

(2007) 12 DEL CK 0014

In the Delhi High Court

Case No : Writ Petition (C) No. 1510 of 1999

Ex. Havildar Suresh Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-12-2007

Acts Referred:

Army Act, 1950 — Section 164(2), 40, 41(1), 48

Army Rules, 1954 — Rule 115(2)

Constitution of India, 1950 — Article 226

Citation : (2007) 12 DEL CK 0014

Hon'ble Judges : Vikramajit Sen, J;S.L. Bhayana, J

Bench : Division Bench

Advocate : R.N. Sharma, for the Appellant; Amiet Andley and Arun Sharma, for the Respondent

Final Decision : Dismissed

Judgement

S.L. Bhayana, J.—The Petitioner has invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, Certiorari or any other appropriate Writ, Order or direction, thereby quashing the impugned Order of termination/dismissal dated 11.07.97 passed by a summary Court Martial u/s 41(1) and Section 40(a) of the Army Act, 1954 (hereinafter referred to as "the Act"). It has further been prayed that the Respondents be directed to reinstate the Petitioner into the Indian Army with effect from the date of discharge, i.e., 11.07.97 with all consequential benefits.

2. It is the case of the Petitioner that he along with 3 others namely Sepoy Jaivir Singh, Sepoy Jaipal Singh and Sepoy Satvir Singh were illegally confined to a detention cell without assigning any reasons and, his arms and ammunitions were withdrawn. Further, under duress and compulsion, he was compelled to write and sign a false confession whereby he wrote that he left his post on the night intervening 21st/22nd Jun, 1997 and had indulged in committing rape upon a civilian woman. The Petitioner further states that he along with the above-

mentioned three persons were kept in a detention cell, when he was told in unequivocal terms that a summary Court Martial was held and that he was reduced to the rank of a Sepoy and was dismissed from service vide Orders dated 11.07.97 allegedly on charges framed u/s 41(1) and Section 40 of the Act.

3. The incident, which led to the discharge of the Petitioner occurred on the night of 06.07.97, in respect of which a summary Court-Martial assembled on 11.07.97 presided over by the Commanding Officer Col. S.S. Dhanoa. The following charges were framed against the Petitioner by the summary Court Martial:

First Charge Disobeying in Such a Manner to Show a Willful Defiance of Authority, a Lawful Command given Personally by The Superior Officer in The Execution of His Office.

AA Section 41(1) In that he,

At field on 06 July 97 in active counter insurgency area when ordered by JC-468197M Nb Sub Rati Pal of the same Bn during an area domination patrol to cover a house with his weapon and also deploy No. 3185392L Sepoy Jaivir Singh along with him said "Mind your own business and move away from here, I know what is to be done," or words to that effect

Second Charge Assaulting his Superior Officer.

AA Section 40 (a) In that he, at field on 06 Jul 97 at 0930 hours in active counter insurgency area when on an area domination patrol picked up a stick and threatened to hit JC468197M Nb Sub Rati Pal of D Coy of the same Bn.

4. The summary Court Martial examined four witnesses, i.e., Nb. Sub Rati Pal, Sepoy Mannu Singh; Hav. Vijay Kumar and Nk. Pradeep Sinha.

5. Nb. Sub. Rati Pal was the first witness to be examined by the summary Court Martial. In his examination he stated that on the night of 06.07.97, while patrolling a village in the Jammu and Kashmir region, he ordered the Petitioner and Hav. K. Vijay Kumar to cordon and cover a suspicious house. The Petitioner retorted by shouting "Mind your own business and move away from here, I know how the cordon is put or the house is covered and what is to be done". Nb Sub Rati Pal further stated that on ordering the Petitioner to speak properly, the Petitioner picked up a stick and threatened to hit him if he did not move away. Hav. K. Vijay Kumar intervened and took the Petitioner aside. Hav. K. Vijay Kumar, Sepoy Mannu Singh and Nk Pradeep Sinha also deposed before the summary Court Martial and stated that they were a part of the patrol along with the Petitioner. They recounted the incident and their accounts corroborate the version of Nb. Sub. Rati Pal. Nk. Pradeep Sinha further stated in his deposition that the Petitioner was always found using foul, abusive and threatening language towards his seniors.

