

Ramesh Kumar Vs. Union of India

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Court : Delhi

Decided On : Mar-01-1997

Reported in : 1997IIIAD(Delhi)116; 1997(42)DRJ182

Judge : Dalveer Bhandari, J.

Acts : [Army Act, 1950](#) - Sections 164

Appeal No. : Civil Writ Petition No. 951 of 1994

Appellant : Ramesh Kumar

Respondent : Union of India

Advocate for Def. : Mr. Mishra

Advocate for Pet/Ap. : G.K. Sharma,; P.K. Behl and; P.N. Misra, Advs

Judgement :

Dalveer Bhandari, J.

(1) The petitioner has approached this court with the prayer that the charge sheet dated 26.5.92 is bad in law and consequently be quashed. He has further mentioned that the conviction and sentence awarded on the basis of the charge sheet by the Summary Court Martial held from 1.6.92 to 3.6.92 by the Commandant, Reserved Supply Depot, Lucknow was perverse, biased and illegal.

It is further prayed that the orders dated 16.11.93 and 21.12.93 passed on the statutory complaint of the petitioner are illegal. It is also prayed that the entire proceedings of the aforesaid Summary Court Martial, including orders dated 16.11.93 and 21.12.93 be quashed, and the petitioner be reinstated in service with consequential benefits.

(2) This petition was filed in February, 1994 and came up for admission hearing before the Division Bench of this Court on 23.2.1994 in which Rule was issued.

(3) The minimum basic facts which are necessary to dispose of this petition are recapitulated as under:-

(4) The petitioner was enrolled in Army as a Sepoy on 19.3.83 and was promoted to the rank of Hawaldar in due course of time. On 16.11.91, the petitioner requested for some leave to complete B.A. (Supplementary) examination. The leave was sanctioned from 24.4.92 to 6.5.92. The petitioner was supposed to leave in the afternoon of 23.4.92. However, on that day, at 10.30 A.M., the Adjutant asked the petitioner to complete the regimental property evaluation book. The petitioner declined to carry out the orders of the Adjutant and a charge sheet was framed against the petitioner. The following charges were framed against the petitioner:-

1. Disobeying in such a manner as to show a willful defiance of a lawful command of an authority given by a superior officer in the execution of the discharge of his duties;

2. Absenting himself without leave;

3. An omission prejudicial to good order and military discipline.

(5) The first charge is regarding disobeying Capt. Rajeev Joshi, Adjutant Rsd, Lucknow and second charge was absenting himself without leave, and the third charge was that the petitioner failed to hand over the charge of Cqmh of the unit to Hawaldar Hardev Prasad and to Naib Sub Dinesh Kumar prior to absenting himself without leave at 1500 hrs on 23.4.92.

(6) In the Court Martial proceedings, the petitioner was granted following punishments:

A)Reduction of the rank

B)To suffer rigorous imprisonment for one year and it was directed that the sentence of rigorous imprisonment shall be carried out by his confinement in civil prison. The petitioner was recommended for division 'C' or Iii while undergoing sentence in civil prison.

C)To be dismissed from the service.

(7) At the time when the petitioner approached the court, he in fact was aggrieved by the aforesaid punishment. The petitioner filed a statutory complaint under Section 164 of the [Army Act, 1950](#). The said complaint was considered by the order dated 17.8.94. The order passed in the statutory complaint reads as under:-

'The Central Government after considering the petition dated 31 Aug 92 submitted by Shri B.P. Ojha, Advocate on behalf of No.6378767H ex Hav/CI Ramesh Kumar of Reserve Supply Depot, Lucknow under the provisions of Section 164(2) of the [Army Act, 1950](#), against the findings and sentence of Scm, commute the punishment of reduction to ranks and one year rigorous imprisonment to 'severe reprimand' and remit the sentence of dismissal and further direct that the individual will be reinstated into service. The period between the date of his dismissal and date of reinstatement in service will not be treated as duty and he will not be paid pay and allowances due to him for the said period.

