

ARMED FORCES TRIBUNAL REGIONAL BENCH, LUCKNOW

Transferred Application No. 11 of 2011

Friday the 11th day of September, 2015

Reserved
(Court No. 2)

Shaikh Imtiaz, son of Shri Fakir Mohammad No.14619273L Ex Naik/Driver Mechanical Transport, Permanent Resident of 584 M.H.B.Colony, Satpur, Nasik, Maharashtra-422 007

..... Applicant
(in person)

Versus

Union of India through the Ministry of Defence, New Delhi.

Chief of Army Staff, Army Head Quarter, New Delhi.

Officer Commanding, 946 AD Missile (SP), Regiment Workshop, Morar Cantt, Gwalior (MP)

Officer Commanding, 514 AD Regiment (SP) c/o 56 APO and others
.....Respondents.

By Shri Rajesh Kumar, learned counsel for the respondents alongwith Capt. Ridhishri Sharma, Departmental Representative.

ORDER

1. Writ Petition No. 2635 of 2009 (S) was received from Madhya Pradesh High Court, Gwalior Bench on 18.1.2011 and was renumbered as T.A.No. 11 of 2011.

2. By means of the present petition, the applicant has prayed for quashing the verdict of guilty and sentence (Annexure-P/1) as well as the order passed by respondent no. 2 (Annexure-P/2) and to set aside the Court Martial Proceedings. He has also prayed for his reinstatement with all consequential reliefs alongwith costs.

3. Facts of the case are that the applicant was enrolled in the Army on 27.8.1993. In 2005, he was serving in 946 AD Missile (SP) Workshop, where he was tried by a Summary Court Martial on the following charges:

“CHARGE-SHEET

The accused No. 14619273L Substantive Naik (DVR MT) Shaikh Intiyaz Mohammad Fakir Mohammad of 946 AD Msl Regt (SP) Wksp attached to 514 AD Regt (SP) is charged with:

First Charge

Army Act Section 56 (a)

**MAKING A FALSE ACCUSATION
AGAINST A PERSON SUBJECT TO
THE ARMY ACT, KNOWING SUCH
ACCUSATION TO BE FALSE**

in that he,

at Gwalior on 30 September 2005, wrote application dated 30 September 2005 to Officer Commanding 946 AD Msl. Regt (SP) WKSP containing the following accusation against IC-55845Y Major Samir Mohite of his unit knowing such accusation to be false:-

“Even Major Samir Mohite has not only harassed me but abused and molested my wife after calling her to his office on 03 July 2004.”

Second Charge
Army Act Section 40(c)

USING INSUBORDINATE
LANGUAGE TO HIS SUPERIOR
OFFICER

in that he

at Gwalior, on 24 March 2006, when marched up to IC-47505F Lt Col SC Kharbanda, Officer Commanding of 946 AD Msl Regt (SP) Wksp told the said officer in a rude and insolent manner:-

- (a) *“Tum saale saare kutte ho” or words to that effect.*
(b) *“Saala kutta Samir Mohite meri wife ke saath soyega usko molestation bologe” or words to that effect.*

Third Charge
Army Act Section 40(c)

USING INSUBORDINATE
LANGUAGE TO HIS SUPERIOR
OFFICER

in that he

at Gwalior on 24 May 2006, during a meeting with Lt Col SC Kharbanda Officer Commanding of 946 AD Msl Regt (SP) Wksp in his office, told the said officer in a rude and insolent manner:-

- (a) *“Chhuti liye bina mein bahar nahin Jaoonga” or words to that effect.*
(b) *“Main fauz mein nahin hoon. Main apko apna OC nahin Manta hoon aur apne aapko is fauz ka sipahi bhi nahin manta hoon” or words to that effect.*

Date: 04 Aug 2006

Sd./-
(Viney Handa)
Colonel

*Commanding Officer
514 AD Regt (SP)''*

4. The Summary Court Martial commenced on 12.8.2006 and it concluded on 5.12.2006. The applicant was found guilty of all the charges and the punishment awarded was reduction to rank, R.I for three months and dismissal from service. His petition under Section 164(2) of the Army Act was rejected by the Chief of Army Staff vide his order dated 2.1.2008.

