

**IN THE ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

**TA/207/09
WRIT PETITION (CIVIL) NO.2890/1996**

**SIGNALMAN RAM KUMAR MOURYA
C/O. CAPT VIRENDRA KUMAR, ADVOCATE
SUPREME COURT OF INDIA
NEW DELHI-110 001.**

**THROUGH : CAPT VIRENDRA KUMAR, ADVOCATE
...APPELLANT
VERSUS**

- 1. THE CHIEF OF THE ARMY STAFF
THROUGH THE DEFENCE SECRETARY (UOI)
S BLOCK, DHQ
NEW DELHI-110 011.**
- 2. LT COL RAM KUMAR
VIA : THE CHIEF OF THE ARMY STAFF
THROUGH THE DEFENCE SECRETARY (UOI)
S.BLOCK, DHQ, NEW DELHI-110 011.**

**THROUGH : SH. ANIL GAUTAM, ADVOCATE WITH
LT COL NAVEEN SHARMA**

...RESPONDENTS

CORAM :

**HON'BLE MR. JUSTICE S.S.KULSHRESTHA, MEMBER
HON'BLE LT. GEN. S.S.DHILLON, MEMBER**

J U D G M E N T

Date : 04-06-2010

1. This petition, to be treated as an appeal under Section 15 of the Armed Forces Tribunal Act, has been preferred by the petitioner against the illegally sentence of 15.04.1995 whereby he was dismissed from the Army. The petitioner contends that he served with distinction in the Indian Army, as a signalman, from July 1984 to 15.04.1995. His services were terminated by a hastily convened Summary Court Martial headed by respondent no.2 who was at that point of time the officiating Commanding Officer of 1 Corps Operating Signal Regiment.

2. The petitioner pleaded that he was put in medical category BEE (permanent) with effect from 23.12.1993. He was diagnosed as a Psychiatric patient suffering from "Adjustment Reaction 309". From 23.12.1993, after having been placed in this permanent low medical category status, he was only required to work under supervision and was to report thereafter for a fresh review. Therefore, to subject him to the Summary Court Martial under his medical circumstances was illegal. The petitioner also argued that there were large number of legal infirmities in his trial. The first and foremost was that he could not have been ordered

to consume his food. Whether he needed to eat or not was his personal decision and the Army could not order him to eat food. Accordingly the charge preferred against him under Army Act Section 41(2) was incorrect, illegal and unsustainable. Prior to the Summary Court Martial the petitioner had sought the assistance of a civil counsel which was not permitted by his Commanding Officer, who merely detailed Captain Gajjan Singh as friend of the accused. It was also argued that the officiating Commanding Officer being a Lt Col was not competent to try him. The petitioner also stated that he has not pleaded guilty during the Summary Court Martial and the records have merely been completed by the Commanding Officer on his own. It was also contended by the petitioner that the punishment meted out to him was grossly disproportionate to the offence committed by him. In a similar case reported in (1987) 4 Supreme Court Cases 611, *Ranjit Thakur Vs. Union of India and others*, the Apex Court had ruled that:

Re contention (c) : *The submission that a disregard of an order to eat food does not by itself amount to a disobedience to a lawful command for purposes of Section 41 has to be examined in the context of the imperatives of the high and rigorous discipline to be maintained in the Armed Forces. Every aspect of life of a soldier is regulated by discipline. Rejection of food might, under circumstances, amount to an indirect*

expression of remonstrance and resentment against the higher authority. To say that a mere refusal to eat food is an innocent, neutral act might be an oversimplification of the matter. Mere inaction need not always necessarily be neutral. Serious acts of calumny could be done in silence. A disregard of a direction to accept food might assume the complexion of disrespect to, and even defiance of authority. But an unduly harsh and cruel reaction to the expression of the injured feelings may be counter-productive and even by itself be subversive of discipline. Appellant was perhaps expressing his anguish at, what he considered, an unjust and disproportionate punishment for airing his grievances before his superior officers. However, it is not necessary in this case to decide contention (c) in view of our finding on the other contentions.

Re contention (d) : *Judicial review generally speaking, is not directed against a decision, but is directed against the “decision-making process”. The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive*

province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review.

In the present case the punishment is so strikingly disproportionate as to call for and justify interference. It cannot be allowed to remain uncorrected in judicial review.

In the result, for the foregoing reasons, the appeal is allowed, the order of the High Court is set aside, the writ petition preferred in the High Court allowed and the impugned proceedings of the summary court-martial dated March 30, 1985, and the consequent order and sentence are quashed.

3. A recapitulation of the events may be necessary to put the issue in its correct prospective. While serving in 1 Corps Operating Signal Regiment the petitioner was charged under Army Act Section 63 wherein he was given 28 days simple imprisonment in a summary disposal by his Commanding Officer. This simple imprisonment commenced on 06.04.1995. The same day i.e. on 06.04.1995 the petitioner refused to eat his food. Accordingly on 07.04.1995 at 1145 hours his company Commander counselled him and asked him to have his food. The petitioner chose to disregard the counselling given by his

Commanding Officer. Thereafter at 1245 hours, the Adjutant of the regiment read out to the petitioner the contents of Army HQ letter no.13128/PSI dated 13.01.1964 regarding the refusal of work or eating food and once again ordered the petitioner to eat his food. The petitioner continued to be defiant and did not take his food. Thereafter the authorities sought to take disciplinary action and commenced disciplinary proceedings against him. The specific charge for which he was tried was:

Army Act
Section
41 (2)

**DISOBEYING A LAWFUL COMMAND
GIVEN BY HIS SUPERIOR OFFICER.**

**in that he,
at Mathura on 07 April 95 at about 1400
hours when ordered by IC-40743L Major
VVP Menon of the same regiment to eat his
food, did not do so.**

4. The contention of the petitioner was strongly contested by the counsel for Union of India by stating that the Medical category BEE (permanent) on psychiatric reasons does not permit the petitioner to become indisciplined or arrogant. Every aspect of a soldier life is regulated by strict code of discipline, so therefore, to refuse any legitimate order amounted to wilful defiance against superior authority. Refusal to eat food is not an innocent act but indicates specific disregard for authority and could not be condoned. The authorities were complying with medical advice as given, which was that he was to work under supervision.

5. The legal infirmities which had been indicated by the petitioner were responded to, in that the charge which was framed against him under Army Act Section 41(2) was a legitimate charge as it tantamounted to disobeying lawful command which was given by a superior officer. Lt Col Ram Kumar who tried the petitioner by Summary Court Martial was the officiating Commanding Officer during this period and was fully competent to try the individual in the manner he did. Detailment of the Capt Gajjan Singh was in conformity to the Army Rule and at no stage had the petitioner ever requested to be represented by civilian counsel during the Summary Court Martial. The record of the Summary Court Martial was shown wherein it was evident that the petitioner had pleaded guilty and appended his signatures to the certificate recorded under Army Rule 115(2).

6. Keeping in view the contending view points, what was apparent was the disproportionality of the sentence. *Ranjit Thakur Vs Union of India reported in (1987) 4 SCC 611* is a similarly placed case wherein the Apex Court had observed that the punishment meted out to the petitioner is strikingly disproportionate and necessitated judicial interference. **Consequently, for this reason the appeal is allowed and**

the Summary Court Martial proceedings, including sentence, are set aside. The petitioner shall be deemed to be in service till the date he reaches pensionable service after which he will be entitled to pension as per law. No order on back wages.

**S.S.DHILLON
(MEMBER)**

**S.S.KULSHRESTHA
(MEMBER)**

**PRONOUNCED IN THE OPEN COURT
TODAY ON DATE 04th JUNE, 2010**