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RAM NARAYAN TIWARI
v.
UNION OF INDIA & ORS.
(Civil Appeal No. 1978 of 2011)

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FEBRUARY 21, 2011
[DR. MUKUNDAKAM SHARMA AND
ANIL R. DAVE, JJ.]

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AIR FORCE ACT, 1950 :

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s.73 – Punishments awardable by Court-Martial – Corporal in Air Force – Charged with sexual abuse against a boy of 9 years – Punishment of reduction in rank and confinement awarded by District Court-Martial commuted by Confirming Authority to dismissal from service – Held: The scale of punishment provided in s.3 clearly confirms the position that dismissal from service is a lesser punishment than that of detention – Since punishment is itself of dismissal from service, there is no question of reduction in rank at all, therefore, it cannot be said that two punishments have been awarded – Besides, the charge leveled against the delinquent was serious and was proved justifying punishment of dismissal.

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The appellant, a Corporal in Indian Air Force, was awarded by the District Court Martial the punishment of detention for three months and reduction in rank, for committing sexual abuse against a boy of nine years. The Confirming Authority confirmed the findings of the District Court Martial, but commuted the punishment of detention for three months to dismissal from service. The High Court declined to interfere.

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It was contended for the appellant that keeping in view s.73 of the Air Force Act, 1950, dismissal from

service was a more severe punishment than order of reduction in rank and the short term confinement; and that awarding two punishments in respect of one offence was illegal. A

Dismissing the appeal, the Court B

HELD: 1.1. Section 73 of the Air Force Act, 1950 provides for scale of punishment, according to which, the most severe punishment under the said provision is considered to be the punishment of death and, therefore, the same has been put on the top followed by imprisonment, detention, cashiering, dismissal from service and then other lesser punishments. The scale of punishment provided in s.73 of the Act clearly confirms the position that dismissal from service is a lesser punishment than that of detention in prison. By commuting the punishment of three months detention and imposing the punishment of dismissal, the Confirming Authority has strictly followed the scale of punishment provided for in s.73 of the Act. Since, the punishment itself is of dismissal from service, there is no question of reduction of rank at all. Therefore, it cannot be said that two punishments have been awarded to the appellant for one single offence. [Para 13, 17] [1111-B-C-D; 1112-E-F] C D E

Union of India and Ors. Vs. R.K. Sharma 2001 (3) Suppl. SCR 664 = (2001) 9 SCC 592 – relied on. F

2. The appellant belongs to Air Force, which is a disciplined service. The allegations made against the appellant were serious. The charge number (2) against him stood proved. The said charge is also serious and for an offence of the said nature the authority was justified in awarding him the punishment of dismissal from service. There is no justification for any interference with the nature of punishment awarded to the appellant. G H

A There was no violation of the provisions of s.73 of the Act.
[Para 16, 17,18] [1112-C-D-F-G]

Case Law Reference:

B 2001 (3) Suppl. SCR 664 Relied on Para 14
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C From the Judgment & Order dated 06.04.2007 of the High
Court of Judicature at Allahabad in Special Appeal No. 569 of
2000.

Manoj Prasad for the Appellant.

D P.P. Tripathi, ASG, Shadan Farasat, R. Balasubramanian,
D.S. Mahra for the Respondents.

The Judgment of the Court was delivered by

DR. MUKUNDAKAM SHARMA, J. 1. Leave granted.

E 2. The present appeal is directed against the judgment and
order dated 06.04.2007 passed by the Division Bench of the
Allahabad High Court dismissing the appeal filed by the
appellant herein and confirming the judgment and order passed
by the learned single Judge in the Writ Petitioner No. 2341 of
1990.

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G 3. In order to appreciate the contentions raised before us
it will be necessary to set out the brief facts of the case. The
appellant while serving as Corporal in the Indian Air Force –
Police Wing was served with a chargesheet dated 20.03.1980
containing three charges which were in the following manner: -

1. *Committed carnal intercourse against the order of
nature with Sanjay Kumar minor on 15.03.1980;*

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2. Consumed 'Ganja' while on duty on the same date; and A
3. Left his place of duty for half an hour and the room remained unattended.

