IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

05.

O. A. No. 40 of 2011

Sanjeev Kumar .....Petitioner

Versus

Union of India & Ors. .....Respondents

For petitioner: Dr. Vijendra Mahandiyan with Ms. Pallavi Awasthi, Advocates

For respondents: Mr. Ajai Bhalla, Advocate with Wg. Cdr. Ashish Tripathi

CORAM:
HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.
HON'BLE LT. GEN. S.S. DHILLON, MEMBER.

O R D E R
28.03.2012

1. Petitioner vide this petition has prayed to quash the order passed by the District Court Martial dated 15.01.2010 and orders dated 29.03.2010 and 07.01.2010 whereby statutory petitions preferred by the petitioner under Section 161 of the Air Force Act were rejected.

2. Petitioner was enrolled on 07.08.1997 in the Indian Air Force and in due course was promoted to the rank of Corporal. He was posted to HQ MC(U), AF in January, 2009. On 13.04.2007, petitioner went to his billet i.e. Prerna Billet, after having a glass of fruit juice. He was driving his motorcycle with a speed of 40 k.m. per hour. When he was in front of officers' mess, he saw a cyclist about 10-15 feet in front of him, almost in the middle of the road. He also noticed the presence of few walkers-by on the left of the road. He decided to overtake the cyclist and proceeded straight towards his billet which was about 1.5 k.m. away from the VIP cottage.

3. By the time the petitioner approached alongside the cyclist for overtaking, the cyclist had reached ahead of the junction of the VIP cottage. While he was in the process of overtaking, the cyclist took a sudden and immediate right turn, which was unexpected to the petitioner and this became the cause for the accident. The cyclist and the petitioner, as a result of the sudden collision, fell down on the right side of the road and sustained injuries. The cyclist was taken to SMC by PW-2 Wg Cdr T Manoj who was coming in a car. Cyclist was subsequently shifted to IGMC, Nagpur but he could not survive and expired on 14.04.2007.

4. Thereafter summary of evidence was ordered and a charge was framed against the petitioner on 29.12.2009 for committing a civil offence under Section 71 of the Air Force Act, 1950 i.e. causing death by rash and negligent act, not amounting to culpable homicide, punishable under Section 304 A of the Indian Penal Code 1860. The order for trial by District Court Martial (DCM) was issued on 08.01.2010. Prosecution examined six witnesses and petitioner had himself examined as a defence witness. After recording of necessary evidence, the DCM found the petitioner guilty under Section 304A of the IPC and sentenced him to forfeit three years past service for the purpose of promotion and also for the purpose of increased pay and was severely reprimanded. The sentence was sent for confirmation to the Confirming Authority and the Confirming Authority confirmed the finding and sentence of the DCM on 19.03.2010 but remitted two years forfeiture of past service for the purpose of promotion and two years forfeiture of service for the purpose of increased pay. Petitioner filed a statutory complaint but without any result. Hence, the petitioner filed the present petition before this Tribunal seeking the aforesaid reliefs.

5. The first and foremost question in the present case is whether finding given by the DCM shows any application of mind or not. There is no finding recorded by the Court as to how the DCM came to the conclusion that the petitioner is guilty of the offence. Learned counsel for the respondents has invited our attention of Section 115 of the Air Force Act 1950 read with Rule 71 of Air Force Rules 1969. We fail to appreciate the proceedings of the DCM as it shows complete lack of application of mind. But since the Statute permits that finding in Court Martials only be recorded as guilty or no guilty. We cannot fault with DCM. But such kind of lack of speaking order showing application of mind is antithesis to the Indian Judicial System. Time and again, the Hon'ble Supreme Court has emphasized that the order should speak for itself and show an application of mind. In this connection, learned counsel for the respondents has invited our attention to a decision given by the Hon'ble Supreme Court in the case of **S.N. Mukherjee Versus Union of India AIR 1990 SC 1984** wherein a similar question came up for consideration and their Lordships has observed that since the rules are part of the Statute, the order cannot be illegal on account of lack of reasons.

6. Be that as it may, today law has developed to a greater extent and it is time for the Air Force authorities to rise to the occasion and take necessary steps to amend the law. The Army Act 1950 and Army Rules 1954 have been amended and necessary provision has been inserted for recording of reasons on the finding. But it seems Air Force authorities are still not aware of the necessary requirement of law. Learned counsel for the respondents submitted that Air Force authorities have already undertaken this exercise and are

awaiting approval of Parliament. Be that as it may, the fact remains that impugned order has been passed without application of mind.

7. Apart from this, we examined the matter independently. We have gone through the statement of witnesses. As per statement of PW-1, NC(E) Bipin Kumar Behera, he was sitting as pillion on the cycle and it was driven by his brother, Prashant Kumar Behera (deceased). He admitted that cycle and motorcycle were going towards the same direction. He also admitted that deceased did not give any hand signals or anything to indicate that he was going to turn towards the right and the motorcycle fell towards the right side after the accident.

8. In our opinion, both cycle and motorcycle were going straight in the same direction and petitioner while overtaking the cycle from the right side, to his utter surprise found that the cyclist was also turning his cycle towards the right side. The petitioner had no sufficient time, but all the same he tried to apply the brake as is apparent from the scratch marks shown in the site plan and photographs. However, he could not avoid the collision and handle of the cycle got entangled with the motorcycle which resulted in both cycle and motorcycle fell down on the ground. Had it been a case of rash and negligent driving, then cycle would have been thrown away by the impact of the motorcycle and it would have damaged. Hence, we don't think that it is a case of rash and negligent driving. Petitioner was driving at an acceptable speed of 40 k.m. per hour. It is unfortunate that while overtaking the cycle, it colluded with the motorcycle due to the cyclist taking a sudden right turn. Consequently, the motorcycle was too close to the cycle while overtaking

which was not expected of the petitioner. This is evident from the statement of PW-1, NC(E) Bipin Kumar Behera, brother of deceased who was the pillion rider on the cycle and only eye witness to the accident. He deposed that his brother (deceased) did not give any hand signals or indication that he was going to turn towards the right and the motorcycle fell towards the right after the accident.

9. In these circumstances, we are of the opinion that this is not a case of rash and negligent driving on the part of the petitioner, therefore, he cannot be found guilty for the offence under Section 304 A of the IPC. Therefore, we set aside the sentence awarded by the DCM vide order dated 15.01.2010 and acquit the petitioner of all charges.

10. The petition is accordingly allowed. No order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
March 28, 2012
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