
(2004) 08 AHC CK 0044
In the Allahabad High Court
Case No : C.M.W.P. No. 1126 of 1992

Chandra Prakash Singh

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 27-08-2004

Acts Referred:

Army Act, 1950 — Section 34, 35, 36, 37, 38

Citation : (2004) 5 AWC 5107

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : Nazar Bokhari and Shamimuddin Khan, for the Appellant; Ajit Kumar Singh and Rai Anandi Prasad Srivastava and V.K. Singh, S.S.C. and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

R.B. Misra, J.—Heard Sri Nazar Bokhari, learned Counsel for the Petitioner and Sri Rai Anandi Prasad Srivastava, holding brief of Sri Ajit Kumar Singh, learned Counsel for the Respondent.

2. In this petition prayer has been made to quash the order dated 2.8.1991 (Annexure-6 to the writ petition), whereby the Petitioner has been punished by awarding reduction in rank, rigorous imprisonment for one month and dismissal from service.

3. The brief facts necessary for adjudication of the case as emerges from the pleadings of the parties are that the Petitioner was enrolled in the Army on 4th September, 1974 and had served in 190-Field Regiment from 9.3.1980 to 1.8.1991. The Petitioner was promoted to the rank of Naik on 6.3.1983 and as a Havaldar on 19th May, 1988. Soon after his promotion the Petitioner sought premature discharge by making application on the following two grounds:

(a) Wife and mother of the Petitioner were ill;

(b) There was nobody to look after the children and landed property.

4. The application of the Petitioner for premature discharge was turned down on the following grounds:

(i) The Petitioner immediately after his promotion as a Havaldar sought premature discharge, whereas, he was to serve for 24 years and he had not submitted this application as a Naik;

(ii) Cause of the Petitioner was not substantiated by any evidence or documents;

(iii) The application of the Petitioner did not have requisite verification and recommendation of DSS and A Board, i.e., District Soldier, Sailor and Airman Board;

(iv) At relevant point of time his trade, i.e., Gunner trade was heavily deficient.

5. The Petitioner had also put in a second application on 24th April, 1991 on similar lines as indicated earlier, here also he had not attached any verification or recommendation by the concerned Board. The Petitioner had also written a letter to the Commander, 15, Artillery Brigade over-passing official channels, however, after sympathetic consideration it was indicated that large number of persons from the trade of the Petitioner were coming forward and there was waiting list of premature discharge, therefore, the same could not be granted. Such decision was conveyed to the Petitioner on 15th May, 1991. After such refusal of premature discharge the conduct of the Petitioner deteriorated, therefore, for several lapses and dereliction on his part, in view of the procedure prescribed Court martial was conducted against the Petitioner and by the impugned order dated 2.8.1991 awarded the punishments as indicated below:

(i) Overstayed leave from 17th June, 1987 to 21st June, 1987 (period of absence 5 days). The individual was tried under Army Act Section 39(b) and awarded severe reprimand.

(ii) Overstayed leave from 15th July, 1989 to 31st July, 1989 (period of absence 17 days). The individual was tried under Army Act Section 39(b) and awarded 5 days pay fine.

(iii) Overstayed leave from 25th April, 1990 to 4th July, 1990 (period of absence 71 days). The individual was tried by summary Court martial under Army Act Section 39(b) and reduced from Havaldar to Naik.

(iv) On the last occasion the individual overstayed leave from 9th May, 1991 to 12th July, 1991 (period of absence 65 days). For this, the individual was tried by summary Court martial and awarded the following:

(a) Reduced to rank.

(b) Rigorous imprisonment one month in Civil Prison.

(c) Dismissed from the Army with effect from 2nd August, 1991.

6. In reference to the offences as indicated u/s 39(b) of the Army Act, 1950 (hereinafter in short called as the "Act"), that without sufficient cause for overstaying leave granted an individual is liable to suffer imprisonment to the extent of three years or less, which according to the Petitioner he had already suffered in view the averments made in paragraph 22 of the writ petition. According to the Petitioner in view of Section 72 of the Act the multiple punishment as indicated u/s 71 of Chapter VII of the Act cannot be awarded to the Petitioner. No other point has been pressed for.

