
(1992) 05 SHI CK 0012
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 686 of 1988

Amar Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-05-1992

Acts Referred:

Army Act, 1950 — Section 1, 108, 109, 110, 111
Army Rules, 1954 — Rule 22, 23, 52, 52(4), 54
Constitution of India, 1950 — Article 226

Citation : (1993) 2 ShimLC 366

Hon'ble Judges : Davinder Gupta, J; D.P. Sood, J

Bench : Division Bench

Advocate : A.K. Goel, for the Appellant; M.L. Sharma, Central Government Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

D.P. Sood, J.—This is a petition under Article 226 of the Constitution of India, praying for an order quashing Annexure "H" pertaining to proceedings on a plea of guilty leading to dismissal of the Petitioner from service on 12-9-1986 on the findings of Summary Court Martial, Annexure "N" and "N-1" whereby the petition dated 14-10-1986 of the Petitioner against the findings and sentence of Summary Court Martial was rejected after due consideration by the Central Government, The criminal proceedings and the order of punishment are questioned on various grounds.

2. It is mainly contended by Sh. A.K. Goel learned Counsel for the Petitioner that the composition of the Summary Court Martial has not been constituted in accordance with Section 130 read with 115 of the Army Act. The next submission is that the recording of plea of guilty was irregular and illegal as the same was not in confirmity with Rule 52. The further submission is that the rejection of his petition against the findings and sentence of the Summary Court Martial vide Annexures "N" and "N-1" was without application of mind by the concerned

authorities.

3. To appreciate these submissions, it becomes necessary to state few more facts and then refer to the relevant provisions of the Army Act and Rules.

4. Respondent No. 1 is the Secretary, Ministry of Defence of the Union of India Respondent No. 2 is the Chief of the Army Staff. Army Headquarters, New Delhi and Respondent No. 3 is Colonel M.S. Chauhan of 17 Mountain Division, Signal Regiment C/O 99 A.P.O. who deal with proceedings as Presiding Officer, Summary Court Martial.

5. The Petitioner was enrolled in the Army Corps of Signal on August 17, 1976 and he was serving with 63 Mountain Brigade Signal Company of 17 Mountain Division, Signal Regiment C/O 56 A.P.O. The Petitioner was charge-sheeted u/s 40(c) and 57(e) i.e. using insubordinate language to his superior officer as contained in Annexure 'A' and obtaining for himself an advantage by making a false entry in the record knowing it to be false.

6. Proceedings u/s 116 of the Army Act were started against the Petitioner and Respondent No. 3 constituted the Summary Court Martial. As per the charge-sheet, the allegations are that (i) using insubordinate language to his superior officer, and (ii) obtaining for himself an advantage by making a false entry in a record, as envisaged u/s 40(c) and Section 57(e) of the Army Act. Pursuant to the proceedings of Summary Court Martial held at field on 12-9-1986, the Petitioner pleaded guilty and after the summary of evidence was read over and explained to him he showed his intention not to produce any evidence in rebuttal thereto as is evident from Annexures "G" and "H". Ultimately, findings and sentence directing dismissal of the Petitioner was passed against which he filed a petition dated 14-10-1986 against the sentence and findings of the Summary Court Martial in respect of which he was intimated vide Annexures "N" and "N-1" that the said petition has been dismissed by the higher authorities after due consideration.

7. At this juncture it becomes necessary to refer to the relevant provisions of the Army Act and the Rules. The Army Act came into force in the year 1950. Chapters VI and VII deal with the offences and punishments respectively and the corresponding sections are from Sections 34 - 89. Chapter X provides for convening of court-martial and its powers the sections are from Sections 108 - 127 Chapter XI deals with procedure of court-martial. The concerned sections are from Sections 128 - 158. Chapter XII deals with confirmation and revision of such sentences and the sections are from Sections 159 - 165. u/s 191 Rules are made by the Central Government. Similarly u/s 192 power is there for the Central Government to make Regulations and as provided u/s 193 the Rules as well as Regulations have to be published in the official Gazette. Such rules called Army Rules were made in the year 1954 and duly published Chapter V of these Rules provides for investigation of charges and remand for trial and power of Commanding Officers Rule 22 provides for the hearing of the charges. Rule 23

lays down the procedure for taking down the summary of evidence. Section 1 of Rule 22 pertains to investigation of charges and remand for trial as also indicates the power of Commanding Officer Rule 52 relates to the general plea of "guilty" or "not guilty". Rule 54 also lays down procedure after plea of "guilty",

