
(1988) 05 DEL CK 0009

In the Delhi High Court

Case No : Criminal Writ Appeal No. 43 of 1985

Ex-Espoy Rajbir Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 27-05-1988

Acts Referred:

Citation : (1988) 35 DLT 312

Hon'ble Judges : M.K. Chawla, J;Charanjit Talwar, J

Bench : Division Bench

Advocate : I.U. Khan, S.K. Mishra, Kirti Uppal and S.K. Dubey, for the Appellant;

Judgement

Charanjit Talwar, J.

(1) The petitioner, Rajbir Singh, was a Sepoy in the 2nd Battalion of the Jat Regiment of the Indian Army. He was tried by a General Court Martial, convicted for the offence of murder and sentenced to imprisonment for life. By this petition under Article 226 of the Constitution of India, the legality and validity of the proceedings of the General Court Martial are being challenged. The charge framed against the petitioner was u/s 302 of the Indian Penal Code. He was found to have shot dead his superior officer, Subedar Ram Sarup, on 29th June, 1983 at about 8.25 p.m. The incident happened at a field station in the Eastern sector somewhere in Tripura where the 2nd Battalion of the Jat Regiment was on active duty.

(2) According to the petitioner, he was posted in the "C" Company of that Battalion which Company was deployed further away from the Battalion Headquarters. He was sent back to the Headquarters from his Company to undergo an educational course. The deceased Subedar Ram Sarup, was the officiating Subedar Major of the Battalion and in that capacity was posted at the Headquarters.

(3) An admitted fact is that prior to the shooting incident, on 25th June, 1983, the officiating Subedar Major detailed the petitioner herein for patrolling duty.

According to the counter-affidavit filed by the respondents, the personnel of that party were briefed about two hours before their departure and at that time the petitioner did not make any grievance about his inability to accompany the party on account of his torn jungle boots. According to the petitioner, however, he made an official report about his jungle boots being torn when the patrol party was asked to fall in for proceeding on that duty. It is his case in paragraph 6 of the petition that at that time he pointed out that because of his torn boots it would not be possible for him to proceed as the terrain where the patrol party was to march, was full of leeches, mosquitoes, thorns and stones. It appears further that when he complained about his inability to join the patrol party, Subedar Ram Sarup scolded him. The petitioner's version is that he was abused in very foul language. The respondents' case is that on being scolded turn making excuses, the petitioner herein at point blank range, fired two short from the self-loading rifle which had been issued to him. at Subedar Ram Sarup and killed him on the spot. The conversation between petitioner and the deceased was heard by a number of military personnel. The shots were heard by quite a few others, including one officer Lt. Thakur Karan Singh. The petitioner was overpowered. The rifle and the magazine containing 18 live rounds were snatched from him. His jungle boots were taken into custody and two fired empty cartridges were recovered from the spot. The petitioner was put under arrest on the morning of 30th June, 1983. The dead body of Subedar Ram Sarup was taken in a truck to a hospital in nearby town Kanchan Pur for post mortem and an F.I.R. was got registered at Police Station Kanchan Pur by Lt. Thakur Karan Singh.

(4) As the offence of murder termed as "civil offence" was committed by the petitioner while on active duty, within the purview of Section 70 of the Army Act, he could be tried by a General Court Martial. According to the petitioner, before ordering the trial, a summary of evidence as per Rule 23 of the Army Rules, 1954 was recorded on the orders of the Commanding Officer. Thereafter the trial was held at Dharna Nagar in Tripura. The petitioner was provided with a Counsel at Government's expense. He was also provided with the services of a defense officer to defend him. After trial, on 8th December, 1983, the General Court Martial held him guilty and sentenced him to suffer imprisonment for life and he was also ordered to be dismissed from service. The conviction and the sentence were confirmed by Major General Yogendra Singh Tomar, General Officer Commanding 57, Mountain Division who was the Confirming Authority, on 23rd February, 1984. The petitioner submitted a representation dated 20th May, 1984 under Sections 164 and 165 of the Act challenging the conviction and sentence imposed on him, to the Chief of the Army staff, Army Headquarters, New Delhi. This representation was dismissed by the order of 10th December, 1984. Thereupon the present petition has been filed.

(5) Mr. I.U. Khan, learned counsel for the petitioner submits that the proceedings of the General Court Martial are vitiated because the law prescribing procedure for trial was not complied with. His reliance is on Rule 22 of the Army Rules,

1954 (for short the Rules). The plea is that the procedure laid in that Rule, which procedure has been held to be mandatory, not having been followed, the promulgation of the Court Martial and trial in question was bad. Before proceeding further, this submission needs to be examined first.

(6) The very first Rule appearing in Chapter V of the Army Rules is Rules 22. The heading of the chapter is "Investigation of charges and trial by Court Martial". That Rule reads as under :

"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 witnesses and make any statement in his defense. (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 HI; 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 that officer; or (b) he considers that there is grave reason for immediate action and such reference cannot be made without detriment to discipline."

