

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Reserved
(Court No. 2)

Original Application No. 43 of 2014

Monday the 01st day of February, 2016

“Hon’ble Mr. Justice Abdul Mateen, Member (J)
Hon’ble Lt. Gen. A.M. Verma, Member (A)”

Nitesh Rai, Ex-SEA-II, 228356-T, S/o Shri Awadhesh Kumar Rai, resident of Village and Post Reotipur, P.S. Shuhawal, Tehsil Zamania, District Ghazipur-232 328.

..... Applicant

By Shri Amit Sharma, counsel for the applicant.

Versus

1. Union of India Ministry of Defence Civil Secretariat, New Delhi through Secretary.
2. The Flag Officer Commanding-in-Chief, Headquarters, Eastern Naval Command, Visakhapatnam-530014.
3. Commanding Officer INS Sukanya, Visakhapatnam.

..... Respondents.

By Shri Anand Vikram, learned counsel for the respondents along with Cdr. U.M. Chand, Departmental Representative.

ORDER

1. This Original Application has been filed by the applicant seeking the reliefs for quashing the impugned order dated 16.8.2013 and to reinstate him in service.

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2. The facts of the case, in brief, are that the applicant was enrolled in the Indian Navy in 2011. On 9.5.2013 he was posted at INS Suknya. On the same day, i.e. on 9.5.2013, there was an altercation between Lt. Ashutosh Kumar Singh and the applicant at about 2230 hours in the ship in which the applicant was physically assaulted by the officer, following which the applicant retaliated and hit the officer, for which he was tried by Summary Trial on 16.8.2013 on the following charge :-

“DID AT ABOUT 2230 HOURS ON 09th MAY 2013 STRIKE LIEUTENANT ASHUTOSH KUMAR SINGH NUMBER 06952 Z HIS SUPERIOR OFFICER AT THE GANGWAY THERE BY COMMITTED AND OFFENCE PUNISHABLE UNDER SECTION 45 (A) OF THE NAVY ACT 1957.”

The punishment awarded to the applicant was dismissal from service.

3. The applicant was represented by Shri Amit Sharma, learned counsel.

4. On 9.5.2013 there was a requirement of charging ELSA for which Lt. Ashutosh Kumar Singh, who was the OOD mustered all hands. On way to Helo Deck for collection of ELSA sets the applicant stated that he fell down from the ladder and his leg was sprained. The applicant claimed that he informed three sailors of this. When the applicant did not return on duty, Lt. Ashutosh Kumar Singh, who was the Officer on Special Duty (OOD) asked the Duty Security Chief R.C. Satpati to establish the whereabouts of the sailor. The applicant was called to the gangway through Motorola of hellodeck Sentry. The applicant reached the gangway where OOD told him

to stand. The applicant stated that he thereafter sat down for sometime since his leg was paining. The applicant requested that he be allowed to go for sick parade but no action was taken. After little while when the OOD did not respond to the request of the applicant, the applicant got up and started going to port catwalk which was seen by the OOD, who used foul language calling the applicant a bastard. On hearing this abusive language, according to the applicant, he asked the OOD to desist from using such language. The OOD, according to the applicant, held the applicant by collar, pushed him and slapped him. After little while EXO came and the applicant told him the whole incident. An ambulance was called and the applicant was taken to INHS Kalyani where he was medically examined and treatment was given to him. The applicant was kept in close custody till 16.8.2013 when he was dismissed from service. The applicant asked for documents from the respondents and learnt that many witnesses had stated the same thing, i.e. the applicant had been hit by the OOD first. The applicant stated that there was extreme provocation by the officer in which not only did he abuse him but also physically hit him, and the applicant stated that, he did not respond in the manner that had been described by the respondents. The applicant prays that the reliefs claimed by him be granted.

5. The respondents were represented by Shri Anand Vikram, learned counsel for the respondents, along with Cdr. U.M. Chand, Departmental Representative.