6. The summary Court Martial found the Petitioner guilty u/s 41(1) and 40 (a) of the Act, and the rank of the Petitioner was reduced to Sepoy and he was

dismissed from the service w.e.f 12.07.1997.

7. The Petitioner thereafter appealed to the Chief of Army Staff, who confirmed the sentence of the summary Court Martial. The order of the Chief of Army Staff is reproduced below:

Orders of The Chief of The Army Staff on the Petition Dated 28 Sep 98 Submitted by No. 14911326H Ex HAV Suresh Kumar of 9 Rashtriya Rifles

1. In exercise of the powers conferred on me vide Army Act Section 164(2), I have examined the petition dated 22 Jun 98 submitted by No. 14911326H Ex Hav. Suresh Kumar of 9 Rashtriya Rifles against the findings of the Summary Court Martial (SCM) held on 11 Jul 97, in the light of the proceedings of the said Court and other relevant documents.

2. The Petitioner was tried on two charges under Army Act. Section 41(1) for "Disobeying in such a manner to show a willful defiance of authority, a lawful command given personally by the superior officer in the execution of his office in Counter Insurgency area" and Section 40(a) "Assaulting his superior officer". He pleaded guilty to both the charges. The Court after due compliance of Army Rules, Rule 115(2) found him "Guilty" of the charge and sentenced him to be reduced from the ranks and dismissed from services.

3. The contention of the Petitioner of that he was confined in illegal custody and never taken out of the cell during the impugned period is false. The related documents reflect the physical presence of the accused at the impugned proceedings.

4. The conviction of the Petitioner is well supported by cogent, coherent and reliable evidence on record which inspires confidence. The sentence awarded to him is commensurate with the gravity of the offence for which was convicted.

5. I, Therefore, reject the petition.

signed at New Delhi on this 14th day of July 1999

sd/- (VP

Malik

General Chief of Army Staff

8. Further aggrieved by this Order, the Petitioner has filed the present Petition for redressal of his grievances under Article 226 of the Constitution.

9. Learned Counsel for the Petitioner has contended before us, that the Commanding Officer Col. S.S. Dhanoa had developed a grudge against the Petitioner, since he had refused to follow his orders to loot the houses of civilians under the garb of anti militant operations. The Respondents have refuted these allegations as being baseless and far-fetched. The Respondents have submitted that the Commanding Officer Col. S.S. Dhanoa had taken charge only two

months before the alleged incident and was thoroughly involved with heavy operational commitments and as such he had no occasion to come in contact with the Petitioner or develop a grudge against him, as alleged.

10. Learned Counsel for the Petitioner further submitted that the Petitioner was in detention from 22.06.97 to 11.07.97 in connection with the alleged molestation of a civilian lady. The Petitioner further contended that his arms and ammunitions had been withdrawn, and as such, it was not possible for him to be sent on patrol in a sensitive insurgent area without arms and ammunitions. The Respondents have categorically denied this and has brought to our attention records indicating that the firearms of the Petitioner were deposited in the company KOTE on 06.07.97 after the commission of the offence. The Respondents have also drawn our attention to the records indicating that the Petitioner was only under detention from 06.07.97 to 11.07.97, thereby manifesting the falsity in the Petitioner's allegations that he was under detention w.e.f. 22.06.97. The witnesses, in their depositions, have clearly stated that the Petitioner was in fact a part of the patrol on 06.07.97, and had disobeyed his superior Nb. Sub. Rati Pal and had also threatened to assault him.

11. Learned Counsel for the Petitioner has also submitted that the Court of Inquiry forcibly took the Petitioner's signature on blank papers. We have perused the records and find the charge to be incredible, keeping in perspective the handwritten proceedings and the signatures of the Petitioner at various places on the pages. It would require extraordinary ingenuity, intricate planning and careful collusion between the members of the Court of Inquiry as well as the witnesses appearing there at, to fit the pages with the Petitioner's signatures on them. We find no truth in the Petitioner's accusations.

