

**IN THE ARMED FORCES
TRIBUNAL,
REGIONAL BENCH, GUWAHATI**

O.A. NO. 01 OF 2011

P R E S E N T

HON'BLE MR. JUSTICE H. N. SARMA, Member(J)

HON'BLE CMDE MOHAN PHADKE (Retd), Member(A)

Sri Oinam Doren Singh,
s/o late Oinam Anu Kala Singh,
Lance Hav (Operator Fire Control
No.15769515K Cinam Sawombung,
PO Lilong, District Thoubal, Manipur.
c/o Mrs Mugadha Begum,
AL-SALAM HOSPITAL,
Pancharatna Road (Hasila para),
Goalpara, Assam.

Appellant

Legal practitioner for Applicant (s):

Mr. A.Roshid,
Mr.D.F.A.Ahmed,
Mr A.Surendra Singh, Advocates

-Versus-

1. The Union of India,
through the Secretary to the Govt of India,
Ministry of Defence, New Delhi-1.
2. The General Officer Commanding-in-Chief,
Central Command, Lucknow(UP), C/o 99 APO.
3. The Officer Commanding Troops,
Administrative Regiment/Army Air
Defence College, Gopalpur, C/o 99 APO
4. The Lieutenant General,
General Officer Commanding-in-Chief,
Lucknow, C/o 99 APO.

... **Respondent s**

Legal practitioner
for Respondent (s):

Mr. N. Deka, Central Govt
Standing Counsel.

Date of Hearing : 03.05.2011

Date of Judgment & Order: 3rd May, 2011

JUDGMENT & ORDER

(Oral)

[H.N.SARMA,J]

This appeal is directed against the order dated 19.05.2009 whereby and whereunder the appellant was awarded the punishment of dismissal from service for committing civil offence of using criminal force to a

woman with the intent to outrage her modesty, contrary to Section 354 of the Indian Penal Code, after holding Summary Court Martial preceded by a court of inquiry. Although the appellant has raised an issue that the order of dismissal has not been served upon him and as such he has annexed only an intimation of the order of punishment served upon his wife, we are not inclined to accept the said contention, inasmuch as, the record made available before us disclose otherwise.

2. We have heard Mr.A.Roshid, learned counsel for the appellant and Mr. N.Deka, learned Central Govt Standing Counsel for the Respondents.

3. To put up briefly, the allegation against the appellant is that while he was serving in the 156 Light Air Defence Missile Regiment and attached to Administrative Regiment, Army Air Defence College, on the night of 13th October, 2008 he tried to outrage the modesty of the wife of Sepoy Ajay Kumar Yadav. A complaint having been made against the appellant, a court of inquiry was conducted followed by recording of summary of evidence. After conclusion of the court of inquiry, a prima facie case

having been found against the appellant under Section 69 of the Army Act, contrary to Section 354 of the Indian Penal Code, a Summary Court Martial was held against him on 19.05.2009 to enquire into the allegations. During the course of the Court Martial the appellant admitted the charge levelled against him and the witnesses produced on behalf of the prosecution proved the allegations. The appellant also admitted the allegations made against him by the PW 1 (Sep Ajay Kumar Yadav) and PW 2 (Smt Poonam Yadav) supporting the prosecution case. Accordingly, upon completion of the proceeding, the Court Martial having found the charge levelled against the appellant as proved, inflicted the penalty of dismissal from service vide impugned order dated 19.05.2009. Against the aforesaid order, the appellant preferred an appeal on 16.06.2009, which was also dismissed by the Appellate Authority on 12.11.2009. Thereafter, the present appeal has been filed before this Tribunal.

4. During the course of hearing the learned CGSC has produced the relevant records pertaining to the case.

5. Mr. A. Roshid, learned counsel for the appellant has submitted that no proper and fair opportunity was given to the appellant in defending the case and the confessional statement was not recorded by following the procedure prescribed by law. It is further contended that the punishment of dismissal from service is disproportionate to the offence charged.

6. Mr. Deka, learned CGSC referring to various orders passed by the authority during the course of enquiry as well as in Summary Court Martial Proceedings has submitted that in fact all opportunities available under the law were provided to the appellant to defend his case. That apart, the relevant provisions of the Army Act and Rules have been duly complied with and in fact no confessional statement of the accused-appellant had been recorded, but the appellant admitted the charge leveled against him. The materials so collected by the authority during the course of inquiry amply proved the guilt of the accused and, thus, he has rightly been inflicted the punishment and, therefore, it needs no interference.

