

Rabindra Kumar Shaw Vs. Union of India and Others

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Court : Armed forces Tribunal AFT Regional Bench Kolkata

Decided On : Jul-20-2010

Judge : Sadhan Kumar Gupta, Member (Judicial) & the Honourable Lt Gen Madan Gopal, Member (Administrative)

Appeal No. : Application No.OA “ 02 of 2010

Appellant : Rabindra Kumar Shaw

Respondent : Union of India and Others

Judgement :

AS PER HONBLE LT GEN MADAN GOPAL, MEMBER (ADMINISTRATIVE)

1. This case pertains to an appeal filed by the applicant for quashing the punishment meted out to the applicant by a Summary Court Martial (SCM). The applicant ex Naik (Nk) Rabindra Kumar Shaw was tried by a SCM and awarded the punishment of reduced to ranks and dismissal from service. The applicant has prayed that the proceedings of the SCM be overruled and he be re-instated in service.

2. Details of the case are covered in the succeeding paragraphs.

3. Nk Rabindra Kumar Shaw, enrolled in the Army on 27th July 2000 in the Corps of Signals. In his period of service, he was posted in several stations and also had attained the rank of Nk. At the time of the incident leading to the SCM, he was

posted with 9 Corps Air Support Signal Unit (CASSU); located somewhere in Himachal Pradesh.

4. The applicant in the justification of his plea (prayer) that on 30th July 2009 and on 03rd August 2009 when the incidents took place i.e., he was charged for disobeying the lawful command given by his superior officer i.e., Company Havildar Major (CHM) Pramod Kumar. The applicant stated that in spite of denying the charge, his Commanding Officer (CO) started the proceedings for the SCM. As per the applicant, he stated that on 30th July 2009 and on 03rd August 2009, he was on duty and obeyed the directions of his superior officers. He also stated that no specific direction was given to him to report for duty and that he worked diligently on the successive days as also on 03rd August 2009.

5. He has also alleged that the charges leveled against him for disobedience of order on 30th July 2009 and on 03rd August 2009, merely stated that a verbal order was passed, it was not substantiated by any circumstantial or documentary evidence that a specific command was given to the applicant against which the entire court martial proceedings was initiated.

6. The applicant also alleges that the CO proceeded with the Court Martial Proceedings based on the charge sheet that he had signed on 13th August 2009 in which eight prosecution witnesses (PW) recorded their statements. The applicant further states that it was alleged that he had refused to sign on the copy on the depositions of the eight PWs, whereas he states that the mentioned PWs were never produced. He also adds that while a friend of the accused was detailed, he was never given an opportunity to prove his innocence.

7. The applicant emphasizes that the entire SCM proceedings were a sham. The actual allegations were never dealt with. The purpose of the SCM, it appears was to punish the applicant so that he gets no relief. He further states that the Court Martial Proceedings did not deal with the events which happened between 30th July 2009 and upto 03rd August 2009. He also adds that he was asked to give a written statement but no cognizance was taken of his written statement. The applicant further states that in spite of his repeated demand for justice, he received no positive response. Thereafter, he took recourse to filing this W.P. with a plea for

quashing the judgment of the SCM.

8. The Ld. Advocate for the applicant pleaded that the applicant has been unduly harmed since he had not disobeyed any order as a matter of fact he was very much present in the place of duty but since he had been given no specific command, there has been some misunderstanding. Ld. Advocate also pleaded that since the applicant had an injury in his little finger of the right hand and he being in great pain could not attend to this assigned duty. As per the applicant, the medical chit produced in the paper book indicates pain on right finger of the foot and not hand He was excused from Physical Training (PT) and games for 48 hours.

9. The Ld. Advocate also questioned the charges leveled against the applicant. The two charges were for disobedience of order given by a superior; charge under Army Act (AA) Section 41 (2). The first charge for the offence on 30th July 2009 was not contested, however, he felt the second charge for the same offence on 03rd August 2009 which stated that Failed to Report to the Radio Detachment when so ordered. It was argued that since his client had not reported for duty, it cannot be under the charge of disobedience but under Section 39 of the AA, i.e., Absence without Leave.

10. The Ld. Advocate for the petitioner pleaded that in the appeal filed by the applicant against the findings, sentence of the SCM that it be rejected addressed to the General Officer Commanding in Chief (GOC-in-C), Western Command, the applicant had clearly stated that he had not disobeyed any order given by his superior that he was even present for duty. He also had repeatedly stated as to how disciplined and hardworking soldier he was. He had mentioned about his injury to which no heed was paid. In brief, the events culminating in the SCM and his dismissal from service is all due to some misunderstanding and that he be pardoned.

11. The Ld. Advocate also raised the issue of the statement given by the applicant explaining the sequence of events from 30th July to 03rd August 2009, however, since the issues highlighted in the statement enclosed with the paper book was not clear as to whom it was given nor did it have any signatures hence was not

taken into account by the Court. As also this statement did not form part of the SCM proceedings or even mentioned in the S of E.

12. The Ld. Advocate for the respondents in reply highlighted that the entire disciplinary proceedings were in complete order and the principle of natural justice had been strictly complied with. He elaborated as to the willful attitude of defiance of the applicant. He read out some of the portions of the statements of the PWs, wherein he highlighted that the applicant was warned /counseled on his behavior not to do so after he had failed to comply with the order for doing duty on 30th July 2009. He also brought out as to how rude the applicant was to his superiors when he was being advised to mend his ways. He further elaborated that the charges leveled against the applicant was in order. Adequate opportunity was given to the applicant to defend himself and cross-examine the PWs. He failed to do so as a matter of fact he was so defiant that he did not even put his signatures where required in spite of repeated orders by the officer recording the Summary of Evidence (S of E) and by his CO during the stage of hearing of charge as also during the SCM proceedings.

