

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

Criminal Appeal No. 13 of 2013

UNION OF INDIA & ORS.

.... Appellants

Versus

LT. COL. S. S. BEDI

.... Respondent (s)

W I T H

Criminal Appeal No. 997 of 2013

LT. COL. S. S. BEDI

.... Appellants

Versus

UNION OF INDIA & ORS.

.... Respondent (s)

J U D G M E N T

L. NAGESWARA RAO, J.

1. These Appeals have been preferred against the judgment of the Armed Forces Tribunal, Principal Bench, New Delhi (hereinafter, '*the Tribunal*') by which the conviction of Ex. Lt. Col. S. S. Bedi by the General Court Martial was affirmed. However, the sentence of cashiering from service was converted into a fine of Rs.50,000/- by the Tribunal. An application filed by Ex. Lt. Col. S. S. Bedi

for granting permission to file an Appeal was dismissed by the Tribunal. The Appellant has filed Criminal Appeal No.997 of 2013 aggrieved by the judgment of the Tribunal upholding the conviction ordered by the General Court Martial and imposition of fine of Rs.50,000/-. The Union of India has filed Criminal Appeal No.13 of 2013 aggrieved by the alteration of sentence from cashiering from service to imposition of fine. For the sake of convenience, we will refer to the parties as they are arrayed in Criminal Appeal No.997 of 2013.

2. The Appellant was commissioned in the Indian Army Medical Corps on 24.07.1966. He was posted at Base Hospital Lucknow as a Medical Specialist on 03.04.1984. A complaint was made by two women against the Appellant on 15.05.1986 that he misbehaved with them during checkup by inappropriately touching their private parts. The GOC-in-C directed attachment of the Appellant for recording of summary evidence which was completed on 30.09.1986. Due to certain procedural irregularities, the summary of evidence was cancelled on 01.10.1986 and a *de novo* recording of summary of evidence was directed.

On the basis of the summary of evidence, the convening authority directed trial of the Appellant by the General Court Martial. On 29.11.1986, a charge sheet was filed against the Appellant. He was charged for committing a civil offence that is to say, using criminal force on two women with intent to outrage their modesty, contrary to Section 354 of the Indian Penal Code, 1860 (IPC). The Appellant was held guilty by the General Court Martial on 09.12.1986 and was sentenced to be cashiered from service on 14.01.1987.

3. The Petition filed by the Appellant under Section 164 (2) of the Army Act, 1950 was rejected on 30.05.1988. The conviction and sentence of the General Court Martial were challenged by the Petitioner before the Delhi High Court in the year 2010. The Writ Petition filed by the Appellant was transferred by the Delhi High Court to the Principal Bench of the Armed Forces Tribunal, New Delhi. The Tribunal upheld the conviction of the Appellant but converted the punishment of cashiering to a fine of Rs.50,000/-. Being dissatisfied, the Appellant filed the above Appeal. The Respondents have also filed an appeal aggrieved by the

judgment of the Tribunal converting the sentence of cashiering to a fine of Rs.50,000/-.

4. Mr. Sridhar Potaraju, learned counsel appearing for the Appellant submitted that the conviction of the Appellant is unsustainable as the evidence on record was not properly appreciated by both the General Court Martial and the Tribunal. He submitted that the evidence of Mrs. Gita Ray which is in favour of the Appellant has not been taken into account. He further stated that the testimony of Lt. Col. R. Sharma is also in favour of the Appellant. He argued that the physical examination of both the complainants was necessary for the ailments that were being suffered by them. One was suffering with bronchial asthma and the other had complaint of duodenal ulcer. He stated that the Appellant is 78 years old and the fine of Rs.50,000/- has already been deposited. In the event of this Court not accepting his submissions, the sentence should not be altered, according to Mr. Sridhar.

5. Mr. Vikramjit Banerjee, learned Additional Solicitor General appearing for the Respondent contended that there is ample evidence on record pointing to the guilt of

the Appellant which has been properly appreciated by the General Court Martial and the Tribunal. The Respondents are only concerned with the conversion of the penalty of cashiering to a fine of Rs.50,000/-. The learned Additional Solicitor General argued that the conversion of sentence by the Tribunal was unwarranted. The Appellant had misbehaved with two patients and the expert evidence also shows that there was no necessity of the Appellant touching the private parts of the complainants.

6. We are unable to accept the contention of the Appellant that his conviction is unsustainable. A perusal of the evidence of the complainants makes it clear that the Appellant misbehaved with them during the course of their physical examination. The evidence of PW-13 Lt. Col. R. Sharma, Physician is to the effect that there was necessity to examine the cardio vascular system of the patient who was suffering with bronchial asthma which involved exposure of chest/breasts and touching of the breasts. However, squeezing of the breasts and nipples of a lady patient was unnecessary. In so far as the other complainant is concerned, Lt. Col. R. Sharma deposed that

her stomach had to be fully exposed right from the pubic symphysis to the nipples and in case of complication of peptic ulcer, even percussion of right side of the chest is mandatory which involves touching of the breasts. Lt. Col. Sharma testified that touching of private parts and squeezing of nipples of such patient was totally unnecessary. There was no motive for false implication of the Appellant by the complainants, therefore, we are in agreement with the conclusion of the General Court Martial and the Tribunal that the Appellant is guilty of the charge of using criminal force against two women patients.

