

(1999) 07 AP CK 0098
In the Andhra Pradesh High Court
Case No : Writ Petition No. 5716 of 1999

B.R. Mouli

APPELLANT

Vs

Commanding Officer, Andhra Pradesh and others

RESPONDENT

Date of Decision : 08-07-1999

Acts Referred:

Army Act, 1950 — Section 121, 80, 83, 84, 85
Army Rules, 1954 — Rule 34

Citation : (1999) 5 ALD 352

Hon'ble Judges : B.S.R. Verma, J

Bench : Single Bench

Advocate : Mr. Capt. K.M. Saxena, for the Appellant; Mr. B. Adinarayana, SC for Central Government, for the Respondent

Judgement

1. This writ petition is filed seeking to declare the proceedings of the first respondent dated 10-3-1999 as endorsed by the third respondent dated 11-3-1999 (Charge Sheet to be tried by General Court Martial) as being in violation of the Army Act, 1950, Section 121 of Army Rules 34, Regulations for the Army Para 903 exceeding jurisdiction, unlawful and ultra vires.

2. Interim stay was granted in WPMPNo.7134 of 1999 on 22-3-1999 and the same is being extended from time to time. Now at the hearing of the Vacate Stay Petition, both the parties have consented for the disposal of the main writ petition.

3. It is the case of the petitioner that the first respondent has issued a charge-sheet dated 10-3-1999, whereupon, the third respondent had directed that the petitioner be tried by a General Court Martial- vide endorsement dated 11-3-1999 on the said charge-sheet. It is his further case that irrespective of the point as to whether the allegations are fact or fiction, the respondents are barred from proceeding against the petitioner by way of trial by a General Court Martial under the provisions of Section 121 of the Army Act, 1950. Section 121 of the said Act is extracted hereunder:

"121. Prohibition of second trial :--When any person subject to this Act has been acquitted or convicted of an offence by a Court Martial or by a Criminal Court, or has been dealt with under any of the Sections 80, 83, 84 and 85, he shall not be liable to be tried again for the same offence by a Court Martial or dealt with under the said sections."

The petitioner further states that he has complied with the disciplinary order of the competent authority and deposited the amount directed by him i.e., Rs.13,530/-. The other pleadings in the writ petition are all on merits of the charges and do not deserve special mention or elaboration.

4. The first respondent filed counter-affidavit stating that the petitioner was not convicted or acquitted by a Court Martial or Criminal Court nor has been dealt with summarily u/s 84 of the Army Act, and hence the plea of second trial invoking Section 121 of the Army Act is unfounded. It is further stated that once a prima facie case has been established, depending on the gravity of the offence, trial by a Court Martial is ordered, and only during that course of action the aspect of guilt on the part of the writ petitioner will be decided either way. It is stated that coming to know about some misappropriation having been taken place in the issue of eggs to a local unit, a staff Court of inquiry was ordered to inquire into the circumstances under which 24,600 eggs were overdrawn by a local unit during the months of April and May, 1996, and basing on the finding and opinion of the Court of Inquiry, the Commander (Andhra Area), directed disciplinary action against the petitioner amongst others. It is further submitted that the Court of Inquiry had arrived at its findings after perusal of relevant documents and after examining various witnesses and such findings are the basis for the charge-sheet issued against the writ petitioner with a direction to be tried by General Court Martial. It is the contention of the respondent that para (g) of the Regulations of the Army relates to the discretionary power as to when cases have to be handed over to the Civil Police or when to hold Court of Inquiry, and since in the present case it was felt necessary, inquiry by Court Martial was ordered. Hence, there was no irregularity. It was further averred that the petitioner has not availed the alternative remedy available to him under the Army Act. Further the Army Act provides for an accused to raise all the pleas before the General Court Martial where the accused can engage an Advocate to defend him and a fair trial is always guaranteed to the accused before General Court Martial. In this context the respondent relies on a judgment of the Apex Court in Major G.S. Sodhi Vs. Union of India (UOI), .