6. The case of the respondents is that the applicant was required to report to Helo Hanger at about 2230 hours. The applicant did not muster on time and frequent announcements had to be made for him to do so. Eventually, the applicant was traced by the Duty Chief R.C. Satpati and was brought to the gangway. On being confronted by the OOD the applicant stated that he had fallen from the port side ladder and had sustained injury and had pain in his right leg. He wanted to report sick. However, the OOD, in his statement before the Commanding Officer, stated that, prima facie, he could not make out that there were any physical marks of injury on the leg of the applicant and hence he concluded that the applicant was feigning his ailment in order to avoid work. The respondents claim that when questioned as to why was he walking slowly, the applicant feigned his ailment, following which the OOD passed some unbecoming remarks. The applicant, despite orders of the OOD, started going back. The respondents deny that the OOD used any foul language in order to stop the applicant. Since the applicant had no intention of returning back to duty, the OOD held the applicant back by grabbing his T-shirt, resulting in physical contact. The respondents, however, stated that no physical force was used by the OOD in order to stop the applicant. The applicant showed no medical document to the OOD which would exclude him from duty. The case was investigated as provided by law and the applicant was kept abreast with all the developments during the period of his close custody. The respondents stated that all the witnesses in their unbiased deposition before the Commanding

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Officer, INS Suknya, have stated that the applicant was the first to assault the OOD. According to the respondents, on being checked by the OOD, the applicant lost his control and assaulted the officer. According to the respondents, the statement of R.C. Satpati cannot be relied upon considering the fact that he is not the sole witness to the incident. The respondents stated that Satpati was neither present at the place of incident nor was aware about the fact of abusing by the officer. The respondents stated that testimony of Yogendra Kumar does not add to bring any new facts on record. The respondents pray that the case of the applicant be dismissed lacking merit.

7. Heard both the sides and scrutinized the documents.

8. From the documents produced by the respondents and the applicant it emerges that the applicant had no former offence in his record book. The medical reports annexed by the applicant indicate that he had a problem in his leg on 10.5.2013 for which he was provided treatment. We have also gone through the statements of the OOD and that of the other witnesses who were eye witnesses to the incident. The OOD, Lt Ashutosh Kumar Singh, has stated in his deposition as under :

“Then I abused him. He stopped and asked me why are you abusing me? Seeing this high level of insubordination I caught his T Shirt to get him near to me to talk. But Nitesh Rai, SEA II QA. III became furious and started hitting me. I pushed him twice or thrice. But Nitesh Rai SEA II QA III was hitting me from behind. I ran towards catwalk and he was after me. Someone from duty watch was holding him. MY OOD chain broke and fell.

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Then he started running to jetty sentry and tried to grab gun. He was abusing me very badly and told that “ I will kill you” in hindi.”

9. R.C. Satpati was also examined and he in his testimony as stated as under :-

“Thereafter announcement was made and Rai came to gangway limping and sat down telling that leg is paining and needs to report sick. OOD did not give permission. Then after, sometime Rai got up and started moving telling that he has to apply medicine. OOD told ‘bastard you come’. Rai told ‘Don’t abuse me’ in hindi and came back. OOD caught him by his collar and pushed Rai with hand and kicked. Both had some manhandling and they went to port cat walk pushing. Then after sometime Rai went down the gangway and I went and got him back and made him to sit in foxle. By then Exo sir came.”

10. Yogendra Kumar was also examined and he in his testimony has stated as under :-

“After checking, then duty security chief came and told that Nitesh Rai, SEA II QA III has sprained his leg. Then OOD sir announced for Nitesh Rai, SEA II QA III and Nitesh Rai, SEA II QA III came limping. He told that he can not walk and was having pain on his leg. He told few times that his leg was paining for about half an hour. Then he got up and went on his own. When OOD sir asked Nitesh Rai, SEA II QA III, he told that as you are not sending me, I am going to mess for applying medicine. Then OOD sir called him back but Nitesh Rai, SEA II QA III did not come. So OOD sir

told “ Bastard come back”. The OOD sir tried pulling Nitesh Rai, SEA II QA III by his T Shirt and waved his hand towards Nitesh Rai, SEA II QA III. Nitesh Rai, SEA II QA III held his hand and there after some “ Dhakkamukhi” between both happened. On seeing this I feared that something wrong is going to happen and went to call EXO sir along with Ajay Sorout, LCK (O). Then EXO sir came. OOD sir, EXO sir and others were at the gangway. After sometime, we were secured.”

