

(1997) 07 MAD CK 0068

In the Madras High Court

Case No : Writ Petition No. 8171 of 1997

Deputy Commandant and Chief Instructor, Officers Training
Academy, Madras

APPELLANT

Vs

Commandant, Officers Training Academy Madras and Another

RESPONDENT

Date of Decision : 04-07-1997

Acts Referred:

Army Act, 1950 — Section 80

Citation : (1997) 07 MAD CK 0068

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Judgement

1. By consent of both parties, the main writ petition itself is taken up for final disposal. The petitioner has approached this Court to issue a Writ of Mandamus forbearing the respondents from proceeding with the charge sheet dated May 20, 1997 without complying with the procedure prescribed under Rule 22 of the Army Rules, 1954 by giving an opportunity to the petitioner to cross examine the witnesses and to put his defence witnesses and his statement as provided therein.

2. According to the petitioner, he joined the Military service as Commissioned officer (II Lieutenant) in the year 1966. Since then he has served at various places and held different posts for the past 32 years. He was promoted to the rank of Brigadier in the year 1993 and has served as Commanding officer and also as a Brigade Commander and administered independent stations and units. Thereafter, he was transferred and posted to his present office at Madras as Deputy Commandant and Chief Instructor, Officers Training Academy in the month of July, 1995. It is also contended that after his placement at Madras, since he questioned some of the irregular and malpractices of the first respondent in his administration, some frictions developed with him. Further, one Colonel M. A. Deviah, HOTT, junior to the petitioner, wrote a letter dated March 10, 1997 to the petitioner stating that he (petitioner) has used abusive language

against him. On the basis of the complaint, the first respondent after framing charges, conducted an enquiry. It is also contended that as per Rule 22 of the Army Rules, 1954 (hereinafter referred to as "The Rules"), the first respondent has to follow all strict procedures and give ample opportunity to the petitioner. Without providing or affording Proper opportunity, the first respondent hurriedly conducted the enquiry against the petitioner, which is contrary to the mandates of Rule 22 of the Rules. Since the above violation has prejudiced the petitioner and it may not be possible for him to defend the ultimate enquiry, the petitioner has approached this Court for appropriate relief.

3. The first respondent filed a counter affidavit disputing various averments made by the petitioner. It is contended that the present writ petition at this stage is not maintainable, since the same has been filed against the pre-decisional stage, when the preliminary enquiry itself is in progress any interference at this stage, would scuttle as well as stifle the inquiry. It is also contended that the tentative charge has been served on the petitioner on May 20, 1997. The procedure prescribed under Rule 22 of the Rules was fully complied with and the principles of natural justice have been adhered to. The outcome of the preliminary enquiry would not result in any punishment straightaway. The procedure contemplated under Rule 24 of the Rules have to be followed then. They also denied the various averments with regard to the merits of the charges. It is further contended that when the first respondent informed the petitioner that prosecution witnesses would presently be examined, the petitioner sought three hours time to prepare his defence. The first respondent has granted the request of the petitioner and adjourned the hearing for 16.45 hours on the same day. The above proceedings were conducted in the presence of two independent witnesses. After affording reasonable opportunity only a preliminary enquiry was conducted and any 5(unreasonable delay in the disposal of the disciplinary case would have adversely affected and is indeed affecting discipline, training and administration of the Academy. those circumstances, they prayed for dismissal of the writ petition.

4. In the light of the above pleading, I have heard Mr. S. Venkateswaran, learned counsel for the petitioner and Mr. V. T. Gopalan, learned senior counsel for the respondents.

5. The main contention of Mr. S. Venkateswaran is that inasmuch as the first respondent failed to follow the procedure prescribed under Rule 22 of the Rules, the enquiry against the petitioner cannot be proceeded with. He also submitted that the first respondent is biased against the petitioner and any order by him would adversely affect his case. On the other hand, Mr. V. T. Gopalan, learned senior counsel after taking me through the detailed counter affidavit as well as the relevant Army Rules, submitted that the present writ petition at the pre-decisional stage when the preliminary enquiry itself is in progress is not maintainable and, in any event, it would affect the enquiry. He also submitted that the procedure prescribed in the Rules, more particularly Rule 22, of the

Rules have been full complied with. He also denied the allegation regarding malafide and bias made against the first respondent. In support of his contentions, he relied on the following decisions :-

- (1) Ram Chander v. Union of India 1989 CLJ 1950 . Delhi High court
- (2) Kehar Singh and Others Vs. State (Delhi Administration),
- (3) Unreported decision in W.P. No. 628 of 1991 (Kanakaraj, J.)
- (4) Major G.S. Sodhi Vs. Union of India (UOI),

6. I have carefully considered the rival submissions.

7. As already stated, the main grievance of the petitioner is that he was not given proper opportunity and the procedures under Rule 22 of the Rules have not been complied with. In order to appreciate his contention, I shall now refer to Rule 22 of the Rules which runs as follows :-

"22. Hearing of Charge :- (1) Every charge against a person subject to the Act other than an officer, shall be heard in the presence of the accused. The accused shall have full liberty to cross examine any witness against him, and to call any witness and make any statement in his defence.

