

S.P. Pandey
v.
Union of India & Ors.

(Civil Appeal No. 6186 of 2018)

21 October 2024

[Pamidighantam Sri Narasimha* and Sandeep Mehta, JJ.]

Issue for Consideration

Appellant-Airman, was charged for “Violation of good order and Air Force Discipline” and “Use of insubordinate language to a superior officer”. An order of admonition was passed on 18.05.2010 against the appellant by the Officiating Commanding Officer. Armed Force Tribunal set aside the punishment of ‘Admonition’ passed against the appellant vide order dated 18.01.2011. Not satisfied with the order of Armed Forces Tribunal, appellant demanded compensation by filing the present appeals.

Headnotes[†]

Air Force Act, 1950 - Regulations for the Air Force – Misconduct – Measure of determining adequate punishment for infractions – Balance and proportion that needs to be maintained between an infraction and its punishment will always be at the core of good governance – Compensation for suffering unnecessary and long-drawn litigation:

Held: When the institutions that we build grow beyond proportion, officers act mechanically and many a times helplessly, ignore the simple and readily available remedies that are available in our normal lives – An incident like this would have ended if a senior officer had at the right time intervened and resolved the issue by taking into account the emotional aspect of the dispute – Perhaps a simple apology by respondent No. 7 would have gone a long way, but that did not happen – One is aware of how insignificant the monetary value of loss of dignity could be, but legal remedies that they are, enable this Court to settle it only as a measure, a token of concern and in recognition of a citizen’s identity and dignity – Having considered the facts and circumstances of the case and having noted the specific and clear findings of the Tribunal, the respondents are directed to pay an amount of Rs. 1 lakh to the

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appellant towards compensation for having suffered an unnecessary and a long-drawn litigation that was foisted on him. [Paras 11 and 12]

List of Acts

Air Force Act, 1950, Regulations of the Air Force.

List of Keywords

Admonition, Good Governance, Misconduct, Balance, Proportion, Compensation.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6186 of 2018
From the Judgment and Order dated 03.10.2017 in TA No. 13 of 2017 and Order dated 01.12.2017 in M.A. Nos. 2140 and 2141 of 2017 in T.A. No. 13 of 2017 of the Armed Forces Tribunal, Regional Bench, Lucknow

Appearances for Parties

Ms. Vanshaja Shukla, Ansh Narayan Tripathi, Nitin Bhardwaj, Advs. for the Appellant.

R Bala, Sr. Adv., Mukesh Kumar Maroria, Rohit Pandey, Ishaan Sharma, Prahlad Singh, Annirudh Sharma li, Mrigank Pathak, Advs. for the Respondents.

Judgment / Order of the Supreme Court**Order****Pamidighantam Sri Narasimha, J.**

1. The appellant is not satisfied that the Armed Forces Tribunal, Jaipur has allowed his OA and quashed the *order of Admonition* passed against him on 18.01.2011. He demands compensation for the wrongful order by filing the present appeal. We agreed with him and for reasons to follow, allowed the appeal and granted compensation.
2. Facts of the case are that the appellant was enrolled in the Indian Air Force in 1997 as Airman in the trade of Radar Fitter. At the relevant

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time, he was posted on the strength of 333 TRU C/o 5 FBSU, Air Force where he commenced work from 16.11.2009.

- 2.1 The incident in question occurred on 17.05.2010, at about 14.20 hrs when he was returning home from duty. On his way back, he had to stop at a railway crossing in a civil area which was closed. The gate was closed due to transit of a train. The allegation against the appellant is that, instead of waiting behind the vehicles already in line at the railway crossing, he overtook all the vehicles, went straight ahead and parked his motorcycle in front of the railway gate.
- 2.2 Respondent No. 7 a Sqn Ldr (Squadron Leader) who was also waiting for the railway barrier to open, approached the appellant and in 'exercise of the responsibility' conferred on officers of the Air Forces under Para 565 of the Regulations questioned the appellant for overtaking all vehicles, pulled out the motorcycle keys and directed the him to park his motorcycle in Guard Room. The respondent no. 7 handed over the keys to Duty NCO and informed the appellant that his motorcycle is being confiscated for not following *good order* and Air Force discipline. This led to an argument between the appellant and respondent No. 7 wherein the appellant allegedly used insubordinate language (*yah kaya gundagardi hai*) contrary to Air Force discipline. Respondent No. 7 ordered closed arrest of the appellant and informed the Commanding Officer and the Adjutant of the Unit. Charge sheet for two offences, i.e. "Violation of good order and Air Force Discipline" and "Use of insubordinate language to a superior officer" was drawn against the appellant.
- 2.3 The charge was tried by Officiating Commanding Officer on 18.05.2010 and an order of Admonition was passed on the same day. However, respondent No. 4 the Station Cdr. 5 FBSU sought sanction for expunction of punishment entry from the documents of the appellant and to proceed with *de novo* trial of the appellant for the above alleged misconduct on the technical ground that sanction under Section 83 of the Air Force Act, 1950 was not obtained.
- 2.4 The appellant preferred a statutory complaint dated 24.05.2010. This led to a formal investigation as ordered by respondent No. 4 to bring out the fact of allegation made by the appellant against respondent No. 7 and it was reported that the allegations

