

(2006) 11 DEL CK 0221
In the Delhi High Court
Case No : WP (C) 21085 of 2005

Colonel B.S. Rai

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-11-2006

Acts Referred:

Army Act, 1950 — Section 164(2), 57
Constitution of India, 1950 — Article 226

Citation : (2007) 136 DLT 284

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

Bench : Division Bench

Advocate : Maj. Retd. K. Ramesh, for the Appellant; Sanjay Katyal and T. Parshad, DY JAG., for the Respondent

Final Decision : Allowed

Judgement

Swatanter Kumar, J.—The petitioner Col. B.S. Rai was charged of having committed the following offence u/s 57(c) of the Army Act, 1950 on 14.1.2004:

CHARGE SHEET

The accused, IC-34740F Colonel Brijendra Singh Rai of Army Headquarters (Directorate General of Signal Intelligence) attached to Headquarters 11 Corps Artillery Brigade, an officer holding a permanent commission in the Regular Army, is charged with:

Army Act Section 57(c) KNOWINGLY AND WITH INTENT TO INJURE ANY PERSON ALTERING A DOCUMENT WHICH IT WAS HIS DUTY TO PRODUCE

In that he, at Jalandhar Cantt, on or about 26 Sept 2000, which came to the knowledge of the authority competent to initiate action on 20 Feb 2003, while Commanding 571 Sub Group and having awarded figurative assessment of nine points in paragraphs 9(a), 9(b), 9(d), 9(g), 9(h), 9(j), 9(k), 10(a) to 10(g) and 12 of the Annual Confidential Report of IC-47755H Major Ajay Shreedhar of his unit, which it was his duty to submit, knowingly altered the assessment to eight

points without the knowledge of the said officer.

Place: Jalandhar Cantt Sd/- Dated : 14 January 2004 (Rajan Anand) Brigadier Commander 11 Corps Artillery Brigade To be tried by a General Court Martial SD/- Station : Jalandhar Cantt (Srinivasa Pattabhiraman) Date: January 2004 Lieutenant General General Officer Commanding 11 Corps

2. where after the petitioner was tried by a General Court Martial which found the petitioner guilty of the charge and sentenced him to take rank and precedence as if his appointment as substantive Colonel bore date the ninth day of March 2004 and to be severely reprimanded. Against the order of sentence, the petitioner submitted a post confirmation petition u/s 164(2) of the Act to the Secretary, Ministry of defense raising various issues of law upon merits of the case. This post confirmation petition was rejected vide order dated 28th April, 2005 passed by the Under Secretary to the Government of India, Ministry of defense being devoid of merit and substance. Being aggrieved from the said order, the petitioner has filed the present petition under Article 226 of the Constitution of India. The counsel for the petitioner has primarily argued on the merits, reliability and worthiness of the evidence recorded before the GCM while contending that there is hardly any evidence to support the charge and even the handwriting expert and other witnesses have stated in their evidence, factors which tilt the entire equities in favor of the petitioner. He vehemently contended that the charge itself is unfounded inasmuch as it is impossible in Indian Army, by all standards, that an officer would get 9/9 in all 23 columns of his ACR particularly when the pen picture of the Officer was not admittedly tampered and the pen picture did not reflect any such distinguishing features of Major Ajay Shreedhar that would justify grant of so many nines in his CR. This is also argued that keeping in view the service profile of the said Officer, 23 nines in the CR would patently be a mismatch not only to the pen picture stated in the records but would also be inconsistent with the previous and even records subsequent to the alleged date of occurrence. The proceedings, findings and sentence imposed upon the petitioner are liable to be set aside. In order to examine the merit of these contentions, it may be necessary for us to refer to certain basic facts giving rise to the present petition.

