

\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Judgment Reserved on: December 10, 2012

Judgment Pronounced on: December 17, 2012

+

W.P.(C) 4874/2012

BHOOPENDRA SINGH

..... Petitioner

Represented by : Mr.P.D.P.Deo, Advocate

versus

UOI AND ORS

..... Respondents

Represented by : Ms.Barkha Babbar, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE MANMOHAN SINGH

PRADEEP NANDRAJOG, J.

1. The petitioner was recruited in the Indian Army and was allocated to the Rajputana Rifles and as of February 26, 2010 was working with the 14th Bn. Rajputana Rifles. He was assigned duties as the Mess Havildar of the Mini Officers' Mess at Upper Sonagachi.
2. The Mess Chef was one Rfn. Rajendra Singh.
3. Three officers, Capt.D.C.Shekhar, Capt.Kapil Kansal and Lt.Harsh Vardhan had to depart at 05:15 hours on February 26, 2010 and thus Lt.Harsh Vardhan had instructed petitioner on February 25, 2010 that the breakfast and lunch of the three officers should be packed and delivered in the mess by 05:15 hours on February 26, 2010.
4. The three officers had to depart at 05:30 hours without the packed breakfast or the packed lunch, and in respect of what happened

contemporaneously, there is no dispute that as the three officers boarded the transport vehicle, L/Nk.Raj informed that the meals were ready, but the officers left. Probably it was a case where the meals were packed a little late but before the officers departed and the officers, probably annoyed with the delay, left in disgust but before that made a verbal complaint to Capt.D.C.Shekhar who immediately summoned the petitioner and penalized him to undergo Pack Drill till 07:00 hours with intimation to Lt.Amit Madhukar, which led the petitioner to go to Lt.Amit Madhukar's room.

5. An ugly incident took place at 05:40 hours when the petitioner reported before Lt.Amit Madhukar. As per the petitioner he was abused, insulted and humiliated by Lt.Amit Madhukar and that Lt.Amit Madhukar falsely claimed of being assaulted by the petitioner. Lt.Amit Madhukar claims that when the petitioner reported to his room, he queried from the petitioner : Do you know what you have to do i.e. when he asked the petitioner if he had understood the orders, the petitioner assaulted him with a peg table.

6. Taking cognizance of a report submitted by Lt.Amit Madhukar on March 13, 2010, the Commandant 166 Mtn. Bde. ordered a Court of Enquiry which concluded on April 27, 2010 and found prima facie case made out to proceed against the petitioner. The Commandant considered the same and opined that case was made out to issue a tentative charge-sheet against the petitioner and direct Summary of Evidence to be recorded. Accordingly, the Commandant drew out and served upon the petitioner a charge-sheet as under:-

“AA SEC 40(a) USING CRIMINAL FORCE TO
 HIS SUPERIOR OFFICER

in that he,

at New Mal on 26 Feb 2010 while performing the duties of Mess Hav, Mini Officers Mess at Upper Soongachi, New Mal threatened and used physical force against IC-70457Y Lt.Amit Madhukar of the same Regiment.

Place : Hasimara

Date : 14 Jun 2010 Sd/-

R.S.Thapa
Col
CO”

7. Summary of Evidence commenced thereafter and concluded on July 28, 2010 at which the department examined 12 prosecution witnesses and in defence the petitioner produced three witnesses.

8. Lt.Amit Madhukar PW-1 deposed as per his version in the complaint and PW-2 Rfn.Vijay Bahadur stated that he heard cries of distress and when he entered the room of Lt.Amit Madhukar he heard and saw him abuse the petitioner who stood quietly and that he did not see any broken furniture in the room. PW-3 Rfn.Rajendra Singh the Mess Chef, Maj.Subhor Bahuguna PW-5, Capt.Vijender Singh PW-6 and Subedar Maj.Shri Ram PW-11 deposed that a noise from the room of Lt.Amit Madhukar made them rush to the room and when they reached they saw and heard Lt.Amit Madhukar showering abuses on the petitioner who was extremely angry and agitated and had to be shepherded out of the room and that when they questioned as to what had happened, petitioner stated that he had hit Lt.Amit Madhukar because he had abused him. They also deposed of having seen a broken chair, a broken peg table and the telephone thrown on the floor of the room. Maj.Subhor Bahuguna PW-5 additionally stated that he had taken photographs of the room, three of which were Ex.P-1 to P-3, which photographs as per the record we may

note show broken leg of a chair, broken edge of a peg table and broken latch of the door.