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made by the appellant were false. However, by letter dated 23.06.2010 the appellant was assured that punishment dated 18.05.2010 would be cancelled and the Admonition entry will be expunged from the record. Relevant portion of letter of Sqn Ldr. Fit Cdr. HRM Ft dated 23.06.2010 is as under:-

“REPLY TO ROG APPLICATION

1. Reference is made to your application dated 24 May 10.

2. You, are interviewed by the Station Commander in two sessions on 18 and 21 June 10 and all the issues brought out by you were addressed. Formal Investigation was ordered to bring out the fact of the allegations made by you against Sqn Ldr HV Pandey (27441) F (P). From the FI, it is clear that allegation made against Sqn officer were false. You were told by the Stn Cdr that punishment given to you dated 18 May 10 by CO 333 TRU will be cancelled and entry will be expunged from the documents.

3. Application being devoid of merit, is disposed, herewith.

4. You are requested to give written acknowledgement regarding receipt of disposal of your application.”

(emphasis supplied)

3. Consequently, by order dated 24.06.2010 the appellant was intimated that charges raised against him have been expunged under 33(1) of the Regulation and punishment entry has been deleted from his service documents. The order reads as follows:

“Tel: AFNET/7742

333TRU, AF
C/O 56 APO
PIN-937333

333 TRU/C 951/2/P1
742490-K Cpl SP Pandey Rad Fit

24 Jun 10

EXPUNGEMENTT OF PUNISHMENT

1. Reference is made to 5 FBSU, AF letter No 5FBSU/C 102/1/P1 dated 23 Jun 10.

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2. It is intimated that the punishment awarded to you by the undersigned on 18 May 10 in connection with the charge sheet raised by Sqn Ldr HV Pandey ((27441) F (P) of 4 Sqn has been expunged under rule 33(1) of the Regulation of the Air Force. The punishment entry has been deleted from the conduct sheet of your service documents.
3. This is for your information.

Sd/- zz
(R Putatunda)
Fit Lt
CO"

4. This litigation would not have survived if the above referred letter had been given effect to. That didn't happen. Wg Cdr V.K. Mohan proceeded de novo against the same charge and ordered for recording of Summary of Evidence on 30.06.2010. The appellant preferred a representation to the Air Officer Commanding-in-Chief with the prayer to stay operation of order dated 30.06.2010 for recording of Summary of Evidence and prohibit the Commanding Officer to conduct the second trial for the same charges. The representation preferred by the appellant was rejected by Chief of Air Staff vide order dated 06.01.2011.
5. In the circumstances, a second Admonition order was passed against the appellant dated 18.01.2011. He appealed to respondent No. 2 and even this was rejected on 28.04.2011. The representation to the Chief of Air Staff for reconsideration of order dated 06.01.2011 which was also rejected on the ground of it being repetitive in nature.
6. Being aggrieved, the appellant approached the Armed Forces Tribunal by filing an Original Application. After hearing the appellant and the respondents and having gone through the materials and records before it, the Tribunal set aside the punishment of 'Admonition' passed against the appellant vide order dated 18.01.2011. It is important to extract the conclusion of the Tribunal, the relevant part of the order is extracted as follows:

"11. Before proceeding further we may recall that the punishment awarded to the petitioner is of 'admonition'. Learned counsel for the respondents submitted that on

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date, the petitioner has retired from service and any further indulgence would gain no fruitful result even if the punishment of 'admonition' is set aside and now the issue involved remains only of academic interest.

12. *Be that as it may, we feel it worth mentioning that from the sequence of events on record, it is evident that the entire episode got triggered by the fact that in a civil area, i.e. at a railway crossing, the petitioner, like many other service/civil motor cyclists had overtaken the long queue of cars to position themselves in front row, close to the railway crossing barrier. No doubt, it is expected of every Air Warrior/Airman to uphold highest degree of discipline inside and outside his service place. But at the same time, from the events noticed hereinbefore, it is borne out that the petitioner had overtaken the parked four wheelers and motorcycles on a public road near the railway crossing barrier and had parked his motorcycle in the front row, may be to avoid rush of traffic when the barrier opened. It appears that this gesture of the petitioner was taken as an affront by the Sqn Ldr H.V. Pandey and he approached the petitioner from the rear and forcefully took away the keys of the motorcycle; confiscated the motorcycle on the ground that the petitioner violated traffic rules and general road discipline, ordered the petitioner to report to the guard room and took the applicant in custody. It was on his orders the petitioner was locked in a cell. The strict action taken by Sqn Ldr H.V. Pandey in a public place over a trivial issue cannot at the same time be appreciated. Even if in the opinion of Sqn Ldr H.V. Pandey the petitioner had committed some wrong in public place, the circumstances of the case required him to have advised the petitioner to mend his ways in future keeping in view the high discipline and dignity of the Air Force. But the manner in which the whole incident was highlighted in full public gaze, and consequent action taken by him, permitting a trivial happening to escalate out of proportion, cannot be appreciated. An offence is an offence and his behaviour should also be officer-like. His behaviour has to set up an example. The incident could have been handled by the officer more appropriately.*

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13. From the record, it is revealed that the petitioner was assured in writing on two occasions that the punishment entry will be expunged. Despite that, the respondent chose to proceed afresh. It gives an indication of vindictiveness and perhaps it was instigated by the officer.

