



2024: JHC: 539-DE



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

% Date of decision: January 24, 2024

+ W.P.(C) 435/2017

(6) **RIFLEMAN PRAMOD KUMAR**

..... Petitioner

Through: Ms. Archana Ramesh, Adv.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Ravi Prakash, CGSC

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

V. KAMESWAR RAO, J. (ORAL)

1. This petition has been filed by the petitioner with the following prayers:-

“In view of the aforesaid facts and circumstances as stated herein, it is most respectfully prayed that this Hon'ble High Court may graciously be pleased to:-

A. Issue a writ, order or direction in the form of a Writ of Certiorari to quash and set aside the punishment of 7 days Rigorous Imprisonment awarded to the Petitioner placed as Annexure P - 7 being grossly harsh on the very face of it.

B. Issue a writ, order or direction in the form of a Writ of Mandamus to transfer the Petitioner to the Rajputana Rifles Regimental Centre, Delhi Cantt for the treatment of his wife



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and minor daughter to meet the ends of equity, justice and fair play.

C. Pass such other further orders/directions as deemed just and proper by this Hon'ble High Court in the circumstances of the case to meet the ends of equity, justice and fair play."

2. At the outset, we may state that learned counsel for the petitioner has not pressed prayer (B) of the petition. So, it follows that the challenge that is being considered by this Court in this petition is only to the extent of punishment of 7 days rigorous imprisonment imposed on the petitioner. The said punishment was imposed on the petitioner on the following charge:-

"AA Sec 63

AN ACT PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE

In that he,

while serving at field Baraub (J&K), indl addressed his application dt 22 Oct 2013 directly to the GOC, same has been reported vide HQ 109 Inf Bde letter No 805/ 1/22 RAJ RIF/A/(i) dt 06 Dec 2013 and HQ 28 Inf Div letter No 6152/109 Bde/5/A3 dated 24 Nov 2013. According to the Para 557 of Defence Service Regulation for the Army 1987, under no circumstances will officers, JCOs, WOs, OR or NCs(E) address the President, the Head of State, a Minister, the Chief of the Army Staff upto formation commander on any official or service matter except through the authorized channel, thereby bypassing the laid down channel of correspondence and committing an act of prejudicial to good order and military discipline.

Period under mil custody - NIL."

3. In effect, the charge against the petitioner is that he has made a communication with the GOC instead of authorized channel to the next



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higher authority, which is in violation of Paragraph 557 of Defence Service Regulation for the Army, 1987.

4. Learned counsel for the petitioner would justify the communication to the GOC on the ground that despite the petitioner's representation to the next higher authority, the same having not been responded to, the petitioner had no other alternative but to make communication to the GOC. She also submits, the punishment is affecting the seniority / career growth of the petitioner. She also justify the communication to the GOC on the ground of serious ailments suffered by the wife and minor daughter of the petitioner, which grievance of the petitioner was not being addressed to by the next higher authority. In fact, it is her submission that in the month of June, 2014, the petitioner has been transferred on the ground of ill health of the petitioner's wife and his daughter and as such, the stand of the petitioner stands vindicated.

5. On the other hand, learned counsel for the respondents would submit that the case set up by the petitioner is totally misconceived as, according to him, in terms of the representation made by the petitioner, the Brigade Commander had given interview to the petitioner on October 22, 2013 and during the interview two options were made available to the petitioner, which are reproduced as under:-

*"a). **Option A:** Individual to go on attachment in Adm & Guard duties at RRRC, Delhi for a period of six months and get his family treated at the Hospital.*

*b). **Option B:** Since the individual's family problem is not of that serious nature that warrants his permanent attendance, Commander gave option to the Petitioner to treat his wife and*



daughter while on leave and accordingly plan his 48 days Balance off Annual Leave immediately even if extra leave is required, same will be granted to the Petitioner. Commander also offered assistance in arranging timely treatment of his family at Army Hospital (R&R).”

6. Despite that, the petitioner submitted another application dated October 25, 2013 seeking interview with the General Officer Commanding, 28 Infantry Division. This, according to the learned counsel for the respondents could not have been done by the petitioner. If he had any grievance, he should have made a representation to the next higher authority but not to the GOC directly.

7. That apart, it is his submission that the petitioner has been promoted to the next higher post though, belatedly. It is not only the punishment of 7 days rigorous imprisonment but also the two penalties awarded in the years 2010 and 2013, for unauthorized absence and having found in possession of excess quantity of liquor and government property items in government married accommodation that resulted in the denial of promotion on due date. So, given the overall conduct of the petitioner, the petitioner has been rightly superseded, however the same is not under challenge in these proceedings and surely the seniority would relate to the date of promotion and hence that also cannot be contested.

8. Having noted the submissions made by learned counsel for the parties, we are of the view that it is a conceded case of the petitioner that the communication made by the petitioner to the GOC was in violation of Paragraph 557 of Defence Service Regulation for the Army, 1987 and the petitioner has already undergone the said



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punishment without any demur. This is for the reason that the penalty was imposed on the petitioner on October 22, 2013, whereas the petition is filed almost after four years of imposition of the penalty. The petition is also hit by delay and laches.

9. The ground urged by learned counsel for the petitioner that the penalty is affecting his seniority is concerned, the same does not appeal to this Court for the simple reason that if the petitioner has got promotion from a later date because of his overall record, surely the same will have a bearing on the seniority. In any case, the challenge to the punishment of 7 days of rigorous imprisonment in the given facts cannot be faulted for the reason, the same has been imposed for violation of paragraph 557 of the Defence Service Regulations which position is not contested.

10. We do not see any merit in the petition. The same is dismissed. No costs.

V. KAMESWAR RAO, J

SAURABH BANERJEE, J

JANUARY 24, 2024/ak