

Ajit Kumar Vs. Union of India and Others

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Court : Armed forces Tribunal AFT Principal Bench New Delhi

Decided On : Dec-01-2010

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

Appeal No. : TA NO. 761 OF 2009 (Writ Petition (C) No. 5589 OF 2002)

Appellant : Ajit Kumar

Respondent : Union of India and Others

Judgement :

1. This writ petition has been filed by the appellant contesting his dismissal from service on the orders of the Summary Court Martial constituted on 6.10.1997. The appellant contends that despite the fact that his record of service till then was exemplary and that this was his first offence, he was dismissed from service in a very arbitrary, casual and illegal manner for a very minor offence. On formation of this Tribunal, the writ petition was transferred to it for disposal and treating it as an appeal under Section 15 of the Armed Forces Tribunal Act 2007, is being disposed of by this judgment.

2. The appellant states that he was enrolled in the Army as a Sep. Driver on 17.10.1995 and on completion of his training, he was posted to 5685 ASC Battalion at Haldwani on 21.12.1996. Within one year of joining this unit and without even assigning him his basic duties as a Driver, he was dismissed from

service and sent home for no fault of his. The allegation against the appellant was that he committed an act of theft under Army Act Section 52(a), in that he between 12.5.1997 and 1.6.1997, while performing the duties of Assistant Salesman of CSD Canteen of his unit, committed theft of various grocery items valued at Rs.1276/-. The appellant alleged that from 12.5.1997 onwards, when he started working in the CSD Canteen, he found that Nk. P. Adhikari, who was in charge of the Grocery Section of the CSD Canteen, was not a straight forward person, in fact, his integrity was doubtful. Keeping this in view, he requested his Company Commander to assign him his basic duties as a Driver, but no action was taken to replace him from the Canteen and he continued to perform the functions of Assistant Salesman. On 30.5.1997, Nk. Adhikari gave him a box containing hair oil, shampoo, soap, powder, cream, etc and asked to deliver this to his house (Nk. Adhikari). When the appellant went to Nk. Adhikaris house, he found it locked and the next day, i.e. 1.6.1997, the appellant informed Nk. Adhikari that he was unable to deliver the items because he found the house locked and he had retained these items in his room in his barrack. Thereafter, Nk. Adhikari handed over a hair remover bottle and again requested the appellant to deliver this to his house (Nk. Adhikaris) after closure of the canteen. However, the same day, at approximately 1000 hours, a surprise check of the canteen was carried out and the hair remover was recovered from him. The appellant urged that he had been falsely implicated in the case by Nk. Adhikari and that he was not afforded an opportunity to defend himself. He contends that the box containing the grocery items supposedly recovered from his personal belongings in the barrack during the surprise check on 1.6.1997 had, in actual fact, been voluntarily handed over by the appellant to the surprise check team and, therefore, it cannot be construed as a case of theft. It was, therefore, contended that the appellant should not have been charged under Army Act Section 52(a) for theft. It was also urged that instead of trying him by a court martial, he should have been tried by a civil criminal court because the CO was biased and the trial would have been illegal. The appellant also contested the finding of guilt during the SCM and stated that he had not preferred any such plea of guilty. It was also urged that the initial hearing under Army Rule 22 had not been complied with and that the charge sheet, SCM proceedings, etc were not handed over to him 96 hours before the commencement of the SCM as required

under Army Rule 34. Furthermore, he was not provided a defending officer of his choice. Therefore, considering the fact that the plea of guilty was not preferred by him, that the provisions of Army Rule 115(2) was not complied with, that initial hearing under Army Rule 22 was not held and that the documents were not handed over to him 96 hours before his trial, the entire trial stood vitiated and should be set aside. Counsel for the appellant also argued that the penalty imposed upon the appellant was not commensurate with the gravity of the misconduct, that the sentence awarded to him was disproportionate to and violative of Article 14 of the Constitution and that dismissal from service for the minor lapse, if any, on the part of the appellant was severe and excessive. The appellant seeks to set aside the SCM proceedings of 6.10.1997 as being perverse, harsh and illegal and further seeks to be reinstated in service.

3. On behalf of the respondents, it was contended that the appellant was tried for the offence under Army Act Section 52(A) as under:

ARMY ACT SEC. 53(A)

COMMITTING THEFT OF PROPERTY BELONGING TO A MILITARY INSTITUTION,

in that he,

at Haldwani, between 12 May 97 and 01 Jun 97, while being Assistant Salesman of CSD Canteen 5685 ASC Bn (MT), committed theft in respect of grocery items as per Appx to the charge sheet valued Rs.1276.00 (Rupees one thousand two hundred seventy six only), the property belonging to the said CSD Canteen.