13. The Ld. Advocate also remarked that being excused PT and Games does implies only that and as such he has to do all other duties. Duty at the Monitoring Station is an important task and sedentary in nature and hence no excuse.

14. The SCM is in order. The appeal by the applicant needs to be rejected.

DECISION

15. On perusal of the documents in the paper book and the arguments of the Ld. Advocates, it is amply clear that the authorities had followed laid down procedures in dealing with the case, commencing from hearing of the charge as per Army Rule (AR) 22 and the subsequent recording of S of E and its culmination in the SCM. In this regard, there has been no violation of the Principle of Natural Justice.

16. It is apparent from the statements of the eight prosecution witnesses that ex Nk Rabindra Kumar Shaw has willfully disobeyed the orders of his superior by not performing bonafide duty on 30th July 2009 and 03rd August 2009. There is

adequate evidence to indicate his guilt. None of these witnesses have mentioned that the accused, ex Nk Rabindra Kumar Shaw had an injury or he was in such pain that he could not perform a sedentary duty.

17. Nk Shaw was given ample opportunity to cross-examine the witnesses but had refused to do so. As a matter of fact he has not even signed the proceedings in spite of being repeatedly asked by the officer recording the S of E as also by the CO, the Presiding Officer of the SCM.

18. Thus for the applicant to state that no PW were even produced, appears absurd. As for appellants plea that the S of E and SCM were notional is also far fetched and only a ploy to substantiate his case.

19. The applicant to play safe has from the very beginning of the case has refused to sign any documents, cross examine the PWs or make a statement in his defence or even call any DWs. As a matter of fact, he has been guilty of culpable disobedience of orders of his superiors by refusing to put his signatures, a clear violation of military norms.

20. At the outset, the CO was hearing the tentative charge as per AR 22, the applicant refused to sign the Appendix A to AO 24/94, a document to prove that the accused has been given a fair chance to call for witnesses in his defence as also to cross examine the PWs. This has been clearly stated by all the PWs. The S of E, the SCM have been conducted as per rules on the subject, the accused was given ample opportunity to defend himself as also to call DW, to which he refused. Lastly he even declined to cross examine the PWs. The principle of natural justice in no way has been violated.

21. The charges framed against the applicant under AA Sec 41 (2) are appropriate. The applicant has deliberately and wantonly disobeyed lawful command. In the Defence Forces commands are invariably verbal and a superior officer is not bound to clarify or justify his orders. In this instant case, the order to the applicant to report for a specific assignment was clear and there was no ambiguity. The applicant is not a raw soldier, he has nine years of service, holds the rank of Nk and very well knows what he is supposed to do. Radio Monitoring

Duty is a vital assignment during peace time and such lapses may not be damaging but in war the ramifications would be unimaginable. The Army is always preparing for war and such a lapse during an exercise as clarified by the CO is his Memorandum of Awarding Punishment quoted as :

During the recently concluded Exercise Rising Com-II and Ex Star Drishti, the individual was a Detachment Commander of a Bde Tel. In spite of being briefed on the communication requirement, he was very casual and did not respond nor give any feedback on reaching his location. His detachment was the only detachment not in communication with the control established at the Corps HQ. The Second-in-Command of the unit was sent to the location, who observed that the individual was neither in the detachment nor had he erected the Radio as required to establish communication. He was admonished and counseled by the CO and warned stern action in case he does not mend his ways.

22. With regards the plea of the applicant in his appeal to the GOC-in-C, Western Command that he had pain in his little finger and hence could not attend to the assigned duty is absurd. The applicant if at all was excused that was in respect of only PT and Games not other duties. In this appeal, there is no mention that the SCM was not correctly concluded. He has also conveniently omitted that PW were never produced and that the SCM was a show with a view to fix him. The GOC-in-C, Western Command, in rejecting the appeal has clearly stated in the operating part as The petitioner was provided full opportunity to put up his defence and challenge the prosecution case, which he chose not to avail. The proceedings were duly analyzed and found to be in order. Considering the nature and circumstances of the offences, the punishment awarded is justified .

23. We are of the firm opinion that considering all facts presented before us, the applicant has no legitimate reason to seek reprieve. He is totally and squarely responsible for his own mistakes and omissions. The applicant has openly defied his superior officer not only while disobeying the orders of his senior who had assigned him for specific duty 30th July 2009 and 03rd August 2009 but also during the stages of hearing of the charges, recording of S of E and the SCM proceedings. The applicant was advised and counselled by his superiors to follow

norms but he chose otherwise.

25. The legal norms are in order, the Principle of Natural Justice have been correctly followed and we find no injustice in as far as the legal proceedings are concerned.

26. The need to maintain discipline in the Army is paramount, it also needs men who can work under trying conditions and not take refuge behind lame excuses. The applicant is not a raw soldier but held the rank of Nk. with more than nine years of service. The army discipline and norms cannot be compromised and has to be sustained.

27. Considering all facts, we are of the opinion that the appeal of ex Nk Rabindra Kumar Shaw against the directions of the SCM and punishment meted out to him needs no interference by the Court.

28. The appeal is rejected with no cost.

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