14. For reasons mentioned hereinabove, we are of the considered view that the Summary of Evidence and punishment of 'admonition' awarded to the applicant deserve to be set aside.

15. Accordingly, punishment of 'admonition' dated 18.01.2011 awarded to the petitioner is set aside. Impugned order dated 28.04.2011 (Annexure-27 to the petition), and order dated 06.01.2010 (Annexure-25 to the petition) are also set aside. Consequences to follow. So far as prayer of the petitioner for directing Sqn Ldr H.V. Pandey, respondent no.7 to pay compensation to the petitioner is concerned, we find that the petitioner has not been able to make out a case, hence rejected.

16. T.A is disposed of accordingly."

- 6.1 It is apparent from the findings of the Tribunal that the respondent No. 7, took the incident personally and forcefully confiscated the keys of the motorcycle and ordered the appellant to report to the Guard room. The Tribunal also notices that he was taken into custody. The Tribunal also recorded that at the instance of respondent No. 7 the appellant was locked in the Cell. While deprecating the conduct of respondent No. 7 for adopting such a severe action over a trivial issue, the Tribunal opined that the officer of a rank of Sq. Ldr. could have given a proper advice to the appellant, to rectify his actions, keeping in view the high discipline and dignity of Airforce. However, the manner in which respondent No. 7 conducted himself was not appreciated. While deprecating the conduct of respondent No. 7 the Tribunal also came to the conclusion that the appellant was subjected to harassment and humiliation giving an impression of vindictiveness at the instance of the concerned officers. It is for this reason the Tribunal had no hesitation in setting aside the punishment. The Tribunal set aside the order of Admonition dt. 18.01.2011. It also set aside the order dated 28.04.2011,

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whereby the appellant's statutory appeal had been dismissed. Lastly, the Tribunal also set aside the order dated 06.01.2010, wherein the Air Force Commander had rejected the appellant's representation. Thus, the decision and the findings of the Tribunal have attained finality.

- 6.2 However, for reason that the Tribunal rejected the prayer for compensation, the present appeal filed by the appellant. We have gone through the material on record, findings of the Tribunal and noted the submissions of Ms. Vanshaja Shukla, counsel for the appellant and by Mr. R. Bala, senior counsel for the respondents.
7. The initial service of the appellant for 14 long years, from its commencement in 1997 to 2011 was unblemished. This is an admitted fact. From the unfortunate incident on 17.05.2010, the appellant's life was embroiled in defending in the disciplinary proceedings and contesting the case before the Tribunal. The disproportionate measure adopted by the respondents, the assurance of expunging the admonition, withdrawal of the same and then the retrial, leading to imposition of the punishment caused great amount of distress.
8. The findings of the Tribunal are categorical. It found that the matter was escalated beyond proportion and there is also an element of vindictiveness in the action taken against the appellant. More than anything, the lone battle of the appellant against the unfair and arbitrary treatment meted out to him, we think is the cause and reason for the indignation. The institution did not protect him, instead it put its full force behind respondent No. 7. Fortunately, the Tribunal set the record straight.
9. Ms. Vanshaja Shukla, counsel appearing on behalf of the appellant has submitted the financial loss that has occurred to the appellant and prayed for appropriate compensation.
10. Small excesses like overtaking the vehicle of one's senior at a railway crossing may be an incident of indiscipline in defense services, but the balance and proportion that needs to be maintained between such an infraction and its punishment will always be at the core of good governance. If the balance is not maintained, the distinction between bad governance, impropriety, unfairness and inhuman treatment is not much. The Tribunal is right in holding that a small incident has unnecessarily grown beyond proportion.

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11. When the institutions that we build grow beyond proportion, officers act mechanically and many a times helplessly, ignore the simple and readily available remedies that are available in our normal lives. We would have thought that an incident like this would have ended if a senior officer had at the right time intervened and resolved the issue by taking into account the emotional aspect of the dispute. Perhaps a simple apology by respondent No. 7 would have gone a long way, but that did not happen, and we are now called upon to assess the economic value of the indignity and proceed to grant monetary compensation to him. We are aware of how insignificant the monetary value of loss of dignity could be, but legal remedies that they are, enable us to settle it only as a measure, a token of our concern and in recognition of a citizen's identity and dignity.
12. Having considered the facts and circumstances of the case and having noted the specific and clear findings of the Tribunal, we direct the respondents to pay an amount of Rs. 1 lakh to the appellant towards compensation for having suffered an unnecessary and a long-drawn litigation that was foisted on him. The amount may be paid within a period of 30 days from the date of this order.
13. The Civil Appeal is disposed of in the above-mentioned terms.

Result of the case: Appeal disposed of.

[†]Headnotes prepared by: Himanshu Rai, Hony. Associate Editor
(*Verified by:* Kanu Agrawal, Adv.)