

(2002) 07 DEL CK 0168
In the Delhi High Court
Case No : Civil Writ No. 5503/97

Ex. Pioneer Arun Kumar Singh		APPELLANT
	Vs	
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 19-07-2002

Acts Referred:

Citation : (2002) 07 DEL CK 0168

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : N.L. Bareja, for the Appellant; Rekha Palli and Babita Puniya, for the Respondent

Judgement

Mukul Mudgal, J.—This petition challenges the order of discharge of the petitioner with effect from 1st October, 1991. The main allegation in the petition is that the order of discharge is based on an application coerced out of the petitioner and the petitioner has for the aforesaid purpose relied upon the constant hostility shown towards him by respondent No. 5, H.S. Ghumman, who was at the relevant time a Lieutenant Colonel in the Army. The petitioner contended that the respondent's hospitality towards him was generated by the petitioner's refusal to acquiesce in the irregularities in accounting of the clothing stores at the behest of respondent No. 5. The petitioner is Ex. Pioneer Arun Kumar Singh, respondent No. 1 is the Union of India, through its Secretary, Ministry of defense, South Block, P.O. DHQ, New Delhi, respondent No. 2 is the Chief of the Army Staff, Army Headquarters, New Delhi, respondent No. 3 is the General Officer Commanding (GOC), Headquarters 11 Corps, c/o 56 APO; respondent No. 4 is the Officer-in-Charge, Records, Bangalore and respondent No. 5 is the Officer Commanding (OC), Pioneer Company, C/o 56 APO, i.e., Lt. Col. H.S. Ghumman.

2. The petitioner's plea is primarily based on a Court of Inquiry which was convened on the basis of the allegations made by the petitioner. The report of the Court of Inquiry which had been the basis of the writ petition was not available to the petitioner and hence not brought on record by the petitioner at

the first instance. The Order of this Court dated 19th November, 1998 is instructive and reads as follows:

"It has been contended by the counsel for the petitioner that in terms of letter dated 26.2.1997, the respondent has taken the stand that there was no record of any convening order for holding of Staff Court of enquiry in 1990, the same is at Page 66 of the paper-book. To the similar effect is another letter of the respondent dated 30.4.1997, which is at page 69 of the paper-book, stating that no record of holding any Court of Inquiry was with the respondent. However, in Annexure-9 attached to the counter affidavit at page 118 there is a recommendation dated 27.11.1990 of of TPS on Court of Inquiry in relation to the petitioner. In view of this contradictory stand of the respondent let the record of the inquiry, if any conducted by the respondent be brought on record and respondents are also directed to explain on affidavit as to how and why these two letters which are at pages 66 and 69 of the paperbook had been written by the respondent."

Thereafter the Court of Inquiry order only came on record pursuant to the Orders of this Court dated 19th November, 1998 and 4th August, 1999.

3. The counter affidavit of the respondents in Paragraph 23 averred as follows:

"In reply to para 5(xiii) a court of Inquiry was conducted on the orders of HQ 11 Corps. Col Karam Singh, Presiding Officer of the Court recommended the following actions (Annexure-R/9).

(i) Disciplinary action should be taken against No. 8031937K Ex Pioneer Arun Kumar Singh for framing allegations against of unit and other personnel of the unit, which could not be proved.

(ii) Suitable disciplinary action taken against JC-14767 1K Sub Pritam Singh and No. 8026580 P LNK Ramesh Singh who allegedly misbehaved with the wife is authorised to go away out of the unit lines without any proper authority."

4. The relevant finding of the Court of Inquiry in so far as it relates to respondent No. 5, H.S. Ghumman reads as follows:

"The allegation against of 1811 Pnr Coy Lt. Col. (TS) H.S. Ghumman for forcing No. 8031937 Pnr Arun Kumar Singh by using undue authority to sign confessional statement is proved."

5. Significantly a concerned effort to play down if not totally ignore, the culpability of Lt. H.S. Ghumman against whom an adverse finding has been recorded by the Court of Inquiry, is evident from the manner in which the respondents 1 to 4 have defended this writ petition. The said paragraph 23 of the respondents' counter affidavit pointedly avoids mentioning that the Court of Inquiry had also directed action against respondent No. 5 though it mentions action recommended against non-commissioned Officers such as Sub. Pritam Singh and P. LNK Ramesh Singh, who were not parties to the writ petition.

However, a perusal of the Court of Inquiry shows that in the said enquiry, a finding was recorded against Lt. Colonel H.S. Ghumman for forcing the petitioner by using undue authority to sign a confessional statement. This is obviously the reason why there were concerted efforts to avoid filing the Inquiry Report which was eventually filed only in August 1999 after two specific orders of this Court dated 19th November, 1998 and 4th August, 1999. The effort to shield Lt. Colonel H.S. Ghumman, respondent No. 5 by attempting only to highlight the role of non-commissioned officers is further evident from the fact that the following order was passed by this Court on 16th May, 2001:

"Arguments heard in part.

