

(2006) 10 DEL CK 0147

In the Delhi High Court

Case No : Writ Petition (C) No. 10620 of 2004

Brigadier J.K. Bansal

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 19-10-2006

Acts Referred:

Army Rules, 1954 — Rule 180, 22
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 4
Penal Code, 1860 (IPC) — Section 417, 69

Citation : (2006) 10 DEL CK 0147

Hon'ble Judges : Swatanter Kumar, J;G.S. Sistani, J

Bench : Division Bench

Advocate : K. Ramesh, for the Appellant; Maninder Acharya, for the Respondent

Judgement

Swatanter Kumar, J.—The petitioner was commissioned in Army Medical Corps as an Army Doctor on 31st August, 1975. Because of his dedicated performance, he was promoted to the rank of Brigadier. For his distinguished service of a high order, the petitioner was awarded Visishta Seva Medal. On 3rd September, 2003, the Director, Institute of Nuclear Medicines and Allied Sciences (INMAS) under the authority of Head Quarter, Western Command, had issued an order attaching the petitioner with Head Quarter Technical Group EME, Delhi Cantt. This was done pursuant to a complaint filed by one civilian Trilok Chand wherein it was alleged that the petitioner got admitted his daughter in Netaji Subhash Institute of Technology on the basis of false certificate about his disability under defense Quota rules of Delhi University. Correctness of this order was challenged by the petitioner by filing a civil writ bearing No. WP(C) No. 6131/2003 titled as 'Brigadier J.K. Bansal v. Union of India and Ors.', which was allowed vide judgment dated 18th May, 2004 During the pendency of the aforesaid writ petition, summery of evidence had been concluded and on 15th March, 2004, the respondents had sought time to look into the matter to consider the desirability of framing of charges. Time was allowed but during that period itself, General Court Martial Proceedings in relation to said article of charges were ordered by

the respondents. These actions of the respondents were considered by the Court as not fair and the Division Bench of this Court while quashing the order dated 3rd September, 2003, had also quashed the General Court Martial Proceedings initiated on the basis of articles of charges relating to the judgment and also directed the respondents to declassify the result of the petitioner for promotion of the petitioner in relation to promotion board held on 4th June, 2003 within one week from the date of pronouncement of the judgment. The Court also imposed a cost of Rs. 50,000/-. The charges, which were framed against the petitioner and for which the Court was ordered to be convened were as under:

CHARGE SHEET

The accused MR-03539P Substantive Colonel (Acting Brigadier) Jai Krishna Bansal, v. M of Institute of Nuclear Medicine and Allied Sciences, defense Research and Development Organisation, Delhi, Officer holding a permanent commission in the Regular Army, attached to HQ Technical Group EME, Delhi Cantt is charged with:

First Charge

COMMITTING A CIVIL OFFENCE, Army Act THAT IS TO SAY, CHEATING, Section 69 CONTRARY TO SECTION 417 OF THE INDIAN PENAL CODE.

In that he,

at Delhi, between 21 Mar and 06 Jul 2000, which came to the knowledge of competent authority to take action on 16 October 2002, while performing the duties of Medical Superintendent and Head, Thyroidology, Institute of Nuclear Medicine and Allied Sciences, committed cheating by intentionally inducing Netaji Subhash Institute of Technology, New Delhi, to admit his daughter named Ms. Manika Bansal, to Bachelor of Engineering Course for the Academic Session 2000-2001, against defense Quota in Priority IV, well knowing that she was not entitled to avail the benefit of said priority.

Second Charge

COMMITTING A CIVIL OFFENCE, Army Act THAT IS TO SAY, CHEATING, Section 69 CONTRARY SECTION 417 OF THE INDIAN PENAL CODE

In that he,

at Delhi, between 14 Apr and 19 Jul 2000, which came to the knowledge of competent authority to take action on 16 October 2002, while performing the duties as mentioned in the first charge above, committed cheating by intentionally inducing Netaji Subhash Institute of Technology, New Dehi to admit his daughter named Ms. Manika Bansal, to Bachelor of Engineering Course for the Academic Session 2000-2001, against defense Quota, by submitting an Entitlement Certificate signed by Maj Gen SK Dewan, Director Management Services of defense Research and Development Organisation, well knowing that his daughter was not entitled to avail the benefit as admissible vide Priority II

from defense Quota.