(2) The Commanding Officer shall dismiss a charge brought before him if, in his opinion the evidence does not show that an offence under the Act has been committed, and may do so if, in his discretion he is satisfied that the charge ought not to be proceeded with.

(3) At the conclusion of the hearing of a charge, if the Commanding Officer is of opinion that the charge ought to be proceeded with, he shall without unnecessary delay -

(a) dispose of the case summarily u/s 80 in accordance with the manner and form in Appendix III; or

(b) refer the case to the proper superior military authority; or

(c) adjourn the case for the purpose of having the evidence reduced to writing; or

(d) if the accused is below the rank of Warrant Officer, order his trial by a summary Court-martial;

Provided that the Commanding Officer shall not order trial by a summary Court-Martial without a reference to the officer empowered to convene a district Court-Martial or on active service a Summary general Court-Martial for the trial of the alleged offender unless either :-

(a) the offence is one which he can try by a summary court-martial without any reference to the officer; or

(b) he considers that there is grave reason for immediate action and such

reference cannot be made without detriment to discipline."

Relying on the said Rule, the learned counsel for the petitioner submitted that the procedures prescribed in the said Rule have not been complied with in the petitioner's case. At this stage, it is relevant to point out that on a perusal of the subsequent rules namely, Rule 23 and Rule 24 of the Rules make the position clear that the enquiry under Rule 22 is only a preliminary enquiry and tentative charges alone have been framed against the petitioner. A Reading of the charge sheet itself clearly shows that it is only a tentative (Annexure I attached with counter affidavit). As already stated, the procedure contemplated under Rule 22 of the Rules is preliminary one and after enquiry, if the first respondent satisfies that there is a prima facie case, then he has to refer the matter for further trial or if he finds that there are no sufficient materials, it is open to him to drop the proceedings.

Admittedly, even the said preliminary enquiry itself has not reached its finality. As rightly pointed out by the learned counsel for the respondents, if this Court interferes at this stage, certainly it would stifle even the preliminary enquiry based upon tentative charges. Further, such preliminary enquiry would not result in any punishment straightaway. Thereafter, the procedure contemplated under Rule 24 of the Rules will have to be followed.

8. With regard to the violation of natural justice, it is specifically denied and the following explanation offered by the respondent in the counter affidavit in para 12 is very relevant, and the same is extracted hereunder :-

"I respectfully submit that the allegations made in para 7 of the writ petition are false and baseless and hence denied. After dismissal of the charge against Col. MA Devaiah, the respondent No. 1 called the petitioner to his office and served the tentative charge sheet. He also read out all the charges to the petitioner. There was no question of requiring the petitioner to explain the 5 charges as alleged by him, since the accused is not required to explain the charge(s) against him in the proceedings under Army Rule 22. When Respondent No. 1 informed the petitioner that prosecution witness would IC presently be examined, he sought three hours time to prepare his defence. The Respondent No. 1 granted the request of the petitioner and adjourned the hearing for 16.45 hours on the same day. The above proceedings were conducted in the presence of two independent witnesses, namely Colonel C. S. Srinivasalu, Commanding Officer, Military Hospital, Chennai and Colonel IM Mehta, Commandant, Supply Depot, Chennai."

It is needless to mention that in a matter like this every charge against a person is required to be investigated promptly in consonance with the strict adherence of the Army Act. In this case, as rightly observed by the learned senior counsel for the respondents, accused is a senior officer holding the post of Deputy Commandant who is responsible for discipline and training of the Academy and any unreasonable delay in disposal of the disciplinary case would have adversely

affected and is affecting discipline, training and administration of the Academy. Further, with regard to non compliance of natural justice, the following averment in para 15 is very relevant and the same is extracted hereunder :-

"In reply to para 10 I respectfully submit that hearing of charge was resumed at 0930 hours on May 21, 1997 and concluded at about 1200 hours the same day, when the Respondent No. 1 ordered evidence to be reduced to writing. The entire proceedings under Army Rule 22 were held in the presence of two independent witnesses namely, Colonel C. Sreenivasulu, Commanding Officer, Military Hospital, Chennai and Colonel IM Mehta Commandant, Supply Depot, Chennai. A copy of proceedings of hearing of charge is attached as Annexure "R-2" to this affidavit.