11. Jintu Kalia too in his testimony has stated as under :-

“On 09th may 13, at about 2300 hrs, duty watch was mustered and I was there, 04 were detailed y OOD sir for ELSA charging. 04 were sent to helo deck for collection of ELSA. 03 reached OOD sir told duty security chief sent to check Duty Security Chief RC Satapathy, CPO QA I told Nitesh Rai, SEA II QA III is sitting in helo hellow deck with leg sprain, OOD sir announced for Nitesh Rai, SEA II QA III and he came back after 15 minutes fimping and told his leg is paining. OOD sir told him to be there on foxle and he sat there. Nitesh Rai, SEAI QA III told 3 times that I want to report sick but OOD sir did not listen. After sometime, Nitesh Rai, SEA II QA III got up and started going to mess. OOD sir asked “Oye, Kahan ja raha hai?”Nitesh Rai, SEA II QA III told I want to apply medicine for pain. OOD sir told you will not go but Nitesh Rai, SEA II QA III told you will not go but Nitesh Rai, sea told no I will go as it is paining. Then OOD sir told him not to go but he continued. Then OOD sir told “Bastard, come back”. Then Nitesh Rai, SEA II QA III came back and

told to OOD sir “ Gali mat do”. The OOD sir held Nitesh Raoi’s collar of T shirt and stopped and Nitesh Rai, SEA II QA III held his hand. The both had “Hathpayi” and went towards port catwalk. Then I went and separated both and OOD chain was lying down which had fallen down during “Hathapai”. I picked it up. Nitesh Rai, CEA II QA III went to quartermaster. I doubt my hand had cut which had happened when holding Nitesh Rai, SEA II QA III as Nitesh Rai, SEA II QA III was angry. When I turned back I saw Rai near the gangway, the EXO sir was called. I went for separating them as I was only thee and I did not want the things to become a big fight. EXO sir came down. Nitesh Rai, SEA II QA III was sitting down in between gangway and quartermaster table. Then we were secured.”

12. From the statements given by the witnesses during the trial it is evident that the OOD was first to initiate the scuffle and in which he first abused the applicant and then physically stopped him from leaving that place. Also the claim made by the respondents that the OOD told his Commanding Officer that there was no physical injury to substantiate the applicant’s claim that he had any injury on his leg is legally not sustainable as the injury was sprained leg for which outside visible marks may not be visible. The fact that emerges is that the applicant did injured his leg and was not feigning ailment. The applicant indeed needed to be sent to sick

report so that his injured leg could be treated properly. Instead, the applicant was abused and physically assaulted.

13. In our view there was extreme provocation to which the applicant may have retaliated.

14. It has been stated by Cdr. U.M. Chand, Departmental Representative, that the officer, viz. Lt. Ashutosh Kumar Singh, too has been dealt with on disciplinary ground and he has lost some service for seniority.

15. While the officer, who initiated the scuffle, has been retained in service with loss of seniority for service, this young sailor, who had retaliated under extreme provocation, was dismissed from service, which, in our view, is a punishment not proportionate to the offence and is too harsh. The applicant has already served adequate punishment by way of being in close custody and for being away from Naval service from the date he was dismissed from service, i.e. 16.8.2013.

16. In view of the above, in our view, the applicant deserves to be reinstated. Accordingly, the O.A. is allowed and the dismissal order dated 16.8.2013 is quashed. The respondents are directed to reinstate the petitioner in service within a period of three months from today. No order as to costs.

(Lt. Gen. A.M. Verma)
Member (A)

(Justice Abdul Mateen)
Member (J)

PG.