaint to the Assistant Provost Marshal (APM), Rajokri, Delhi that the applicant was visiting his place and his daughter Ms. Arpana Kumari was missing with the applicant since 15.01.2008. An FIR was lodged in police station Sangam Vihar, New Delhi on 31.01.2008. Sh. Suresh Yadav also made a complaint to the Air Force authorities on 31.01.2008 (Annexure A-II). The APM, Rajokri of HQWAC submitted report of the investigation on this complaint on 10.03.2008 (Annexure A-III Colly) to H.Q.

4. The applicant further submitted that when the investigation by the APM was in progress the applicant submitted an application to his Commanding Officer on 17.04.2008 that he has not been given an opportunity to cross-examine the witnesses and that the allegations against him were baseless. He also requested for a separate inquiry to go into the matter (Annexure A-IV). The respondents authorities rejected the request of the applicant vide their letter dated 07.05.2008 (Annexure A-V). The applicant further contended that when he returned to Delhi he was called upon by OIC and was told about the complaint dated 31.01.2008 made by Sh. Suresh Yadav. It is further alleged that on 06.02.2008 the APM, Rajokri, New Delhi was informed by Sh. Suresh Yadav as also by his letter dated 22.02.2008 stating that his daughter has reached Patna at her sisters residence and, therefore, he was withdrawing the said complaint. In that letter he stated that he has no grievance against the applicant (Annexure A-VI).

5. However, the applicant was issued with the Show Cause Notice (SCN) dated 31.03.2008 under Section 20(3) of the Air Force Act read with Rule 18 of Air Force Rules, 1969. This SCN issued was issued by Capt. N.K. Sharma, Command Judge Advocate on behalf of AOC-in-C (Annexure A-VII). The applicant, meanwhile, replied to the SCN on 07.05.2008 (Annexure A-IX) and also filed a writ petition before the Honble Delhi High Court against the SCN issued on 31.03.2008, which was dismissed as withdrawn in order to give appropriate response to the SCN (Annexure A-VIII).

6. It is further contended by the applicant that the respondents did not satisfied with his reply of the Show Cause Notice and the applicant was dismissed from service on 07.06.2008 by the orders of Sqn. Ldr. Manpreet Singh (impugned order). The applicant, thereafter, on 12.10.2008 submitted a representation to the Chief of Air Staff (CAS), requesting for cancellation of the order of dismissal from service and reinstating him (Annexure A-X). This petition was also rejected by CAS on 09.02.2009 (impugned order). Thereafter, the applicant sought information under the RTI for Court of Inquiry proceedings, which was again rejected by CPIO. Thereafter, the applicant appeared before the first appellate authority. However, the same was also rejected (Annexure A-XI). On appeal to the Central Information Commission for providing information regarding the notings on his case file qua dismissal of the applicant from service, which was allowed by the Central Information Commission (CIC) (Annexure A-XIII Colly). Thereafter, the applicant filed the present O.A.

7. Learned counsel for the applicant argued that the SCN issued by Group Capt. N.K. Sharma, Command Judge Advocate was in violation to the orders as it should have been signed by the competent authority, which, in this case, is AOC-in-C; thus, the notice was bad in law and the proceedings based on that notice became non est.

8. He also argued that no proper Court of Inquiry was held and the applicant was not given an opportunity to cross-examine the witnesses; therefore, he was deprived from a valuable right, the report is against the principles of natural justice and no action can be taken thereon.

9. Learned counsel for the applicant further argued that HQWAC was fully aware of the divorce proceedings, taking place between the applicant and his first wife i.e. Mrs. Reena Tripathi in Tis Hazari Courts, Delhi. Since he had promised to marry Ms. Arpana Kumari, therefore, after dissolution of marriage with Mrs. Reena Tripathi, there was no offence that the applicant has committed, but the authority failed to understand and took a harsh decision and against the law.

10. Learned counsel for the applicant further argued that the father of Ms. Arpana Kumari had withdrawn the complaint made against him and, therefore, there was

no valid reason for the respondents to proceed against him. He also argued that since then the applicant had now married to Ms. Arpana Kumari and they are having children from the said marriage. As such, there is no need to proceed against the applicant.

11. Learned counsel for the applicant cited the judgment passed by Honble Supreme Court in (1972) 1 SCC 144 Union of India Vs. Capt. S.K. Rao, in which the Honble Apex Court has held that a proper Court of Inquiry is required and, thereafter, in case the competent authority decides to dispense with the General Court Martial and invoke administrative proceedings, it can be undertaken.