(7) The Supreme Court in Lt.-Col. Prithi Pal Singh Bedi and Others Vs. Union of India (UOI) and Others, had an occasion to interpret the above rule. It was held that Rules 22 to 24 of the Army Rules are mandatory in respect of every person subject to the Act other than an officer. Therefore, there can be no doubt that in the case of the petitioner who is admittedly not an officer, the provisions of the above Rule were strictly to be complied with. It is manifest that in a society in which the Rule of Law is prevalent, a trial is to be preceded by investigation into the allegations against an offender. That very principle has been made applicable by incorporation of Army Rule 22. Even in case of an officer if he so requests in writing, the procedure prescribed has to be followed. In the present case, on going through the Court Martial proceedings, we find that the petitioner was arraigned on 30th November, 1983 and after he pleaded not guilty, the very first question which was asked to him by the Court Martial was whether he wished to apply for an adjournment on the ground that any of the rules relating to procedure before trial had not been complied with. We may note the question:

"DO you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial has not been complied with and that you have been prejudiced thereby or on the ground that you have not had sufficient opportunity for preparing your defense."

It was in answer to this question that the defense counsel requested for a short adjournment to complete preparation for the defense. The request made may also be quoted:

"THE defense counsel at this stage requests for a short adjournment for a day to complete preparation for the defense. The prosecutor has no objection. The Court after considering the request of the defense counsel decides to grant the adjournment till 08LOhrsonOI December, 1983. The decision of the Court is announced in the open Court."

(8) It is admitted by Mr. Khan that no application either oral or in writing was made to the Court regarding non-compliance of Army Rule 22. We have also gone through the closing address of the defense counsel (exhibited as Ex. 4-A in those proceedings) and find that no grievance about the procedure not having been followed was made. Even in the petition under Sections 164 and 165 of the Army Act challenging the conviction and sentence there is no reference to the non-compliance of the Army Rule 22. A copy of the said representation/petition is annexed as Annexure "A" to the writ petition. Although there is a grievance about the non-compliance of provisions of Section 23, 33, 90 of the Army Act and also of Army Rule 95, yet there is no submission that Rule 22 was not adhered to. Apparently for the first time this plea has been raised in the writ petition. The respondents in their counter-affidavit deny the same. It is submitted in paragraph 15 that "the investigation was carried out by the Commanding Officer as per procedure laid down in Army Rule 22. It is admitted that a court of inquiry was held to investigate the circumstances which led to the death of Subedar Ram Sarup....."

(9) At this stage we may notice the scope of the investigation which is preliminary in nature to be conducted under the Army Rule 22. The word "Charge" referred to means simply a complaint or allegation against the soldier concerned. The rules lay down a clear distinction between the charge sheet" and the "charge". Charge has been defined in sub-rule (2) of Rule 28 under this very chapter. It reads.

"(2)A charge means an accusation contained in a charge-sheet that a person subject to the Act has been guilty of an offence."

The "charge sheet" has to be framed after the preliminary investigation during which the statements of the witnesses and the plea of the accused are not to be recorded in writing. However, the nature of the offence has to be made known to the accused and the witnesses are to be examined in support of those allegations in his presence. He has also to be given full liberty to cross-examine the witnesses deposing against him as has been noticed in Lt Cat. Prithi Pal Singh

Bedi's case (supra). The Commanding Officer after holding the preliminary investigation has three options. One of them is that on his satisfaction that the case should be proceeded with, he may dispose it of summarily u/s 80 of the Act or adjourn it for purposes of having the evidence reduced to writing. The procedure for recording evidence in writing is laid down in Army Rule 23.

(10) The question whether the Commanding Officer heard the charge under Army Rule 22 or did not comply with the Rule in our view is a question of fact. We have not been shown any provision under the Army Act and the Rules laying down that a record is to be kept by the Commanding Officer regarding that investigation. However, we are informed that after the decision in Lt. Col. Prithi Pal Singh Bedi's case (supra) the Army authorities have issued instructions that this Rule must be strictly complied with and the Commanding Officers have been asked to fill in a form in their own hand to show that witnesses were examined by them in the presence of the accused and that the delinquent official was given full liberty to cross-examine them. It is also to be noticed therein that he was given liberty to produce defense witnesses. But we are further informed that so far there is no instruction to direct that record (the report certifying that Army Rule 22 has been complied with) is to be placed before the Court Martial. In the present case as we have noticed above, this grievance regarding non-compliance of the Rule had not so far been made before the Army authorities. For the first time before us the petitioner says that this rule was not complied with. This averment is denied. The question thus being a pure question of fact cannot be gone into in a writ petition. We, however, feel that in the interests of justice it would be useful to the concerned Court Martial as well as to the authority hearing the representation u/s 164 of the Army Act if directions are issued to the Commanding Officers to submit the record of proceedings under Army Rule 22 along with the charge sheet to the said Court/Authority. A copy of the record of proceedings before the Commanding Officer ought also to be supplied to the soldier concerned in the event of a Court Martial being held. It appears from a close reading of the Rule that proceedings thereunder include more or less the features of an oral magisterial preliminary inquiry,

(11) In the present case we, however, held that the petitioner has not been able to substantiate his plea that Army Rule 22 was not complied with.

(12) The other main ground urged by Mr. Khan was that the offence made out by the prosecution can be said to be at the most culpable homicide not amounting to murder covered u/s 304 Part II of the Indian Penal Code. The plea is that in the facts and circumstances of the case the petitioner committed the alleged crime because of grave and sudden provocation. The filthy abuses hurled by Subedar Ram Sarup were the cause of the incident. While exercising our jurisdiction under Article 226 of the Constitution of India we cannot assess the merits of the case. It is not open to us to alter the charge or reduce the sentence. In the writ petition we are only entitled to interfere in a case where there has been infraction of a mandatory rule or where the conviction and sentence have

been imposed on no evidence. We reject this contention also.

(13) The result is that the petition has no merit and is dismissed.