

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

10.

T. A. No. 477 of 2010

Writ Petition (Civil) No. 7411 of 2008

Ex. Nk. Bijay Kumar Barik

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh. S. R. Kalkal, Advocate.

For respondents: Ms. Barkha Babbar, Advocate.

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.

HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER

12.5.2011

The petitioner, by this petition has prayed that the order dated 6.1.2005 and 5.3.2008 may be quashed being arbitrary, illegal and unjust and the respondents may be directed to reinstate the petitioner into service with all consequential benefits.

2. The petitioner was enrolled in Indian Army on 22.2.1995 and on completion of his basic military training, he was posted to 1st Battalion of Mahar Regiment. The petitioner was detailed to proceed on temporary duty to Bharat Electronics Limited, Machilipatam to get the "Hand Held Thermal Imager" repaired. The petitioner was handed over the equipment and he was sent all alone to escort the equipment and get it repaired. The petitioner reached at Bharat Electronic Limited, Machilipatnam on 7.4.2005 and on the next day morning, the petitioner deposited this equipment for repair. The petitioner was told that it will take three days' time and accordingly, he

informed Major Gaurav Seth of 1st Battalion, Mahar Regiment and kept on giving the progress report to Adjutant of the Battalion i. e. Major Gaurav Seth. Initially, the petitioner was told to go and report to 16th Battalion NCC at Mahilipatnam, but there was no messing facilities with the NCC Battalion. Since the staff posted to NCC Battalion was staying at their own arrangement, the petitioner stayed for a night in the guest house of Bharat Electronics Limited. The petitioner could not afford the charges of the guest house. Moreover, the guest house also did not have messing facilities, only one could get place to stay there. In these circumstances, the petitioner had to leave the place and had been regularly coming to Bharat Electronics Limited and conveyed the progress report to Adjutant of the unit on telephone. The petitioner reached Nizamuddin Railway Station on 8.5.2005 and changed another train to reach at Delhi Junction. A fellow co-passenger, who was travelling with the petitioner and stated to be hailing from Orissa i. e. the same district from which the petitioner hailed, offered a cup of tea to the petitioner. The petitioner on consuming the tea went into deep sleep. When the train was put in the railway yard for cleaning, he woke up to find that the equipment he was carrying with him, was missing and the co-passenger who offered him tea also disappeared. The petitioner reported the matter to movement control officer at Delhi, Military Police, Delhi and lodged an first information report (FIR) at Delhi Railway Station. A staff Court of Inquiry was held to investigate the circumstances for loss of equipment but the petitioner was not given notice under Army Rule 180. He was also not given the copies of the Court of Inquiry and was not given any assistance to defend himself and accordingly, he was sent for a Summary Court Martial and two charges were framed against him. The first charge was that he was on temporary duty to Bharat Electronics Limited and he absented himself from 8.4.2005 to 6.5.2005 and the

second charge was that he lost by his negligence the "Hand Held Thermal Imager" bearing registration no. B-2450 which was entrusted to him for repair. Both the charges were tried and he pleaded guilty and he was punished by the Summary Court Martial by reduction in rank and to suffer rigorous imprisonment for four months in civil prison and to be dismissed from the service. This punishment was confirmed by the respondents. Hence, the petitioner filed a writ petition in Delhi High Court challenging the said punishment.

3. A reply was filed by the respondents and the respondents took the position that all necessary compliance has been made in the matter and he has himself admitted his guilt.

4. We have heard learned counsel for the parties and perused the record.

5. As per the finding given by the Summary Court Martial that the petitioner absented on from 8.4.2005 to 6.5.2005 and secondly that he lost a very sensitive instrument which was entrusted to him for repair. So far as the second question of loss of instrument is concerned, there is no dispute on this part. It is admitted that this instrument was entrusted to him and he admits that he took it and went to Bharat Electronic Limited for repair but on his way back, he was duped by some co-passenger and the instrument was taken away by some one and the petitioner lost the same. There is no dispute on this admitted issue. So far as the first charge of absence is concerned, it is not of a serious consequence. The only question is loss of instrument which is admitted by the petitioner and there is no denial of the said fact. Learned counsel for the petitioner tried to persuade us that no notice under

Army Rule 180 was given to the petitioner and he was also not given an opportunity to defend himself and copies of the Court of Inquiry were not given to him. The basic question is loss of instrument which is an admitted fact. Therefore, so far as the finding of the Court of Inquiry regarding loss of instrument is concerned, it is well established. The question with regard to absence from 8.4.2005 to 6.5.2005 is concerned, the petitioner has also given an explanation to the same but the explanation was not found to be satisfactory. Be that as it may, the loss of instrument was a grave mistake on the part of the petitioner which cannot be condoned. Consequently, we uphold the conviction and sentence by the Summary Court Martial.

6. Learned counsel for the petitioner submits that the petitioner has put in about 11 years of service and his past record has been unblemished. He has also submitted that in fact as per the procedure, whenever such sensitive instruments are being sent for repair then a guard is normally provided for safety for transit of such sensitive instruments which is also indicated from the direction of the General Officer Commanding HQ 27, Mountain Division on the Court of Inquiry held on 10.9.2005 that apart from this punishment, it requires that an administrative action should be initiated against Captain Gaurav Seth, Adjutant of 1st Battalion, Mahar Regiment for not ensuring adequate safety for transit of controlled stores and he submits that as per Standing Operating Procedure (SOP) and drills of 1 Mahar in connection with custody and transit of controlled stores be revised on overriding priority and therefore, instead of sending this instrument which is stated to be sensitive, at least a guard should also have been provided to the petitioner. Learned counsel for the petitioner submits that the petitioner is responsible for this loss but the punishment in

this regard is too harsh. He has been reverted back and dismissed from service and he has already undergone rigorous imprisonment for four months on account of loss of the instrument. Learned counsel for the respondents pointed out that the petitioner is not entitled to pension as he has put in only 11 years of service. This is true but the question is that the petitioner has already been punished for one mistake. Therefore, all that we can recommend is that he may make a representation to the authorities and the authorities may consider his matter sympathetically as the petitioner has already suffered more than the mistake committed by him. We hope and trust that the authorities will look into the matter sympathetically and consider the case of the petitioner, if possible for grant of pension as he has put in 11 years of service. The petition is disposed of accordingly. No order as to costs.

A.K. MATHUR
(Chairperson)

S. S. DHILLON
(Member)

New Delhi
May 12, 2011