4. However, subsequently, another amended chargesheet was served upon him wherein the charges, namely, "*consuming Ganja while on duty*" and "*remaining absent from duty*" were dropped. The first charge of the first chargesheet was retained and another charge to the effect as shown was included therein, namely, "he placed his penis in the region of the exposed buttock of master Sanjay Kumar aged about 9 years". B C

5. Thereafter the appellant was tried in the District Court Martial. Witnesses were examined and after conclusion of the trial, the District Court Martial found charge No. 1 as not proved but held that the charge No. 2 stood proved. Consequent to the findings so recorded, punishment of three months detention and reduction in rank was awarded to the appellant. As per the provisions of the Air Force Act, 1950 the aforesaid findings as well as the punishment were subject to confirmation by the Confirming Authority, consequently, the records were placed before the Confirming Authority which confirmed the said findings but commuted the punishment of detention for three months to dismissal from service vide order dated 07.08.1980. D E

6. Being aggrieved by the aforesaid order, the appellant filed Writ Petition No. 8251 of 1980 before the Allahabad High Court challenging the order dated 07.08.1980. The said Writ Petition was dismissed by the High Court vide judgment and order dated 21.02.1985. However, the said judgment and order was challenged before this Court which was registered as Criminal Appeal No. 421 of 1989. This Court by its order dated 10.07.1989 remanded the case back to the Confirming Authority with the following observations: - F G

"In view of the facts and the circumstances of the case, the H

A order dated the 7th August, 1980 confirming the findings and sentence by the Court Martial is set aside. The matter should go back to the Confirming Authority for reconsideration and confirmation, in accordance with the law.”

B 7. In view of the aforesaid findings and directions recorded by this Court the matter was once again placed before the Confirming Authority which reconsidered the matter. Upon such reconsideration a revised confirmation order was passed by the Confirming Authority on 30.10.1989 by which the finding as well as the sentence awarded by the District Court Martial was confirmed. However, the Confirming Authority commuted the punishment of the detention for three months to dismissal from service. The said order was challenged by the appellant by filing Writ Petition No. 2341 of 1990 before the learned single Judge, Allahabad High Court which was dismissed by order dated 26.07.2000.

E 8. Being aggrieved by the aforesaid judgment and order a special appeal was filed before the Division Bench of the Allahabad High Court which was registered as Special Appeal No. 569 of 2000. Before the Division Bench the counsel appearing for the appellant contended that the appellant is not aggrieved by the findings recorded by the District Court Martial or by the Confirming Authority at all and the sole contention that was raised by the counsel, apparently on instructions from the appellant, was that in exercise of powers under Section 157 of the Air Force Act [for short “the Act”], the Confirming Authority could mitigate, remit or commute the sentence but could not enhance the punishment. Therefore, in a nutshell what was submitted was that the punishment of dismissal from the service was more severe and harsher than serving three months’ detention and, therefore, the order passed by the Confirming Authority altering the punishment given by the District Court Martial was not permissible.

H 9. In support of the said contention reference was made

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and reliance was placed on Section 73 of the Act which reads A
as follows: -

"73. Punishments awardable by courts-martial –
Punishments may be inflicted in respect of offence
committed by persons subject to this Act and convicted by B
courts-martial according to the scale following, that is to
say –

(a) death;

(b) transportation for life or for any period not less than C
seven years, in respect of civil offences;

(c) imprisonment, either rigorous or simple, for any period
not exceeding fourteen years;

(d) detention for a term not exceeding two years in the case D
of airmen;

(e) cashiering, in the case of officers;

(f) dismissal from service; E

(g) reduction to the ranks or to a lower rank or
classification, in the case of warrant officers and non-
commissioned officers;

Provided that a warrant officer reduced to the ranks F
shall not be required to serve in the ranks as an
airman;

(h) forfeiture of seniority of rank, in the case of officers,
warrant officers and non-commissioned officers, and
forfeiture of all or any part of their service for the purpose G
of promotion, in the case of any of them whose promotion
depends upon length of service;

(i) forfeiture of service for the purpose of increased pay,
pension or any other prescribed purpose; H

A (j) severe reprimand or reprimand, in the case of officers, warrant officer and non-commissioned officers;

(k) forfeiture of pay and allowances for a period not exceeding three months for an offence committed on active service;

B (l) 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;

C (m) stoppage of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good.”

