
(2008) 07 OHC CK 0023
In the Orissa High Court

Bachan Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-07-2008

Acts Referred:

Army Act, 1950 — Section 109, 113, 153, 154, 164
Constitution of India, 1950 — Article 136, 20, 226
Evidence Act, 1872 — Section 27

Citation : (2008) 07 OHC CK 0023

Hon'ble Judges : L.S. Panta, J;C.K. Thakker, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

L.S. Panta, J.—Bachan Singh, the Appellant is aggrieved by the Judgment and Order Dated 5-2-2002 passed by the Division Bench of the High Court of Jammu and Kashmir at Jammu allowing LPA (SW) No. 284 of 1997 filed by the Respondents herein against the Judgment dated 20-11-1996 of the Learned Single Judge of the High Court whereby the Learned Single Judge allowed SWP No. 14-A of 1984 filed by the Appellant and quashed the General Court Martial held against him including confirmation of sentence passed upon him by the General Court Martial and the Appellant is relegated to back to the position he held on the date of passing of the order with all the benefits under the Rules.

2. A General Court Martial (GCM) under the Army Act, 1950 (for short "the Act") was convened by the competent authority on 4-1-1982 u/s 109 of the Act to try the Appellant holding the rank of Sepoy in Second Battalion, the Dogra Regiment in the Army. The allegations against the Appellant for which he was suspected to be tried by GCM were:

No. 3973649A Sep. Bachan Singh of 2 Dogra is resident of Village Paragwal, Tehsil Akhnoor, District Jammu (J&K) s/o Shri Dharam Singh and stepson of Smt Gyano Devi, second wife of Shri Dharam Singh.

3. Sep. Bachan Singh studied in Govt. Lower High School, Paragwal up to 9th. He was enrolled in the Army on 11-10-1975 to Meerut in the Dogra Regt. He is married to Smt Veena Kumari d/o Shri Durga Singh, resident of Village Chargarwar, Tehsil Jammu, District Jammu (J&K). Sep. Bachan Singh proceeded on annual leave w.e.f. 16-1-1980 to 15-3-1980 to his home station Village Paragwal, Tehsil Akhnoor.

4. Shri Bachan (sic Rattan) Singh s/o Shri Waryam Singh, resident of a village Najwal, Tehsil Akhnoor, District Jammu (J&K) which is about 3 km from Village Paragwal is related to Sep. Bachan Singh. Sep. Bachan Singh's stepmother Smt Gyano Devi is the younger sister of Shri Rattan Singh's mother Smt Vidya Devi.

3. During the month of February 1980 Smt Vidya Devi had gone over to Sep. Bachan Singh's house and invited him and his wife over to her place. On 12-3-1980 Sep. Bachan Singh along with his wife Smt Veena Devi and his three months old son went to Smt Vidya Devi's house.

6. Bhri Rattan Singh and Sep. Bachan Singh consumed country liquor that night. At about 2130 hrs Shri Rattan Singh and Sep. Bachan Singh went out for a walk and while walking crossed the border into PAK territory where they were met by two PAK FIU staff at Post Dera. PAK (sic) if he was in possession of his identity card. Sep. Bachan Singh gave his name as Narinder Singh, son of Shri Surjeet Singh, his unit as 16 J&K LI located at Mizoram. PAK FIU staff gave Rs 200 (sic). Sep. Bachan Singh when he reached his home. The next day, 13-3-1980, Sep. Bachan Singh with his family left for his home.

7. On 15-3-1980 Sep. Bachan Singh left his Village Paragwal to rejoin hi/unit. At 1830 hrs 15-3-1980, Sep. Bachan Singh rejoined his unit, 2 Dogra.

8. On 4-7-1980 Sep. Bachan Singh under an escort proceeded to 168 ASC Bn on temp duty for interrogation at the Joint Interrogation Centre South c/o Det 4/290, Liaison Unit c/o 56 APO and returned back to the unit on 10-8-1980.

9. The order convening the Court Martial reads as under:

Form of order for the Assembly of a General Court Martial Under the Army Act

Orders by IC-5095P Major-General K. Mahipat Sinhji, Officiating General Officer Commanding 16 Corps.

Place: Field: No. 3973649A Sepoy Bachan Singh, 2nd Batallion,

The Dogra Regiment

Date: 15 December, 1981 : The details of officers mentioned below will assemble at Field on the sixteenth day of December, 1981 for the purpose of trying by a General Court Martial the accused person named in the margin (and such other person or persons as may be brought before them).

The senior officer to sit as presiding officer. Members

IC-7757LBrig. TalwarHarjeet-Cdrl 91 Inf Bde

IC-12716L Lt. Col. Borkar, Mukand Narasinha- OC 1890 Indep Lt Bty.