5. The learned Counsel for the petitioner has ultimately made out two points for consideration before this Court.

(1) The petitioner was already awarded punishment by making him to march before the Commanding Officer, and on reprimanding him, further directed to pay an amount of Rs.13,200/-. Hence, he cannot be punished for the second time for the very same charges;

(2) As per the policy of the Central Government issued through Army Headquarters dated 26-11-1983, the competent authority has no jurisdiction to order the impugned proceedings of ordering to be tried by General Court Martial.

6. With regard to the first contention, the learned Counsel for the petitioner has not placed any material before this Court with regard to the alleged punishment already awarded by making him to march before the Commanding Officer and reprimanding him and directing him to pay a sum of Rs.13,200/-. Admittedly, the amount of Rs.13,200/- was paid by the petitioner. There is no record to prove this allegation and substantiate this point. Even assuming that the amount of Rs.13,200/- which amount is ordered to be recovered because of the misconduct on the part of the petitioner that does not mean that the petitioner is absolved from the charges under enquiry. Further, the petitioner did not elaborate about the mode of inquiry conducted in this regard which resulted in awarding the alleged punishment. Hence, this plea cannot be accepted.

7. With regard to the second aspect of jurisdiction, the petitioner contends that the Army Headquarters Letter No.35036/ AG/DV-I(P) dated 26-11-1993, which stipulates that trial by different yard sticks contravenes the principles of equity and justice. The letter reads as follows:

".....(In a case where Army Personnel, Civilians paid from Defence Budget and other civilians are involved trial by different yard sticks contravenes the principles of equity and justice)..... Therefore to ensure uniformity in the administration of justice the cases of Army Personnel may also be disposed of through administrative action. It is for strict compliance please....."

The learned Counsel for the petitioner further contends that in view of the above letter, the respondents are barred from proceeding only against the petitioner by way of trial by General Court Martial. Therefore, according to him, the respondents are expected either to hand over the case to civil administration for investigation and trial or dealt with it administratively, and they cannot be permitted to proceed with the trial of the petitioner by a General Court Martial.

8. In this context, it is necessary to peruse the counter-affidavit which reveals that para 903 (b) (i) of the Regulations of the Army postulates holding of inquiry at the discretion of the competent Financial Authority in these cases and in the instant case the COI and since the Court of Inquiry felt necessary, General Court Martial was ordered by the competent authority. Regulation 903(h) provides that the Competent Financial Authority will ensure that financial responsibility for losses is enforced and disciplinary action taken against personnel held responsible. Regulation 903(j) provides that "offences involving moral turpitude, fraud, culpable negligence involving financial loss will be tried by Court Martial and not disposed of summarily or by Administrative Action.

9. In view of the above provisions, it cannot be said that the petitioner was already awarded punishment which could not be substantiated in any manner and there is no jurisdiction for the competent authority to order an inquiry as

contemplated under the impugned proceedings. A perusal of charges obviously shows that the charges involve moral turpitude, fraud and mis-appropriation. The gravity of the misconduct has necessarily to be enquired into as contemplated under the Army Act and the Regulations and a reading of the relevant provisions of the Regulations would only show that the circumstances under which a disciplinary inquiry has to be ordered by a General Court Martial and the fact that cannot be ignored is that such a decision has been arrived at by the first respondent only on the basis of the report of the Court of Inquiry and in my opinion such a discretionary authority which has apparently been exercised having regard to the report of the Court of Inquiry, cannot be called as illegal, arbitrary or otherwise. Further Constitutional Courts shall not interfere in matters where a disciplinary inquiry is ordered unless the illegality in the administrative action is conspicuously made out.

10. In the light of the above discussion, I do not find any illegality or irregularity or lack of jurisdiction in the proceedings of the first respondent dated 10-3-1999 as endorsed by the third respondent dated 11-3-1999 which warrants interference by this Court. The writ petition therefore fails, and is accordingly dismissed. No costs.