ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Court No 3

Original Application No. 212 of 2012

Wednesday, this the 26th day of August, 2015

Hon'ble Mr Justice D.P. Singh, Member (J)
Hon'ble Air Marshal Anil Chopra, Member (A)

13896119A Hav (MT) Daroga Rai,
Son of Late Satya Deo Rai
Resident of House No. 233B/1B, Ganga Vihar Colony
Transport Nagar, Dhumanganj, Allahabad

---------Applicant

Ld. Counsel for the Applicant : **Col (Retd) Ashok Kumar,**
Shri Rohit Kumar, Advocate

Versus

1. Chief of Army Staff, South Block, DHQ PO, New Delhi -110011

2. Commandant cum Chief Records Officer,
Army Service Corps Centre (South) and Records, Bangalore

3. Commanding Officer, 5133 ASC Bn, c/o 56 APO

4. Union of India, Through Secretary Ministry of Defence,
DHQ PO, New Delhi -110011

------Respondents

Ld. Counsel for the Respondents : **Shri R.S. Mishra,**
: **Central Govt. Counsel**
Assisted by Lt Col Subodh Verma, Departmental Representative for the Respondents

ORDER

(PASSED IN COURT)

1. This Original Application has been filed under section 14 of the Armed Forces Tribunal Act, 2007, whereby the Applicant has prayed for the following reliefs:-

(a) Quash the cryptic rejection orders of the Chief of Army Staff bearing file No 08746/DV-3(A) dated 23 Feb 2011 (Annexure A-1 refers).

(b) Allow the Statutory petition preferred under section 87 read in conjunction with section 26 of the Army Act 1950 dated 19 Jul 2010 (Annexure A-2 refers).

(c) Quash impugned punishment of severe reprimand implicated on 22 May 2010 by Col Mohit Mahendroo, Commanding Officer, 5133 ASC Bn (MT) (Annexure A-3 filed with the O.A.) with all consequential benefits to the applicant.

2. Heard Ld. Counsels for the parties. It is a fit case for adjudication. Admit.

3. Pleadings have been exchanged. With the consent of Ld. Counsels for the parties, we proceed to decide the original application on merit on the basis of affidavit/documents available on record.

4. The applicant was enrolled in the Indian Army on 30.04.1987. After completing his training he was posted to various units and was promoted as Havildar on 01.04.2003. While posted at 5133 ASC Battalion, he was detailed to perform duties of Block Commander on convoy duty. On 16.04.2010 the individual was involved in an incident of quarrel and affray with unit personnel leading to collective breach of discipline. On investigation he was found blameworthy alongwith two other individuals for instigating and indulging in collective indiscipline and he was punished with 'Severe Reprimand' . He filed Statutory Complaint which was rejected on 23.02.2011 by Chief of Army Staff. Being aggrieved, the Applicant filed this Original Application before this Tribunal.

5. In short the applicant preferred this application to quash the impugned order dated 22.05.2010 by which the applicant was punished with 'Severe Reprimand' followed by rejection of Statutory Complaint vide order dated 23.02.2011 as contained in Annexure A-8 and Annexure A-1 of O.A.

6. Impugned order shows that the applicant while performing the duties of Block Commander of convoy duty on 16.04.2010 instigated personal of his unit to verbally assault Hav Satish Kumar, resulting into quarrel between the persons of the unit on convoy duty. A Court of Inquiry was held and the applicant was found guilty. Relying on Court of Inquiry the applicant was punished with Severe Reprimand. Statutory complaint was submitted by the applicant. Being aggrieved by the Severe

Reprimand merely on the ground that order of punishment suffers from consequences for the reason that the finding of the Court of Inquiry could not be relied upon while awaiting the punishment. Ld. Counsel for the applicant while pressing for relief submitted that the reliance placed by the competent authority on the report of Court of Inquiry was not in consonance of Army Rule 182. Ld. Counsel for the applicant further argued that by deciding the statutory complaint, the Chief of Army Staff has not passed the reasoned and speaking order.

7. On the other hand, Ld. Counsel for the Respondents submits that the order of Chief of Army Staff is law full and based on the report of Court of Inquiry. The conduct of the applicant during convoy duty was not up to the mark.

8. We have consider the arguments of Ld. Counsels for both the parties. The provision contained in Army Rule 182 is reproduced as under:-

> *"**182. Proceedings of court of inquiry not admissible in evidence.** The proceedings of a court of inquiry, or any confession, statement, or answer to a question made or given at a court of inquiry, shall not be admissible in evidence against a person subject to the Act, nor shall any evidence respecting the proceedings of the court be given against any such person except upon the trial of such person for willfully giving false evidence before that court.*

Provided that nothing in this rule shall prevent the proceedings from being used by the prosecution or the defence for the purpose of cross examining any witness."

9. At the face of record Rule 182 provides that the proceedings of the court of inquiry shall not be admissible in evidence. The use of findings of court of inquiry may be during the course of court martial proceedings for the purpose of contradiction or during course of examination to confront any witness.

10. Reliance placed by the competent authority on the court of inquiry seems to suffer from substantial illegality and cause prejudice the applicant from fair trial. It is well settled proposition of law as contained in AIR 1982 page 1413 in the case of Prithivi Pal Vs UOI .

11. While passing order, it was not open to the competent authority to rely upon the material or the finding recorded during court of inquiry. The finding under court of inquiry and evidence lead thereon is not substantiative evidence hence impugned order is vitiated.

12. Coming to the second argument with regard to impugned order passed by Chief of Army Staff. The Chief of Army Staff has noted the objection raised by the applicant with regard to Rule 182. While agreeing the verdict of Chief of Army Staff has not given reason as to how and under what manner he does not agree with the contention of the applicant with regard to applicability of Rule 182. Once a plea was taken by the

applicant that in view of the Rule 182 the report of court of inquiry should not have been taken into the account to punish the applicant on the subject matter , then that should have been dealt with by the Chief of Army Staff while deciding the statutory complaint. Otherwise the decision suffered being hit by Article 14 of the Constitution of India.

13. The law has been advanced much ahead than what was existing earlier. Now it is well settled proposition of law that whether it quasi judicial or administrative order it should be reasoned and speaking one. The cryptic order affecting the right of citizen shall be violative of principle of natural justice.

14. In view of the above, the impugned order is not only illegal because of Rule 182 but also it suffers from vice of arbitrariness since it is not reasoned one. The relevant portion of the impugned order of February 2011 is reproduced as under :-

> *"(e) In view of the above the punishment awarded is sustainable.*
>
> *5. NOW THEREFORE considering the entire facts and circumstances of the case we hereby reject the Statutory Complaint dated 19 July 2010 submitted by Number 13896119A Havildar (Mechanical Transport) Daroga Rai, being bereft of merit and sustainable."*

15. The order at the face of record is non speaking, unreasoned without considering the ground raised by the applicant while forwarding the statutory complaint.

16. Accordingly, it appears to be not sustainable being hit by Article 14 of the Constitution of India.

17. In view of the above the Original Application is allowed. The impugned order dated 22.05.2010 and dated 23.02.2011 are set aside with all consequential benefits.

18. No order as to cost.

(Air Marshal Anil Chopra)
Member (A)

(Justice D.P Singh)
Member (J)

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