IC-28737L Maj. Vohra, Satyendra Mohan - 2 Sikh

IC-25247M Capt. Jagmal Singh - 37 Med Regt

IC-34139K Capt. Ranjit Barkakoty - 81 Armd Regt Waiting Members

IC-13474A Lt. Col. Brar, Surjit Singh - OC 28 EME Bn IC-24826M Gill, Mohanlit Singh - 8 Cav

IC-35033K Capt. Hari Mohan Joshi - 374 Sig Regt Judge Advocate

IC-36504Y Maj. Deosthale, Jayant Kumar - DAJAG

HQ Northern Command is appointed Judge Advocate Prosecutor

IC-29015L Maj. Valentine, Joseph Melvin - 9 Madras appointed prosecutor

The accused will be warned, and all witnesses duly required to attend.

The proceedings (of which only three copies are required) will be forwarded to Headquarters, 16 Corps, through DJAG Headquarters Northern Command. Signed this fifteenth day of December, 1981.

sd/- (R.K. Kashyap) Lieutenant Colonel Assistant Adjutant-General for Officiating General Officer Commanding 16 Corps

The charge-sheet reads as under:

Charge-Sheet

The accused, No. 3973649A Sep. Bachan Singh, 2nd Battalion, The a Dogra Regiment is charged with:

The Army Act: an act prejudicial to good order and Section 63, military discipline in that he,

at Village Najwal (J&K) on 12 March, 1980, went across the international border to Post "Dera" in Pakistan, along with Shri Rattan Singh s/o Shri Wary am Singh of the said village.

sd/- (Balwant Singh) Major Officiating Commanding Officer 2nd Battalion, The Dogra Regiment

Station: Field Date: 12 Dec, 1981

To be tried by a General Court Martial Place: Field Date: 12 Dec, 1981

sd/- (R.K. Kashyap) Lieutenant Colonel Assistant Adjutant-General for Officiating General Officer Commanding 16 Corps.

10. Section 63 of the Act reads as under:

63. Violation of good order and discipline.-Any person subject to this Act who is guilty of any act or omission which, though not specified in this Act, is prejudicial to good order and military discipline shall, on conviction by Court martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

11. After conclusion of the proceedings, the Appellant was held guilty of the charge and was sentenced to suffer two years" imprisonment and also dismissed from service by Order Dated 22-1-1982 of the GCM. The sentence passed against the Appellant was confirmed by the confirming authority as required under the Act. The Appellant challenged his conviction and sentence in SWP No. 14-A of 1984 filed by him in the High Court of Jammu and Kashmir at Jammu which as noted above, was allowed by the Learned Single Judge by Order Dated 20-11-1996. The ground which appealed to the Learned Single Judge in setting aside the Court Martial and subsequent confirmation 9 of sentence may be stated from the relevant paragraphs of the Judgment of the Learned Single Judge which are as under:

I have gone through the record that was produced before me today and also leafed through the statements made by the witnesses before the General Court Martial. Not even a single witness has deposed that he had seen or had any knowledge of the Petitioner having crossed ever the international border. There is absolutely no evidence.

12. Learned Counsel appearing for the Respondents has vehemently relied upon the statement made by the Petitioner-accused before the summary of evidence. According to him this statement was made voluntarily and can be safely acted upon. I decline to agree with the Learned Counsel for the reason, because, statements made before summary of evidence cannot be relied upon in the first instance. Even then I have gone through the statement of the Petitioner-accused before the General Court Martial. In that statement, the Petitioner has vehemently stated that the earlier statement made by him during the summary of evidence was as a result of force exercised upon him during interrogation. He has totally resiled from this statement, did not own the same.

13. I am tempted to refer to Article 20 of the Constitution read with Section 27 of the Evidence Act. The statement tendered by the Petitioner-accused before the summary of evidence has been destroyed and another statement was later recorded. The General Court Martial has taken note of this statement and itself returned a finding in the following manner:

The Court decided to uphold the contention of defence and not to admit the above document in evidence.

14. General Court Martial seems to have sufficiently been conscious of the loopholes which the statement had and it was because of these loopholes that this confessional statement was not acted upon. Suffice to say that there is no evidence linking the Petitioner-accused with the allegation under which he stands

charged.

15. On the strength of the foregoing reasoning, I find the proceedings to be inconsistent with the provisions of the Army Act and the finding of the Court Martial was not in accordance with the law. Therefore, the same is quashed and the Petitioner is relegated back to the position he had on the date of passing of the order. He will be entitled to all the benefits under Rules.

16. Aggrieved by the said order of the Learned Single Judge of the High Court, the Union of India and the officials concerned of the Army have preferred Letters Patent Appeal (SW) No. 284 of 1994. By Order Dated 5-2-2002, the Division Bench of the High Court allowed the appeal and set aside the order passed by the Learned Single Judge in SWP No. 14-A of 1994. Hence, the Appellant has preferred this appeal.

