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Court : Armed forces Tribunal AFT Principal Bench New Delhi

Decided On : Dec-10-2010

Judge : S.S. Kulshrestha, Member &Amp;amp; the Honourable Mr. Lt.Gen. S.S. Dhillon, Member

Appeal No. : TA NO. 399 of 2009 (Writ Petition (C) No. 1749 of 1998)

Appellant : Dilbagh Singh

Respondent : Union of India and Others

Judgement :

1. This petition has been brought by the appellant contesting the Summary Court Martial proceedings and sentence of 6.2.1995, by which he was sentenced to be reduced to the ranks and to be dismissed from service. On formation of this Tribunal, the writ petition was transferred and is being disposed of by this judgment treating it as an appeal under Section 15 of the Armed Forces Tribunal Act 2007.

2. Before going into the versions of both parties, it would be appropriate to give a brief review of the circumstances resulting in this SCM. The appellant returned from annual leave on 29.1.1995. At Leh Airport, he was informed by Sep. Swaran Singh of his unit that he was to proceed immediately to HQ 15 Corps, Srinagar. Sep. Swaran Singh also gave him the desired movement order, which was the authority for him to proceed for such duty. However, the appellant did not proceed

to HQ 15 Corps for duty because, according to the appellant, he did not have the requisite winter clothing or money with him and also that he had boils on his hand and chest. The appellant reported back to his unit, i.e. 282 Company ASC Type A and did not proceed to HQ 15 Corps as ordered. Thereafter, he was tried for an offence under Army Act Section 41(2), i.e. disobedience of lawful command, and sentenced to be reduced to the ranks and to be dismissed from service. On his petition to the Chief of Army Staff under Army Act Section 164(2), the Chief of Army Staff remitted the sentence of dismissal to discharge from service with all consequential benefits, while rejecting the petition for all other purposes. Therefore, the prayer in this appeal is to set aside the entire SCM proceedings of 6.2.1995 and to restore the appellant to the rank of Havildar from the date he was court martialled. Learned counsel for the appellant stated that he had joined the Army on 18.3.1983 and was promoted to the rank of Naik in 1986 and to Havildar in 1989. This was due acknowledgment of his dedicated and selfless service to the Army.

3. The appellant stated that he proceeded on annual leave from 18.11.1984 to 18.1.1995. He reported back on time at Chandigarh Transit Camp from where he was sent to his unit by service aircraft on 29.1.1995. On arrival at Leh, he was informed by Sep. Swaran Singh of his unit to proceed to HQ 15 Corps at Srinagar and was also given a movement order as due authority for such move. The appellant expressed his genuine problem that he had no clothing or money and that he had fever as well as a boil on his hand and right side of the chest. The appellant rang up his unit Head Clerk and informed him accordingly and requested him to tell the Commanding Officer about his problem. Thereafter, on 2.2.1995, he reported to the unit wherein his Company Commander, Maj. A.K Prehar, admonished him for disobedience of orders and thereafter, summary court martialled him on 6.2.1995 for an offence, as given below:

AA SEC. 41(2)

DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER.

in that he,

at field on 29 Jan 95 when ordered by IC-41595-X Maj MKS Yadav 2IC of 282 Coy ASC (Sup) Type A to proceed on temp duty to HQ 15 Corps vide mov order No 111/ST-12 dated 25 Jan 95, did not do so.

The appellant contended that he had an unblemished record of service till the date of this offence and his general character at the time of his court martial was very good. He also argued that he had almost 12 years of service at the time of his court martial. It was further argued by the appellant that the court martial was vitiated due to non compliance of Army Rule 34 as well as Army Rule 23(1). Furthermore, his not proceeding on duty to HQ 15 Corps did not amount to disobedience under Army Act Section 41(2), in that he had not shown any wilful defiance of authority of any lawful command of a superior officer.

4. The appellant also contended that all along he had pleaded his innocence and for him to be tried on a plea of guilt was grossly illegal. In all fairness, the Commanding Officer should have changed his plea of guilty to not guilty under the provisions of AR 116(4) and conducted a full-fledged trial. This can be discerned from the fact that his statement at the summary of evidence states I told him that I have a boil in armpit. How can I go? After coming back to unit Maj MKS Yadav asked why I did not go to Srinagar and I told him ..... Thereafter, at the court martial also, he has pleaded as under:

After coming back from leave, I did not have adequate money and personal clothing and I also had a boil in my armpit that is why I did not go to Srinagar but come to the unit. If I had got admitted it would have been taken as malingering.

Despite these repeated statements of innocence for the CO to proceed against him as if he had pleaded guilty was distortion of the factual position, notwithstanding the fact that he had signed such proceedings and plea of guilt based on inducements and threats by his CO.

5. This contention of the appellant was strongly opposed by the respondents stating that the appellant had displayed wilful disobedience of a lawful command given by his superior officers and he had been rightly punished for the same. In fact, the Chief of Army Staff had been benevolent in remitting the sentence of

dismissal from service and he had been accorded consequential benefits also. For him now to state that he should also be given back his rank of Havilder and for the SCM proceedings to be set aside would be gross traversity of justice. It had been adequately proved that immediately on joining from leave at Leh, the appellant was given a movement order and instructions to proceed directly to HQ 15 Corps on temporary duty. But he wilfully disobeyed the orders and was rightly tried by the court martial for an offence under Army Act Section 41(2). The appellant was given a lawful command by his superior officer, Maj. Yadav, to proceed on temporary duty to HQ 15 Corps. This order was given in writing, vide Movement Order No. 111/ST12 dated 25.1.1995, which was handed over to him by Sep. Swaran Singh at Leh Airport on 29.1.1995. He wilfully disobeyed the orders. The three grounds taken by him, i.e. he did not have clothing, money and that he had a boil on his armpit were frivolous and not acceptable. The plea that he had a boil on his armpit and, therefore, could not proceed on temporary duty was unacceptable because he could have got this boil treated even on temporary duty at HQ 15 Corps or while en route at any suitable medical stations. Moreover, if he could travel from home to Chandigarh and thereafter to Leh and Kargil in extreme cold winters with the so called boil on his shoulder, he could certainly have travelled from Leh to Chandigarh with the same ailment. The second issue about clothing was a blatant lie, as there is an extreme cold climate detachment of the unit at Leh which would have issued him whatever clothing he required for that area. The last plea of inadequate money was also irrelevant as he could have drawn his salary at HQ 15 Corps where he was being sent on duty. Disobedience of orders of such a nature in an active field station by a Havildar is not acceptable in a disciplined Army and sets a bad example for the other personnel. It was also argued that the appellant was habituated to alcohol and was a constant nuisance in the unit and had disobeyed orders on a number of occasions, for which he had been warned severely by the superiors. For example on 8.10.1994, he was found intoxicated by the duty JCO for which he was duly punished. It was strongly argued that the remittance of the sentence of dismissal to discharge has given the appellant adequate relief because the Chief of Army Staff had also vide the same order given the appellant all consequential benefits and there was no need for any further relief to the appellant.

6. Keeping in view the fact that the charge of disobedience has been proved and that the sentence of dismissal from service has been remitted by the Chief of Army Staff to discharge with all consequential benefits and the fact that the SCM was conducted in a judicious manner and in compliance with all provisions of the Army Act and Rules, we do not find any reason to interfere with the findings and sentence of the SCM. Accordingly the appeal is dismissed.

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