2.Except for the above relief the petition is rejected by the Central Government.

By order etc.

SD/-

(D.R.SHARMA)

Under Secretary to the Govt. of India'

(8) CAPT. Venkatesh M. Naik, filed a counter- affidavit on behalf of the respondents. In the counter-affidavit, it was mentioned that in view of the aforesaid order of 17.8.94, the petitioner's petition has become infructuous and the petitioner has resumed his duty on 29.10.94.

(9) This court in its order dated 7.10.94 has observed as under:-

'The petitioner has shown a copy of the order dated 31.8.94 received by his counsel from the Additional Directorate General Discipline & Vigilance (DV-3), Adjutant General's Branch, Army Headquarters, Dhq Po New Delhi-11, along with a copy of the order passed by Government of India.

According to the said order part of the prayer of the petitioner's petition has been accepted. By virtue of the said order the Government has granted remission of sentence of dismissal. The petitioner has been directed to be reinstated into service and the period between the date of his dismissal and date of reinstatement in service will not be treated as duty and he will not be paid pay and allowances due to him for the said period. The petitioner states that he will rejoin the duty without prejudice to his rights and contentions.'

(10) Mr. Sharma, the learned counsel submitted that though the petitioner's petition under section 164 has become 'in fructuous' but even the sentence of severe reprimand is illegal and by the said order, though substantial relief has been granted to the petitioner, still the conviction has not been set aside and the severe reprimand may retard or prejudice his chances of further promotion. He further submitted that the entire proceedings before the Court Martial were illegal and they need to be set aside.

(11) The learned counsel for the petitioner also submitted that charges against the petitioners are not specific and they have been framed on extraneous considerations.

(12) Mr. Mishra, learned counsel for the respondent submitted that in view of the order dated 31.8.94, the petitioner's petition has been virtually allowed and in view of this order, no interference is called for by this court.

(13) Mr. Mishra had drawn my attention to the statement of the petitioner. In the detailed statement, the petitioner placed reliance on Rule 112 of the Army Rules. The same is reproduced as under:-

'112.Objection by accused to charge

THE accused, when required to plead to any charge, may object to the charge on the ground that it does not disclose an offence under the Act, or is not in accordance with these rules.'

(14) According to this Rule, the petitioner can object to the charge on the ground that it does not disclose an offence under the Act but this was not done by the petitioner in this case.

(15) The petitioner in his statement had mentioned that the order of Mr. Rajeev Joshi, Adjutant, was not a lawful command. All the submissions of the petitioner were considered. It is for the Court Martial to accept or reject the submissions of the petitioner. Mr. Mishra also pointed out from the writ petition that the petitioner is really aggrieved because the sentence awarded to him was unduly harsh and disproportionate. Now the sentence has been substantially reduced and no further interference is called for.

(16) The Competent authority has commuted the punishment of reduction in rank, of one year R.I. to severe reprimand and set aside the order of dismissal and further directed that the petitioner be reinstated into service. The period between the date of dismissal and the date of reinstatement in service will not be treated on duty and he will not be given the pay and allowances due to him for the said period.

(17) There is no doubt that the competent authority by its order dated 31.8.94 has fully considered the petitioner's petition dated 31.8.92 in proper perspective and the petitioner has been granted substantial relief, and in accordance with the said order, the petitioner has now resumed his duty.

(18) The learned counsel for the respondent has placed reliance on B.C. Chaturvedi vs. Union of India, and Union of India vs . B.C. Chaturvedi, : (1996)ILLJ

1231 SC . In the said judgment, the Court has observed that the High Court or Tribunal while exercising the power of judicial review cannot normally substitute its conclusion on penalty and impose some other penalty unless the punishment imposed by the disciplinary authority or the appellate shocks the conscience of the High court or Tribunal.

(19) I have carefully considered the rival contentions of the parties. The order dated 31.8.94 is eminently just and fair. No interference is called for. Consequently, I do not find any merit in the writ petition. The writ petition is accordingly rejected with no order as to costs.

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