

[2019] 1 S.C.R. 161

EX. LAC YOGESH PATHANIA

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v.

UNION OF INDIA & ORS.

(I.A. No. 1/2016)

In

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(Civil Appeal D. No. 14214 of 2016)

JANUARY 08, 2019

[DR. D. Y. CHANDRACHUD AND HEMANT GUPTA, JJ.]

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Armed Forces Tribunal Act, 2007 – s.30 r/w s.31 – Disciplinary proceedings – Breach of good order of Air Force discipline – Court of Inquiry – District Court Martial (DCM) found appellant guilty for using insubordinate language to his superior officer, for using criminal force and for act prejudicial to good order of Air Force discipline – Tribunal concurred with the findings of the DCM and dismissed the appeal holding that there was direct evidence to prove misconduct on part of appellant and his involvement in use of criminal force to senior officer; that appellant also admitted that he had few drinks that day; that there was direct evidence of presence of appellant in the unruly crowd and the stand of the appellant that he was slapped was also not made out from the evidence on record – Appeal before Supreme Court – Held: The Tribunal had re-appreciated the evidence and had concurred with the findings of DCM – The view taken by Tribunal was a plausible view and, therefore, did not warrant any interference in appeal in terms of jurisdiction vested in Supreme Court under ss.30 and 31 of the Act – In terms of s.31 of the Act, an appeal to Supreme Court is maintainable with the leave of the Tribunal and such leave can be granted on the ground “that a point of law of general public importance” or “it appears to the Supreme Court that the point is one which ought to be considered by that Court” – No point of law of general public importance is involved in the instant case so as to entitle appellant grant of leave – Air Force Act, 1950 – s.161(2).

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Dismissing the I.A. along with the appeal, the Court

HELD: 1. PW11 was cross-examined on the question of manhandling of the appellant but he, categorically, denied the

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- A same. In fact, he deposed that the appellant pushed him from behind, whereas LAC slapped him on his left cheek. The statement of the witness was that the appellant has consumed liquor because he was smelling and his speech and behaviour was not good. The witness asked the appellant as to whether he had taken drink. The reply of the appellant was that not only he but everybody had taken drinks then why he alone was being questioned. PW 11 stated that he held the left arm of the appellant and moved 2-3 steps towards the billet and told the appellant to go to billet. But the appellant sat on cement lid of drainage after moving 5-6 meters. He again held his left arm and told him to go to billet but he did not go. In the cross-examination, he denied that he pushed the appellant, he deposed that he held his hands, as he was under the influence of liquor. He denied the suggestion that he slapped the appellant. The question as to whether PW 11 has given slaps to the appellant is a question of fact. The Tribunal examined the statements of the witnesses to uphold charge nos. 3, 5 and 7 as proved. Thus, the stand of the appellant that he was slapped was not made out from the evidence on record. The Tribunal re-appreciated the evidence and concurred with the findings of the DCM. The view taken by the Tribunal was a plausible view and, therefore, did not warrant any interference in
- B appeal in terms of jurisdiction vested in this Court under Sections 30 and 31 of the Act. There is no point of law of general public importance involved which may warrant grant of leave to the appellant. [Paras 11, 12, 13][166-D-H; 167-A-B, F]

CIVIL APPELLATE JURISDICTION: I.A. No.1 of 2016 in Civil

- F Appeal Diary No. 14214 of 2016.

From the Judgment and Order dated 06.08.2015 of the Armed Force Tribunal, Chandigarh Regional Bench at Chandimandir in O.A. No. 324 of 2010 and order dated 13.1.2016 in M.A. Nos. 3358 & 3367 of 2015 in O.A. No. 324 of 2010.

- G D. K. Thakur, Varinder Kumar Sharma, Advs. for the appellant.

Mrs. Madhvi Diwan, ASG, R. Balasubramanian, Vanktesh, A. K. Sharma, Mukesh Kumar Maroria, Advs. for the respondents.

The Judgment of the Court was delivered by

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HEMANT GUPTA, J. 1. The present appeal under Section 30 read with Section 31 of the Armed Forces Tribunal Act, 2007 (for short “the Act”) along with IA No. 1 of 2016 seeking leave to appeal arises out of an order passed by the Armed Forces Tribunal, Chandigarh, Regional Bench at Chandimandir (for short ‘Tribunal’) in OA (Appeal No. 324 of 2010) on 06.08.2015.

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2. The appeal before the Tribunal was directed against the findings and the sentence awarded by District Court Martial (for short ‘DCM’) on 01.02.2010 confirmed on 09.03.2010 and also against rejection of his statutory complaint under Section 161 (2) of the Air Force Act, 1950 by the Chief of Air Staff. The DCM was initiated on account of an incident on the intervening night of 22.05.2009 and 23.05.2009 wherein a breach of good order of Air Force discipline was created by Module II airmen trainees attached to NTTI and Accounts Conversion Course trainees in the TV Room, over the change of TV channel on 22.05.2009 between 2150 hrs to 2210 hrs.

