
(1996) 10 AHC CK 0088

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6926 of 1993

Ex Major Dharam Pal Kukrety

APPELLANT

Vs

Union of India & Ors.

RESPONDENT

Date of Decision : 01-10-1996

Acts Referred:

Army Act, 1950 — Section 164, 37
Army Rules, 1954 — Rule 62(1)
Constitution of India, 1950 — Article 226

Citation : (1996) 10 AHC CK 0088

Hon'ble Judges : P.K.Mukherjee, J and Jagdish Bhalla, J

Final Decision : Dismissed

Judgement

Jagdish Bhalla, J.

1. This writ petition is directed against the sentence dated 6th December, 1980 passed by the General Court Martial.

2. According to the petitioner he was commissioned in the Indian Army in Rajput Regiment and in due course of time attained the rank of Major in Rajput Regiment which formed part of 25th Infantry Division which in turn was part of 16th Corps of the Indian Army. In the year 1978 the petitioner was posted in the Rajput Regiment as 2 IC. i.e. 2nd in Command under the Commanding Officer Lt. Col. S.N. Verma and one Major V K. Singh was also posted as Company Commander in the same Regiment. The Commanding Officer Lt. Col. S. N. Verma went on leave on 14th October, 78 and before proceeding on leave he had sanctioned seven days Casual leave to Major V K. Singh. However, due to operational reasons Major V K. Singh could not be sent on leave immediately. The petitioner, who was officiating in absence of Lt. Col. S. N. Verma, informed Major V.K. Singh to go on seven days casual leave with effect from 17th October, 1978.

3. According to the petitioner, the whole controversy which led to the punishment to the petitioner is connected with the late coming of Major V K. Singh from

seven days casual leave. According to the petitioner, Major V K. Singh had overstayed for three days his seven days" casualleave and returned back after ten days. It has also been contended by the petitioner that fatherinlaw of Major V.K. Singh was the Deputy speaker of the Haryana Assembly at the relevant time and was a very influential person and was friendly to Lt. General Gurbachan Singh, respondent No. 3 to this writ petition. It has also been indicated that the fatherinlaw of Major VK. Singh spoke to respondent No. 3 and requested him to sort out his soninlaw"s problem (Major V. K. Singh). According to the petitioner, this facts was born out from the proceedings of Court of Inquiry para 258(j) which is reproduced below:

"258. xxx xxx

(j) Maj. Kukrety also stated that he was aware of a telephone conversation between Maj V. K Singh and his wife wherein his wife informed Maj. V. K. Singh that her (Mrs. V. K. Singh"s) father had spoken to the Army Commander and that everything would be sorted out. Now as Maj Kukratey put it "it is between General Gurbachan Singh and Shri Ramchandraj"or words to that effect, Maj Kukraty said that the General Officers Commanding and the Brigadier Commander were under pressure from higher head quarters on this account."

4. Thereafter on 1st December, 1978 Maj. V.K. Singh was remanded and produced before Brigadier P.N. Kackar, respondent No. 6 who was the Brigade Commander. It has been alleged by the petitioner that the petitioner was also asked to be present before Brigade Commander and from his actions, the petitioner came to the conclusion that the Brigade Commander did not want to proceed with the case of Major V K. Singh and actually wanted to drop the same. According to the petitioner, the petitioner came to know that the then Deputy General Officer Commanding of 25 Infantry Division, Brigadier Y.P. Bakshi and Staff Officer Ltd. Col. S. N. Kuttappa had advised respondent No. 6 to drop the disciplinary proceedings against Major V. K. Singh. At this lime the petitioner on 4th December, 1978 personally met respondent No. 6 and apprised him of the background of the case and insisted that in the interest of discipline in the Rajput regiment, if the nation is not dealt with suitably, then a bad precedent would be see in the Unit. According to the petitioner, he sought personal interview with respondent No. 4 on 4th December, 1978 but was no allowed to see him as he was interested that the case of Major V. K, Singh be dropped. On 16th December 1978 Major V. K. Singh was awarded Displeasure not to be recorded. The petitioner felt aggrieved as according to him this was no punishment at all and more so because there was a break in service and it could only be regularised by a Court Martial and not be administrative action. Furthermore, the had no face to show to the men of his unit as the unit had been very strict towards other men who indulged in any breach of discipline or good order.

