

(2007) 05 DEL CK 0073

In the Delhi High Court

Case No : Writ Petition (C) No. 18712 of 2005

Chhotu Singh Naruka

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-05-2007

Acts Referred:

Army Act, 1950 — Section 160, 164(1)
Army Rules, 1954 — Rule 68
Constitution of India, 1950 — Article 226

Citation : (2007) 05 DEL CK 0073

Hon'ble Judges : T.S. Thakur, J;S.N. Aggarwal, J

Bench : Division Bench

Advocate : Aishwarya Bhati and K.S. Bhati, for the Appellant; Maninder Acharya, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Aggarwal, J.—The petitioner in this writ of certiorari calls in question the findings and sentence dated 02.05.2005 passed by the Summary General Court Martial (SGCM) as confirmed by the Confirming Authority (respondent No. 3) on 18.06.2005 and for directions to the respondents to reinstate him in service with consequential benefits and to return back Rs. 1,93,615/- recovered from him.

2. The brief facts of the case giving rise to this writ petition are as follows:

The petitioner had joined the service in the Army on the post of Sepoy on 14.12.1984. He was promoted to the rank of Hawaldar on 01.12.1995. On 12/13.07.2001, the petitioner's house was searched by the respondent authorities and Rs. 1,93,615/- was found from his house from steel box. The respondents ordered the Court of Enquiry to find out the actual source of money found at the petitioner's house during search operation. Based on the finding of the Court of Enquiry, the petitioner was charged for two offences i.e. criminal misconduct relating to recovery of Rs. 1,93,615/- from his house which amount was disproportionate to his known source of income and also for disobeying a

lawful command given to him by his superior officer to give password to have an access to the computer. The SGCM was held against the petitioner and he was tried on the abovementioned two charges between 14.05.2004 to 14.09.2004. The SGCM vide its order dated 31.07.2004 found the petitioner not guilty on the first charge and referred charge No. 2 for opinion of the Confirming Authority who in turn returned the same to the SGCM. Thereafter, the SGCM vide its order dated 14.09.2004 found the petitioner not guilty also on the second charge i.e. disobeying the lawful command of the superior officer and recorded reasons for the same. When the matter went for confirmation to the Confirming Authority, the Confirming Authority vide its order dated 23.04.2005 issued revision order u/s 160 of the Army Act, 1950 read with Rule 68 of the Army Rules and directed the SGCM for reconsideration of its findings on both the charges. Pursuant to the said directions of the Confirming Authority, the SGCM reconsidered the entire matter afresh including the evidence on record and vide its order dated 02.05.2005 recorded conviction of the petitioner on the first charge and acquitted him of the second charge. The petitioner was sentenced by the SGCM as follows:

I. to be reduced to the ranks.

II. to suffer RI for one year.

III. to be dismissed from the service.

3. On 12.05.2005, the petitioner submitted a pre-confirmation petition u/s 164(1) of the Army Act, 1950 before the respondents which was rejected by the Confirming Authority vide its order dated 18.06.2005. Aggrieved therefrom, the petitioner had filed a writ petition being WP(C) No. 3904/05 before the High Court of Rajasthan at Jodhpur but his said petition was dismissed by the Rajasthan High Court vide order dated 07.09.2005 for want of territorial jurisdiction. Thereafter, the petitioner has filed the instant writ petition seeking setting aside of the findings and sentence dated 02.05.2005 passed by the SGCM as confirmed by the Confirming Authority on 18.06.2005 and for his reinstatement in service with consequential benefits.

4. In response to notice of this writ petition, the respondents have filed their counter affidavit in which they have supported the findings and sentence passed by the SGCM against the petitioner as confirmed by the Confirming Authority vide its order dated 18.06.2005. It was contended that the principles of natural justice were duly followed while holding trial against the petitioner and sentencing him for the charges he was tried for. The respondents have prayed for the dismissal of this writ petition.

