IN THE ARMED FORCES TRIBUNAL PRINCIPAL BENCH, NEW DELHI

TA NOS. 23 AND 673 OF 2009
(WRIT PETITION (CIVIL) NOS.5765 & 7414 OF 2000)

D.P TRIPATHY ...APPELLANT

VERSUS

UNION OF INDIA & ORS. ...RESPONDENTS

ADVOCATES

MR. BHIM SEN SEHGAL FOR THE APPELLANT

M/S. BRAKHA BABBAR & ASIT TIWARI
WITH
WG. CDRS. ASHISH TRIPATHI & RENUKA GARG
FOR THE RESPONDENTS

CORAM :

HON'BLE MR. S.S.KULSHRESTHA, MEMBER
HON'BLE MR. S.S.DHILLON, MEMBER

COMMON JUDGMENT
08.12.2010

1. In these two writ petitions, the appellant seeks quashing of the District Court Martial proceedings and thereafter entitlement to pension and disability pension. Since similar facts and circumstances arise in these cases, they are being disposed of by this common judgment. On formation of this Tribunal, these writ petitions were transferred and are treated as appeals under Section 15 of the Armed Forces Tribunal Act 2007.

2. The appellant contends that he is a disabled and mentally deranged airman who has served the Air Force for over 13 years, during which he has rendered exemplary, dedicated and sincere service to the Air Force and to the nation and just when he would have been entitled to pension, he has been court martialled and dismissed from service, thus denying him his judicious dues. The appellant seeks to quash the DCM proceedings of 14.5.1999 as also grant of disability pension consisting of both elements, i.e. service as well as disability element with effect from 30.6.1999 and other consequential reliefs, which would be due to him on

reinstatement. He argued that after enrolment in the Air Force on 2.12.1986, the appellant was promoted to Corporal in September 1993 and has served to the full satisfaction of his superiors. The appellant has qualified in all the trade tests and other eligibility criteria for further promotion.

3. The appellant was granted leave from 10.6.1996 to 21.6.1996. Unfortunately, during his leave period, he fell sick and suffered severe mental disease and remained under constant treatment for mental illness. He has produced the entire records to the authorities after he rejoined and thereafter he was treated in various Military and Air Force hospitals for the same mental disease for over one year. Therefore, his contention that he, in actual fact, was suffering from mental disease has been borne out by this protracted treatment in various military hospitals after he rejoined. Despite producing medical evidence, the authorities were not convinced and court martialled him for the following offences.

FIRST CHARGE
SECTION 39(b) AF ACT 1950

WITHOUT SUFFICIENT CAUSE OVERSTAYING LEAVE GRANTED TO HIM

in that he,

at No. 77 SU, AF having been granted leave of absence from 10 Jun 96 to 21 Jun 96 with prefix on 08 & 09 Jun 96 and suffix on 22 & 23 Jun 96 overstayed the said leave without sufficient cause until he was apprehended by 627231B Sgt Kumar S IAF/P of 26 P&S Unit, AF on 24 Apr 98.

SECOND CHARGE
Section 39(b) AF Act 1950

WITHOUT SUFFICIENT CAUSE OVERSTAYING LEAVE GRANTED TO HIM

in that he,

at No. 77 SU, AF having been granted leave of absence from 26 Oct 98 to 27 Nov 98 overstayed the said leave without sufficient cause until he surrendered himself at 77 SU, AF on 22 Dec. 98.

As a consequence of such court martial, he was sentenced to be reduced to the ranks and to be dismissed from service. Counsel for the appellant urged

that the appellant was coerced to accept his guilt and that the respondents illegally conducted the DCM knowing fully well that the appellant was mentally deranged and was not in a fit state to stand trial. The appellant pleaded that being a psychiatric patient, he should not have been court martialled and instead, the authorities should have taken recourse to invalidate him on medical grounds, so that he could be entitled to disability pension as the appellant suffered mental disease on account of attributability to his Air Force service. The appellant also urged that his entire discipline record was clean and there were no adverse entries in his entire 13 years of service other than the one for which he was court martialled.

