
(2001) 07 DEL CK 0026
In the Delhi High Court
Case No : Criminal W.P. No. 590 of 1991

Chandra Kumar	Vs	APPELLANT
State		RESPONDENT

Date of Decision : 23-07-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 95 DLT 448

Hon'ble Judges : R.S. Sodhi, J

Bench : Single Bench

Advocate : S.C. Maheshwari, Sandhya Goswami and Jabar Singh, for the Appellant; Jyoti Singh, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Sodhi, J.—Criminal Writ Petition 590/91 seeks to challenge the proceedings of a General Court martial, its order and sentence dated 4.6.1990. The grievance of the petitioner is that the Court Martial is void ab-initio on the grounds that it has been convened by an officer against whom statutory complaint was pending and that the officers manning the Court are subordinate to the Convening Officer, Therefore, the proceedings were biased. He, further, challenges the Court Martial on the ground that the defense was not allowed to lead evidence, inasmuch as he was not allowed to produce the transporter who transported his luggage and Maruti Car No. DDU4101 from Bangalore to Udhampur. As also no one was produced from the check-post to establish that truck Nos. JKQ 3285 and JKR 9587 crossed the barrier carrying the baggage as also the car of this petitioner. Another grievance of the petitioner is that the charge framed against him qua receiving LTC twice in the same year has already been adjudicated upon and this petitioner was punished. Therefore, he could not have been tried for the same offence again.

2. The facts of this case are that the petitioner was sought to be tried by a General Court Martial on the following charges:

First charge "SUCH OFFENCE AS IS MENTIONED IN CLAUSE

Army Act (f) OF SECTION 52 OF THE ARMY ACT WITH INTENT TO

Section 52(f) DEFRAUD,

in that he,

at field, on 30th Jan. 89, with intent to defraud submitted a claim of Rs. 35,270/- in respect of transportation of his household luggage and car in civil truck Nos. JKQ 3285 and JKR 0587 respectively on permanent posting from Bangalore to Udhampur well knowing that his such luggage and car had not been so transported.

Second Charge "SUCH AN OFFENCE AS IS MENTIONED IN CLAUSE

Army Act (f) OF SECTION 52 OF THE ARMY ACT WITH INTENT TO

Section 52(f) DEFRAUD,

in that he,

at field, on 18th Jan. 89, with intent to defraud submitted Leave Travel Concession (LTC) claim for year 1988 to CDA(O) Pune, well knowing that he had already availed the LTC for the year 1988.

Third change "AN ACT PREJUDICIAL TO GOOD ORDER AND MILITARY

Army Act DISCIPLINE.

Section 63

in that he,

at filed, on 17th Nov. 1988, improperly utilised for himself IAFT-1752-PA/53-869651 dated 15th Nov. 1988, single/return journey railway warrant from Jammu to New Delhi and back."

3. The petitioner at the first instance made a grievance as to the constitution of the Court saying that the officers manning the same were subordinate to the Convening Officer against whom the petitioner had filed a statutory complaint and, Therefore, he had no confidence in the Court. This objection was adjudicated upon by the Court and over-ruled vide its order dated 15th March, 1990. The petitioner chose not to carry his grievance any further instead participated in the proceedings till the very end. He challenged the same only by way of this writ petition in 1991, where inter alias he took grounds of bias based on his objections taken by him earlier before the Court.

4. I have heard learned Counsel for the petitioner who has strenuously argued that once the petitioner had shown lack of confidence in the composition of the Court, it was incumbent upon the Convening Officer to have attached him to another unit. Learned Counsel has also submitted that the defense of the petit

(SIC) was handicapped inasmuch as a biased Court had not allowed him to produce (SIC) witness essential to his case.

5. I have carefully examined the record of the case. Undoubtedly, it is (SIC) within the purview of this Court to examine the sufficiency of evidence add (SIC) However, the correctness of the Court Martial, procedural error or any lapse (SIC) fairness could always be enquired into by way of judicial review. I have been (SIC) through the record of the case by learned Counsel for the respondent (SIC) submitted that the statutory complaint alleged to have been made by the petit (SIC) was against Commander 71, Sub Area, who at that time was Brig. I.S. Sahni (SIC) the Convening Officer of the present Court Martial was Brig. J.S. Phoolka. There (SIC) the contention of the learned Counsel that prejudice has been caused to him (SIC) convening of the Court is misfounded. From the record it appears that (SIC) contention of the learned Counsel for the respondent is correct and that (SIC) petitioner's basis of this objection is factually erroneous. The next attack (SIC) learned Counsel for the petitioner is to his denial of defense inasmuch as transported who transported his goods was not examined. That also is factually incorrect. (SIC) 26, Sh. Satinder Pal Singh s/o Sh. Janak Singh has been produced by the petit (SIC) in his defense as the transporter who is alleged to have transported his goods (SIC) witness categorically states that only a receipt for transporting of goods was (SIC) but no goods were in fact transported. The Toll in charge has been examined as (SIC) 13 who states that the trucks alleged to have carried the goods of the petitioner (SIC) namely, JKQ 3285 and JKR 9587 did not cross the check-posts of the (SIC) Therefore, this contention of the petitioner is also baseless. The next contention namely that he has been punished twice for use of LTC is denied by the respondent (SIC) and the petitioner has not placed on record any order by which he was punished (SIC) the first instance. This also to my mind holds no water.

6. Having, Therefore, examined the record of the case, in order to ascertain (SIC) fairness of the proceedings as also the legality thereof, I am of the firm opinion (SIC) the proceedings of the Court Martial sought to be challenged in this writ petitioner (SIC) suffers from no infirmity that calls for interference by the Court.

7. CrI. Writ Petition 590/1991 is dismissed.

8. Writ Petition dismissed.