8. As regards the first point so urged we find no substance in this contention for two reasons. Firstly, there was no such challenge made in the writ petition and secondly, proceedings are that of Summary court-martial and not that of Summary General Court-martial Section 116 of the Army Act deals with Summary Court-martial. It lays down as under:

116. Summary court-martial.-

(1) A summary court-martial may be held by the commanding officer of any corps, department or detachment of the regular Army, and he shall alone constitute the court.

(2) The proceedings shall be attended throughout by two other persons who shall be officers or junior commissioned officers or one of either, and who shall not as such be sworn or affirmed.

9. It would be relevant to detail here that we had called for those original records and carefully perused the same. We find that Respondent No. 3 was the Commanding Officer of 17 Mountain Division, Signal Regiment at the material time. The Petitioner at that time was Havaldar Clerk. The Petitioner also did not raise any objection to the conducting of the trial by Respondent No. 3 while sitting on the Court. As such, this objection at this stage cannot be gone into by this Court.

10. Now examining the next submission pertaining to the plea of guilty not having been recorded in accordance with the provisions of the Army Act and the Rules framed thereunder, it is to be noted that the Petitioner has pleaded that the "plea of guilty" is not voluntary in character. In fact, according to him, it was made at the behest of Captain Jagbir Singh who was his (accused friend) who had met ten times earlier and talked to Respondent No. 3 to take a lenient view of the matter and ultimately told him (Petitioner) that pursuant to the talk held between him and Respondent No. 3, he (Petitioner) would only be reprimanded provided he pleads guilty to save the prolonged proceedings.

11. Dealing with this submission, we find that Summary court-martial presided over by Respondent No. 3, recorded the evidence consisting of statements of S/ Sh. G.R. Shivran, Maj. Hari Parsad, I.P. Singh, Ved Parkash and statement of the accused-Petitioner besides the record produced before him i.e. leave application, leave certificate, requisition for seat, record on leave including casual leave. At the trial the Petitioner pleaded guilty, rather than to face the trial, the Petitioner opted to accept the award of the Respondent No. 3. The Petitioner was thereupon awarded the punishment of dismissal from service.

12. Respondent No. 3 was empowered to conduct the Summary court-martial

under the above said Rules. The requirement of two independent persons to watch proceedings throughout was followed in letter and spirit, inasmuch as. Major Anjum Sahab and Subedar Garjan Ram of the same regiment were deputed to watch the proceedings throughout as envisaged u/s 116(2) of the Army Act. Neither the Petitioner produced his friend Captain Jagbir Singh on his behalf to show that he had been assured by Respondent No. 3 to be reprimanded provided he pleaded guilty. Rather the record shows otherwise. Nowhere this plea at all has been raised during trial nor this fact has been substantiated now by the Petitioner. In fact, the summary of evidence was read-over and explained to him as is evident from the original record of which Annexures "G" and "H" are the photostat copies annexed with the petition. This fact has also been verified by the two independent persons deputed to watch the proceedings referred to above. Rule 52(4) as also Rule 22 have been followed by Respondent No. 3 while presiding over the Summary Court Martial in letter and spirit. There appears to be no substance in this submission and as such it is rejected.

13. Regarding the last submission, suffice it to state that the Petitioner had already been intimated of the dismissal of his petition dated 14-10-1986 vide Ministry of Defence letter's dated 21-7-1987, reference of which has been given in Annexures "N" and "N-1" dated 21-7-1987 and 12-8-1987, respectively, which corroborate this fact. The Petitioner has not annexed letter dated 21-7-1987 with his petition. This plea appears to be an afterthought one. Accordingly, this plea is also rejected.

14. In view of the above, Petitioner having failed on all accounts the petition is dismissed with no order as to costs.