

Union of India and Others

Vs

Naik Subedar Baleshwar Ram and Others

Civil Appeal No. 778 of 1988

(S Ranganathan, P. B. Sawant, K. Ramaswamy JJ)

27.10.1989

JUDGMENT

RANGANATH MISHRA, J. –

1. This appeal is by special leave and is directed against the judgment of the Division Bench of the High Court of Gauhati setting aside the order of conviction and the punishment of imprisonment as also the order of dismissal from service inflicted on the three respondents following a finding of guilt by the General Court Martial.

2. Naik Subedar Baleshwar Ram was a Junior Commissioned Officer of Amaribari Supply Point in the far eastern sector and was in overall charge of the said supply point. Around 5.30 p.m. on June 19, 1980, he directed driver Rattan Singh to park an army vehicle near the ration store for loading dry ration. Respondent Ramji with the help of one labourer from civilian side loaded the dry ration in the vehicle, whereafter Baleshwar Ram directed the truck to be taken towards Balipura. Respondent 1 sat in the front seat in civil dress while respondent 2 and 3 sat behind the body of the truck. By the time the vehicle reached Balipura, it had become dark and respondent 1 ordered the driver to take the vehicle towards Tezpur. When the vehicle reached the outskirts of village Batavari, respondent 1 directed the driver to slow down and turn the vehicle towards the right and take it off on a kucha track not leading to Tezpur. The driver of the vehicle was not prepared to take the vehicle was so taken and on the kucha track the vehicle on the kucha road but upon respondent 1's insistence the vehicle was so taken and on the kucha track the vehicle bogged down midway and could not be taken further. In the meantime, some civilian persons gathered there. The respondent 2 and 3 got down and started unloading some ration until they were prevented by the civilians present there. Respondent 2 slipped away from the place. The civilians being suspicious informed the civil police, who in turn handed over the matter to military police for investigation and necessary action. After due inquiry a disciplinary action was initiated and inquiry under Rule 22 of the Army Rules was undertaken. A General Court Martial followed where definite charges were given and ultimately on the basis of summary evidence available all the three persons were found guilty, convicted and sentenced. Order of dismissal from service followed.

3. The decision of the court-martial and the order of dismissal were challenged before the Guwahati High Court in a writ petition. The High Court found that as against respondents 2 and 3 there was no inquiry under Rule 22. The High Court relied upon the decision of this Court in Lt. Col. Prithi Pal Singh Bedi v. Union of India ((1982) 3 SCC 140 : 1982 SCC (Cri) 642) and held that the proceeding before the General Court Martial was in violation of the mandatory provisions of the Army Rules. On that finding the High Court set aside the order of conviction and punishment of imprisonment as also the order of dismissal from service.

4. It is a fact that as against respondents 2 and 3 there was no inquiry under Rule 22. It is not disputed that the Commanding Officer of the Unit had stated before the General Court Martial that he did not find any case against respondents 2 and 3. The summary of evidence recorded in the General Court Martial has been made available to us and we have read the same. The conclusion reached by the Commanding Officer seems to us to be a reasonable one. We do not think there is any justification to set aside the order of the High Court so far as respondents 2 and 3 are concerned.

5. So far as the case against respondent 1 goes there was an inquiry under Rule 22. The point raised on behalf of respondent 1 in the High Court was different from the case made out by respondents 2 and 3. It has been pleaded that the inquiry under Rule 22 as against respondent 1 related to an offence which came under Section 63 of the Army Act, namely, conduct prejudicial to good order and military discipline; while the charge he was called upon to face in the General Court Martial was one of theft punishable under Section 52(a) of the Army Act. We have seen the evidence recorded in the inquiry under Rule 22. It is a fact that the allegation at the stage of inquiry under Rule 22 was described as prejudicial to good order and military discipline but the basic facts said to constitute that allegation were nothing else than removal of the foodstuff which constituted the charge of theft. It is, therefore, clear that no prejudice has been caused to respondent 1 and the inquiry under Rule 22 and the trial before General Court Martial were over the selfsame facts.

6. In these circumstances, we are inclined to sustain the judgment of the High Court in regard to respondent 2 and 3 but we would reverse the judgment in regard to respondent 1 and restore the order of the General Court Martial. Respondent 1 has already been dismissed from service. He has undergone more than 9 months of the punishment out of one year of imprisonment. There has been a gap of several years since he has been released from jail initially on bail and later on the basis of the judgment of the High Court. In these circumstances he need not be taken into custody for suffering the balance period of the sentence. The appeal is partly allowed. There shall be no order for costs.

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