(2014) 02 GAU CK 0011

Gauhati High Court

Case No: Writ Petition No. 4789 of 2013

No. 796468-G Corporal Kundan Singh Suman CLK GD — APPELLANT

Vs

The Union of India and Others — RESPONDENT

Date of Decision: Feb. 11, 2014

Acts Referred:
Air Force Act, 1950 - Section 161(1) 161(2) 70 71#Constitution of India, 1950 - Article 227#Penal Code, 1860 (IPC) - Section 354

Citation: (2014) 02 GAU CK 0011

Hon'ble Judges: Abhay Manohar Sapre, C.J; Ujjal Bhuyan, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Abhay Manohar Sapre, C.J.
By filing this writ petitioner, under article 227 of the Constitution of India, the applicant of O.A. No. 16 of

2012 seeks to challenge, the order dated 11.6.2013 passed by the Armed Forces Tribunal, Guwahati (for short called ""The Tribunal"") in the

aforementioned O.A. By impugned order, the Tribunal dismissed the O.A. filed by the writ petitioner and in consequence confirmed the order dt.

23.3.2012 passed by the Government of India u/s 161(1) of the Air Force Act (for short called The Act), which had arisen out of an order dated

12.01.2012 passed by competent authority (Air-Officer commanding-in-Chief Eastern Air Command, Indian Air Force on the pre-confirmation

petition filed by the petitioner u/s 161(1) of the Act.

2. By these proceedings referred above, the three authorities named above upheld in principal the punishment imposed on the petitioner sentencing

him to undergo detention for a period of 3 months, (reduced by the Tribunal from 3 months to one month by partly accepting the case of petitioner

on imposition of sentence), reduction in rank and reprimand for the misconduct which he had committed.

3. It is against these orders; the petitioner (employee of Air Force) has felt aggrieved and filed this writ petition under Article 227 of the

Constitution of India.

4. Short facts need mention infra.

5. The petitioner at the relevant time was working in the Indian Air Force on the post of Clerk General Duty (GD) at 511 SU AF, Dinjan. On

11.11.2011, he was alleged to have involved in one incident where he misbehaved and tried to outrage the modesty of a lady repeatedly whilst

travelling in Air Force Bus from Tinsukia Railway Station to Air Force Station Dinjan. This incident was reported by the lady by filing a complaint

to the competent authority of the Air Force. The complaint was investigated by the Air Force authorities and accordingly finding prima facie

substance in it, the petitioner was tried by District Court Martial (DCM- for short) on 1.9.2011.

6. Basically two charges were framed against the petitioner. The First charge was u/s 354 of IPC Code read with Section 71 of the Act for using

the criminal force against the woman intending thereby to outrage her modesty by repeatedly touching her body while travelling in the bus and in the

alternative committing an act prejudicial to the good order and in violation of Air Force discipline.

7. The prosecution examined the witness including the complainant. They were cross-examined by the petitioner. The petitioner also adduced

evidence. The D.C.M. however on appreciation of evidence held the main charge against the petitioner as proved and accordingly sentenced him

to undergo detention for a period of 3 months coupled with reduction of rank and also reprimand for the offence committed.

8. The petitioner filed a pre-confirmation petition on 13.12.2011 u/s 161(1) of the Act before the Air Officer Commanding-in-Chief and prayed

therein that the findings recorded by the DCM may not be confirmed and it be set aside. The competent authority by his well reasoned order dated

12.1.2012 dismissed the petition and in turn affirmed the order of the DCM.

9. The petitioner felt aggrieved of this order filed post confirmation petition u/s 161(2) ibid to Government of India. However this petition was

dismissed by the Government by order dated 23.3.2012 resulting in upholding of the orders impugned therein.

10. It is against this order; the petitioner felt aggrieved filed O.A. before the Tribunal out of which this petition arises. The Tribunal by impugned

order dismissed the O.A. in principal by upholding the charges leveled against the petitioner. However, the Tribunal having regard to the facts and

circumstances reduced the period of sentence from 3 months to 1 month. As stated supra, all other material findings in relation to charges were

upheld.

11. It is against this order; the petitioner (employee) felt aggrieved and filed this writ petition under Article 227 of the Constitution of India.

12. Learned counsel for the petitioner argued the matter at length for hours on facts and law. He also re-appreciated the entire oral evidence

adduced by both the parties to convince us that no charge was made out against the petitioner as alleged but having heard him and upon perusal of

the record of the case; we find no merit in this writ petition.

13. In our considered opinion, all the four authorities named above having consistently held the charge leveled against the petitioner as proved, the

finding of fact based on proper appreciation of evidence is binding on the writ court while hearing a petition under Article 227 of the Constitution of

India against such orders.

14. Mere perusal of the orders passed by four authorities below which are under challenge here would go to show that they are quite reasoned

one and each authority being conscious of their respective jurisdiction exercised their powers in accordance with law for recording categorical

findings of fact against the petitioner. It is apart from the fact that the impugned finding of fact is neither found to be against the evidence and nor

found to be against any provision of law and nor found to be against the record and nor is perverse to the extent that no judicial man of average

capacity can ever reach to such conclusion. In other words, the findings is such that it was capable of being recorded on the evidence on its

appreciation and hence such finding is binding on the writ court while hearing petition under Article 227 of the Constitution of India. We cannot

undertake the exercise of re-appreciating the oral evidence like an appellate court but can only confine our inquiry into the jurisdictional issue

arising in the case.

15. Though learned counsel went on arguing that the finding is perverse to its extreme hence not legally sustainable but we are afraid we can accept

his submission. We do not however consider it necessary to elaborate his submission and nor consider it proper to record our detail reasoning

once we record our concurrence to the impugned findings of facts recorded by the four authorities below.

16. Learned counsel for the petitioner than contended that the issue of this nature was not liable under the Act and it should have been tried by the

local civil police and courts. We do not agree for the reason that under the Act, the authorities are invested with the power to investigate and try

the offences. One cannot dispute that the offence in question does fall under Chapter VI read with Section 70 of the Act and hence it was

cognizable in the court martial proceedings and was accordingly rightly tried by the specified authorities under the Act.

17. Outraging the modesty of a lady by any person and that too in a public place is a serious act and being cognizable offence under the Indian

Penal code read with the Act, once held proved on facts/evidence by the competent authority under the Act, it deserves imposition of severe

punishment on the accused committing such offence. Such is the case in hand.

18. In our considered view, the Tribunal having upheld the finding of the offence being proved against the petitioner, should not have reduced the

sentence from three months to one month, because looking to the manner in which the offence was committed by the petitioner, the authorities

below were right in imposing three months sentence. However, having got the partial benefit in reduction of quantum of sentence, the petitioner

should now feel fortunate to have suffered lesser punishment of one month as against the original imposition of 3 months.

19. In any event, we are not concerned with the question of interfering in quantum of punishment to the detriment of the petitioner except to

observe that no interference is called for in the impugned order of the Tribunal, which, in our opinion, rightly upheld all the three orders of the

statutory authorities under the Act. We respectfully concur with the findings of the Tribunal.

20. In the light of foregoing discussion, we find no merit in the petition, which fails and is hereby dismissed. No cost.