9. Capt.Satinder Singh PW-8, Nb.Sub.Bhanwar Singh PW-9 and Sub.Khubee Ram PW-10 deposed that parents of the petitioner had met the Commanding Officer and Lt.Amit Madhukar after the incident and begged for his son to be pardoned. Col.S.K.Singh PW-12, the Commanding Officer of the Battalion deposed that upon being informed of the alleged assault he went to the spot, whereupon he saw injury marks on the left forearm of Lt.Amit Madhukar. He also deposed that the petitioner though aggressive was not violent. As per him he questioned the petitioner as to whether what he had done was correct or why he had not reported the matter to seniors, whereupon the petitioner accepted that it was his mistake. He also deposed that the family members of the petitioner had met him and Lt.Amit Madhukar to beg forgiveness. Capt.D.C.Shekhar PW-13 deposed that he had ordered one hour of pack parade to be performed by the petitioner for failure to deliver packed lunch by the required time. He also deposed that on that afternoon i.e. on February 26, 2010 when he reached the room of Lt.Amit Madhukar he found the latch of the room broken, one peg table broken from the site and an easy chair partially broken. When he enquired from Lt.Amit Madhukar as to what had happened, the entire incident was narrated to him. He also deposed that on February 27, 2010 the petitioner had put up an application for premature discharge.

10. Considering the Summary of Evidence the Commanding Officer directed petitioner's trial before a Summary Court Martial to commence on August 10, 2010, and the charge-sheet was drawn and served upon the petitioner on August 02, 2010, which reads as under:-

“AA SEC 40(a)

USING CRIMINAL FORCE ON
HIS SENIOR OFFICER

in that he,
on 26 Feb 2010 at New Mall
caused injury on the right hand of
his unit IC 704574 Lt. (Now Capt.)
Amit Madhukar by hitting with
peg table.

Place : Hasimara

Date : 2 Aug 2010 Sd/-

R.S.Thapa

Col

Commanding Officer

21 Kumaon”

11. On August 02, 2010 itself the petitioner was called upon to intimate to give the name of the person whom he desired to act as the friend of the accused to which petitioner responded on August 05, 2010 that he desired Col.(Retd.) P.D.P.Deo, since practising as an Advocate to be the friend of the accused and prayed to be granted 10 days’ leave to proceed to Delhi and engage the counsel. On the same day i.e. August 05, 2010, petitioner was informed that leave was refused and that he should at his own level ensure presence of the friend of the accused when the trial would commence on August 10, 2010.

12. The trial commenced with Capt.Raj Sobhi Sunni present as the friend of the accused. Nine prosecution witnesses were examined namely Capt.Amit Madhukar, Maj.Subhor Bahuguna, Col.S.K.Singh, Rfn.Vijay Bahadur, Rfn.(Mess Chef) Rajendra Singh, Capt.Vijendra Singh, Sub.Maj.Shri Ram and Capt.D.C.Shekhar who deposed as per their statements made during Summary of Evidence. The petitioner examined seven witnesses in defence, namely, CHM Dharm Bir, Hav.Sukhbir Singh, L/Nk. Rajbir Singh and for record they deposed that the general character

of the petitioner was good and during his service he never had any altercation with anybody.

13. At the end of the trial penalty imposed upon the petitioner was to be reduced in rank and to suffer RI for two months.

14. As regards Lt.Amit Madhukar, since evidence surfaced that he had abused the petitioner warning was issued to him and he was also sent for counselling.

15. The first ground of challenge to the penalty imposed upon the petitioner is that benefit of Army Rule 129 was effectively denied to the petitioner for the reason as per the Rule he had a right to be assisted at the trial by a friend of the accused and by denying him leave to visit Delhi and engage Col.(Retd.) P.D.P.Deo, a practising Advocate to be the friend of the accused, the right conferred by the Rule was violated.

16. Now, facts noted herein above would reveal that the tentative charge-sheet was drawn and served upon the petitioner on June 14, 2010 when Summary of Evidence was directed to be recorded. Proceedings pertaining to Summary of Evidence concluded on July 28, 2010. The petitioner was aware that if incriminating evidence surfaces against him, there was an impending danger of he being tried at a Court Martial and thus one would have expected that the petitioner, being forewarned, would be forearmed i.e. would be in touch, if he so wanted, with a lawyer to defend him. Further, on August 02, 2010 the charge-sheet was served upon the petitioner and the trial was scheduled to commence on August 10, 2010. Thus, there was sufficient time for the petitioner to arrange for a counsel and the Commanding Officer was fully justified in not sanctioning leave to the petitioner because when charge-sheets are served and trials had to commence the delinquent is not to be granted leave and permission to

leave the precincts of the battalion as there would be grave danger of the Force personnel being an absconder.