4. Counsel for the appellant made a strong plea that the entire court martial was an outcome of the authorities not appreciating the genuine and established medical problem of the appellant, which commenced in the year 1989 when the appellant suffered a head injury and was hospitalised for treatment of such head injury. His medical treatment from 1996 to 1998 was also on account of the same injury, a fact which was

not understood in its correct perspective by the authorities, who further compounded the problem by forcing him to stand trial, although he was not medically fit to undergo the rigors of the court martial or understand and put across his defence as he could, if he had been of mentally sound health. It is, therefore, very ironic that the authorities have not attributed his illness to service conditions and have not even entitled him disability pension.

5. Counsel for the respondents argued that the appellant was a habitual offender and a liar and did not have a good record of service as he is now attempting to claim. Between the period of 2.12.1986 when he was enrolled in the Air Force and till June 1996 i.e. in a period of less than ten years, he had six discipline entries as given below:

Date	Unit	Charge	Sentence
13.02.88	MTI, AF	Overstay of leave from 13.2.88 to 23.2.88 (total absence 10 days 19 hrs and 29 min.)	7 days CC
21.03.88	MTI, AF	Overstay of leave from 21.3.88 to 24.3.88 to 24.3.88 (total absence 3 days 8 hrs and 59 min	3 days CC

18.08.92	8 Wg. AF	Overstay of leave from 24.7.92 to 09.08.92 (total absence 16 days 13 hrs and 14 min.)	15 days detention
17.12.93	9 Wg. AF	Overstay of leave from 17.12.93 to 27.12.93 (total absence 10 days 7 hrs and 19 min.)	14 days CC
30.01.92	1 TETTRA	Overstay of leave from 23.9.91 to 27.10.91 (total absence 10 days 19 hrs. and 29 min.)	3 days detention
03.06.96	77SU, AF	Lost by negligence his pay book Part-II Sl. No.229100	Admonition

Not only this, the appellant is also making a false statement when he says that he had almost 13 years of service and was nearing the service limit to entitle him to pension. By doing so, he has included two years period, for which he was absent without leave, and, therefore, in actual fact, if his service was to be calculated, it would be approximately 11 years and not 13 years. The fact of the matter is that the appellant was granted 12 days casual leave from 10.6.1996 to 21.6.1996 and he did not report to the unit till he was apprehended by the Air Force police from home on 24.4.1998. His

total absence was for a period of 669 days. The appellant was also trying to gain the sympathy of the Court by stating that he had surrendered, whereas in actual fact, he had been apprehended and taken to his unit under Air Force police escort and had never surrendered. Not only this, during the period of his 669 days absence, the Air Force police had visited his house on various occasions and on each occasion, they were told by the appellant's wife/parents that the appellant had not come home. If the appellant was undergoing medical treatment for his so called psychiatric problem, then why was this fact hidden from the Air Force authorities for two years? When the Air Force police visited his house, his wife/parents should have informed them of his medical condition and the Air Force authorities would have provided full support and assistance to the appellant. Counsel for the respondents, therefore, urged that the appellant has not come with clean hands to the Court and is indulging in lies and fabrication to substantiate his case. It was also pointed out that during this entire period of 669 days of absence, the appellant was not admitted in any hospital even for one day and had all along been treated as an out-door patient. Even the medical

condition pointed out, i.e. “CHLOROQUINE PSYCHOSIS” is not a very serious condition and does not last beyond sixty days. Also, if he was not admitted in hospital even for one day and was able to go on a regular basis for treatment, surely he could have gone to the closest Air Force station and informed them of his condition. Let alone this, he could at least have written to his unit and informed them of his medical condition and the reasons for his overstaying leave. Therefore, everything that he is stating as reasons for his overstaying leave are false and fabricated and have not been substantiated by any facts other than so called certificate given by the civil practitioner. Counsel for the respondents also urged that not only has he overstayed leave for 669 days, but also overstayed leave again in 1998, i.e. when he was granted 29 days annual leave from 26.10.1998 to 23.11.1998, he did not report to the unit on expiry of such leave and reported only on 22.12.1998. Therefore, he was tried for both these offences by DCM and given the punishment of reduced to the ranks and dismissal from service, which certainly cannot be considered harsh or disproportionate.