3. The petitioner was commissioned in the Indian Army in the Corps of Signals on 11th June, 1977 being a high profile officer with an adequate technical expertise and was granted all the promotions including selection grade of Lt. Col. and promotion to the post of Colonel. He was posted to sensitive areas including 571 Sub Group as a Commanding Officer. On 7th September, 2000, father of the petitioner died in a village at Khiragarh in District Rajnandgaon in Madhya Pradesh and while lifting the dead body and the hot urns, the right fingers of the petitioner got burnt thereby, it became difficult for the petitioner to write. An ACR of a junior officer Major Ajay Shreedhar was initiated by the petitioner on 26th September, 2000. The handwriting of the petitioner in relation to writing of figures was awkward and he has his own style of writing the figures particularly

the figure 8. On 14th September, 2001, MS Branch, Army Headquarter observed that the ACR of the said officer showed tampering of figure 9 converted to 8 and to look into the matter, they wrote a letter to the Unit. On 29.11.2001, Major Ajay Sreedhar wrote after a period of two months that there was a discrepancy in his subject ACR indicating that the figure 9 was converted to 8. In turn on 7th February, 2002, the Army Headquarter wrote to the petitioner and invited his comments in this respect. This was replied to by the petitioner on 15.2.2002 wherein he denied that he had at all tampered with the ACR but it was by his hand writing and having considered that the said Officer only deserved 8 in certain qualities and not nine, converted the same to 8 and there was no tampering or conversion of the figures. He also stated that the petitioner had written 8 in such similar manner without intending to injure anybody's interest.

4. In the counter affidavit, the respondents have raised objections with regard to the very maintainability of the writ petition on the ground that the appreciation of evidence would be impermissible under writ jurisdiction and further that the ACR in respect of Major Ajay Sreedhar for the period June 1999 to May 2000 was noticed in the Army Headquarters wherein it appeared that the figure of "9" had been converted to "8". The said Officer then confirmed that there was tampering done in his ACR by overwriting in his figurative assessment. It is also averred that the petitioner was the Commanding Officer and had not been fair to Major Ajay Sreedhar. The Explanation rendered that the petitioner writes 8 in a manner that he writes 9 first and then converts it into 8, is of no use, as the record clearly shows that he writes "9" differently. Consequently, the petitioner was charged for the above offence, was tried by the General Court Martial in accordance with law and was subsequently punished. In fact, the respondents claim that they have already taken a liberal view in the matter. They have emphatically relied upon the statement of witness No. 4 who was examined during the Court Martial proceedings. While referring to the records produced by the respondents during the course of hearing, it is also stated that the authorities concerned have applied their mind and have rightly rejected the contentions raised by the petitioner during trial as well as in the post-confirmation petition. The proceedings, the findings and the sentence awarded to the petitioner does not suffer from any infirmity, as such the writ petition should be dismissed.

5. As is evident from the contentions raised on behalf of the petitioner that they are all factually based and depend primarily upon the appreciation of evidence. The jurisdiction of this Court while entertaining a petition questioning the correctness or legality of a trial by General Court Martial is limited and the Court normally would not travel into the field of considering the factual matrix of the case purely upon appreciation or re-appreciation of evidence. Reference in this regard can be made to the case of Mohan Rao v. UOI, where a Division Bench of Rajasthan High Court in WP(C)No. 400/1988 while referring to the Judgment of the Supreme Court in the case of State of Andhra Pradesh and Others Vs. Chitra Venkata Rao, stated that the High Court is not a court of appeal and cannot re-appreciate evidence on record. In another case titled as Major G.S. Sodhi Vs.

Union of India (UOI), various provisions in relation to pre-trial procedure were examined and the court held that the High Court would not make a roving enquiry into allegations, counter allegations or factual controversies. Substantial compliance to the procedure/provisions was held to be proper.