17. Mr. D.K. Garg, Learned Counsel appearing on behalf of the Appellant in support of the Judgment of the Learned Single Judge, contended that the Learned Single Judge has rightly quashed the GCM primarily on the ground that the GCM had been convened in violation of the mandate of Section 109 of the Act. According to the Learned Counsel, the GCM was not convened by the authority competent to do so in terms of Section 109.

18. It was urged that there was no direct evidence produced on record of the GCM by the Respondents to prove the guilt of the Appellant for offence u/s 63 of the Act and in the absence of any evidence, the order of conviction and sentence imposed upon the Appellant by the GCM was invalid, unsustainable and in violation of natural justice and in such circumstances the Judgment of the Learned Single Judge setting aside the order of the GCM could not have been interfered with by the Division Bench in letters patent appeal. It was, therefore, submitted that the impugned order of the Division Bench of the High Court deserves to be set aside by restoring the order of the Learned Single Judge.

19. Mr. Parag P. Tripathi, Learned Additional Solicitor General for the Respondents on the other hand, supported the order passed by the Division Bench of the High Court and submitted that the High Court was right in allowing the letters patent appeal and in making the order. He submitted that the Learned Single Judge has exceeded his jurisdiction under Article 226 of the Constitution of India by setting aside the Court martial and subsequent order of conviction and sentence recorded against the Appellant which was later on confirmed by the competent authority as envisaged under the Act and the Rules for violation of good order and discipline in terms of Section 63 of the Act. According to the Learned Counsel, this Court in exercise of its power under Article 136 of the Constitution may ordinarily not interfere with the order of the Division Bench.

20. Having heard the Learned Counsel and having gone through the material on record and also the relevant provisions of the Army Act and Rules, in our opinion, the Division Bench of the High Court was justified in setting aside the order of the Learned Single Judge who was not justified in setting aside the well-reasoned

order of the GCM which was based upon proper and fair appreciation of the evidence of the material witnesses, statement made voluntarily by the Appellant before it, other material and ? subsequent order of the confirming authority.

21. The Appellant's contention that the convening of the GCM in this case is not valid because u/s 109 of the Act, the GCM can be convened only by any officer who has been appointed by a specific warrant in that connection by the Chief of the Army Staff must be rejected. u/s 109 of the Army Act, a GCM may be convened by the Central Government or the Chief of the Army Staff or by any officer empowered in this behalf by warrant of the Chief of the Army Staff. There is nothing in Section 109 which requires the Chief of the Army Staff to issue a warrant for each specific case. A general warrant for convening GCM under the Act has been issued by the Chief of the Army Staff u/s 109 whereby all the officers not being under the rank of a Field Officer, commanding the 16 Corps are empowered to convene GCM for the Trial of any person under his command who is subject to military law authorised by A-1 warrant duly signed by the Chief of the Army Staff and was produced before the High Court which has been noticed and extracted in the Judgment by the Division Bench. The warrant of authorisation reads as under:

Warrant of convening of General Court Martial under the Army Act.

To,

The Officer Nor being under the rank of a Field Officer, Commanding the XVI corps

In pursuance of the provisions of the Army Act, 1950 (46 of 1950), I do hereby empower you, or the officer on whom your command may devolve during your absence, not under the rank of Field Officer, from . time to "time as occasion may require, to convene General Court Martial for the Trial, in accordance with the said Act and the Rules made thereunder, of any person under your command who is subject to military law and is charged with any offence mentioned in the said Act, and is liable to be tried by a General Court Martial.

And for doing so, this shall be, as well to you as to all others whom it may concern, a sufficient warrant.

Given under my hand at New Delhi this twenty-fourth day of June, 1972.

sd/- General Chief of the Army Staff.

22. In the present case, the abovesaid Order Dated 15-12-1981 convening the assembly of GCM under the Act passed by IC-5095P Major-General K. Mahipat Sinhji, Officiating General Officer Commanding 16 Corps, clearly proves that the GCM has been convened by a competent authority in accordance with the provisions of Section 109 of the Army Act. The members of the GCM were selected and appointed in compliance with Section 113 of the Act. Thus, the Respondents have fully complied with the requirement of law.

23. The record of the Court Martial produced before us by the Learned Additional

Solicitor General would reveal that the GCM was held against the Appellant on different dates at Udhampur. The record would disclose that the Appellant had made voluntarily written confessional statement before the GCM admitting the allegations levelled against him in the charge-sheet. On bare perusal of the GCM, it becomes quite clear that the proceedings were recorded by the GCM in the presence of the Appellant, his defending officer and other witnesses. The statements of Major S.K. Sareen, Smt Vidya Devi, Veena Kumari, Tara Chand, Rattan Singh, Prabhu Ram, Major S.B. Ambel, Pritam Singh, Capt. A.K. Chowdary, Major Amin Chand Bhattee were recorded by the GCM on behalf of the prosecution in support of the charge in the presence of the Appellant. The Appellant was afforded full opportunity of cross-examining the witnesses but he did not avail of the said opportunity.

