

(2010) 07 DEL CK 0199

In the Delhi High Court

Case No : Writ Petition (C) No. 8441 of 2009

Anil Kumar

APPELLANT

Vs

UOI and Another

RESPONDENT

Date of Decision : 16-07-2010

Acts Referred:

Army Act, 1950 — Section 52, 79, 80, 81, 83

Army Rules, 1954 — Rule 22

Constitution of India, 1950 — Article 226

Citation : (2010) 07 DEL CK 0199

Hon'ble Judges : J.R. Midha, J;Gita Mittal, J

Bench : Division Bench

Advocate : R.S. Dhull, for the Appellant; Barkha Babbar, for the Respondent

Final Decision : Dismissed

Judgement

Gita Mittal, J.—The petitioner assails the summary trial proceedings under the Army Act, 1950 conducted against him and the punishment

awarded thereunder vide the order dated 1st March, 2004 passed by his Commanding Officer.

2. The factual matrix giving rise to the present petition is set hereafter in brief. The petitioner was enrolled in the Army on 10th October, 1988 and

was deployed with the EME Department Battalion, Secunderabad. While serving at 723 Field Workshop Company (7004 EME Battalion), the

petitioner had cleared the examination for the rank of Havildar Major in the Technical Entrance Exam Test conducted in May, 2003. He was

promoted to the rank Local Unpaid Naik thereafter. He was also detailed to undergo Naik to Havildar (NH) Cadre Course Serial No. 5 of 2004

commencing from 6th September, 2004 at 3 EME Centre, Bhopal and to undergo the diploma course DAE(B)-301 w.e.f. 3rd January, 2006 at

the EME School, Baroda.

3. In the meantime, the petitioner was found to have committed certain offences under the Army Act, 1952 for which a tentative charge sheet

dated 27th February, 2004 laying the following charges against him was drawn up:

TENTATIVE CHARGE SHEET

The accused Number 14613036L Rank/Trade Naik VM(MV) Name Anil Kumar of 7004 EME Battalion is charged with :-

First Charge SUCH AN OFFENCE AS IS

MENTIONED IN CLAUSE (F) OF

ARMY ACT SEC 52 SECTION 52 OF THE ARMY ACT

WITH INTENT TO CAUSE

WRONGFUL GAIN TO A PERSON

in that he,

at Missamari, on 02 June, 2003 got himself issued unauthorisedly Railway Warrant (IAFT-1752) bearing machine number 17 B-978507 for

journey from New Misamari to Una, Himachal and back for himself and his family, well knowing the fact that he had already availed free return

journey warrants for the said journey in the same calender year, thus causing a loss of Rupees 8475/-(Eight Thousand Four Hundred and Seventy

Five Only) to the state.

Second Charge SUCH AN OFFENCE AS IS

MENTIONED IN CLAUSE (F) OF

ARMY ACT SECTION 52 OF THE ARMY ACT WITH

INTENT TO CAUSE WRONGFUL GAIN

SEC 52

TO A PERSON

in that he,

at Misamari, in the month of September, 2003, got himself issued unauthorisedly Railway Warrant (IAFT-1707) bearing machine number 17 B-

978530 for single journey from New Misamari to Jalandhar Cantt. for his wife and child, well knowing the fact that he had already availed a free

return journey railway warrant for the said journey in the same calender year, thus causing a loss of Rupees 3510/-(Rupees Three Thousand Five Hundred and Ten Only) to the state.

Third Charge SUCH AN OFFENCE AS IS
MENTIONED IN CLAUSE (F) OF
ARMY ACT SECTION 52 OF THE ARMY ACT
WITH INTENT TO CAUSE
SEC 52
WRONGFUL GAIN TO A PERSON

in that he,

at Misamari, on 28 April, 2003, with intent to defraud, preferred his false leave Travel Concession claim and received money from CDA vide their

payment authority (IAFA-468) Number Rly/CL/1522/1 dated 28 August 2003 whereas he had already drawn free railway warrant for

conveyance of his family, thus causing a lost of Rs.286/-(Rupees Two Hundred and Eighty Six only).

4. In compliance with the requirement of Army Rule 22, the proceedings for hearing of charges before the commanding Officer of the above

charges was held on 1st March, 2004. The Commanding Officer heard the charges as well as the prosecution witnesses who were produced

before him in the presence of the petitioner and gave the petitioner opportunity to cross-examine the witnesses. The records which have been

placed before us show that the petitioner declined to cross-examine the witnesses. The petitioner also declined to make any statement or to

produce any witness in his defence.

5. On conclusion of the proceedings and hearing of the charges, the Commanding Officer passed an order that the petitioner should be tried

summarily.

6. We may notice that so far as the summary trial of the petitioner is concerned, he was tried on the same charges as afore noticed. The summary

proceedings against the petitioner also held thereafter on 1st March, 2004 have also been placed before us.