Third Charge

BEING AN OFFICER BEHAVING Army Act IN A MANNER UNBECOMING HIS
Section 45 POSITION AND CHARACTER (alternative to EXPECTED OF HIM the
second charge)

in that he,

at Delhi, between 14 Apr and 19 Jul 2000, which came to the knowledge of
competent authority to take action on 16 October 2002, while seeking an
Entitlement Certificate from Maj Gen SK Dewan, Director, Management Services,
DRDO, informed the latter that he had suffered a head injury on 21 Oct 1984,
while in operation `Blue Star'', which statement he well knew to be false.

Place : Delhi Cantt

Sd/- (KS Venugopal)

Date: 17 Mar 2004

Major General Commander HQ Technical Group EME TO BE TRIED BY GENERAL
COURT MARTIAL

Place: Delhi Cantt-10

Sd/- Dated: 18 Mar 2004

(Thomas Mathew) Maj Gen GOC Delhi Area

2. Obviously, the said article of charges and the proceedings taken in furtherance
thereto stood finally concluded by the judgment of the Division Bench of this
Court passed in WP(C) NO. 6131/2003 dated 18th May, 2004 The respondents
had in fact approached the Supreme Court against that judgment, which was
dismissed by the Supreme Court vide order dated 30th March, 2005. Vide order
dated 18th June, 2004, the respondents had ordered a Court of Inquiry against
the petitioner as well as the General Court of Inquiry in certain aspects. The
convening order reads as under:

CONVENING

ORDER

1. A C of I will assemble at a place, date and time to be decided by the Presiding
Officer to investigate the following allegations against MR-03539P Brg J K Bansal:

(a) The injury report of 27 Apr 89, in respect of MR-03539P Brig J K Bansal,
AMC, of INMAS, DRDO, New Delhi was forged by changing the nature of injury
from the originally recorded "MILD" under the word INTER Vertebral DISC
PROLAPSE, to "MODERATELY SEVERE" in its place by erasing the word "MILD"
with white fluid.

(b) MR-03539P Brig J K Bansal, AMC, has had himself declared as a case of 'Ataxia' attributable to military service, which would give him double benefit i.e. make himself eligible for full (100%) disability pension on retirement, and at the same time be fit for promotion, despite such disability (ies).

2. The composition of the Court will be as under:

(a) Presiding Officer - Maj Gen SK Jaswal, COS, 10 Corps

(b) Members:

1. - One Brig to be detailed by HQ 35 Inf. Bde.

2. - One Brig (AMC) to be detailed by Army Hosp (RandR).

3. The Court will also investigate into the following aspects:

(a) Why was the Officer downgraded in 2003 for injury sustained in 1984, while he was not even made to undergo a medical board in 1984?

(b) Why was the C of I not held immediately after the officer sustained injury on 07 Feb 1989?

(c) Why was the injury report (IAFY-2006) delayed for over a period of 21 months?

(d) Why was the back injury sustained in Feb 89 not detected by the promotion medical board held in Apr 89, for which the officer was subsequently downgraded to S1H1A3 (L) (T-24)P1E1 in Dec 89?

(e) When was the Officer upgraded to SHAPE-1 after being downgraded in Dec 89 and on whose authority?

4. The Court will also investigate the complicity of any officer/person who might be involved in any way and pinpoint the responsibility and culpability, if any, by the Army Officers/personnel involved.

5. The provisions of Army Rule 180 will be complied with, wherever, applicable.

6. Army Rule 181 will be complied with.

7. All adm arrange for the Court will be made by HQ 35 Inf Bde.

8. The C of I proceedings duly completed in all respects in quintuplicate will be submitted by 20 Jul 2004

Case No: 3335/C of I/Brig JK Bansal/A1 (AK Jha) Col HQ Delhi Area Col 'A' for GOC 18 JUN 2004

3. In the meanwhile, the petitioner was promoted to the rank of Major General in his corps. According to the petitioner, the earlier Court of Enquiry related to injury of brain concussion suffered by the petitioner in Operation Blue Star in Punjab in the year 1984 and a spinal injury in the year 1989. The present

proceedings initiated by the respondents relate to the same incidents and have been initiated by the respondents out of malice, bias and arbitrariness. The petitioner had also prayed for an interim stay from commencement and continuation of present proceedings initiated in furtherance to order dated 18th June, 2004, which was granted by the Court vide its order dated 9th July, 2004. The stay continues to operate.