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3. The incident pertaining to the disciplinary proceedings against the appellant happened after 2240 hrs in Dakota ‘A’ Block and at the main gate. A Court of Inquiry was conducted followed by summary of evidences. Thereafter the appellant was tried by DCM on seven charges of misconduct. The DCM has found the appellant guilty of charge nos. 3, 5 and 7 which read as under:

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“3. Under Section 40 (c) Air Force Act, 1950 for using insubordinate language to his superior officer; in that he, at 405 Air Force Station on 22 May 2009 when checked by 647216 MWO ML Ranwan Cat Asst regarding bellowing of whistle in the billets, said to him, “MAINE KOI WHISTLE NAHI BAJAYA HAI, APKO JO KARNA HAI KARLO AUR AAP MERA KUCH NAHI KAR SAKTE or words to that effect.

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5. Under Section 40(a) Air Force Act, 1950 for using criminal force to his superior officer, in that he, at 405 Air Force Station between 2230 hrs and 2345 hrs on 22 May 2009 used criminal force to 672315 WO Agar Singh Eqpt Asst by pushing the said WO Agar Singh from back.

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7. Under Section 65 Air Force Act, 1950 for an act prejudicial to good order and Air Force Discipline. In that he, at 405 Air Force

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- A Station during intervening night of 22 May 2009 and 23 May 2009, improperly provoked a group of Module-II trainees of intake 02/09 which assembled at Main Guard Room and who were shouting slogans such as "WE WANT CI, "TUM APANA HAATH NICHE RAKHO", "HUM TUMKO KUCH NAHAI BATAYANGE," "CI IS COMING FROM BANGALORE OR WHAT, WHY IS HE TAKING THIS MUCH TIME," "CI KO BULAO", "CI NAHIN TO AOC-IN-C KO BULAO," "CI KO BULAYENGE," "STATION COMMANDER KO BULAYENGE," "C-IN-C KO BHI BULAYENGE," or words to that effect."
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- C 4. Before DCM, the prosecution examined 14 witnesses, whereas the appellant examined 3 witnesses in defence. After examining the evidence on record, the appellant was given punishment of rigorous imprisonment for five months and also an order of dismissal from service was passed. Such punishment was confirmed on 09.03.2010 subject to
- D modification of punishment of rigorous imprisonment being reduced to a period of two months. It is thereafter a statutory complaint was filed which was also dismissed.
- E 5. The Tribunal, in appeal under Section 15 of the Act, examined the evidence led by the parties and found no error in the findings recorded by DCM and consequently dismissed the appeal. It is, thereafter, the present appeal with an application for permission to file appeal has been preferred.
- F 6. The background of the incident is that on 22.05.2009, there was verbal fight with use of abusive language between Accounts Conversion Course trainees and Module II airmen trainees in the TV Room, over the change of TV channel. Squadron Duty Officer (Sgt BP Singh) and Orderly Officer (JWO JA Rana) got the TV room closed to avoid further fight amongst the trainees. The LAC S. Santra, sensing the possibility of further fight between the two groups of the trainees, informed the situation to WO Agar Singh. WO Agar Singh in turn informed
- G MWO M. L. Ranwan (Cat Asst, Asst Flt Cdr Catering Faculty), who directed Agar Singh and other two faculty instructors – Sgt A K Yadav and Sgt D Pradeep to the scene of disturbance – Dakota 'A' Block. On reaching to the scene of disturbance Dakota 'A' Block they found the trainees hooting, shouting and yelling, whistling and creating nuisance
- H after the lights out time.

7. The allegations against the appellant are that he misbehaved with the senior officers when they visited Dakota 'A' Block. The learned Tribunal found that in respect of charge no. 3, there is direct evidence of PW1 M. L. Ranwan, PW2 S. Santra, PW8 D. Pradeep, PW9 A.K. Yadav and PW11 Agar Singh to prove misconduct. The Tribunal found that as per the admission of the appellant himself, he had few drinks that day. Further, the Tribunal found in respect of charge no. 5, that there is direct evidence of PW2 S. Santra, PW8 D. Pradeep, PW9 A.K. Yadav and PW11 Agar Singh, though with minor variations, but such statements confirmed the involvement of the appellant in use of criminal force to Warrant Officer Agar Singh PW 11, when he was being hit by LAC Ritudhaj Accounts Assistant. Similarly, in respect of charge no. 7, the Tribunal found that there is direct evidence of PW1 M. L. Ranwan, PW3 B.P. Singh, PW4 Cpl Arun Yadav, PW5 I. J. Singh, PW6 P. Padhi, PW8 D. Pradeep, PW9 A. K. Yadav, PW10 Sqn Ldr Samrat Pal Chaudhary, PW11 Agar Singh, PW12 Dheeraj Dalal and DW3 J. Kumar that the appellant was present in the unruly crowd consisting mainly of Module-II trainees and leading them while in transit to and at the main guard room. DW2 Harvinder confirmed that the appellant was standing near ICICI ATM.