7. The petitioner had entered a plea of "guilty" to the charges laid against him. The Commanding Officer had accordingly followed the procedure

which would so apply and had recorded the evidence of the prosecution witnesses.

8. On a consideration of the evidence led in the summary proceedings, and the plea of guilt, the Commanding Officer of the petitioner awarded

punishment of severe reprimand and stoppage of pay and allowances until he made good a sum of Rs.12,271/-in respect of the Railway Warrants

which valued at Rs.8475/-, Rs.3510/- and the Leave Travel Concession valued at Rs.286/-.

9. It is an admitted position that the said amount stands recovered from the dues of the petitioner, to which there has been no objection.

10. Aggrieved by this punishment imposed upon him the petitioner has filed the present petition. The sole ground of challenge in the writ petition

which has been pressed before us is that having regard to the nature of the allegations levelled against the petitioner which involved fraud and mala

fide intention, it was not open to the respondent to summarily try the petitioner and that they were bound to have proceeded against him by

directing proceedings of a Court Martial. In support of this contention Mr. R.S. Dhull, learned counsel for the petitioner places reliance on the

provisions of Section 52 of the Army Act, 1950 and para 432 of the Defence Services Regulations,.

11. We have heard the learned counsel for the parties and examined the available record. Before dealing with the legal objection which has been

pressed, it becomes necessary to notice that the petitioner had entered a plea of guilt to the charges which were laid against him in the summary

proceedings dated 1st March, 2004. No objection to the jurisdiction of the Commanding Officer who conducted the summary proceedings nor

any objection to the punishment which was imposed was raised by the petitioner. The petitioner also accepted the sentence awarded to him on 1st

March, 2004 and has acceded to the recovery of the amount of Rs.12271/- effected pursuant to the order dated 1st March, 2004 imposed upon

him.

12. It is also noteworthy that even before us, there is no challenge to the factual basis of the charges levelled against the petitioner. The plea of guilt

by the petitioner is a clear admission of the charges levelled against him.

13. It is trite that favourable exercise of writ jurisdiction is not a matter of right

for a petitioner. This Court is not bound to exercise extraordinary jurisdiction under Article 226 of the Constitution of India in favour of the petitioner merely on making of a legal point (Ref: Ramniklal N. Bhutta and another Vs. State of Maharashtra and others,).

14. Be that as it may, we may now decide the legal objection raised by Mr.R.S.Dhull, learned counsel for the petitioner on its merits.

15. So far as the options of trial which are available to the Army Authorities in respect of the offences is concerned, learned counsel for the

respondent has drawn our attention to the provisions of Chapter 7 of the Army Act, 1950. We may notice hereafter the provisions of Section 52,

79 and Section 80 which have a bearing in the instant case, the same read as under:

Section 52, Offences in respect of property-Any person subject to this Act who commits any of the following offences, that is to say,-

(a) commits theft of any property belonging to the Government, or to any military, naval or air force mess, band or institution, or to any person

subject to military, naval or air force law; or

(b) dishonestly misappropriates or converts to his own use any such property; or

(c) commits criminal breach of trust in respect of any such property; or

(d) dishonestly receives or retains any such property in respect of which any of the offences under clauses (a), (b) and (c) has been committed,

knowing or having reason to believe the commission of such offence; or

(e) willfully destroys or injures any property of the government entrusted to him; or

(f) does any other thing with intent to defraud, or to cause wrongful gain to one person or wrongful loss to another person,

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this

Act mentioned.

Section-79

Punishments otherwise than by court-martial-Punishments may also be inflicted in respect of offences committed by persons subject to this Act

without the interventions of a court-martial and in the manner stated in the section 80, 83, 84 and 85.

Section-80

Punishment of persons other than officers, junior commissioned officers and warrant officers-Subject to the provisions of section 81, a

commanding officer or such other officer as is, with the consent of the Central Government, specified by [the Chief of the Army Staff], may, in the

prescribed manner, proceed against a person subject to this Act otherwise than as an officer, junior commission officer or warrant officer who is

charged with an offence under this Act and award such person, to the extent prescribed, one or more of the following punishments, that is to say,-

- (a) imprisonment in military custody up to twenty-eight days;
- (b) detention up to twenty-eight days;
- (c) confinement to the lines upto twenty-eight days;
- (d) extra guards or duties;
- (e) deprivation of a position of the nature of an appointment or of corps or working pay, and in the case of non-commissioner officers, also deprivation of acting rank or reduction to a lower grade of pay;
- (f) forfeiture of good service and good conduct pay;
- (g) severe reprimand or reprimand;
- (h) fine up to fourteen day"s pay in any one month;
- (i) penal deductions under clause (g) of section 91;

16. We have examined the provisions of the Army Act, 1950. It has been pointed out that the charges against the petitioner make out an offence

covered u/s 52(f) of the Army Act. Section 52(f) renders anything done by an Army personnel with intent to defraud or to cause wrongful gain to

one person or wrongful loss to one person, an offence which, on conviction by a court martial, is punishable with imprisonment for a term which

may extend to 10 years or such less punishment as mentioned in the Army Act.