6. In view of the settled position of law, within the limited sphere of that jurisdiction, we would still proceed in relation to the submissions made before the Court. We had perused the records and it appears from the record that the figure of "9" has been changed into "8", either as a matter of habit or by an intentional intent. The opinion of the hand-writing expert does create a doubt in the version put forward by the petitioner. It is also true that the petitioner writes "8" in different ways but the figure of "8" as made out in the ACR in dispute, relating to Major Ajay Shreedhar is somewhat strange. We must notice one fact that none of the witnesses including the Major had attached any motive against the petitioner for doing the alleged alteration in the figures in the ACR of that Officer. The evidence adduced before the General Court Martial does indicate that the figure of "9" was altered to figure "8". This fact besides being proved by the hand-writing expert is even partially admitted by the petitioner, who had said that the figure of "9" was written and then converted to "8". Be that as it may, the present case certainly cannot be termed as a case of "No Evidence" or "Perverse appreciation of Evidence?".

7. There is hardly any scope for this Court to interfere in the findings of fact recorded by the GCM. There is evidence to support the charge against the petitioner and the records produced before the Court do not reflect that the stand taken by the petitioner is factually correct. The fact of the matter is also that the pen picture recorded by the petitioner was never altered and there was no motive pleaded or proved or even shown for alteration of the figure into "8" from "9". The extent of proof cannot be stated to be a ground for interference by this Court. As such we are unable to find any merit in the contentions raised on behalf of the petitioner. The contention that "for any Member of the Armed Forces to get "9" over "9" in all columns is an impossibility" is again a submission which is based upon surmises and conjectures. We are not concerned with any hypothesis but are called upon to decide the case on its own facts.

8. The contention raised on behalf of the petitioner that keeping in view the peculiar facts and circumstances of the case, particularly the service profile of the petitioner wherein he has been given coveted appointment even after the said incident and was even given an award/commendation, the punishment reflected upon the petitioner is disproportionate to the gravity of the charge. It is also contended that particularly in absence of any motive or malice, hardly any prejudice has resulted to any concerned. Major General A.S. Bhagat, who was examined as the second witness, had in his statement even explained the service profile and character of the petitioner as follows:

SECOND defense WITNESS

?My observation of the accused as his Initiating Officer, First Technical Officer and later his Reviewing Officer is that he has high character qualities and in matters of personal probity, the impression I carry about him is that he is above board.

In March 2003, I was returning to Delhi from Chandigarh by Shatabdi Express and Major Atul Ajmani, who was GSO-2 in Signals Intelligence Directorate, was with me. In midway he came to my coach and said, ?Do you know about an inquiry instituted against Colonel B.S Rai about an Annual Confidential Report of a Major where there is an allegation of converting figures nines to eights?, to which I answered that I generally knew but not all. Then Major Atul Ajmani gave his own example when he signed his Annual Confidential Report last year and he got the same impression as if figure nine had been converted to figure eight. Later on, he realised that it was the accused''s style of writing?.

...Major Atul Ajmani had not told me that his Annual Confidential Report had been written by the accused after an observation had been made by the Military Secretary''s Branch to the same Initiating Officer, in the case of Major Ajay Sreedhar.

9. The above facts are not disputed by the respondents and in fact there is no dispute to the fact that the petitioner had been an excellent Officer and was performing his duties to the satisfaction of all concerned. The respondents have imposed the punishment to take rank and precedence as if his appointment as substantive Colonel bore date 9th day of March 2004 and was to be severely reprimanded. The petitioner was in fact, promoted to the rank of Colonel. While dealing with the post-confirmation petition, the authorities have not really applied their minds to this aspect. It is imperative that this aspect of the matter should be examined by the authorities concerned. Of course, imposition of punishment squarely falls in the domain of the disciplinary authorities but where the punishment is disproportionate and various factors leading to such punishment have not been properly appreciated by the authorities, the Court can always interfere in relation to quantum of punishment. In the facts and circumstances of the case, the Explanation rendered by the petitioner in Court that having recorded "9" in the figurative assessment of the said Officer, he had second thoughts and converted the same into "8" without any motive, cannot be entirely ruled out.

10. For the reasons afore-recorded, we allow this writ petition limited to that extent and with a direction to the respondents to reconsider the matter in relation to imposition of punishment upon the petitioner and to pass appropriate orders in accordance with law. However, in the facts and circumstances of the case, parties are left to bear their own costs.