12. He also cited the judgment passed in 1212 (1) SCT 79 Madhukar Tulsiram Tayade Vs. Chairman, Board of Directors, Vidarbha Kshetriya Gramin Bank, Akola and Ors., in which the Honble Bombay High Court has observed that removal from service can only be undertaken after giving a reasonable opportunity to the petitioner by the appellate authority; also, reasons have to be given by the authority for confirming the punishment; in case it is not done so, it implies that there has been non application of mind and, thus, is a violation of principles of natural justice.

13. He further cited the judgment passed by Honble Supreme Court in JT 2003 (3) SC 201 Union of India and Ors. Vs. B.N. Jha. In this case, the Honble Supreme Court has observed that a finding of guilt should be arrived at by a Court only after it has been supported by evidence and this evidence must be analysed and only then finding of guilt can be arrived at by the Court; any deviation to this procedure will bring one to the conclusion that there has been no evidence brought on record to prove the guilt of the respondents.

14. Learned counsel for the respondents states that the applicant was married to Mrs. Reena Tripathi and was living in service accommodation at Subroto Park. On 01.02.2008 a complaint was received by APM, Rajokri from Sh. Suresh Yadav resident of House No.C-305, Sangam Vihar, New Delhi against the applicant alleging that his daughter Ms. Arpana is missing since 15.01.2008, in which he suspected that the applicant is behind the alleged disappearance. Accordingly, a detailed investigation was carried out by the APM on the allegations against the

applicant. The investigation revealed that on 15.01.2008 the applicant along with Ms. Arpana had gone to Lucknow and stayed at the residence of LAC Sujeet, his younger brother, who was posted at AF Station, Bakshi Ka Talaab, Lucknow. While at Lucknow, the applicant established physical relations with Ms. Arpana and later came back to Delhi alone leaving Ms. Arpana at Lucknow. Under constant pressure from civil police and Air Force Police the applicant called her to Delhi and also pressurised her to write a suicide note blaming her parents. From Delhi he sent her to Patna where her sister was living. He also threatened her not to tell anyone about her stay with him at Lucknow.

15. The respondents further contended that the applicant promised Ms. Arpana that he is going to get divorce from his wife shortly and he will marry her, but later another complaint was received from Ms. Arpana dated 11.02.2008 alleging undue pressure from the applicant to withdraw her complaint and that he was also trying to blackmail her on the basis of some photographs and love letters written by her. It is further contended that the Indian Air Force Military Police (IAFMP) carried out search of the house of the applicant and recovered some photographs of both of the applicant and Ms. Arpana and letters along with other items. The investigation revealed that the applicant had sexually assaulted Ms. Arpana Kumari.

16. Learned counsel for the respondents further stated that a show cause notice under Rule 18 of the Air Force Rules, 1969 was issued on 31.03.2008 to the applicant for sexually exploiting Ms. Arpana Kumari and the applicant submitted his reply on SCN dated 07.05.2008. The AOC-in-C after considering his reply to the SCN and the circumstances of the case in entirety ordered dismissal of the applicant from service in terms of Section 20(3) of the Air Force Act, 1950 read with Rule 18 of the Air Force Rules, 1969. Accordingly, the applicant was dismissed from service on 07.06.2008.

17. Learned counsel for the respondents argued that the circumstances of the case makes it evident that no statutory rights of the applicant were violated and he was given ample opportunity to present his case. He further submitted that the applicants behaviour in sexually exploiting Ms. Arpana Kumari on the pretext of getting married to her reflected on his conduct as a member of IAF and was

against the dignity and decorum of the service. Learned counsel for the respondents stated that in the past also, applicants behaviour has not been exemplary. There was an incident of theft of warrant for which he was punished. He also argued that the applicant had made some allegations stating that the Warrant Officer K.S. Upadhyay, who was member of the IAFMP at Rajokri, was vengeful towards the applicant, but the same fact has not been substantiated by evidence. Further, he argued that the said Warrant Officer had not been made party to the petition.

18. Learned counsel for the respondents argued that Group Capt. N.K. Sharma had signed the document i.e. the SCN on behalf of AOC-in-C. The AOC-in-C had approved the issue of SCN based on the investigations carried out by the IAFMP as also the reports made available to him. The original record was presented by the counsel for the respondents for perusal.

19. Learned counsel for the respondents argued that in the SCN qua the allegations there is no whisper against the Warrant Officer K.S.Upadhyay of being biased and, therefore, the allegations of bias by the Warrant Officer cannot be sustained.