4. The petitioner in this petition under Article 226 of the Constitution of India prays that the order dated 18th June, 2004 Constituting Court of Inquiry against the petitioner be quashed and the respondents be restrained from holding similar Court of Inquiry as the same being arbitrary and malicious.

5. As per the counter affidavit filed by the respondents, the present petition is wholly misconceived. It is stated that petitioner has committed two offences under Army Act and both acts of the petitioner have different ramifications. The two inquiries are independent and second inquiry is not liable to be either stayed or quashed by the Court. During the pendency of the writ petition, the respondents also filed an application under Order 39 Rule 4 CPC for vacation of the interim order by placing complete facts on record. It was stated in the application that a perusal of the chargesheet dated 17th March, 2003 reveals that the crux of the charges leveled against the petitioner were with regard to cheating committed by the petitioner intentionally including Netaji Subash Institute of Technology to admit his daughter under defense Quota seat for the academic session 2000-2001 while the order dated 18th June, 2006 related to interpolation of injury report dated 27th April, 1989 and declaring himself as a case of Ataxia attributable to military service, thus, trying to seek double benefits. The other part of the Court of Inquiry relates to General aspects and not to the petitioner as such. The proceedings are at the stage where the Court should not interfere as the respondents still have to look into the propriety of any disciplinary action to be taken against the petitioner. The Court of Inquiry is a Fact Finding Inquiry and it is intended to look into various aspects besides the conduct of petitioner.

6. The petitioner has contended that the order dated 18th June, 2004 is liable to be quashed and further proceedings should be stayed primarily on the following grounds:

(i) The principles of double jeopardy are attracted in the present case as the charges framed by the respondents in the first Inquiry are squarely covered and concluded by the judgment of the Court dated 18th May, 2004 and the Court of Inquiry particularly involving the petitioner on somewhat similar issues is not permissible.

(ii) The second Inquiry is result of malice, bias and arbitrariness on the part of the respondents.

(iii) The charges as framed are no offence in the eyes of law and in any case the petitioner is neither author nor involved in such documents as they have been

prepared by the competent authorities. In other words, he has nowhere recorded the nature of the injuries nor has declared himself as a case of Ataxia attributable to military service with an attempt to gain double benefits. These proceedings were prepared by the Medical board.

7. Besides relying upon the judgments of the Supreme Court in the cases of Aligarh Muslim University and Others Vs. Mansoor Ali Khan, and Bhagwan Das Sita Ram, H.U.F. represented by its Karta Sita Ram Vs. Commissioner of Income Tax , Lucknow (U.P.), the petitioner has also filed photocopies of certain medical reports in support of his pleas.

8. As far as the first contention of the petitioner is concerned, we are not impressed with the said contention. The chargesheet and convening order dated 18th June, 2004, is entirely distinct and different than the first chargesheet served upon the petitioner. In the first chargesheet, the charge is related to performance of duty of the petitioner as Medical Superintendent of the Institute of Nuclear Medicine and Allied Sciences and cheating by inducing Netaji Subhash Institute of Technology to admit his daughter to Bachelor of Engineering Course for the Academic Session 2000-2001 against defense quota with the knowledge that she was not entitled to get admission. It is also stated that the medical certificate signed by the Director of the Institute was again an act of cheating or intentional misleading as he knew that his daughter was not entitled to such certificate. The third charge was with regard to declaration that on 21st October, 1984 the petitioner had suffered head injury in operation Blue Star, which was not correct.

9. The present two article of charges are nowhere related to the admission of the daughter of the petitioner to Bachelor of Engineering Course nor with regard to entitlement certificate. As such, the contention of the petitioner that these two article of charges are fully covered by the previous charge sheet or by the judgment of the Court dated 18th May, 2004 attracting the principles of double jeopardy cannot be said to be correct. However, one element which to some extent is common is the injury report in relation to head. It is also not the subject matter of the subsequent chargesheet. Thus, the principles of double jeopardy do not arise.