7. On perusal of the materials on record, we find that the appellant was charged under Section 69 of the Army Act on the allegations levelled against him. The charge reads as follows: -

“Committing a civil offence that is to say, using criminal force to a woman with intent to outrage her modesty, contrary to Section 354 of the Indian Penal Code.”

In that he,

at Gopalpur Military Station, on 13 Oct, 2008, used criminal force to Mrs Poonam Yadav wife of Number 14648734 M Sepoy (Driver Mechanical Transport) Ajay Kumar Yadav of Air Defence Static Workshop, Gopalpur Military Station by holding her forcibly from behind and attempting to grope her, intending thereby, to outrage her modesty.

8. The Court of Inquiry conducted by the authority found sufficient proof of the allegations leveled against the appellant and accordingly he was tried by holding a Summary Court Martial. The appellant pleaded guilty before the Summary Court Martial. It is also on record that before recording the plea of guilt, the Court explained the meaning of the charge and the consequence of admission thereof to which the appellant

asserted that he understood the nature of the charge to which he pleaded guilty. It is also on record that the appellant was made aware of the general effect of pleading guilty and the difference in procedure that would be made by the plea of guilty.

9. The Court having been satisfied that accused appellant understood the charge and consented on the plea of guilty, accepted the same and accordingly recorded the same in compliance of sub-rule (2) of Rule 115 of the Army Rules. During the course of the proceedings the statement of the victim (PW 2) as well as her husband (PW 1) was recorded in presence of the appellant.

10. Both the prosecution witnesses confirmed the allegations leveled against the accused-appellant and the appellant was provided opportunity to cross-examine them. That apart, in his statement also the appellant admitted the allegation leveled against him, as deposed by the PW 1 and PW 2.

11. On the basis of the materials recorded during the course of Summary Court Martial, conducted in

compliance of Rule 115(2A), found the appellant admitted the guilt and accordingly imposed the punishment of dismissal from service.

12. From the materials available on record, we are of the view that all the procedural formalities, as provided under the Army Act and the Rules/regulations have been complied with in inflicting the punishment upon the appellant. The statutory appeal filed by the appellant has already been rejected by the appellate authority. Accordingly, we do not find any procedural lapse or illegality crept in passing the impugned order.

13. At this stage, Mr. A. Roshid referring to Section 71 of the Army Act has strenuously urged that considering the nature of evidence and in absence of any adverse findings as regards the character and antecedent of the appellant he could have been dealt with a bit leniently by awarding the punishment other than dismissal. Neither the appellate order nor the impugned order of dismissal discloses anything justifying inflicting the punishment of dismissal from service.

14. Mr. Deka, learned CGSC submits before us that in awarding punishment the provisions of Clause 448 of the Army Regulation and Section 84 of the Army Act were kept in mind by the authority and upon such consideration the punishment of dismissal was awarded upon the appellant. We find that Section 84 of the Army Act referred by Mr. Deka has no relevance relating to the consideration required to be taken in inflicting punishment. From the record produced before us, we find that there is no disclosure of mind of the authority to the effect that there were consideration of the gravity of the offence in awarding the punishment. Admittedly, there are several numbers of punishments provided under Section 71 of the Act and undoubtedly it is the discretion of the authority to inflict suitable punishment. However, we express our view that the record should have disclosed at least the minimal necessity of application of mind by the authority while inflicting the punishment of dismissal or dismissing the appellant.

15. In view of the above discussion, we dispose of this appeal giving liberty to the appellant to file an application under Section 179 of the Army Act before the

appropriate authority praying for infliction of lesser punishment with sufficient reason in the facts and circumstances of the case. In the event of such application is being filed within 30 days from today, the respondent authority shall dispose of the same within a period of 45 days from the receipt thereof. It is made clear that by this order we have not expressed any view of ours, on the punishment and the matter is absolutely left to the discretion of the concerned authority exercising the said power.

16. Appeal stands disposed of as directed above. In the facts and circumstances of the case, there shall be no order as to costs.

MEMBER(A)

MEMBER(J)