20. Learned counsel for the respondents argued that the respondents had also provided with a copy of the statement of Ms. Arpana Kumari as well as the certified copy of the report of investigation in order to prepare his defence. Further, he argued that the complaint was made to Air Force authorities and there was no need to investigate the matter by civil authorities or a judicial magistrate.

21. He drew our attention to his voluntary statement made during the course of investigation, in which he himself said that he considers Arpana as a sister.

22. Learned counsel for the respondents argued that the applicant blackmailed Ms. Arpana and photos and letters were recovered from his house and it was also brought out that he finally gave her money and pressurised her to go to her sisters residence at Patna and not to talk to anyone about her staying at Lucknow with him. Learned counsel for the respondents argued that a Court of Inquiry is not essential before issuing a SCN vide Air Force Rule 18(1) and since he was

informed qua the gravamen of charges against him, it was considered not essential to initiate a regular Court of Inquiry. He also argued that having received the inquiry report, as also having taken into consideration the reply to the SCN, AOC-in-C, in his wisdom, decided to dispense with the service of the applicant.

23. Having heard both the parties at length and having examined the documents placed before us we are of the view that the Court of Inquiry is not a pre-requisite for issue of SCN. Rule 18(1) of the Air Force Rules give out the circumstances under which personal can be removed or dismissed from service. Rule 18(1) of the Air Force Rules, 1969 reads as under: -

18. Dismissal or removal of a person subject to the Act other than an officer. -(1) Save in a case where a person subject to the act other than an officer is dismissed or removed from the service on the ground of conduct which had led to his conviction by a criminal court or a court-martial, no such person shall be dismissed or removed under sub-section (1) or sub-section (3) of section 20 unless he has been informed of the particulars of the cause of action against him and allowed reasonable time to state in writing any reasons he may have to urge against his dismissal or removal from the service.

24. We have considered the submission of the learned counsel for the applicant and the arguments addressed by learned counsel for the respondents. As regards the validity of the SCN issued on 31.03.2008 and signed by Group Capt. N.K. Sharma, it is apparent from the SCN itself that the officer had signed on behalf of AOC-in-C. We have also examined the notings of the file before us, in which the AOC-in-C had taken a considered decision to issue a SCN based on the investigation report conducted by the IAF, the complaints filed by Ms. Arpana Kumari and her father. The SCN also contains gravamen of the charges against the applicant in detail. Therefore, the SCN was complete in itself. The contentions raised in this respect by the applicant side are baseless.

25. We have observed that the investigation was carried out by IAF Military Police. We have examined the relevant provisions regarding powers of military police. Para 917 of the Regulations for the Air Force Act 1964 empowers the Chief of Air Staff to issue administrative instructions as may be relevant for day to day

administration. Under this Regulation, the Chief of Air Staff has issued the Air Force order No.15/1990. This deals with IAF POLICE ORGANISATION, ROLE AND FUNCTIONS. Vide para 8 of the Order, the responsibility of the Air Force Police has been listed out. Para 8(b) and (c) are as under:-

(a) xxxx

(b) To preserve good order and discipline.

(c) To prevent breaches of discipline by persons serving or attached to the Air Force.

26. Vide para 57 of the said Air Force Order, the authority for investigation by Air Force Police has been listed out. Para 57 reads as under:-

57. IAF Policemen. IAF Police tradesmen are the back bone of the security system of a Wing/Station/Unit. They are to be utilised to ensure physical security, maintenance of discipline, prevention and detection and investigation of crime within the premises of the Wing/Station/Unit.

27. Besides this, Manual of Air Force Police, IAP 5000, at para 158 states as under:-

WO/SNCO i/c Investigation. IAF/Policemen who have an aptitude and flair for investigations will be detailed for this duty. All cases of theft and other occurrences which require investigation, will be handled by the policeman detailed for the purpose. Generally the tasks are as follows:-

(a) He will maintain an upto date record of all cases and note their progress in proper sequence.

(b) Cases reported must be investigated immediately and prompt action must be taken to bring the offender to trial.

(c) Seeking assistance of civil police/PandS Unit where it is not possible to carry on the investigation without outside help.

(d) Proper recording of all evidence and submission of reports to the Security Officer.

(e) He will maintain a proper diary to note the progress of the investigation so as to enable other agencies to continue the investigation.

Policemen detailed for investigation duties must use tact in obtaining information and be discreet in their dealings.

