
(2005) 07 UK CK 0039
In the Uttarakhand High Court
Case No : Writ Petition No. 1436 of 2001

Capt. V.N. Saxena

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 14-07-2005

Acts Referred:

Army Act, 1950 — Section 122, 19
Army Rules, 1954 — Rule 14, 14(2), 14(3), 14(4), 182
Constitution of India, 1950 — Article 14, 226

Citation : (2005) 3 SLJ 196

Hon'ble Judges : Prafulla C. Pant, J; P.C. Verma, J

Bench : Division Bench

Advocate : T. Punvani and Rajendra Dobhal, for the Appellant; Ashok Agarwal, Learned Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Prafulla C. Pant, J.—By means of this writ petition, moved under Article 226 of Constitution of India, the petitioner has sought direction in the nature of certiorari, quashing the impugned order dated 13.11.1990, whereby his services, dismissed from Indian Army, by the respondents.

2. Brief facts of the case, as narrated in the writ petition, are that the petitioner entered in the Indian Army as 2nd Lieutenant with service No. IC 39774Y and was posted as Officiating Troup Commander in 1481 Light Regiment at Galuthi. On 2.9.1983, while petitioner was serving on said post, a theft of Rs. 14,000/-, took place in the regiment with regard to which Gnr Udai Singh was one of suspects. On instructions of Officiating Commanding Officer Maj. Jagga Singh, the petitioner along with 2/Lt. K.S. Paul, pursued the matter, and on pointing out of Gnr Udai Singh (since deceased), recovered Rs. 12,000/-out of the theft amount. The said Gnr was suspected for the reason that after the theft was committed, he disappeared from the unit, without intimating anyone. On inquiry, it was found that said Gnr had gone to Military Hospital on a pretext that he was

suffering from stomachache. But on inquiry, it was found that no person with the name of said Gnr was admitted in the hospital on said date till 3:15 P.M. But later on, suddenly he got himself recorded as admitted at 5:55 P.M. and remained in the hospital till 5.9.1983, when nothing was found clinically wrong with him. Again, after a week on 12.9.1983, Mr. Udai Singh, got himself admitted in the Military Hospital with a complaint that he has pain in abdominal region due to renal failure. On which, he was shifted to Military Hospital, Udham Singh Nagar and thereafter referred to Delhi. Later on, while being shifted to Delhi, he expired. With Gnr Udai Singh (deceased), Gnr Gyan Singh was also a suspect and after a summary Court Martial, he was found guilty and sentenced with punishment. Meanwhile due to the death of the Gnr Udai Singh, Court inquiry was held against the petitioner as well as eight other army personnel's viz. Maj. Jagga Singh, 2/Lt. K.S. Paul, Hav Jeet Ram, Hav Sohan Lal, Naik S.I.K. Nair, L/Nk S.S. Kawre, L/Nk Ram Pratap and L/Nk Ram Avtar. The allegations against all the above personnel, including the petitioner was that they were responsible for beating Gnr Udai Singh and using 3rd Degree method against him, which ultimately led to his death. A charge sheet dated 19.4.1985, was issued against the petitioner and proceedings were initiated for recording summary of evidence. On the basis of proceedings in summary of evidence, a show cause notice dated 31.5.1986, was served on the petitioner, wherein he was charged with the allegation that he did not ensure that Gnr Udai Singh who was being questioned for alleged theft, not manhandled or ill treated. A reply was sent by the petitioner on 2.6.1986 to said notice. On conclusion of proceedings of summary of evidence, the petitioner was informed vide letter dated 20.10.1986 (copy Annexure-5 to the writ petition) that the disciplinary case against him and other two officers has been closed. Suddenly in May, 1989, the petitioner received another show cause notice, purported to have been issued u/s 19 of Army Act, 1950 read with Rule 14 of Army Rules, 1954 calling upon the petitioner to show cause as to why his services be not terminated on the ground which were identical to those as contained in charge sheet dated 19.4.1985: It is pertinent to mention here that no Court Martial was held in the matter. On 25.7.1989, a reply to above mentioned show cause notice was also given by the petitioner and ultimately vide order dated 13.11.1990, the petitioner was dismissed from services (copy Annexure-1 to the writ petition). The said order has been challenged, before this Court, on the ground that the impugned order is misconceived, arbitrary and in gross violation of the principle of natural justice. It is also alleged that since the contents of show cause notice earlier after charge sheet dated 19.4.1985 and show cause notice dated 15.5.1989, are identical and in the proceedings of summary of evidence, petitioner was earlier, not found guilty nor any Court Martial was held, as such the impugned order, three years after the close of summary of proceedings, is bad in law, as it was not open for the respondent No. 2 Chief of Army Staff, to take shelter of Rule 14 of Army Rules, 1954, in such circumstances. It is further alleged that no evidence whatsoever was found in the proceedings for summary of evidence, implicating the petitioner nor thereafter new material was there on the basis of which fresh