7. Mr. Sridhar argued that even if the penalty imposed by the Court Martial of cashiering from service is upheld, forfeiture of all the pensionary benefits of the Appellant is not automatic. He submitted that no order as contemplated in Section 71 (h) of the Army Act, 1950 forfeiting his pension has been directed by the General Court Martial. Therefore, the Appellant is entitled for payment of pension. He relied upon the judgments of this

Court in ***Union of India v. Brig. P.K. Dutta (Retd.)***¹ and ***Union of India v. P.D. Yadav.***²

8. The punishment that may be inflicted in respect of offences committed by persons under the Army Act and convicted by the Court Martial are dealt with in Section 71. Section 71 (d) refers to cashiering and 71 (h) provides for forfeiture of service for the purpose of increased pay, pension or other prescribed purposes. Forfeiture in the case of a person sentenced to cashiering or dismissal from the service of all arrears of pay and allowances and other public money due to him at the time of such cashiering or dismissal is provided in Section 71 (k). It is relevant to refer to Regulation 16 (a) of the Army Pension Regulations, 1961, according to which the pension of an officer cashiered from service may be forfeited at the discretion of the President.

9. The Respondent in ***Union of India v. P.K. Dutta (Retd.)*** (supra) was Court Martialed and awarded three years' rigorous imprisonment apart from being cashiered. He approached the Delhi High Court complaining against

¹1995 Supp. (2) SCC 29

²(2002) 1 SCC 405

the inaction of the authorities in not paying him retiral benefits. The Delhi High Court held that cashiering does not itself result in forfeiture of retiral benefits. It was argued by the Union of India before this Court that proceedings for forfeiture of the retiral benefits as contemplated by Regulation 16 (a) of the Pension Regulations were pending and the High Court ought not to have allowed the Writ Petition filed by Brig. P.K. Dutta. This Court was of the opinion that Section 71 relating to the punishments awardable by the Courts Martials and Regulation 16 (a) operate in distinct fields. Regulation 16 (a) contemplates a situation where an officer is cashiered on dismissal or removal from service and provides how his pension is to be dealt with. Section 71 (h) provides for a punishment relating to forfeiture of pension at the conclusion of Court Martial. Finally, it was concluded that the nature and content of both the impositions is different and there is no inconsistency between Section 71 (h) and Regulation 16 (a).

10. In *Union of India v. P.D. Yadav* (supra) it was held by this Court that punishment imposed under Section 71 of

the Army Act and order passed under Regulation 16 (a) of the Pension Regulations are entirely different. The submission made that imposition of punishment under Section 71 of the Army Act and passing of an order under Regulation 16 (a) would result in double jeopardy was not accepted by this Court.

11. Punishments awardable by a Court Martial under Section 71 include cashiering in case of officers and forfeiture of service for the purpose of pension apart from the other penalties. Admittedly, the punishment imposed on the Appellant is only cashiering from service. There is no dispute that Section 71 (h) forfeiting the pension of the Appellant has not been resorted to by the Respondents. There is merit in the submission of Mr. Sridhar that in the absence of an order passed under Section 71 (h), the pension of the Appellant cannot be forfeited. The judgment of the Tribunal by which the punishment of cashiering from service has been altered to imposition of a fine of Rs.50,000/- is subject matter of this Appeal which have been pending for the past seven years. There is nothing on record to show that proceedings have been

initiated under Regulation 16 (a) of the Pension Regulations.

12. By an order dated 20.01.2013, this Court stayed the execution proceedings only. There may be a justification for the Respondents for not initiating proceedings under Regulation 16(a) of the Pension Regulations in view of the pendency of these Appeals. The Respondents are at liberty to commence proceedings under the Pension Regulations for forfeiture of the pension of the Appellant, if they so desire.

13. The Tribunal converted the sentence of cashiering into a fine of Rs.50,000/- by holding that the Appellant has a blemishless record of service. The Tribunal found the imposition of the punishment of cashiering from service shockingly disproportionate. The Tribunal also highlighted the delay in the complaint made against the Appellant. We are not convinced with the reasons given by the Tribunal for converting the sentence from cashiering to imposition of fine of Rs.50,000/-. We restore the punishment of penalty of cashiering by taking into account the reprehensible conduct of the Appellant abusing a position

of trust being a Doctor which is not condonable. However, we direct the Respondents to consider the entire record of service of the Appellant and his advanced age while taking a decision to initiate proceedings under the Army Pension Regulations. In case the Respondents decide not to initiate proceedings under Army Pension Regulations, the Appellant shall be entitled for all pensionary benefits. The amount of Rs.50,000/- deposited by the Appellant shall be refunded to him with interest accrued therefrom.

14. The Appeals are disposed of.

.....J.
[L. NAGESWARA RAO]

.....J.
[HEMANT GUPTA]

.....J.
[S. RAVINDRA BHAT]

**New Delhi,
July 29, 2020.**