17. It is also evident from the above that the scheme of the Act provides that so far as the infliction of punishment in respect of the offences

committed by army personnel is concerned, the statute has permitted the same without mandatory intervention of a trial by a court martial. Any

army personnel who is charged with a commission of offence under the Army Act, 1950, can be tried in the manner set out u/s 79 and Section 80

of the statute as well. The punishments prescribed u/s 52 are of a lesser gravity other than those as prescribed in Section 80 of the Army Act.

Section 80 casts a restriction on the extent and severity of the punishment which may be imposed if the personnel is tried summarily thereunder

without the intervention of court martial. In this background if the submissions made by the learned counsel for the petitioner were to be accepted,

the petitioner should have been tried by court martial and would be liable for higher punishment u/s 52 of the Army Act.

18. Reliance has been placed before us by learned counsel for the petitioner on para 432 of the Defence Services Regulations which mandates that

an offence involving fraud and moral turpitude etc. will be tried by a Court Martial and that such cases will not be disposed of summarily. It is

urged that the charge against the petitioner of having committed the offence u/s 52(g) of the Army Act involved fraud and moral turpitude. For this

reason it is contended that the petitioner could have tried only by court martial.

19. We have considered the recommendations made in this paragraph 432 of the Defence Services Regulations which reads as follows:

432. Offences in respect of Public or Regimental Property--Persons subject to Army Act committing offences involving moral turpitude ,fraud,

theft dishonesty and culpable negligence involving financial loss of Public or Regimental property will be tried by court-martial or prosecuted before

a civil court. Such cases will not be disposed of summarily or by administrative action. Punishments in such cases will be deterrent and

commensurate with the gravity of the offence.

The recommendation thereunder is clearly a restriction or a bar on the discretion conferred on the authorities u/s 79 of the Army Act, 1950.

20. The question which requires to be considered is as to whether the action of the respondents in summarily trying the petitioner, and the orders

passed as a result, would be rendered illegal for the reason of non-compliance with para 432 of the Defence Services Regulations. This very issue

was considered by the office of the Deputy Judge of the Advocate General. So far as the case in hand is concerned by the opinion dated 27th

February 2004 the Deputy Judge Advocate General had opined as follows:

3. Admittedly, the Summary Trials in question have been held in violation of the instructions contained in the above mentioned provisions. Even the

case of Nk Anil Kumar, who was charged with three separate offences of fraud/false claim, has been disposed off summarily with the award of severe reprimand and "stoppage of pay and allowances". The summary trials in question, thus, tend to trivalise the offence of fraud, contrary to the spirit of para 432 and para 459 of Regulations for the Army 1987 (Revised Edition).

4. Notwithstanding the above, no material has been brought on record to show any ulterior motive or malafide intention on part of the officer

holding the trial in disposing of the cases summarily. In view thereof, as also considering the non statutory the nature of the aforementioned

instructions, I have persuaded myself to advise non interference with the Summary trial proceedings which are otherwise legal and valid. However,

the officer holding the trial needs to be advised to follow the instructions contained in the MML and the Regulations while dealing with

disciplinary/judicial matters.

5. I do not subscribe to the views of EME Records that the Summary Trial proceedings are illegal only because they have been held in violation of

the Note appended below Army Act Section 52, which are non statutory in nature.

21. In this behalf, it is necessary to note that "Regulations for the Army" have been issued under the authority of the Government of India. The

preface to these Regulations placed before us, clearly records that these regulations are non-statutory and merely supplemental to the relevant

statutory provisions wherever they exist and do not supplant them.

22. The action of the respondents was in exercise of statutory power u/s 80 and is legally permissible. In this background, the failure to try the

petitioner by a Court Martial as suggested and recommended in para 432 of the non-statutory Defence Service Regulations having regard to the

nature of the offence committed by the petitioner, does not render the action of the respondents or the summary trial of the petitioner and the

punishment imposed upon him, illegal.

23. The records placed before us show that the respondents have complied with the requirements of Rule 22 of the Army Rules, 1954 and have

followed prescribed procedure before passing the impugned procedure. Having heard the charges against the petitioner a decision was taken u/s

80 to try the petitioner by the summary proceedings. No violation of any

statutory provision or rules or regulations framed thereunder has been pointed out. We have noticed above that the petitioner has admitted his guilt in respect of the charges and not objected to the recovery of the amounts. The reliance placed on the observations of the Supreme Court in CA No. 6587/2008 in SLP No. 6037/2007 entitled as Union of India Vs. Rajpal is therefore misplaced.

24. It is necessary to note that during the course of hearing, it is pointed out that the petitioner has since superannuated and it shall not be possible to proceed under the Army Act, 1950. The present writ petition has been filed for this reason.

25. For all these reasons, we find no merit in the petition which is hereby dismissed.