show cause notice u/s 19 of Army Act, 1950 or order under Rule 14 of Army Rules, could have been issued. It is also alleged in the writ petition that recovery of theft money was made from Gnr Udai Singh on 5.9.1983, while he got admitted on 12.9.1983, complaining pain in abdominal region due to renal failure. As such there was no nexus between the recovery of money and the death of Gnr Udai Singh. It is also alleged by the petitioner that prior to the incident of theft also, Gnr Udai Singh had been hospitalised between 10.8.1983 to 27.8.1983 on the complaint that he was suffering from Amoebic Typhilitics. Therefore, dismissal of petitioner from the services is totally misconceived, which has been sought to be quashed.

3. On behalf of the respondents, a counter affidavit was filed by Col. Y.S. Bisht in which particulars as to petitioner's entry in the army, his posting and impugned order of dismissal, passed against him are not denied. It is stated in the counter affidavit that initially there were four suspects, namely Hav Kartar Singh, Hav Narottam Lal, Gnr Udai Singh and Gnr Gyan Singh in the matter of theft to Rs. 14,000/- from the regiment. It is also stated in the counter affidavit that on 3.9.1983, at dinner time, Maj. Jagga Singh, Officiating Commanding Officer, ordered petitioner and 2/Lt. K.S. Paul, to get the four suspects thrashed out so that the theft can be worked out. On 4.9.1983, Gnr Gyan Singh was taken to Balnoi Mor and was thrashed to obtain his confession. It was done under the orders of the petitioner. It is further stated in the counter affidavit that Gnr Udai Singh was brought to Unit Lines on 5.9.1983, in hospital dress with hands tied behind his back. On his arrival, on the same day, Mandir Parade was held at about 18.00 hours. It is further stated in said affidavit of Col. Bisht that on orders of petitioner, unauthorised punishment of beating was given to Gnr Udai Singh (deceased), Gnr Gyan Singh by Hav Sohan Lal, Hav Jeet Ram, N.K. S.I.K. Nair, L.N.K. S.S. Kaware and L.N.K Ram Avtar. It is alleged that Gnr Gyan Singh and Gnr Udai Singh were tortured and Gnr Gyan Singh (No. 14344346Y), gave details regarding torture of hanging of Gnr Udai Singh upside down by a rope and inserting bottle in his anus, which ultimately resulted in recovery of substantial amount of stolen money. He further gave details that when he apprehended the similar torture, so he confessed and gave remaining amount, to avoid the brutal torture. However, in the counter affidavit, it is admitted that Gnr Udai Singh was admitted again in the hospital on 12.9.1983 and thereafter on 15.9.1983, he was put to a list of "Acute Renal Failure". On 17.9.1983, he was lifted by helicopter and later when was being sent to Delhi on 18.9.1983, he died. The probable cause of the death in the post mortem report, as stated in the counter affidavit is that "death could have been due to renal failure as diagnosed clinically". The counter affidavit, filed on behalf of the respondents, further discloses that according to the surgeon, the renal failure could have been due to the reasons: (a) Shock due to peripheral circula failure. (b) Crush syndrome (multiple injuries). (c) Kidney failure.