5. In the meantime Lt. Col S. N. Verma Came back form his leave and he was apprised by the petitioner with regard to break of service of Major V. K. Singh as he had overstayed the casual leave from 7 days to 10 days and the petitioner

asked for attachment to some other unit and temporarily handed over his command of second Rajput Regiment to Major T. Mathew. However, the Headquarter 93 Infantry Brigade directed that the command need not be handed over till written direction are received. The Commanding Officer subsequently withdrew his request for attachment to some other unit but the petitioner revived his demand for attachment to some other unit and also represented for an interview with General Officer Commanding in Chief (GOC in C). The said request of the petitioner was not relished by respondent No. 4. According to the petitioner, the respondent No. 6 in collusion with respondent No. 4 started running for the petitioner. In these circumstances, on 21st December, 1978 action against the petitioner was initiated out of the behest of respondent No. 4 who on said date called respondent No. 6 and sent Major P. Mehta, his Brigade Major, with an ambulance along with Capt. Prakash (Doctor) to 2 Rajput Regiment base with instructions to Lt. Col. Verma that the petitioner should be made a psychiatric case for investigation and he be put on AFMS 10 (Form used for referring military personnel to psychiatrist). This fact was told to the petitioner by Captain Mangunath, Regimental Medical Officer of 2 Rajput Regiment on 22nd December, 1978. However, the petitioner could not be put on AFMS 10 because the authorities of 2 Rajput Regiment were unable to implement it. In this behalf the evidence of Captain Prakash who appeared in the proceedings as witness No. 5, in paragraph 232, is set out herein below.

"232. On 21st December, 1978, after lunch I was called by the Brigadier Maj. Of 93 Infantry Brigade (Brigadier Kacker), Staff Officer, on the telephone telling me to send an ambulance vehicle and come myself to 2 Rajput Administration Base to evacuate a patient to Rajauri to 160 General Hospital. I then got an ambulance ready and came to Brigade Headquarters. The Brigade Maj asked me to obtain AFMS 10 and with it come to 2 Rajput administration base."

It has been averred by the petitioner that on the same very day, i.e. 21st December, 1978 when the ambulance and the doctor was sent back, respondent No. 6 at the behest of respondent No. 4 sent another ambulance to evacuate the petitioner to Advance Dressing Station Hospital in the field for treatment and advice. Respondent No. 6 again requested 2 Rajput Regiment authorities for accompanying the petitioner to Advance Dressing Station. However, this again could not be done. This fact, as alleged by the petitioner, would be apparent from the statement of Captain Manjunath, witness No. 7 in the Court of Inquiry. The statement of witness No. 7 may be quoted as below:

"287. At about 18.00 hours on 21st December, 1978 Major Kukrety came out of the Mandir and both of us went to the Officer's mess. I left him in his room. Later I met the adjutant who told me about the ambulance vehicle and the B.M's (Brigade Major's) visit to the unit with AFMS 10 to take Major Kukrety.

He also told me that the ambulance had been sent back on hearing of this incident from this Adjutant. I was surprised and felt annoyed because I felt that there on AFMS i O. Apart from Major Kukrety being a little sad, I had a little while

ago left him in otherwise normal health.

"238. On 22nd December, 1978 Major Kukrety went to Rakh Haveli in the morning. Around 14.30 hours he talked to me from forward defended locality late and told me that he was not well as he had a headache. I told him to come down. Instead he asked me to come upto forward defenced locality Lata, if possible. I was also called by the Commanding Officer and told to go and see Major Kukrety and also to bring him down to administration base, if possible. The Commanding Officer looked worried."