5. The applicant appeared in person. He pleaded that he was posted at Gwalior. His wife Smt. Razia Shaikh was Ward Attendant in MH Gwalior, where he had been given permission for out-living. There was an altercation between the applicant's wife and Capt. Swagate Mohite, who was an MNS officer in MH Gwalior, consequent to which Capt. Swagate Mohite's husband Capt. Sameer Mohite, who was the applicant's senior, made a complaint, based on which the applicant was awarded punishment of 14 days R.I. While the applicant was undergoing this punishment, his wife was called to the office of CO of the Unit, where he was met by Capt. Sameer Mohite, who molested her and also abused her. The applicant has annexed copy of complaint by his wife as Annexure P/4 to the petition. The applicant was sent by CO to MH Gwalior by filling up Form AFMSF-10 on 8.7.2004 for psychiatric examination, from where he was discharged on 1.10.2004 as he had recovered. The applicant states that he was ordered to move to 142 AD Regiment on 17.12.2005 for Court of Inquiry. He was given a charge-sheet on 4.8.2006 and the Summary Court Martial (SCM)

commenced on 12.8.2006. During currency of SCM, his wife filed Habeas Corpus Writ Petition No. 4710 of 2006 in Madhya Pradesh High Court. On 27.11.2006 the said writ petition was dismissed with some observations which went against the respondents. The respondents had assured the High Court that the applicant shall not be humiliated or tortured by any army officer. The SCM in a very arbitrary manner announced its verdict on 5.12.2006. The applicant's petition under Army Act Section 164(2) was rejected by the Chief of the Army Staff.

6. The respondents, represented by Shri Rajesh Kumar and Capt. Ridhishri Sharma, Departmental Representative, deny that the SCM was conducted in an arbitrary manner. The SCM they state was totally bona fide and was conducted in accordance with law. The applicant had made false accusations against Capt. Mohite on 3.7.2004 because of which he had been awarded 14 days R.I. In the instant case, the abusive language used by the applicant had been proved and consequently the applicant was awarded punishment, which is just and legal.

7. Heard both sides and scrutinized the documents.

8. In the past, the applicant had incurred three red ink entries and one black ink entry. He had 13 years 3 months and 9 days service on 5.12.2006. The AFMSF-10 with which the applicant had been sent to the hospital gives the relevant information for sending him to the hospital, stating therein that the applicant has a past psychiatric history and he is indisciplined. The relevant extracts of AFMSF-10 are as follows:

“The indl took off his clothes incl his under garments and refused to put them back despite repeated requests/orders from his superiors. From the above facts it is evident that the indl has displayed signs of indiscipline, disgraceful conduct and disregard for his superior officers. It also seems that the indl has lost his mental balance again. The undersigned strongly recommends that the indl should NOT be retained in service.”

9. The charges against the applicant were heard in the instant case on 12.7.2006 under the provisions of Army Rule 22, in which six witness had been examined. The applicant did not cross-examine any witness. The trial commenced on 12.8.2006 in which the applicant did not call any defence witness neither did he make any statement.

10 While the trial by SCM was on, the Habeas Corpus Writ Petition No. 4710 of 2006 had been filed during the currency of SCM. The relevant extracts of the judgment dated 27.11.2006 delivered in the said petition are as follows:

“3. From the allegations, counter allegations, the pleadings and counter reply it appears that I.M.Shaikh was detained by the Army Officers and to that extent we did not like and appreciate the action of the Army Officers against a detenue. After all Army Officers cannot be allowed to torture a personnel and to violate his fundamental rights and human rights.”

“4. At this stage, Col. Vinay Handa, who is a Court Martial Officer is also present today. Lt. Col. Kharbanda had assured this Court that in future I.M.Shaikh shall not be humiliated, tortured by any of the Army Officers and personnel. Today the Court Martial Officer has also assured this Court that in future even in the court martial proceedings he shall not be humiliated, tortured or no third degree method shall be adopted so far as the case of Naik I.M.Shaikh is concerned. There shall be no harm to his life and his human dignity. He

further assured that during court martial proceedings he will be allowed to meet his wife and family members and will also be allowed the lawyer to appear on his behalf in the proceedings and shall be medically examined repeatedly.”

“9. With the aforesaid observation as the corpus of I.M.Shaikh has been produced and today he is not in illegal detention, this petition has come to an end and the same is accordingly dismissed.”

10. The respondents, in particular Col. Vinay Handa, who was the Court during the SCM, stated in the High Court inter alia that the applicant shall not be humiliated or tortured and no third degree method will be used and no harm to his life and dignity will be caused. Implied therein is the admission that such unconstitutional methods had been used against the applicant by the respondents during the investigation and trial by SCM. Such a conduct of the respondents cannot be condoned and is strongly condemned.

11. In the result, we partly allow this T.A. The order passed by the SCM dated 5.12.2006 is hereby quashed, as also the rejection of the petition dated 2.1.2008 is quashed. The applicant shall be deemed to be notionally in service till the date he reaches the service entitling him for pension; whereafter he shall be paid pension and all retiral benefits. No order as to costs.

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

(Justice Abdul Mateen)
Member (J)

LN/-