6. With regard to the medical ailments and the medical grounds that the appellant has been resorting to from time to time, the respondents clarified the same as under:

(i) The head injury that he has supposedly suffered in 1989 has not been substantiated by him at all and no documents to this effect have been produced. In fact, as the appellant himself has admitted, he has continued to perform his duties thereafter and he was totally medically fit without any treatment or being placed in any Low Medical Category (LMC).

(ii) The medical report produced by the appellant justifying his absence of 669 days does not indicate hospitalisation even for a single day. It may not be out of place to state that the medical record may even have been fabricated. The fact of the matter is that whatever treatment was given by Dr. Gopal Chandra Kar of Medical College, Cuttack, only alludes to "CHLOROQUINE PSYCHOSIS" and medication. There is no

hospitalisation or psychiatric evaluation or any criticality of condition which would justify his not reporting back to the Air Force or not even intimating the Air Force authorities of his condition. In fact, the entries made by Dr. Kar clearly established that he has visited the doctor a total of five times in 669 days. This surely cannot be considered to be so critical as to justify his 669 days absence. It was also stated that the hospitalisation period of approximately a year after he rejoined on leave was not because of any illness that the appellant was suffering from, but merely to clear the doubt raised by the appellant about his so called mental sickness and prolonged medical treatment by Dr. Kar. Therefore, the Air Force authorities found it only proper to keep him under psychiatric observation for a period of one year, wherein the opinion of Col. A.K Koushal, Classified Specialist (Psychiatry) was taken and he has stated that he could continue to work under supervision and should not handle fire arms and ammunition and was placed in temporary LMC. In fact,

the psychiatric observations conducted on the appellant were exhaustive and intensive and on conclusion, it was established that he was fit to undertake his duties under limited supervision.

(iii) With regard to the medical condition of the appellant at the time of the trial, it was indicated by the respondents that he was sent for medical examination prior to the DCM and the medical authorities recommended him fit for trial by DCM. It was only thereafter that he has been tried by the court martial. It was also pointed out that at no stage during the court martial has the appellant or his counsel indicated that he was medically unfit or had any medical problem whatsoever.

(iv) It was also urged by the respondents that the so called medical illness, referred to by the appellant, was not of the nature of being attributable to military service. He being placed in temporary LMC was done as a precautionary measure and

there was no disease which was attributable or aggravated by military service.

7. The respondents urged that during his trial by DCM on both the charges, he pleaded "guilty" and the court read and explained the provision of Section 84 of the Indian Penal Code and Section 142 of the Air Force Act to the appellant and suggested to him to withdraw his plea of guilty. The court advised the appellant that because he has stated that he was late in the second charge on account of his wife's medical problem, he should withdraw his plea of guilt and take that as a line of defence. The appellant submitted that he did not wish to rely on any such defence and reiterated that he voluntarily and unconditionally pleaded guilty to the charges, after fully understanding the meaning, nature and ingredients of his plea. This plea of the appellant was confirmed by the defending officer. In fact, even at the time of plea in mitigation, the court again observed that the plea in mitigation was not consistent with his plea of guilt. However, the appellant reiterated that his statement in the plea in mitigation regarding his mental disorder is only to secure a milder punishment and he does not wish to

contest the charges against him. It was only thereafter that the Court proceeded with the findings and sentence.

8. Considering the above facts, we do not see any merit in the case. Accordingly, both the appeals are dismissed.

(S.S DHILLON)
MEMBER

(S.S KULSHRESTHA)
MEMBER