D 10. The Division Bench of the High Court, however, held that the aforesaid provision of the Act provides for a scale according to the severity of the punishment and that detention has been placed higher than the dismissal from service in the said scale and, therefore, it is difficult to hold that by commuting the punishment of three months detention and imposing the punishment of dismissal, the Confirming Authority has imposed a harsher punishment. Having held thus, the appeal filed by the appellant was dismissed. No other issue was either raised or discussed by the Division Bench of the High Court and, therefore, the present appeal is also restricted and confined only to the aforesaid issue.

E 11. Counsel appearing for the appellant placed reliance on Section 73 of the Act and submitted that the order of dismissal is a more severe punishment than the order of reduction in rank and short-term confinement. Counsel also submitted that awarding two sentences in respect of one offence is manifestly illegal.

G 12. Counsel appearing for the respondent, however, refuted the aforesaid submission and submitted that detention

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under the aforesaid Section 73 of the Act is considered to be a harsher punishment than the dismissal from service and, therefore, the order of punishment awarded against the appellant is legal and valid. A

13. We considered the aforesaid submission in the light of the records of the case. Section 73 of the Act provides for scale of punishment. According to the said scale, the most severe punishment under the said provision is considered to be the punishment of death and, therefore, the same has been put on the top followed by imprisonment, detention, cashiering, dismissal from service and then other lesser punishments. The Confirming Authority has commuted the punishment of three months detention and imposed the punishment of dismissal and, since, the punishment itself is of dismissal from service there is no question of his reduction to the ranks at all. Therefore, it cannot be said that, in fact, two punishments have been awarded to the appellant for one single offence. B
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14. With regard to the issue of awarding of punishment by the Confirming Authority, almost a similar issue came up for consideration before this Court in the case of *Union of India and others v. R.K. Sharma* reported in (2001) 9 SCC 592 which was a case relating to the provisions of the Army Act, 1950, viz., Sections 71 & 72, which are practically *pari materia* with the Air Force Act. E

15. We have considered the said decision in the light of said sections of the Army Act. On going through the said decision we find that Section 71 of the Army Act, 1950 is *pari materia* with Section 73 of the Air Force Act, 1950. In the said decision this Court held that Section 72 of the Army Act merely provides that the Court Martial may, on convicting a person, award either the punishment which is provided for the offence or any of the lesser punishments set out in the scale in Section 71. It was also held that Section 71 does not set out that in all the cases a lesser punishment must be awarded and, therefore, merely because a lesser punishment is not granted it would not F
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A mean that the punishment was violative of Section 72 of the Act. It was further held that dismissal from service provided in item (e) of Section 71 of the Army Act, 1950 as one of the punishments according to scale is a lesser punishment than imprisonment as contemplated under Section 57 and 63 of the Army Act. In our considered opinion the ratio of the aforesaid decision squarely applies to the facts of the present case.

16. Counsel appearing for the appellant also submitted that the punishment awarded to the appellant was too severe and harsh considering the nature and the degree of the offences established. The appellant belongs to Air Force, which is a disciplined service. The allegations made against the appellant were serious. The charge number (2) against him stood proved. The said charge is also serious and we are of the considered opinion that for an offence of the aforesaid nature the authority was justified in awarding him the punishment of dismissal from service.

17. The scale of punishment provided in Section 73 of the Act clearly confirms the position that dismissal from service is a lesser punishment than that of detention in prison. By commuting the punishment of three months detention and imposing the punishment of dismissal, the Confirming Authority has strictly followed the scale of punishment provided for in Section 73 of the Act and, therefore, there is no justification for any interference with the nature of punishment awarded to the appellant.

18. We, therefore, hold that there was no violation of the provisions of Section 73 of the Air Force Act, 1950. The appeal, therefore, has not merit and is dismissed accordingly, but without costs.

R.P.

Appeal dismissed.