

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU.

SWP No. 3104/2001

Date of decision: 26.08.2010

A. D. Paul

Vs. UOI and others.

Coram:

Hon'ble Mr. Justice Sunil Hali, Judge.

Appearing counsel:

For the petitioner(s) :Mrs. Surinder Kour, Advocate.

For the respondent(s) :Mr. K. K. Pangotra, ASGI.

- i/ Whether to be reported in : Yes/No
Press, Journal/Media.
 - ii/ Whether to be reported in : Yes/No
Digest/Journal.
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Petitioner joined the Indian Air Force as Washer Up in the year 1984. It is contended by him that In the month of October, 1991 he suffered from severe chest pain. He applied for leave which was granted to him and he was allowed to go to his native village. The petitioner was arrested by Air Force authorities on the allegation that he has absented without leave. District Court Martial was held under Section 39(a) of the Air Force Act, 1950 and petitioner was given following punishments on 04.05.1992:-

- a) To undergo detention for 15 days; and

b) To be dismissed from service.

The petitioner challenged the punishment after seven years by filing SWP no. 1386/1999 and while disposing of the writ petition on 27.07.2001, following directions were issued:

“ Therefore, with regard to the quantum of punishment and with regard to explanation qua reason of absence respondents would reconsider the whole issue. This would be done within a period of four months from the date copy of the order passed by this Court is made available by the petitioner to the respondent authorities.”

After directions having been issued by this Court, the matter seems to have been examined by the Chief of the Air Staff and vide order dated 19th of November, 2001, the case of the petitioner has been rejected. It is against this order the present writ petition has been filed by the petitioner.

It is contended by learned counsel for the petitioner that petitioner was not provided the copies of declaration. The inquiry was not conducted in terms of Rule 154 of the Air Force Rules, 1969. That the petitioner was not granted opportunity to cross examine the witnesses nor was he allowed to produce any witness in his defence. It is also contended that summary of evidence was not recorded in the presence of the petitioner.

On the other hand, respondents have, in their objections, stated that despite being a deserter with service property in his possession, the petitioner, after his arrest, was initially admitted

in Command Hospital Chandi Mandir and after he was declared fit for trial, the District Court Martial was held against him. The evidence was recorded in presence of the petitioner and he was provided an interpreter of his choice before the proceedings. It is further stated that petitioner declined to cross examine the witnesses. After concluding the proceedings the case was referred to the superior authority under Rule 25 (1) (b) of the Act. The petitioner had pleaded guilty to the charge of absence and the plea of guilty was recorded in accordance with Rule 60 of the Air Force Rules.

I have heard the learned counsel for the parties.

Petitioner's earlier writ petition was disposed of with directions to the respondents to re-consider the whole issue. After considering the case by the Chief of the Air Staff, it has been established that petitioner was tried on a formal charge sheet and after hearing the charge, the Commanding Officer ordered recording of Summary of Evidence in accordance with Law. The Summary of Evidence was recorded in presence of the petitioner where he was given opportunity to cross examine the witnesses and that petitioner declined to cross-examine any witness. The petitioner on arraignment pleaded guilty to the charge of absence. The petitioner was defended by Sqn Ldr R.K. Sinha (13344) Met, the defending officer of his choice. It

has been contended that the proceedings were conducted strictly in accordance with the provisions of the Air Force Law. It has been specifically established that during his period of absence the petitioner was not admitted in any hospital.

Since the proceedings have been conducted in accordance with the Rules governing the petitioner, no fault can be found with the order impugned. The contention of the petitioner that he was not granted any opportunity to defend himself cannot be justified as the petitioner has been given proper opportunity of hearing and as noticed above, principles of natural justice too have been complied with.

Even otherwise this Court cannot sit in appeal against the order of dismissal, which has been passed after proper inquiry under Rules. This Court could at best examine the procedure which had been adopted and, in case it finds no fault with the procedure adopted, Court cannot interfere in the same.

It is true that proceedings initiated by the respondents are subject to the judicial review by the High Court under Article 226 of the Constitution of India, but this judicial review, may not permit re-appreciation of evidence by the High Court. It is only when the District Court Martial was not properly convened or there was any challenge to its composition and the proceedings, on the basis of violation of the provisions of the

Act and Rules, that the High Court, may exercise its power of judicial review. The District Court Martial has sufficiently discharged its judicial function. Its proceedings indicate that due care and caution had been taken by the Court in adhering to the provisions of the Act and Rules on the subject. Its responsibility to protect the rights of the petitioner charged before it by providing all the procedural safeguards, has been properly discharged by it.

Nothing substantial was urged by learned counsel for the petitioner regarding the challenge made by the petitioner as to the rejection of his case by the Chief of the Air Staff. Perusal of the rejection order reveals that the same had been passed by the competent authority after due application of mind.

For all what has been said above, I do not find any material on records to interfere with the orders sought to be questioned by the petitioner in this petition.

There is no merit in this petition, which is, accordingly, dismissed.

(Sunil Hali)
Judge

JAMMU.
26.08.2010
Anil Raina, Secy

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