As per the post mortem report, the external injuries were:- "multiple old partly healed up abrasions with scab formulation sealtered over left forehead, both

wrists, at leg and ankle at places and on the back at places". In Para 21 of the counter affidavit, it is stated that petitioner did not disclose regarding the act of beating, to Commanding Officer Lt. Col. G.S. Attariwala. It is also stated that Court of Inquiry was presided by Col. D.S. Sachar on 28.10.1983. As per the counter affidavit, involvement of the petitioner in the beating of Gnr Udai Singh as well as Gnr Gyan Singh was established. However, it took long time to filter out evidence and processing the case vis a vis other officers, allegedly involved in the matter. Meanwhile, period of limitation provided of three years for initiation of trial by General Court Martial, under Army Act, 1950 passed, and no trial by Court Martial was possible. As such the administrative action was taken u/s 19 of Army Act, read with Rule 14 of Army Rules, 1954. Lastly, it is stated in the counter affidavit that impugned order is just, proper and not in violation of any of the laws.

4. In the rejoinder affidavit, the petitioner has reiterated the assertions made in the petition. It is stated in Para 16 of the rejoinder affidavit that it is wrong to say that any charge or guilt was found established against the petitioner, as the petitioner was even promoted, after the proceedings of summary of evidence were dropped. Relying on Rule 182 of Army Rules, 1954, it is stated in the rejoinder affidavit that the proceedings of the Court of Inquiry are not admissible in evidence. A supplementary affidavit was also filed on behalf of the petitioner, wherein he has stated that even after he was dismissed from service, he was awarded medal for his meritorious service.

5. We heard learned Counsel for the parties and perused the entire record.

6. Before further discussions, it is pertinent to mention here relevant provisions:

"Section 19--Termination of Service by Central Government--Subject to the provisions of this Act and the rules and regulations made thereunder the Central Government may dismiss, or remove from the service, any person subject to this Act.

"Rule 14--Termination of Service by the Central Government on account of misconduct--(1) When it is proposed to terminate the service of an officer u/s 19 on account of misconduct, he shall be given an opportunity to show cause in the manner specified in Sub-rule (2) against such action:

Provided that this sub-rule shall not apply:

(a) where the service is terminated on the ground of misconduct which has led to his conviction by a criminal Court; or

(b) where the Central Government is satisfied that for reasons, to be recorded in writing, it is not expedient or reasonably practicable to give to the officer an opportunity of showing cause.

(2) When after considering the reports on an officer's misconduct, the Central Government or the Chief of the Army Staff is satisfied that the trial of the officer

by a Court-martial is inexpedient or impracticable, but is of the opinion, that the further retention of the said officer in the service is undesirable, the Chief of the Army Staff shall so inform the officer together with all reports adverse to him and he shall be called upon to submit, in writing, his explanation and defence:

Provided that the Chief of the Army Staff may withhold from disclosure any such report or portion thereof, in his opinion, its disclosure is not in the interest of the security of the State.

In the event of the explanation of the officer being considered unsatisfactory by the Chief of the Army Staff, or when so directed by the Central Government, the case shall be submitted to the Central Government, with the officer's defence and the recommendation of the Chief of the Army Staff as to the termination of the Officer's service in the manner specified in Sub-rule (4).

(3) Where, upon the conviction of an officer by a criminal Court, the Central Government or the Chief of the Army Staff considers that the conduct of the officer which has led to his conviction renders his further retention in service undesirable a certified copy of the judgment of the criminal Court convicting him shall be submitted to the Central Government with the recommendation of the Chief of the Army Staff as to the termination of the officer's service in the manner specified in Sub-rule (4).

(4) When submitting a case to the Central Government under the provisions of Sub-rule (2) or Sub-rule (3), the Chief of the Army Staff shall make his recommendation whether the officer's service should be terminated, and if so, whether the officer should be :

- (a) dismissed from the service; or
- (b) removed from the service; or
- (c) compulsorily retired from the service.

(5) The Central Government after considering the reports and the officer's defence, if any, or the judgment of the criminal Court, as the case may be, and the recommendation of the Chief of the Army Staff, may:

- (a) dismiss or remove the officer with or without pension or gratuity; or
- (b) compulsorily retire him from the service with pension and gratuity, if any, admissible to him.

Rule 182--Proceedings of Court of inquiry not admissible in evidence--The proceedings of a Court of inquiry, or any confession, statement, or answer to a question made or given at a Court of inquiry, shall not be admissible in evidence against a person subject to the Act, nor shall any evidence respecting the proceedings of the Court be given against any such person except upon the trial of such person for wilfully giving false evidence before that Court:

Provided that nothing in this rule shall prevent the proceedings from being used

by the prosecution or the defence for the purpose of cross-examining any witness."