12. Learned Counsel for the Petitioner further argued that the Petitioner has been illegally and arbitrarily dismissed without giving an opportunity to defend himself. He further argued that he was also not afforded an opportunity to cross-examine the witnesses and to examine any witness in his defense and, Therefore, the entire summary Court Martial has violated the Principles of Natural Justice. On this, learned Counsel for the Respondents has argued that the Petitioner was given the opportunity to defend himself in the Court Martial proceedings. He argued that a complete set of the summary of evidence and the summary of the Court Martial has been supplied to the Petitioner in the presence of an independent witness and he was given an opportunity to cross examine the defense witnesses.

13. The allegations that the Petitioner was not supplied with the summary of the Court Martial; and he was not granted an opportunity to cross-examine or produce his own witnesses is without any substance. From Annexure-K to the Counter Affidavit it is quite apparent that the Petitioner at his own behest gave up his right to cross-examine the witnesses as well as make a statement in support of his case. The statements of the witnesses have been duly seen and signed by the Petitioner, and also bear a statement to the effect that he has

declined to make any statements in order to support his case and also that he has refused to cross-examine the witnesses. Learned Counsel for the Respondents has also rightly stated that the Petitioner's contention that he became aware of the charges against him for the first time after the receipt of the documents pursuant to the Orders of this Court dated 31-07-98 holds no ground, as the Petition dated 29.09.97 to the Commanding Officer for the alleged supply of the documents clearly indicates that he was dismissed u/s 40(a) and Section 41(i) of the Act. The Respondents have further brought to our notice that the Petitioner had categorically stated in his Petition that he had been tried by a summary Court Martial and a summary of evidence had been recorded. From this it is amply clear that the Petitioner was all along aware of the proceedings and was also given the opportunity to defend himself. The argument of the Petitioner holds no force.

14. Before parting with this case, it is necessary to observe that a Writ Court does not, while examining the validity of the Orders passed by a summary Court Martial, sit in appeal or reappraise evidence on the basis whereof the Court Martial has recorded a finding and sentenced the accused to suffer punishment. We cannot lose sight of the fact that under Article 226 of the Constitution, this Court cannot sit as an Appellate Authority but it has to examine from the point of its limited jurisdiction whether the Orders of the summary Court Martial were just, fair and in accordance with the existing rules. In the present case, from the above discussion, the deposition of the witnesses and the documents placed before us, we are of the view that the arguments put forth by the Petitioner are without any foundation. There is consistency in the deposition of the witnesses, regarding the presence of the Petitioner on the patrol and incident of his insubordination. It is evident from the deposition of Nk. Pradeep Sinha as well as Annexure R-1 that the Petitioner had habitually misbehaved and undermined the authority of his superiors. The Petitioner had earlier been reprimanded u/s 48 of the Act for intoxication while on duty. The learned Counsel for the Respondents has drawn our attention to exhibit-K, which shows that at the summary Court Martial the Petitioner was afforded an opportunity and at his own behest, declined to cross-examine the witnesses as well as state his own case at the summary Court Martial. It is evident from Exhibit-K that the Petitioner had both read as well as refused to cross-examine the witnesses. The argument of the Petitioner that the summary Court Martial proceedings were held in violation, being evident from the copies of the alleged proceedings pertaining to the summary of evidence and summary court martial proceeding being supplied to the Petitioner once this Court had directed the Respondents is also without force. The Petitioner was afforded an opportunity to defend his case, at the summary Court Martial. The learned Counsel for the Respondents has drawn our attention to Annexure P-1, which is a Representation made by the Petitioner to the Chief of Army Staff. The contents of the Representation are indicative of the fact that the Petitioner was well aware of the Charges and has also admitted to being tried by a summary Court Martial.

15. In view of the above, the Writ Petition being devoid of any merit is dismissed.

16. No costs.