The brief facts of the case, according to the respondent, were that the appellant was performing the duties of Assistant Salesman in the CSD of his unit and had been routinely and regularly pilfering items for his personal use and had been caught before several witnesses and appropriate action taken against him. A proper summary of evidence was constituted, wherein three witnesses were examined. Nb. Sub. T.B Chhetri (PW

1) has testified that he was performing the duties of JCO in charge of the CSD canteen of his unit and in the third week of May 1997, Nk. Adhikari, who was the NCO in charge of the grocery items of the CSD canteen reported that some items have been deficient since the preceding week and that he suspected the appellant. He ordered Nk. Adhikari to keep a watch on the appellant and report the progress to him. On 1.6.1997, Nk. Adhikari informed him that the appellant had just stolen an Anne French Hair Remover and kept in his pocket and walked out of the CSD canteen. The appellant was called back to the canteen and on searching him, the bottle of Anne French Hair Remover was recovered. Thereafter, they proceeded to his barracks and searched his personal belongings. The search was conducted in the presence of Sub (MT) Bhagwan Singh, Senior JCO of A Company, Hav (MT) Budhi Ram, PW 1 himself and Nk. Adhikari. From the personal suitcase of the appellant, various canteen items were found, the details of which were exhibited during the SCM and their valuation assessed as Rs.1276/- . The witness testified that the appellant admitted the theft committed by him and stated that whenever he got a chance, he used to steal these items, which were found in his suitcase. Nk. Adhikari (PW

2) has testified that in the third week of May 1997, he found some items in his grocery section of the CSD canteen to be deficient and accordingly reported the matter to his superior i.e. Nb. Sub. T.B Chhetri, who asked him to keep a watch on the grocery dealing staff. The witness went on to state that at approximately 1030 hours on 1.6.1997, he saw the appellant pocket a bottle of Anne French Hair Remover and walk out of the canteen. The appellant was asked to come back to the canteen and searched and the bottle of Anne French Hair Remover was recovered from his personal belongings after which they went and searched his personal belongings kept at the barrack and recovered the other deficient items. Hav. (MT) Budhi Ram (PW

3) has also testified to the same facts as given by PWs 1 and

2. The appellant did not cross examine any of the three witnesses and their testimony remained intact. It was also argued by the respondents that not only did the appellant not prefer any cross examination of the witnesses, he did not even

make any statement at the hearing under AR 22, or at the recording of summary of evidence to put across his point of view and neither did he call any witness in his defence. At no point of time has he taken the plea either at the summary of evidence or during the SCM proceedings that these items were handed over to him by Nk. Adhikari for delivering to his (Nk. Adhikaris) house. Obviously, this is an afterthought, which has been included in the writ petition as the appellant has totally omitted in putting across any defence of this nature at the earlier three occasions given to him in accordance with law. The respondents also urged that the plea of guilty had been preferred voluntarily by the appellant and his signatures obtained on the original record of the SCM proceedings showing the compliance of Army Rule 115(2). In fact, the only plea put in by the appellant during the SCM proceedings was that he had only 1 years of service and he requested to be permitted to continue in service.

4. The legal infirmities were explained by the counsel for the respondents by stating that while the SCM was held on 6.10.1997, the initial hearing under Army Rule 22 was held on 10.6.1997, wherein the CO ordered recording of the summary of evidence, which was completed by 30.6.1997. The summary of evidence was recorded as per Rules and in the presence of the appellant, wherein he was afforded full opportunity to defend himself and also to cross examine the witnesses and to produce any witness in his defence. The appellant declined to make any statement and no witnesses were produced by him. It was further confirmed by respondents that the charge sheet and the summary of evidence were handed over to the appellant on 1.10.1997, well before the mandatory 96 hours before the trial and that Lt. Col. A.S Teotia had been detailed as friend of the accused. The finding of the SCM is supported by cogent and reliable evidence on record. With regard to the gravity of the offence, the respondents stated that for a young soldier with barely one year of service to indulge in such repetitive acts of theft was unacceptable and was indicative of his attitude and also as to what heinous crime he could commit in future. Therefore, keeping in view the necessity of maintaining high degree of discipline and integrity, the sentence was commensurate with the gravity of offence and cannot be termed as excessive or arbitrary, especially since the entire proceedings from the investigation stage till the finalisation of the SCM proceedings have been conducted in strict compliance

with law and there were no aberrations, whatsoever.

5. Keeping the above in view, we do not find any reason to interfere with the findings and sentence arrived at by the SCM. The appeal is accordingly dismissed.

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