28. We have also examined the duties assigned to IAF Military Police at para 174 of the Manual. The same is as under:-

174. Investigation duties. In a Provost and Security Unit an investigating agency called the Special Investigation Branch is established to deal with all major/minor cases, including vigilance, reported to a Provost and Security unit. Normally, an experienced SNCO of the IAF Police is detailed as SNCO i/c and he is responsible to the Assistant Provost Marshal for proper investigation of cases reported. Comprehensive instructions on the functioning of this section are given in AFO 188/77 as amended from time to time.

29. Under the above provisions, the Provost unit APM Rajokri was competent to investigate the case based on the complaint received from Shri Suresh Yadav dated 31.01.2008 and later on from Ms. Arpana dated 16.02.2008. Though Shri Suresh Yadav withdrew his complaint on 22.02.2008, Ms. Arpana has not withdrawn the complaint to date. It was very much in the realm of investigative duties that the Provost Marshal carry out his functions. Since it is just an investigation by Provost, invoking of Regulation 790 is therefore not required. Besides, the copy of the provost report was provided to the applicant which contain the gravamen of the charges against him. Under Section 18 of the Air Force Rules, a court of inquiry is not a pre-requisite. However, details of the charges held against the delinquent needs to be given in the show cause notice, which was done in this case.

30. We have perused the investigation report as filed by APM Rajokri. We have also perused the statements of various witnesses which includes LAC Sujeet

Kumar, ESSA younger brother of the applicant who was posted at Air Force Station Dhobi Ka Talab. He has clearly stated that Sgt Prem Kumar had visited him accompanied by a girl whose name was Arpu approximately 22 years of age. She was not a relative. He has further stated that his brother and the girl had stayed in his house together and had intimate relations with each other. Also that Sgt Prem Kumar told him that he plans to marry this girl since he does not have an issue with his wife. His statement corroborates with the statement given by Ms Arpana.

31. We have also examined the reply given by the applicant to the SCN, in which he has only contested the issue of SCN based on certain legal counts and he has challenged the investigation carried out by the IAFMP, Rajokri, New Delhi. In the reply to the SCN he has made an allegation against the APM, Rajokri to say that the Warrant Officer K.S. Upadhyay was against him due to a Court of Inquiry held in the year 1999 relating to some missing railway forms. This indicates that the copy of the APM report was made available with the applicant.

32. We have noted that though Shri Suresh Yadav had withdrawn his complaint on 06.02.2008 but complaint filed by Ms. Arpana on 16.02.2008 has still not been withdrawn. We observe that Ms. Arpana's letter contains the gravamen of the charges wherein she alleges that she was forcibly taken to Lucknow on 15.01.2008 with a promise that applicant will marry her and she was, therefore, sexually exploited. On return to Delhi on 26.10.2008, the applicant further pressurised her to force her father to withdraw the complaint and also compelled her to move to Patna where her elder sister was residing. At this stage, the applicant was married and his application for divorce proceedings with his first wife Ms. Reena Tripathi was filed on 26.02.2008 which was granted on 21.07.2008. Therefore, the applicant was clearly trying to exploit her sexually at the time when his application for divorce had not even been filed. This conduct of applicant being a Army personnel was not befitting and a gross misconduct.

33. From the original file and notings, we have also seen that the AOC-in-C, on receipt of the reply dated 07.05.2008 and based on other documents, placed before him took a considered decision to dismiss the applicant from service.

Therefore, to say that the AOC-in-C has taken a decision without application of mind or without giving due consideration to the facts of the case, are not correct. AOC-in-C has opined that the conduct of the applicant has been so grave in nature and against the ethics of the society and that it is prejudicial to the community living in the Air Force and, hence, the services of the applicant in the Air Force were considered to be undesirable. Having considered the case in entirety he has passed the order of dismissal on 05.06.2008 under Section 20(3) of the Air Force Act read with Rule 18 of Air Force Rules, 1969. That order does not suffer from any infirmity and illegality.

34. The citation by the learned counsel for the applicant in UOI Vs Capt S.K. Rao (Supra) also does not help him because the case pertains to the GCM and their Lordships have opined that the court martial should have been preceded by a court of inquiry. However, in this judgment, the Honble Apex Court has also held that the respondents are competent to invoke the provisions of Section 19 which empowers them to dismiss or remove any person from the service subject to the Act. Section 19(2)(a) specifically gives power to make a rule providing for the removal from the service of persons subject to the Act. In fact this judgment supports our view which gives the right to the competent authority to discharge a person under the provisions of Section 20(3) of the Air Force Act read in conjunction with Rule 18 of the Air Force Rules 1969.

35. In view of the foregoing, we are not inclined to interfere in the case. The applicant is not entitled for relief claimed.

36. Application stands dismissed. No orders as to costs.

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