10. The present chargesheet relates to injury report dated 27th April, 1989 i.e. converting of word "Mild" to "Moderately Severe" under the words "Inter Vertebral Disc Prolapsed by erasing the word `Mild" with white fluid. Secondly that the petitioner had declared himself to be a case of `Ataxia" with 100% disability attributable to military service so that he could get disability pension upon retirement. Both these charges are strictly not covered by the first chargesheet but the Court must notice that it is not possible to completely rule out the element of bias in these article of charges. However, para 3 relates to conduct a general enquiry and is not specifically directed towards the petitioner. It is other officer, who may be responsible for the acts and deeds stated to have been committed and which are sought to be looked into by the authorities. As far

as the two article of charges against the petitioner are concerned, under para 1(a) and 1(b), the petitioner had offered a reasonable reply. According to the petitioner, he is not the author of any of the documents and they have been prepared by the respective Medical Boards and Medical Records clearly show that it is the doctors, who have declared him as a case of Cerebella Ataxia. He has annexed copies of the Medical Record in that regard. The respondents had also produced certain original record before the Court during the course of hearing and the form, which is stated to have been interpolated by the petitioner by converting the word `Mild" to "Moderately Severe". We may notice that in the form produced before the Court as well as form produced by the petitioner, none of them bear the white fluid as stated in the charge. There is typing and reverse of the page does indicate the word mild. These were recorded as back as on 27th April, 1989. The Medical Board Proceedings dated 27th April, 1989 the disease of the petitioner reflects as `Inter Vertibral Disc Prolapse" while the Medical Board Proceedings dated 8th November, 1984, reflects that the petitioner was observed for a close head injury. These are entirely based upon the record of the respondents and the respondents are expected to look into these records before directing any inquiry against the petitioner.

11. It cannot be disputed that provisions of Rule 180 of the Army Rules, 1954 contemplates an inquiry which could be specifically or even general in nature. It is in the discretion of the authorities whether they wish to conduct a fact finding inquiry under Rule 180 or directly take recourse to the provisions of Rule 22 of the said Rules but wherever the authorities decide to invoke the aforesaid provisions of Rules, full opportunity has to be granted to such person. In the Order dated 18th June, 2004, we have been informed that there would be due compliance of provisions of Rule 180 in the case of petitioner. There is an accepted practice in the Army that where there are specific complaint against the officer/member of the force, normally the authorities would invite the comments of such officer before taking recourse even to the provisions of Rule 180. This was fairly admitted at the bar by both the counsel appearing for the parties. The present case is one where under para 3, the scope of inquiry is general in nature as it intends to find out errors, if at all, committed by the officers other than the petitioner and working of the Department. As far as two articles in para 1(a) and 1(b) are concerned, the petitioner had offered an Explanation supported by the record of the respondents and it is clear from the record as well as counter affidavit filed by the respondents that the competent authority had not applied its mind to this aspect of the case. The petitioner has risen to the rank of Major General through the process of army and now to pick up an article of charge of the nature afore- referred, which relates to the year 1989 without any proper application of mind may not be just and fair. Where other members of the force are involved or their conduct is likely to be affected, the authority must act with great caution so as to prevent prejudice and demoralization of the members of the force.

12. Having given our considered view to the facts of the present case, on the

basis of record produced, we would dispose of this writ petition with following directions:

(a) In respect of two Articles i.e. 1(a) and 1(b) as stated in order dated 18.6.2004, the petitioner would submit his reply to the competent authority within four weeks from the date of pronouncement of this judgment. He would be at liberty to annex such documents as he may have in his power and possession. He could also refer to the record of the respondents, which would even be produced in Court.

(b) The competent authority, after consideration of such a reply, may take a decision whether or not to conduct the inquiry as contemplated under Rule 180 of the Rules against the petitioner. This order would be served upon the petitioner and will not be given effect to at least for a period of two weeks from the date it is served upon the petitioner.

(c) The convening Order and the Court of Inquiry as directed under order dated 18th June, 2004 in relation to other persons and/or as the inquiry is general in its nature would commence after the order has been passed and communicated to the petitioner in terms of above directions.

(d) We do express our pious hope that the competent authority (which is now different than the one, who passed the order dated 18th June, 2004 as the petitioner has promoted to the rank of Major General) would now apply its mind in just and fair manner.

13. In the facts and circumstances of the case, we left the parties to bear their own costs.