8. Learned counsel for the appellant submitted that the evidence of the prosecution witnesses has not been taken into consideration by the Tribunal in proper manner and in fact has been misread. The learned counsel for the appellant relies upon the statements of PW 2 Santra, PW 8 D. Pradeep and PW12 Dheeraj Dalal to contend that the statements of such witnesses do not prove the allegation of whistling by the appellant. It is argued that PW12 Dheeraj Dalal Accounts Assistant of 408 Air Force Station was declared hostile. The witness was examined to prove the charge no. 2 that is the appellant "at 405 Air Force Station at about 2245h, on 22.05.2009, improperly caused disturbance by whistling at A-9 billet".

9. We do not find any merit in such argument as charge No. 2 has not been found proved by the DCM. Therefore, the statement of PW12 Dheeraj Dalal cannot be relied upon by the appellant so as to disapprove the findings recorded by DCM on charge nos. 3, 5 or 7.

10. It is argued that the appellant was slapped by WO Agar Singh. Such stand is sought to be corroborated from the statements of DW2 LAC Harvinder and DW3 J. Kumar. DW2 LAC Harvinder has deposed

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- A that around 2300 hours he was talking to his brother on his mobile while standing near staircase of A-9 Billet when he saw WO Agar Singh slapping the appellant. He heard the voices coming from the ground floor stating ‘Fall-in at Guard Room’ after about 10-15 minutes. In the cross examination he stated that he has seen WO Agar Singh giving one slap to the appellant. He also deposed that when Sqn Ldr Chaudhary asked something from the appellant, the response of the appellant was “Maine do peg piya hai”. On the other hand, DW3 deposed that WO Agar Singh slapped the appellant four times on his left cheek by his right hand. He admits that the trainees while going towards main gate were shouting “we want CI, CI nahi to STN CDR ko bulao, STN CDR nahi to
- B C-IN-C ko bulao”. He admits that he was also shouting these slogans. He admits that he pleaded guilty before DCM for using insubordinate language to MWO ML Ranwan and for leading the mob and shouting slogans. He wanted to meet CI as the appellant was slapped by WO Agar Singh.
- C D 11. PW11 Agar Singh was cross-examined on the question of manhandling of the appellant but he, categorically, denied the same. In fact, he deposed that the appellant pushed him from behind, whereas LAC R. Rathee Accounts Assistant slapped him on his left cheek. The statement of the witness is that the appellant has consumed liquor because he was smelling and his speech and behaviour was not good. The witness asked the appellant as to whether he has taken drink. The reply of the appellant was that not only he but everybody had taken drinks then why he alone being questioned. PW 11 Agar Singh stated that he held the left arm of the appellant and moved 2-3 steps towards the billet and told the appellant to go to billet. But the appellant sat on cement lid of drainage
- E F after moving 5-6 meters. He again held his left arm and told him to go to billet but he did not go. In the cross-examination, he denied that he pushed the appellant, he deposed that he held his hands, as he was under the influence of liquor. He denied the suggestion that he slapped the appellant. The question as to whether WO Agar Singh has given slaps to the appellant is a question of fact. The learned Tribunal has examined the statements
- G H of the witnesses to uphold the charge nos. 3, 5 and 7 as proved. Thus, the stand of the appellant that he was slapped is not made out from the evidence on record. The Tribunal has reappreciated the evidence and concurred with the findings of the DCM.

12. We have appreciated the evidence, even though, the Tribunal has recorded a finding of fact in respect of misconduct alleged against the appellant. We find that the view taken by the Tribunal is a plausible view and therefore does not warrant any interference in appeal in terms of jurisdiction vested in this Court under Sections 30 and 31 of the Act. Sections 30(1) and 31(1) of the Act read as under: -

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“30.(1) Subject to the provisions of Section 31, an appeal shall lie to the Supreme Court against the final decision or order of the Tribunal (other than an order passed under Section 19):

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Provided that such appeal is preferred, within a period of ninety days of the said decision or order:

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Provided further that there shall be no appeal against an interlocutory order of the Tribunal.

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31. (1) An appeal to the Supreme Court shall lie with the leave of the Tribunal; and such leave shall not be granted unless it is certified by the Tribunal that a point of law of general public importance is involved in the decision, or it appears to the Supreme Court that the point is one which ought to be considered by that Court.

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13. In terms of Section 31 of the Act, an appeal to this Court is maintainable with the leave of the Tribunal and such leave can be granted on the ground “that a point of law of general public importance” or “it appears to the Supreme Court that the point is one which ought to be considered by that Court”. The point on which this Court will exercise jurisdiction is a point of law of general public importance. We do not find that any point of law of general public importance is involved which may warrant grant of leave to the appellant. Consequently, I.A.No.1 of 2016 along with Civil Appeal is dismissed.

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