24. It appears from the record that despite giving warning to the Appellant to the effect that he was not obliged to make any confessional statement, the Appellant made written confessional-statement on 22-10-1980. The Appellant made additional statement in addition to first summary of evidence on 10-9-1981 in the presence of witnesses, namely, IC-25616Y Major S.L. Gautam, independent witness and Major Amin Chand, officer recording summary of evidence. It appears from the record that second additional summary of evidence recorded on 10-9-1981 was in compliance with the a Army Rules 23(1), 23(2), 23(3), 23(4) and 23(6) in which the Appellant did confess .his guilt.

25. Chapter XII of the Act deals with confirmation and revision. Section 153 provides that no finding or sentence of a general, district or summary General Court Martial shall be valid except so far as it may be confirmed as provided by this Act. Section 154 prescribes that the findings and sentences of general Courts martial may be confirmed by the Central Government, or by any officer empowered in this behalf by warrant of the Central Government. The record of the Respondents shown to us would establish that the findings of conviction and sentences imposed upon the Appellant by the GCM were confirmed by the competent authority in terms of Section 154 of the Act. We find the proceedings of the GCM to be quite immaculate where Trial was fair and every possible opportunity was afforded to the Appellant to defend his case. After examining the record of the Court Martial ourselves, we find that the Learned Single Judge, with respect to him, completely misdirected himself in coming to the conclusion that the proceedings held by GCM were inconsistent with the provisions of the Army Act and the finding of the Court Martial was not in accordance with the law. The Appellant was given opportunity to inspect whatever record he wanted, his wife and other witnesses were examined in his presence and he had participated in the Court-martial proceedings without raising any objection. The GCM took into consideration the relevant oral evidence of the material witnesses and statement voluntarily made by the Appellant and additional summary confessional statement duly signed by him in the presence of Major S.L. Gautam and Major Amin Chand who have also appended their signatures thereon and other materials produced before it, found the Appellant guilty of the charge and

convicted and sentenced him accordingly.

26. The Appellant filed post-confirmation petition against the order of the GCM u/s 164 of the Act, a copy whereof has been shown to us by the Learned Counsel for the Appellant. We are informed by the Learned Additional Solicitor General that the said petition has been rejected by the competent authority and findings and sentences of the GCM recorded against the Appellant were confirmed and the Appellant was, accordingly, informed about the decision so taken by the authority. Indisputably, the Appellant has neither challenged the said order of the competent authority passed under the statute before the High Court in the Writ Petition nor was the order brought to the notice of the Division Bench by the Appellant at the time of hearing and deciding the letters patent appeal.

27. Having examined the above said order of the Learned Single Judge, we find that the findings and reasonings recorded therein are not based upon proper assessment of the facts of the case and it was not necessary for the Learned Single Judge to have minutely examined the record of the GCM as if he was sitting in appeal. We find that on merits, the Learned Single Judge has not clearly and plainly said that there was no case against the Appellant to hold him guilty of the offence charged. It is well-known and well-settled proposition of law that in proceedings under Article 226 of the Constitution, the High Court cannot sit as a Court of appeal over the findings recorded by the GCM. Judicial review under Article 226 of the Constitution is not directed against the decision but is confined to the decision-making process. Judicial review is not an appeal but a review of the manner in which the decision is made. The Court sits in Judgment only on the correctness of the decision-making process and not on the correctness of the decision itself. Thus, examining the case of the Appellant from all angles we are satisfied that there was no irregularity or illegality in the GCM which was fairly and properly conducted by most qualified members holding very high ranks in army hierarchy.

28. The Division Bench of the High Court in the impugned Judgment while setting aside the Judgment of the Learned Single Judge has relied upon the decision of this Court in Union of India (UOI) and Others Vs. Major A. Hussain (IC-14827), and observed that the High Court cannot reappreciate the evidence recorded by the authorities and substitute by its own finding replacing the conclusion reached by the competent authority.

Though the Division Bench of the High Court has not given detailed reason in its Judgment for setting aside the Judgment of the Learned Single Judge, yet in substance we are of the opinion that the said Judgment on merit warrants no interference inasmuch as no illegality, infirmity or error of jurisdiction could be shown before us by the Appellant.

29. In our view, there is no merit in the contentions taken by the Appellant.

30. For the reasons above stated, there is no merit in this appeal and it is, therefore, dismissed. There will be no order as to costs.