It has further been averred in the petition that when respondent No. 4 came to know about the failure on the part of the respondent No. 6 to evacuate the petitioner to a hospital, he became very much annoyed and in a spirit of vengeance issued an "order on 22nd December, 1978 at 7.30 p.m. for attachment of the petitioner to 10 Infantry Brigade to conduct an exercise of all Officers of 10 Infantry Brigade. This was a ruse set up by respondent No. 4 and respondent No. 6 to grab the petitioner as soon as he is out of his regiment. The petitioner has submitted that such exercise is conducted only by Officer of the rank of Ltd. Col. who are Staff College qualified and the order was motivated as its only purpose was to get hold of the petitioner and put him on AFMS10. However, the petitioner could not be spared as he was to make preparations for "OP SHIKAR" (a code name for an exercise in the Army). It has been submitted that when all the attempts of respondents No. 4 and 6 failed to somehow arrest the petitioner and make him a mental case, then they prevailed upon the petitioner's Commanding Officer Ltd. Col. S. N. Verma to arrest the petitioner for the time being and left off after the case of Major V K. Singh is settled. The Commanding Officer called the petitioner on 24th December, 1978 and wanted to arrest him. The petitioner immediately took out his belt and handed over to the Commanding Officer but also asked him on what charge he was being arrested. As there was no charge against the petitioner and it was being done illegally because respondents No. 4 and 6 wanted the petitioner to borne how withdraw the request to see the G.O.C. in C. 16 corps and arrest him with an intention to put him on AFMS10, the Commanding Officer returned the belt to the petitioner and did not affect the arrest when all the attempts of respondent Nos. 4 and 6 failed to arrest the petitioner, then in the early hours of 28th December, 1978 the entire "Lala" post was encircled by troops from 15 Mahar Regiment, 2/3 Gorkha Rifles and 8 Mumaon Regiment. However, the petitioner refused to vacate his post at "Lata" in the sence of a tentative chargesheet as throughout apprehensive that he might be made a psychiatric case. The petitioner has submitted that it was within his right to meet the C.O.C.inC. ,16 Corps to appose him as to how the disputing of the regiment had been spoilt by the respondent Nos. 4 and 6. It has further been averred that on the 28th December, 1978 itself, at about 12.00 hours the petitioner was called to BHIM post by Maj. General A. V Natu, the Chief of Staff feeling secured, the petitioner apprised the General about the whole episode who asked him to come to Nagrota at Nagrota respondent No. 4, although junior to Major General A. V Natu, arrested the

petitioner but failed to put the petitioner on AFMS10. The petitioner was attached to 2/3 Gorkha Rifles and was kept under cross arrest with armed guards.

6. On the above facts, a Court of Inquiry was held and it was conducted by Officer outside the 25th Infantry Division but by the Officers of the 16 Corps. The General Court Martial pronounced its judgment on 6121980 and the proceedings were confirmed by the Chief of the Army Staff on 31st January, 1983. Thereafter the order of the General Court Martial was promulgated on 1st March, 1983 and the petitioner was sent to the Jammu Jail from where he was transferred to Naini Central Jail on 20th may, 1983.

7. According to the petitioner, the convening order "was not signed by the competent officer, but the Staff Officer on 27th October, 1979 Learned counsel for the petitioner emphatically pressed that the Staff Officer was not competent to sign the convening of the General Court MarI ial and thus, the proceedings were void in itio Learned Counsel for the petitioner further argued that the General Court Martial did not carry any reasons in support thereof. It was argued by learned counsel for the petitioner that there is violation of the provisions of Section 101 of the Army Act and since the petitioner was taken into custody initially on 28th December, 1978 and thereafter was released after passing of interim order in the petitioner sometimes in the years 1980. However, while passing the order, the period of sentence already undergone was not considered by the General Court Martial. It has also been argued that it was not a case of mutiny as the petitioner was charged and at the maximum it could be an act of insubordination and for the act of insubordination, the sentenced awarded is disproportionate. To bring home his arguments, the learned counsel for the petitioner has cited the following cases:

(i) Bhagat Ram v. State of Himachal Pradesh and other, AIR 1983 SC454. and

(ii) Union of India v. Parma Nanda, AIR 1983 SC 1185, on behalf of the petitioner it has also been urged that the detention of the petitioner was illegal and, thus, the petitioner claimed compensation and in this connection he relied on the cases reported in;

(i) Dr. PC. Kakar v. Commandant Military Hospital Trimatgiri and others, 1994 Cri.L.J. 1025 and

(ii) Bhim Singh, MLA v. State of J&K, AIR 1986 SC 494.

