

(1999) 09 GAU CK 0010

Gauhati High Court

Case No: Civil Rule No. 3274 of 1997

Bhagaban Talukdar

APPELLANT

Vs

Union of India (UOI)
and Others

RESPONDENT

Date of Decision: Sept. 10, 1999

Acts Referred:

- Army Act, 1950 - Section 40, 41, 71, 73
- Army Rules, 1954 - Rule 124, 22(3)

Citation: (2000) 2 GLT 51

Hon'ble Judges: J.N. Sharma, J

Bench: Single Bench

Advocate: A. Hazarika, A. Bhagawati, M. Phukan and S.K. Muktar, for the Appellant; U.C. Das, C.G.S.C., for the Respondent

Final Decision: Allowed

Judgement

J.N. Sarma, J.

I have heard Mrs. A. Hazarika, the learned Counsel for the Petitioner and also heard Mr. U.C. Das, the learned C.G.S.C. for Respondents.

2. This writ application has been filed by a person, namely, Sri Bhagaban Talukdar, the Petitioner herein, belonging to armed forces. He was appointed as Motor Mechanic on 23.3.82 and after getting training, at the relevant time he was at Tezpur. In the month of May, 1996 a charge was brought against him that he has used criminal force as against his superior officer and, as such, a summary court martial was convened and before the Summary Court Martial, witnesses were examined and the Petitioner himself made a statement and before making the statement, he was duly warned in terms of Army Rules 22(3) in presence of independent witnesses that if he makes the statement, that statement shall be used against him as evidence, inspite of this warning, he made a statement which was

recorded in presence of the witnesses and a part of the statement is quoted below:

On 09 May 96 at about 2100 hrs CHMUH(HU) K.U. Ahomed and Coy Champion No. 14591951L/Nk N.C. Pandey came to me and told me that I have to go for protection duty of HCO Tezpur and took my signature for drawing of weapon & Arms and gave me LRC dor doing duty on 10 May 1996 starting from 0700 hrs. I signed the authority letter. That time I was in my bed.

By around 2200 hrs. I went to bathroom for urinal and then came to CHM K.U. Ahmed's room and I informed him that I do not have Web eqpt, so that some one else could be detailed. He told me to manage the Web eqpt of your own and told you are not doing service for me. As he did not agree I got annoyed and went towards the bathroom I found a wooden stick in bathroom used for cleaning of bathroom. I took the wooden stick in my hand and rushed towards CHM HAV UM(MD) K.U. Ahomed's room as he was alone and lying on the bed I hit him on his head and saw blood coming out from the head. I gave Anr. blow which he stopped by his hand.

On this CHM HAV MH(MU) K.U. Ahomed shouted for help on hearing people coming towards CHM room I went towards the bathroom and hided myself. I also threw the stick outside. After about 10.15 minutes when someone came to CHM HAV UM(MU) K.U. Ahomed room I quickly went to my bed.

3. On the basis of this admission/plea of guilt, the Summary Court Martial sentenced the Petitioner to imprisonment for six months and also passed an order for dismissal from service. It is submitted by Mrs Hazarika, the learned Counsel for the Petitioner that Rule 124 of the Army Rules provides for only one sentence. Rule 124 of the Army Rules reads as follows:

The Court shall award one sentence in respect of all the offences of which the accused is found guilty.

Section 40 of the Army Act provides for punishment for striking or threatening superior officers.

4. Mrs Hazarika, the learned Counsel for the Petitioner places reliance in a judgment of Division Bench of This Court in Civil Ride No. 841/1982, Hemanta Kumar Rathor v. Union of India and Ors. passed on 4.7.88, in paragraph 9 of the said Judgment is quoted below:

It is admitted fact that in this case and as per charge only one offence was alleged to have been committed by the Petitioner and he was tried under "Summary Court-Martial." Therefore apparently it is clear that the Petitioner was convicted u/s 41 of the Act and he had been inflicted with two different punishment as aforesaid which is violative of the principle of law prescribed under Rule 124 of the Army Rules. Therefore, on that count also, the sentence is liable to be quashed.

Paragraph 13 of the aforesaid Judgment reads as follows:

Upon hearing the learned Counsel for the parties and basing the principles laid down by the Supreme Court in Ranjit(Supra) we are constrained to hold that two punishment should not have been inflicted in view of the gravity of the offence alleged in the charge. It is submitted by Mr. Sarma that the Petitioner has already undergone 47 days imprisonment in Civil Prison at Gauhati. However, we would observe in the light of the aforesaid decision of the Supreme Court that in the present case the punishment is undoubtedly disproportionate and as such interference by This Court is justified. Therefore, considering the facts and circumstances of the case and of the principle of law enunciated by the Supreme Court we are of the view that the impugned order cannot stand and is liable to be set aside which we hereby do. Consequently, the petition is allowed and the conviction and sentence of the Petitioner are quashed. Accordingly, we direct the authority of the Respondents to reinstate the Petitioner in his post he was holding at the time of his dismissal.

5. I feel that the interest of justice requires that the punishment of dismissal should be set aside in view of the above decision of the Court. The Petitioner has already put up service for 14 years 1 month & 29 days and after service for Anr. about 11 months he is entitled to some retiral benefits. In that view of the matter, while upholding the order of imprisonment, I quash the order of dismissal in view of the Judgment of Division Bench of This Court quoted above. No doubt, it is provided in Section 73 read with Section 71 of Army Act that a Court Martial may award additional punishment alongwith the sentence and that aspect of matter was not considered in the Judgment of Division Bench of This Court as quoted above. I have gone through the Division Bench Judgment. There are divergent views of different High Courts holding that Section 73 of Army Act empowers a Court Martial to combine various types of punishment, and some High Courts have held that the power is not there, but there is a direct decision of Division Bench which, I am bound to follow. Accordingly this writ application is allowed as indicated above. The order of reinstatement shall be passed within a period of three months from the date of receipt of this order.