

GEN. OFFICER COMM. IN CHIEF, LUCKNOW AND ORS.

v.

R.P. SHUKLA (DEAD) BY LRS. AND ORS.

MAY 22, 2006

[DR. AR. LAKSHMANAN AND LOKESHWAR SINGH PANTA, JJ.]

Service Law:

Armed Forces—Sepoyes and Havildar employed on short-term basis—Misconduct—Summary Court Martial—R.I. for one year/six months—Dismissal from service—High Court setting aside entire proceedings for non-observance of r.180 of Army Rules and directing reinstatement—Held, finding of High Court that r.180 was not observed is factually not correct—On merits, charges against delinquents being serious and grave in nature, punishments awarded are not disproportionate or excessive in nature to shock conscience of the Court—Terms of their engagement having already expired, they could not be reinstated in service—Order passed by Officer Commanding, Troops, C.O.D. affirmed—Army Rules—r.180.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4022 of 1998.

From the Judgment and Order dated 4.1.1996 of the High Court of Madhya Pradesh in Misc. Petition No. 2611/1992.

A. Saran, ASG, S. Wasim A. Qadri and Mrs. Anil Katiyar, Advs., with him for the Appellants.

The Order of the Court was delivered :

ORDER

The present Civil Appeal is directed against the judgment and order dt.04.01.1996 passed by the High Court of Madhya Pradesh, Jabalpur in Misc.Petition No. 2611 of 1992.

We have heard Mr. A. Sharan, learned ASG appearing on behalf of the appellants.

A The first respondent died during the pendency of this appeal in this Court. Though his Lrs. were impleaded vide Courts Order dt.20.04.2006 in I.A.No.2, there is no response on their behalf. Notice has also been served on respondent Nos. 1(i), 1(ii), 2 and 3. In spite of service, none appears for the said respondents.

B The respondents were found guilty by the Officer Commanding, Troops, C.O.D., Jabalpur by order dt.18.04.1992. They were sentenced to undergo RI for one year and dismissal from service. This was in respect of respondent No.1. Respondent Nos. 2 and 3 were sentenced to undergo RI for six months each and also suffered dismissal from service. All the three respondents approached the High Court on 05.08.1992 by way of Writ Petition under Article 226 and 227 of the Constitution of India being Miscellaneous Petition No.2611 of 1992 with a grievance that the appellant had not decided the appeal till the date of filing of the Writ Petition. However, during the pendency of the Writ Petition, the appeal filed by the respondents was rejected by the appellant No.1 herein. The appellants challenged the legality and validity of the proceedings of the Summary Court Martial and award of the punishment by the Summary Court Martial on various grounds. The appellants contested the said Writ Petition by filing a detailed affidavit.

D The High Court vide its judgment dt. 04.01.1996 allowed the Writ Petition on the sole ground of non-observance of Army Rule 180 and accordingly set aside the entire proceedings of Summary Court Martial including charge sheet dt. 09.04.1992 and also set aside the punishment awarded to the respondents therein with a further direction that they will be entitled to be reinstated in the services. Being aggrieved by the above judgment, the appellant has preferred the present appeal in this Court.

E We have perused the judgment passed by the High Court and also the grounds of SLP and the other annexures filed along with the Writ Petition and in this appeal. We have also heard the learned ASG appearing on behalf of the appellants herein. Since the High Court has disposed of the Writ Petition on the ground that Army Rule 180 has not been strictly observed, we directed the learned ASG to place before us the entire original records of the inquiry and other allied proceedings in order to satisfy ourselves as to whether Army Rule 180 has been adhered to or not. The entire records have been placed before us and we have perused the same. A perusal of

the entire records would clearly show that the Court of Inquiry has strictly observed and complied with the Army Rule 180. The finding of the High Court, therefore, that Army Rule 180 has not been observed is factually not correct and we, therefore, have no option but to set aside the judgment of the High Court and affirm the order passed by the Officer Commanding, Troops, C.O.D., Jabalpur.

We have also perused the charges of misconduct alleged against the respondents herein. The charges are very serious and grave in nature. In view of the seriousness of the charges, we are of the opinion that the punishment awarded to the respondents are not disproportionate or excessive in nature to shock the conscience of this Court. We, therefore, affirm the order passed by the Officer Commanding, Troops, C.O.D., Jabalpur imposing punishment of RI and dismissal of all the three respondents from service which they deserve in the facts and circumstances of the case.

It is also seen from the application filed by the appellants for fixing an early date of hearing of the appeal, certain particulars with regard to the tenure of service of the respondents have also been furnished in the said application which are as under :-

Army No. Rank and Name	Date of enrollment in DSC	Date of dismissal	Date of completion of terms of engagement if not dismissed
7086847 ES/HAV R.P.Shukla	11 Jul 83	18 Apr 92	21 Jul 93
10243832 Ex-Sep Pati Ram Balmiki	7 Jul 84	18 Apr 92	6 Jul 94
13843278 Ex-Sep Mohan Lal	26 Jul 90	18 Apr 92	25 Jul 95"

It is submitted that the existing terms of all the respondents have already expired much before the order of reinstatement was passed by the High Court of Madhya Pradesh vide its judgment dt.04.01.1996. Since the terms of the engagement of all the three respondents have already expired, they cannot

A also be reinstated in service. It is stated that the respondents were employed in service on short term basis, their terms of employment expired way back on 25 Sept.1995 and the High Court Judgment came in 4th January, 1996. On this ground also, the respondents have no case.

B For all the reasons aforesaid, we set aside the judgment of the High Court which is impugned in this appeal. In the result, the appeal filed by the appellants stands allowed. However, there shall be no order as to costs.

C As already noticed, the High Court has disposed of the matter only on the ground of non-observance of Army Rule 180. At the time of hearing before us, the entire records were placed before us and we have perused the same. Therefore, we decided to consider the entire matter on merits and accordingly allowed the present appeal as above.

R.P.

Appeal allowed.