8. Learned counsel for the respondents vehemently denied the contention raised on behalf of the petitioner. It was pointed out by learned counsel for the respondents that the petitioner has concealed the fact that the petitioner alongwith others had challenged the legality and validity of the order constituting the General Court Martial which has been decided by the apex Court in the reported judgment in AIR 1982 SC 1413; In re Lt Col. Prithi Pal Singh Bedi, Captain Dharam Pal Kukrety and another and Captain Chander Kumar Chopra v. Union of India. It has been argued that the petition is liable to be dismissed only

one this ground. However, it was further argued that the petitioner is party to the mutiny along with one Naik Bhanwar Singh of II Rajput Regiment and the offence of the petitioner was of serious nature which amounts to mutiny. It was also argued by the learned counsel for the respondents that so far as Major V. K. Singh is concerned, although displeasure note was recorded, but it was found that he had not overstayed his casual leave of seven days as alleged by the petitioner. It has also been argued that over staying two days leave can also be regularised by disciplinary order by an administrative action and not necessarily only by General Court Martial as stated by the petitioner. It has been pointed out by the learned standing Counsel that all types of leave commence and conclude at the transit camp. The journey period from the battalion to the transit camp and back are not part of the leave. It has been submitted that although Major V K. Singh was away from the battalion for ten days, but four days were "journey period" from the battalion to the transit camp and back. Therefore, these four days are to be excluded. In these circumstances, Major V K. Singh was on leave for only a period of six days and it cannot be said that Major V K. Singh had overstayed.

9. With regard to the telephonic conversation, we are of the view that the petitioner has failed to substantiate said allegations, therefore, the same cannot be assailed.

10. The petitioner was charged with mutiny along with one Naik of his battalion. The word "mutiny" is defined under Section 37 of the Army, Act, 1950 which is quoted as under:

"37. Mutiny Any person subject to this Act who commits any of the following offences, that is to say

(a) begins, incites, causes, or conspires with any other persons to cause any mutiny in the military, naval or air forces of India, or any forces cooperating therewith; or

(b) joins in any such mutiny; or

(c) being present at any such mutiny, does not use his utmost endeavours to suppress the same, or

(d) Knowing or having reason to believe in the existence of any such mutiny, or of any intention to mutiny or of any such conspiracy does not, without delay, give information thereof to his commanding or other superior officer; or

(e) endeavours to seduce any person in the military, naval or air force of India from his duty or allegiance to the Union; shall on conviction by courtmartial be liable to suffer death or such less punishment as is in this Act mentioned."

From a perusal of above definition, it is evident that the word "mutiny" has a wide range and scope and we are of the view that the charges levelled against the petitioner are squarely converted under the definition and we do not agree

with the argument of the learned counsel for the petitioner that the charges against the petitioner do not constitute "mutiny" and at the best it can be termed as "insubordination". Refusing army commands and pointing weapon cannot be mere insubordination and that too, in the field area. Urge of munity should be curbed at the initial stage itself and if it is allowed to continue before it can be overcome, it may spread widely and the consequence could be fatal. Therefore, in the interest of the external and also internal security of the nation, no mutiny can be taken to be lightly or should be allowed to continue in the grab of insubordination. Therefore, in view of the allegations of charges against the petitioner, we are of the definite view that the petitioner alongwith others was rightly charged with mutiny.

11. The petitioner has tried to make out a case of bona fide and colourable exercise of powers, but he failed to substantiate the same for the reason that appropriate action was taken against Major VK. Singh.

