

SUPREME COURT OF INDIA

Rabindra Kumar Shaw

Vs.

Union of India, Ministry of Defence

C.A.No.4852 of 2011

(L.Nageswara Rao and Hemant Gupta,JJ.,)

28.08.2019

JUDGMENT

L.Nageswara Rao,J.,

1. The Appellant was enrolled in the Indian Army on 27.07.2000 in the Corps of Signals. When he was posted with the 9th Corps Air Support Signal Unit (CASSU), he was charged for disobedience of lawful command given by his Company Havaldar Major (CHM) Pramod Kumar. The charges communicated to the Appellant are as follows:

First charge

"Army Act Section 41(2)

DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER IN THAT HE, at Yol Cantonment, on 30 July 2009, when ordered by his Section Non Commissioned Officer Number 15361 420F Company Havaldar Major (Operator Cipher) Parmod Kumar of the same unit to perform the duties as Detachment In-charge of the unit Radio Monitoring Detachment from 1900 hrs. to 2359 hrs. on 30 July 2009 did not do so.

Second charge

Army Act Section 41 (2)

DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER IN THAT HE, at Yol Cantonment, on 03 August 2009, when his Section Non Commissioned Officer Number 15361 420F Company Havaldar Major (Operator Cipher) Parmod Kumar of the same unit ordered him to perform the duties as the Detachment In-charge of the unit Radio Monitoring Detachment from 1900 hrs. to 2359 hrs. on 03 August 2009, failed to report to the Radio Department."

2. The Appellant denied the charges. Proceedings were initiated before the Summary

Court Martial. Company Havaldar Major Pramod Kumar of Operation Section, 9th Corps deposed before the Summary Court Martial that the Appellant failed to perform the duty of Operator-cum- Detachment In-charge of the Radio Monitoring Detachment Unit from 1900 hrs. to 2359 hrs. on 30.07.2009. As the Appellant did not report for duty as directed by him, Company Havaldar Major Pramod Kumar went to the Barrack and directed the Appellant to explain the reason for not reporting for duty. Thereafter, Pramod Kumar himself performed the duties of Detachment In-Charge during that night. The Appellant again absented himself from duty in spite of directions issued on 03.08.2009. The Appellant was marched up to the Commanding Officer, Colonel Rajiv Sud on 06.08.2009. Tentative charges were framed and explained to the Appellant. The Appellant refused to sign Appendix 'A' as directed by the Commanding Officer.

3. By an order dated 26.08.2009, the service of the Appellant was terminated on the basis of the findings recorded in the Summary Court Martial. He preferred an appeal to Respondent No.4 which was dismissed by an order dated 16.02.2010. Thereafter, the Appellant filed a Writ Petition in the Calcutta High Court which was transferred to the Armed Forces Tribunal, Kolkata Bench. By the impugned order, the Armed Forces Tribunal upheld the order of termination of service of the Appellant.

4. The learned counsel for the Appellant submitted that there is no truth in the allegations that he willfully disobeyed the orders of his superior. He justified his absence from duty on the ground that he suffered an injury in his little finger of the right hand. He also submitted that the penalty of termination of service is disproportionate to the charges framed against him.

5. The learned Senior Counsel for the Respondents stated that the Appellant was not a raw soldier, having served the Army for a period of 9 years prior to the date of incident. Disobeying lawful command deliberately and intentionally is a serious charge. The learned Senior Counsel for the Respondent also stated that the Appellant refused to sign any documents, cross examine the witnesses or make a statement in his defence. He deliberately did not summon any defence witness.

6. The Armed Forces personnel are different from civil services. Not being present at his detachment unit and disobeying the lawful command cannot be ignored lightly. There is abundant material to show that the Appellant is guilty of disobeying the lawful command of his superiors not once but on two occasions. The Appellant is also guilty of deliberately not co-operating with the Summary Court Martial. It is also clear from the record that he did not utilize the opportunity to defend himself. The penalty of termination of service of the Appellant cannot be said to be incommensurate with the delinquency.

7. In view of the above, we are of the opinion that the Armed Forces Tribunal did not commit any error in affirming the termination of service of the Appellant. The appeal is dismissed.