7. In order to deal the situation, relevant provisions of Sections 39(b), 71, 72 and 73 of Chapter VII of the Act are enumerated as under:

39. Absence without leave.-Any person subject to this Act who commits any of the following offences, that is to say,-

- (a) absents himself without leave, or
- (b) without sufficient cause overstays leave granted to him, or
- (c) * *
- (d) * *
- (e) * *
- (f) * *
- (g) * *

shall, on conviction by Court-martial, be liable to suffer imprisonment for a term which may extend to three years or such less punishment as is in this Act mentioned.

71. Punishment awardable by Courts-martial.-Punishments may be inflicted in respect of offences committed by persons subject to this Act and convicted by Courts-martial, according to the scale following, that is to say,-

- (a) death;
- (b) transportation for life or for any period not less than seven years;
- (c) imprisonment, either rigorous or simple, for any period not exceeding fourteen years;
- (d) cashiering, in case of officers;
- (e) dismissal from service;
- (f) reduction to the ranks or to a lower rank or grade or place in the list of their rank, in the case of warrant officers; and reduction to the ranks or to a lower rank or grade, in the case of non-commissioned officers:

Provided that a warrant officer reduced to the ranks shall not be required to

serve in the ranks as a sepoy;

(g) forfeiture of seniority of rank in the case of officers, junior commissioned officers, warrant officers and non-commissioned officers; and forfeiture of all or any part of their service for the purpose of promotion, in the case of any of them whose promotion depends upon length of service;

(h) forfeiture of service for the purpose of increased pay, pension or any other prescribed purpose;

(i) severe reprimand or reprimand, in the case of officers, junior commissioned officers, warrant officers and non-commissioned officers;

(j) forfeiture of pay and allowances for a period not exceeding three months for an offence committed on active service;

(k) forfeiture in the case of a person sentenced to cashiering or dismissal from the service of all arrears of pay and allowances and other public money due to him at the time of such cashiering or dismissal;

(l) stoppage of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good.

72. Alternative punishment awardable by Court-martial.—Subject to the provisions of this Act, a Court-martial may, on convicting a person subject to this Act of any of the offences specified in Sections 34 to 68 inclusive, award either the particular punishment with which the offence is stated in the said sections to be punishable, or, in lieu thereof, any one of the punishment lower in the scale set out in Section 71, regard being had to the nature and degree of the offence.

73. Combination of punishments.—A sentence of a Court-martial may award in addition to, or without any one other punishment, the punishment specified in Clause (d) or Clause (e) of Section 71 and any one or more of the punishments specified in Clauses (f) to (l) of that section.

8. In the present case, the Petitioner was held guilty of overstaying leave in view of Section 39(b) of the Act, for which after being convicted by Court-martial he was given punishment of one month's rigorous imprisonment as indicated u/s 39(b) itself. In respect of awarding reduction in rank and dismissal from army apart from the punishment given as indicated u/s 39(b) in view of Section 73 of the Act, in addition to above punishment specified in Clause (d) or Clause (e) of Section 71 as well as any one or more punishment as specified in Clauses (f) to (l) of Section 71 of the Act could be awarded over the Petitioner. From the reading of Section 39 and provisions of Section 71, 72 and 73 of the Act it becomes clear that the above-indicated punishments have rightly been awarded to the Petitioner within the purview of the Act.

9. I have heard learned Counsel for the parties. It is clear that for the offences as indicated u/s 39(b) of the Act the Petitioner apart from being put in imprisonment could be awarded more punishment as indicated in Clause (d) or

Clause (e) of Section 71 of the Act and any one or more punishment specified in Clause (f) to Clause (l) of Section 71 of the Act and rightly so the Petitioner was awarded above indicated punishment, which is in consonance to the provisions of the Section 73 of the Act. It has not been argued on behalf of Petitioner that the Court-martial proceeding is vitiated. Since in the Court-martial proceeding, adequate care has been taken while arriving at the conclusion and the Petitioner was rightly found guilty for the alleged charges levelled against him. In these circumstances, I do not find any procedural illegality in the Court-martial proceeding and also I do not find any merits in the contentions of the Petitioner, therefore, no relief as prayed for could be granted to the Petitioner.

10. In view of the above observations, the writ petition is dismissed.