12. The petitioner has also raised a grievance that the punishment meted out to him is disproportionate to the charges and in this connection he has cited the cases of Bhagat Ram (Supra) and Union of India v. Parmanand Nanda (Supra). We have given our anxious consideration to the point raised and have considered the proposition of law laid down in the aforesaid cases and are of the opinion that in view of the fact that the charges against the petitioner come within the four corners of the definition of "mutiny" therefore, to no stretch of imagination it can be said that the punishment is disproportionate. We are of the view that any person guilty of mutiny should be given exemplary punishment so that it may be an example for others and none else may think on the terms of mutiny against the nation's defence. No nation can afford to take lightly even a whisper of mutiny. It is a historical fact that mutiny in the army starts with disobedience and, therefore, the argument of the petitioner that the punishment is disproportionate to the charges does not satisfy our conscience for the reason that the urge for mutiny should be curbed at the earliest.

13. The next argument of the learned counsel for the petitioner was that the petitioner was illegally detained therefore, in view of the same, compensation should be awarded to him by this Court under Art. 226 of the Constitution. Learned counsel for the petitioner relied upon case of Dr. E.C. Karar (supra) and Bhim Singh (Supra). However, we find that no such prayer has been made in the writ petition nor the petitioner had filed any writ petition when he was under detention with a prayer for issuance of a writ in the nature of habeas corpus against his said alleged illegal detention. The petitioner has failed to make out any reasonable ground for the interference and award of compensation on the ground of illegal detention. It is worthwhile to note that the argument for award of compensation has been lightly made on behalf of the petitioner.

14. As far as the argument of the petitioner that the conviction of the General Court Martial was not signed by the competent authority is concerned, we find that the petitioner and others had approached the Hon'ble Supreme Court of

India under Article 32 of the Constitution challenging the legality and validity of the convening of the General Court Martial and particularly the constitution of the General Court Martial and the writ petition was dismissed by the Hon"ble Supreme Court finally and interim orders granted to the three petitioner before the Hon"ble Supreme Court, including the petitioner, was vacated. (See AIR 1982 SC 1413). In the circumstances, we are of the view that once the legality and validity of the order convening the General Court Martial was challenged and has attained the attention of the Hon"ble Supreme Court, it cannot be reagitated before this Court in view of the principles of constructive resjudicata. Therefore this Court cannot go into the details of the legality or validity of the convening of the General Court Martial. We find that the petitioner has failed to substantiate that reasons are to be recorded. We are of the opinion that in view of Rule 62 (I) of the Army Rules, 1954 no reasons are to be recorded. Therefore, if reasons have not been recorded, there is no illegality in the impugned order of punishment. Since no reasons are to be recorded while passing the order of guilt, in view of Rule 62 (I) of the Army Rules, it becomes the duty of the incumbent officer to prove that all the material before the General Court Martial was not taken into consideration by the General Court Martial.

15. We are of the opinion that the petitioner was taken into custody in accordance with the provisions of Section 101 of the Army Act which provides for as under:

"101. Custody of officers. (1) Any person subject to this Act who is charged with an offence may be taken into military custody.

(2) Any such person may be ordered into military custody by any superior officer.

(3) An officer may order into military custody any officer, though he may be of a higher rank, engaged in a quarrel, affray or disorder."

In view of the above, the allegation of the petitioner that he was taken into custody in violation of provisions of Section 101 of the Army Act, has no legs to stand. The petitioner himself admitted that he was taken into custody by his superior officer, i.e. the Commanding Officer.

16. Certain questions of facts have been raised by the petitioner which cannot be looked into because this Court cannot be relegated to a fact finding committee nor it sits in appeal.

17. Learned standing counsel also argued that the petitioner has alternative remedy available to him under Section 164 of the Army Act and on this ground alone the writ petition should be dismissed. Since the matter was listed for final hearing and the petition has been admitted, we are of the view that taking into consideration the fact that the petitioner has been pending before this Court for a considerable period of time, it should not be dismissed on the ground of alternative remedy.

18, In the premise, the petitioner has failed to make out a case for interference under Article 226 of the Constitution of India.

19. The writ petition is accordingly dismissed. However, in the circumstances of the case, there shall be no order as to costs. Petition dismissed.