Further in para 18 the first respondent has explained the position in detail and the same is extracted hereunder :-

".... The procedure contemplated under Rule 22 was fully complied with. When an opportunity to make a statement was given to the petitioner, he, in his statement, said that to avoid compromise my line of defence, I do not wish to produce any defence witnesses at this stage. When he gave the list of defence witnesses previously, arrangements were made to secure their presence on the next day and all the witnesses were in fact present and for reasons best known to the petitioner he did not want the defence witnesses to be produced at that stage. Earlier when the prosecution witness were examined, the petitioner was given full opportunity to cross-examine every prosecution witness in the presence of two independent witnesses, but the petitioner had declined to cross examine them. Therefore there is no question of the prescribed procedure not being followed as sought to be projected in this para."

Admittedly, the petitioner is a very senior officer of the Army. At the commencement of the hearing of the charge, he was given an adjournment of three hours on his own request, which was sufficient for an officer of his rank and seniority to understand a simple charge-sheet and plan his line of defence. The petitioner was also given an opportunity to cross-examine each prosecution witness. However, it is seen that it was only he declined the same. He had also given a list of defence witnesses, who were made available to him, however, it is stated by the respondent that the petitioner examined only six of them in his defence and he declined to examine the remaining witnesses on the ground that sufficient evidence in his defence has come on record. In the light of the above clear position, it is relevant to note that in an enquiry, when admittedly in a preliminary stage, this Court will not act as a Court of Appeal and interfere on merits or assess prosecution case afresh. Further, the grievance regarding non compliance of Rule 22 of the Rules and the question whether the Commandant/first respondent failed to comply with the said rule, inasmuch as the question being pure question of fact cannot be gone into in writ petition-vide *Indu Engineering and Textile Ltd. Vs. Delhi Development Authority*, -Division Bench Delhi High Court and *Kehar Singh and Others Vs. State (Delhi Administration)*, .

The very same view has also been expressed by Kanakaraj, J., while disposing of a writ petition W.P. No 628 of 1991 dated March 14, 1991. The following conclusion of the learned Judge is very relevant and the same is extracted hereunder :-

"The legal position on this aspect is also against the petitioner. In a recent judgment of the Supreme Court in Major C. S. Sodhi v. The Union of India W.P (CRL) No. 478 of 1989 dated November 30, 1990 it has been pointed out as follows :-

"We must also observe that the main thrust of the argument in this case is only about the violation of Rules 22 to 25. But we are unable to find any flagrant violation of any of these rules. Even otherwise, if there are some minor irregularities, they do not, in any way, affect the proceedings in the general court-martial during which a regular trial was conducted."

The Supreme Court had in turn followed the judgment in Lt.-Col. Prithi Pal Singh Bedi and Others Vs. Union of India (UOI) and Others, I am, therefore, rejecting the first contention based on violation of Rules 22 to 25.

9. The last argument of the learned counsel, for the petitioner is with regard to mala fide and bias attributed against the first respondent. The said allegation of the petitioner has been stoutly denied in para 22 of the counter affidavit. The following Statement in para 22 of the counter affidavit disproves the complaint of the petitioner :

".... The allegation of illegal actions on the part of the Respondent No. 1 is baseless and a foul trick to divert attention from the real issues. All actions of the Respondent No. 1 in respect of the disciplinary proceedings are in accordance with law and rules without any bias against the petitioner. It is relevant to mention that the Respondent No. 1 has no power to order trial or award any punishment to the petitioner. Under Army Rule 24, after considering the Summary of Evidence, he has only two options; firstly he can re-hear the case and dismiss the charge(s); and secondly, he can refer case to the proper superior military authority for decision. Thus the Respondent No. 1 has no authority to mar the promotion prospects of the petitioner, as alleged by him."

Further, in G. S. Sodhi v. Union of India (supra), there was a plea of malafide and bias and it has been denied in the counter affidavit. In such situation their Lordships of the Supreme Court have held that it is not open to the Court to conduct a roving enquiry. Further, their Lordships observed that the officer in question was concerned with the preliminary enquiry and not with the court-martial, hence allegation of bias against him would not affect court-martial proceedings.

10. In the light of the above factual and legal positions, I am unable to accept any one of the arguments of the learned counsel for the petitioner and I do not find any merit in the writ go petition, consequently the same is dismissed. No

costs. The dismissal of the writ petition will not prevent the petitioner from raising all objections permissible under law before the concerned authorities.