Procedure as to investigation of charges and remand for trial are provided in Chapter V of the Army Rules, 1954.

7. Admittedly, there had been an incident of theft in the regiment in which the petitioner was posted. It is also not disputed that Gnr Udai Singh was one of the suspects. It is also not disputed between the parties that on instructions of Maj. Jugga Singh, Officiating Commanding Officer, the petitioner was entrusted to work out the theft case. From the affidavits, counter affidavits and papers on record, it is also clear that the cause of the death of the suspect, about 13 days after the recovery of the stolen money, as per the post mortem report, was renal failure. The charge against the petitioner, as mentioned in the Annexure-2 (copy of charge sheet) is that to extract confession from the suspect, he resorted to beating of Gnr Udai Singh and used criminal force in doing so. It is also established that the petitioner gave his reply to said charge and show cause notice issued earlier in the matter. The copy of letter No. 77990/MSII dated 20.10.1986 (copy Annexure 5 to the writ petition), issued on behalf of the Military Secretary, shows that the petitioner was informed that the disciplinary case against him has been closed. Contents of Para 2 of the said letter are being reproduced below:

"The disciplinary case against IC-14245 Maj. Jagga Singh, Capt. V.N. Saxena (IC-39774) and IC-41332 2/Lt. K.S. Paul, has been closed and therefore the restrictions imposed on these officers vide our letter under reference are hereby removed."

8. The petitioner has alleged, on the basis of aforesaid letter, in Para-15 of the writ petition that the proceedings were dropped against him. In reply to said para, in Para 36 of the counter affidavit, only this much has been stated "that the contents of Para No. 15 of the writ petition has already been replied in the proceeding paragraphs." However, we fail to find any explanation in the counter affidavit, as to how after closing the disciplinary proceedings, on same charge another show cause notice was issued in the year 1989. It is not a case that the matter against the petitioner was remanded for trial by Court martial. After closing of inquiry, as a result of proceedings of summary of evidence and thereafter promoting the petitioner to the rank of Captain, the respondents required to show the extra material or the another misconduct due to which the petitioner was served with fresh show cause notice in the year 1989. The contents of show cause notice dated 15.5.1989 (copy Annexure-6 to the writ petition), shows that the respondents are harping the same tune, again in fresh show cause notice, regarding which the proceeding had already been dropped against him, in the year 1986 (after recording evidence and perusing the reply of the officer). The learned Counsel for the respondents failed to show any extra material or any new development due to which cause for an administrative action arose after six years to dismiss the petitioner from services on the same ground.

The excuse given in the counter affidavit regarding the fact that it took time in filtering the evidence to scrutinise role of officers, does not appear to be plausible. Had the petitioner been found guilty in inquiry, instead of holding Court Martial. Respondent No. 2 could have proceeded u/s 19 of the Army Act, 1950 read with Rule 14 of The Army Rules, 1954, but it is not the case here. The officer along with other officers was not found guilty rather he was informed that the proceedings are closed against him. Not only this, he was promoted to the post of Captain. Then suddenly in 1989, another show cause notice was issued in respect of the same incident and petitioner's services were terminated. The impugned order of dismissal, passed on such charge, appears to be totally arbitrary and violative of Article 14 of Constitution of India.

9. In Major Radha Krishan Vs. Union of India and Others, , the Hon''ble Apex Court has held that where the trial by Court-Martial against the offences committed by an army personnel was barred by limitation u/s 122 of the Act, the summary procedure for termination under Rule 14(2) of the Rules, cannot be followed on the ground that the trial by Court -Martial was inexpedient or impracticable. Such a satisfaction that the trial was inexpedient or impracticable can be arrived only at a time when trial by a Court Martial is permissive or possible. In view of said principle of law and for the reasons as discussed above by us, the impugned order by which the services of the petitioner were dismissed, is liable to be quashed. Accordingly the writ petition is allowed. The impugned order is quashed. The petitioner shall be entitled to the consequential benefits, admissible (as of right) to him under the rules treating him Captain, the post he held on the date when the impugned order was passed. No order as to costs.