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

6. Learned Counsel appearing for the petitioner had argued that the findings and sentence recorded by the SGCM against the petitioner are totally perverse and

could not be sustained in law. It was contended by her that the petitioner had duly accounted for the amount of Rs. 1,93,615/- recovered from his house through the evidence of PW-6 Hawaldar Gayad Singh who stated before the SGCM that he had taken a loan of Rs. 1,25,000/- from the petitioner in December, 1999 and had returned Rs. 25,000/- to him in January, 2001 and balance Rs. 1 lac in June, 2001 towards repayment of the loan. Learned Counsel had further argued that the petitioner had also shown that he had rental income and also income from agriculture and Therefore the petitioner could not have been accused of possessing money disproportionate to his known source of income. Learned Counsel for the petitioner had further argued that in the first order passed by the SGCM on 31.07.2004, the petitioner was rightly found not guilty of the first charge relating to possession of money disproportionate to his known source of income. It was urged that the petitioner was wrongly convicted of the said charge in the second round of proceedings undertaken by the SGCM pursuant to the directions of the Revisional Authority without taking any further evidence in the matter. The contention of the learned Counsel was that the petitioner had rendered a dedicated service of more than 20 years before the alleged incident in which Rs. 1,93,615/- was recovered from his possession on 12/13.07.2001 and this aspect of the matter was not taken into consideration by the SGCM while passing the impugned sentence against him. It was also contended that there was complete non-application of mind on the part of the Confirming Authority in rejecting the pre-confirmation petition by a non-speaking order. According to the learned counsel, the petitioner deserves to be reinstated in service after setting aside the proceedings of the SGCM held against him.

7. We have given our anxious consideration to all the above arguments advanced on behalf of the petitioner but we have not been able to persuade ourselves to agree with any of his submissions. It is not disputed that an amount of Rs. 1,93,615/- was recovered from the house of the petitioner on 13/12.07.2001 and that he could not give a satisfactory account for possessing the said amount and Therefore the concerned authorities rightly arrived at a conclusion that the above amount recovered from his possession was disproportionate to his known source of income during the relevant period. We do not find any merit or substance in the submission of the learned Counsel for the petitioner that the findings and sentence recorded by the SGCM against the petitioner are in any manner perverse. We also do not find any substance in his submission that the findings of the SGCM in its second round pursuant to order of the Revisional Authority are vitiated as no further evidence was taken before holding the petitioner guilty of the charge he was tried for. There is sufficient evidence on record to show involvement of the petitioner in the alleged malpractices in arrival/departure of transients in 213 Transit Camp that led the SGCM as well as the Confirming Authority to believe and conclude that the money recovered from the petitioner was not the money in his possession from legal sources. We are of the view that PW-6 Hawaldar Gayad Singh was rightly disbelieved by the SGCM for the reason that he was an interested witness, presumably a planted witness, to help the

petitioner being his relative. During arguments it was not disputed that the borrowings and lending of money in the Army is strictly prohibited and that this norm is well established and being promulgated from time to time in the Unit. When asked, learned Counsel who appeared on behalf of the petitioner, admitted that no information was given or permission taken by the petitioner for alleged lending of money to PW-6 Hawaldar Gayad Singh. On the face of it, it appears to us that the petitioner could not satisfactorily account for the money recovered from his possession from his house on 12/13.07.2001. Under these circumstances, by no stretch of imagination, it can be said that the findings of the SGCM are perverse. The contention of learned Counsel that there was complete non-application of mind on the part of the SGCM in rejecting the pre-confirmation petition is also devoid of any merit. We have perused the impugned order dated 18.07.2005 passed by the Confirming Authority and on a perusal of the same, we find that the Confirming Authority has given cogent reasons for agreeing with the findings of the SGCM and rejecting the pre-confirmation petition filed by the petitioner. The relevant portion of the impugned order dated 18.06.2005 passed by the Confirming Authority is reproduced here-in-below:

A scrutiny of records reveal that due procedures as per law have been strictly complied with by the appropriate authorities at the pre trial stage as well as by the appropriate authorities at pre-trial stage as well as at the Summary General Court Martial proceedings the petitioner was given in fair and reasonable opportunity to make his defense. There were no violation of the provisions of the Army Act and army Rules. The petitioner placed Not Guilty to all the charges. The court after considering the evidence led by the Prosecution and the defense found the petitioner not Guilty to all the charges but on revision the petitioner found Guilty to the first charge the finding are well supported by cogent and reliable evidence on record. The findings and sentence (on revision) awarded by the Court are just and legal.

8. In view of the above, we have no hesitation in holding that the petitioner was rightly convicted and sentenced by the respondents for having been found in possession of money disproportionate to his known source of income. The case does not warrant any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. This writ petition is devoid of any merit and Therefore fails and is hereby dismissed with no order as to costs.