17. The next point urged, was something which we find incomprehensible, but lest we are accused of not dealing with a submission made, would be noting the same. It was urged that during Court of Enquiry petitioner had made a statement inculpatory against Lt.Amit Madhukar and Capt.D.C.Shekhar. With reference to Army Rule 180 it was urged that these two officers ought to have been called upon to cross-examine the petitioner.

18. Now, we just do not understand as to how this point would be relevant qua the petitioner. It would have been relevant if departmental action was taken against Lt.Amit Madhukar and Capt.D.C.Shekhar because the mandate of Army Rule 180 is to afford an opportunity to an Army personnel to cross-examine witnesses at a Court of Enquiry if his the statements were likely to cause prejudice to the officer concerned.

19. Probably, the petitioner intended to convey to his counsel that notwithstanding he making statements indicting the two officers and yet Army Rule 180 not being followed would be some kind of evidence that the department was proceeding in a pre-determined manner to nail the petitioner, but when we asked the counsel whether this was the purport of the pleadings, the counsel responded in the negative; and thus we leave it at that.

20. It was then urged that there is no evidence that the petitioner used criminal force and for which learned counsel heavily relied upon the statement of Rfn.Vijay Bahadur, PW-2 who stated that he had not noticed any broken furniture in the room of Lt.Amit Madhukar.

21. We have noted herein above that PW-3, PW-5, PW-6 and PW-11 have clearly deposed to have seen broken furniture in the room of Lt.Amit

Madhukar. PW-5 had proved the photographs taken by him soon after the incident which also shows broken furniture. PW-12 has clearly deposed of having seen injuries on the left forearm of Lt.Amit Madhukar.

22. There is enough evidence of the petitioner having used criminal force against a superior officer.

23. It was then urged that the witnesses of the prosecution have deposed that Lt.Amit Madhukar had abused the petitioner, and thus it was pleaded that the petitioner reacted to a provocation. Dovetailing to the submission, was the plea that if this be so, punishment inflicted upon the petitioner was harsh and in any case disproportionate keeping in view that Lt.Amit Madhukar was simply warned and sent for counselling. Learned counsel urged that as a superior officer Lt.Amit Madhukar was the one who provoked the petitioner, if at all.

24. Now, no independent witness had deposed as to what triggered the incident, but Lt.Amit Madhukar had stated that after Capt.D.C.Shekhar had told the petitioner to do Pack drill and for compliance had required him to report to him i.e. Lt.Amit Madhukar. The petitioner reported but was agitated and assaulted him. The witnesses have clearly stated that it was shouting which led them to the room of Lt.Amit Madhukar and that when they reached they saw and heard Lt.Amit Madhukar abusing the petitioner.

25. Now, Lt.Amit Madhukar had a reason to be abusing the petitioner because the petitioner had assaulted him. We clarify, we have opined that Lt.Amit Madhukar had a reason to be abusing the petitioner and not that he was justified in abusing the petitioner.

26. We are not to sit as a Court of Appeal and as long there is incriminating evidence that would be the end of the matter.

27. With reference to paragraphs 3, 4, 5 and the testimony of the witnesses already noted herein above in paragraphs 8 and 9 what clearly

surfaces is the fact that the petitioner was not the person who was ordered to prepare the food, but was merely ordered to transport the pack meal to the officers. As the meal had been given to him late, he was late in delivering the same to the officers. So, he was naturally frustrated at having been punished for something that was not in his control. Thus, when he reported to the room of Lt.Amit Madhukar he was already upset and when Lt.Amit Madhukar asked him if he had understood the orders, it was the last straw and it caused him to snap and led to his violent outburst.

28. As regards the charge of discriminatory punishment, evidence probablizes that the petitioner had assaulted Lt.Amit Madhukar who had responded by showering verbal abuses. Qualitatively and quantitatively the offending roles are different.

29. For the offence committed by the petitioner, notwithstanding that his past conduct was blameless the penalty imposed cannot be labelled as shocking the judicial conscience of the Court.

30. We find no merit in the writ petition which is dismissed but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(MANMOHAN SINGH)
JUDGE

DECEMBER 17, 2012
dkb