

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 966 OF 2017
(@ Criminal Appeal D.No.32079 OF 2014)

UNION OF INDIA & ORS.

APPELLANT(S)

VERSUS

SQN. LDR K.S. RAINA

RESPONDENT(S)

O R D E R

Application for leave to appeal is granted.

We have heard the matter finally with the consent of learned counsel for the parties.

The brief facts, necessary for the disposal of this appeal, are that the respondent who is an officer commissioned in the Indian Air Force, while driving the car collided with a stationary car as a result of which two persons were killed. An FIR was filed by the son of the deceased couple and the matter was finally taken over by the Air Force for trial by court martial. The General Court Martial was convened which held the proceedings and ultimately arrived at the finding that the respondent was negligent in driving the car. It recommended dismissal of the respondent from service and one year imprisonment. The matter was thereafter

placed before the Air Chief Martial for confirmation of the aforesaid proceedings. The proposal of punishment was allowed by the Air Chief Martial by order dated 10.07.2012 by confirming the findings. However, insofar as the sentence is concerned, the Air Chief Martial felt it proper to award the following punishment:-

- "(a) to forfeit three years past service for the purpose of promotion.
- (b) to forfeit two years service for the purpose of (illegible) pay; and
- (c) to be several implemented."

The respondent challenged the aforesaid order by filing the application before the Armed Forces Tribunal, Principal Bench, New Delhi and the Tribunal has set aside the order of punishment awarded by impugned order dated 07.02.2014.

We may at this stage also record that the respondent had also submitted a post confirmation petition on 16.08.2012 and while the said petition was still pending the respondent approached the Armed Forces Tribunal, Chandigarh on similar action. That petition was disposed of with a direction to the competent authority to consider the said post confirmation petition and pass appropriate orders

thereon and liberty was given to the respondent to approach the Court again if the post confirmation petition is not decided in this way. After the post confirmation petition was decided the appellant approached the Principal Bench of the Armed Forces Tribunal as mentioned above. In these circumstances, the Union of India has taken preliminary objection about the territorial jurisdiction of the Principal Bench and submits that as the respondent has on earlier occasion approached the Chandigarh Bench of the Tribunal he could have gone to that Bench. That part of the submission of Union of India has been rejected by the Tribunal, *inter alia*, on the ground that since post confirmation petition was decided by the authority in Delhi, and when that is under challenge, Delhi Bench of the Tribunal had the jurisdiction. We do not find any fault with the approach of the Tribunal.

As far as penalty is concerned, it was challenged by the respondent on two grounds, namely, (i) the constitution of the court was not in accordance with the appropriate rules inasmuch as the Presiding Officer who awarded the punishment was not nominated by the convening authority and (ii) the order is not accompanied by reasons as required by SRO 17 dated March 2012. After going through the relevant rules and the order convening court martial, the Tribunal has

accepted the aforesaid submission of the respondent.

Ms. Pinky Anand, learned Additional Solicitor General, has drawn our attention to Section 2 of Regulation 739 of Air Force Regulations 1964 which deals with the convening of court martial. This provision states that the members and the waiting members will be mentioned by name or the number and ranks and the units from which they are drawn will alone be named. However, sub-para (a) of Regulation 739 specifically stipulates that insofar as the Presiding Officer of a court-martial is concerned, it must be named in the convening order for the assembly of the court. That was admissible in the instant case. Therefore, the finding of the Tribunal on this count is also frivolous. Another submission of the respondent was that the order passed by the Tribunal was a non-speaking order and must therefore be set aside on this count precisely.

After hearing the learned counsel for the parties we feel that the respondent had allegedly substantiated the aforesaid issue challenging the penalty order. In these circumstances, we do not find fault with the order passed by the Tribunal. However, at the same time we feel that once it was found that the court martial was not convened appropriately in

accordance with the rules and the order was a non-speaking order, the Tribunal could have granted another opportunity to the appellant to convene proper court martial and have the proceedings. Accordingly, the order of the Tribunal is modified only to the extent that the appellant shall be entitled to hold fresh proceedings against the respondent in accordance with law. Having regard to the fact that there is already a long delay and the respondent is also eligible for further promotion, the court martial proceedings shall be concluded by the appellant within a period of three months.

The appeal is disposed of in the above terms.

.....J.
[A.K.SIKRI]

.....J.
[DEEPAK GUPTA]

NEW DELHI,
MAY 29, 2017.

