

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2016

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE MR. JUSTICE R.MAHADEVAN

W.A.No.1261 of 2009

G.Udhayasuriyan .. Appellant

Vs.

- 1.The Union of India,
rep. by the Defence Secretary,
Ministry of Defence,
Sena Bhavan,
New Delhi-110 001.
- 2.The Chief of Army Staff,
Sena Bhavan,
New Delhi-110 001.
- 3.The Commanding Officer,
12, Engineering Rgiment,
C/o 56 APO.
- 4.The Group Commanding Officer,
MEG & Centre,
Bangalore-560 042. .. Respondents

Appeal filed under Clause 15 of Letters Patent against the order dated 06.02.2009 in W.P.No.12044 of 1999 on the file of this Court. Petition filed under Article 226 of the constitution of India praying for the issuance of a writ of Certiorari Mandamus calling for the records culminating in the order NO.1376326 Y NK, dated 22.07.1998 passed by the third respondent and quashing the same and directing the respondents to reinstate the petitioner in service.

For Appellant .. Mr.T.R.Sethuraman

For Respondents .. Notice unserved

JUDGMENT

(Judgment of the Court was made by The Hon'ble Chief Justice)

The appellant was recruited as Naik in the Indian Army on 30.8.1982 and served in various places. He was tried by the Commanding Officer in Summary Court Martial on account of absentation from duty without authorisation. It may be noted that the appellant had even earlier committed offences under various Sections inter alia Sections 39(b), 39(a) and 54(b) of the Army Act, 1950 and was punished in September, 1997. He had reported three days later, after availing of the leave on 13.09.1997. The reason given by him of his father's demise was found to be factually wrong by the Court of Inquiry! He again absented himself on 29.09.1997 and he left without giving any reason and did not report to anyone before leaving the station. He reported back to duty only on 26.11.1997, after absence of 59 days. He again absented himself for 89 days from 31.12.1997 to 24.3.1998. He was sent for and brought to Nazirabad under custody on 15.05.1998 and remanded.

2. The summary of evidence was recorded and duly submitted and keeping in mind the offence and the gravity of the offence, the Commanding Officer in Summary Court Martial proceedings has awarded punishment of reduction in rank, sentence of RI in Civil Jail for one month and also dismissal from service.

3. The appellant assailed the aforesaid by filing W.P.No.12044 of 1999, which was dismissed by the learned Single Judge by the impugned order dated 06.02.2009.

4. It is not necessary to advert to the order of the learned Single Judge, as the argument is based on some other legal aspects which have not been urged before us. The only plea urged before us is of disproportionality of sentence and thus, the reasoning of the impugned order has been accepted. We may note that there is however no discussion on the aspect of disproportionality of sentence in the impugned order and one can thus safely presume that this was not an aspect urged since other-wise, a review application would have been filed.

5. When we examine even this aspect of disproportionality of sentence, we can hardly find any reason to interfere with the same. The Army is a disciplined force and therefore, naturally the parameters applicable are quite different. The appellant has been a habitual defaulter from duty as it is apparent from the facts set out herein above and has even, "declared his father as dead for an excuse, which was found false! Absence from duty running into long periods of time and repeatedly so,

on the part of a person of a disciplined force cannot be countenanced.

6. We, thus, find no reason to interfere with the sentence, that being the only aspect urged before us.

7. The writ appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Defence Secretary,
Ministry of Defence,
Sena Bhavan, New Delhi-110 001.
- 2.The Chief of Army Staff,
Sena Bhavan, New Delhi-110 001.
- 3.The Commanding Officer,
12, Engineering Rgiment, C/o 56 APO.
- 4.The Group Commanding Officer,
MEG & Centre,
Bangalore-560 042.

CTK(CO)
EU 09.09.16

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