Learned counsel for the petitioner will file an affidavit, explaining the laches for the period 1991 to 1997 within four weeks from today. Response, if any, to the said affidavit be filed by the respondents within two weeks thereafter. Learned counsel for the respondents shall produce the records for the action taken against Lt. Col. H.S. Ghumman in terms of the opinion of the Court of Inquiry conducted on 18th June, 1990 on the next date."

6. Even though the petitioner complied with the Order dated 16th May, 2001, it was not complied with by the respondents 1 to 4 as neither the record as per the said order has been produced in this Court in spite of considerable passage of time, nor has any information been furnished either in writing or orally about the action taken against H.S. Ghumman. Thus the conclusion that no action whatsoever was taken against Lt. Colonel H.S. Ghumman even though he was found guilty of the charge of coercion leveled against him by his subordinate, i.e., the petitioner is inescapable.

7. Furthermore, determined efforts were made to file a misleading counter affidavit in this Court which was a blatant and a brazen attempt to reproduce only partly the finding of the Court of Inquiry held by the respondents themselves by only extracting the findings against Pritam Singh and Ramesh Singh and implying that there was no other finding recorded by the said Court of Inquiry. The omission to mention the findings against the Lt. Colonel H.S. Ghumman is more glaring because he is respondent No. 5 in the present writ petition whereas Pritam Singh & Ramesh Singh were not even parties to the writ petition. It is thus evident that the counter affidavit was filed and the report of the Court of Inquiry not filed to avoid the consequences of the Court of Inquiry against Lt. Col. H.S. Ghumman.

8. The Armed Forces are expected to set a very high standard of probity and discipline and superior officers are consequently invested with extremely wide-ranging disciplinary powers over their subordinates commissioned as well as non-commissioned and the very nature, extent and the potency of the disciplinary jurisdiction available to such officers makes it all the more imperative that the power against the subordinates particularly the non-commissioned ones, be exercised in a fair, balanced and objective manner. The respondent No. 5 clearly

stood indicated by the Court of Inquiry conducted by the Army. The delinquency of Lt. Col. Ghumman was attempted to be shielded from the scrutiny of this Court in a ham handed manner which eventually has turned out to be counter-productive and has succeeded in exposing the extremely objectionable conduct of the respondents in attempting to shield an officer who was found delinquent by their own Court of Inquiry. Even when the petition was being argued, the learned counsel for the respondent avoided answering the question as to whether any action was taken against respondent No. 5, which has led this Court to conclude that no action has been taken against Lt. Col. H.S. Ghumman. This is an unfortunate state of affairs and the Officer of Judge Advocate General is directed to look into this and to file an affidavit in this Court, giving a detailed report about the action taken against Lt. Col. H.S. Ghumman subsequent to the Court of Inquiry, within 8 weeks from today. In case no action is taken, the affidavit will also state the reasons, if any, for not following up the findings of the Court of Inquiry. The affidavit to also state reasons why a counter affidavit which did not disclose the findings against respondent No. 5 was filed in this Court and who was responsible for filing such an affidavit.

9. As far as the merits of the present case is concerned, the petitioner has filed an additional affidavit, explaining his laches as per the Order dated 16th May, 2001. In so far as laches are concerned, the petitioner has given an Explanation that subsequent to his discharge on 13th September, 1991, he had sent a Legal Notice dated 7th September, 1992 by Registered Post to the respondents. The petitioner has further stated in this affidavit that his Advocate, Shri Chhattar Singh sent a Reminder dated 16th November, 1992 by UPC to the respondents, seeking a reply of the Notice dated 7th September, 1992. The petitioner has also relied upon the Letters (in the nature of reminders of his notice dated 7th September, 1992) dated 9th January, 1993; 25th May, 1993; 9th April, 1994"; 3rd May, 1994, 9th July, 1995, 8th July, 1996 and 20th September, 1996. These letters were sent by UPC. The petitioner has further pleaded that thereafter he had contacted Ex. Major S.K. Sharma, an Advocate, practicing in Meerut and who sent a Notice dated 30th January, 1997 by Regd. AD and consequently a reply to the said Notice was received from the respondents. Thereafter another letter was sent to the respondents, asking for the record of the Court of Inquiry and eventually the writ petition filed in this Court on 15th December, 1997.

10. In my view, the real laches in the petition begin from 7th September, 1992 when a Registered Notice was sent by the petitioner's Advocate, Mr. Chhattar Singh. The petitioner has attempted to explain the period since 7th September, 1992 up to 30th January, 1997 when a notice by registered post was sent by his subsequent Advocate, Ex. Major S.K. Sharma. The said notice dated 30th January, 1997, sent by Ex. Major S.K. Sharma by Regd. AD Post was duly replied to by the Army Authorities. Thus it is evident that the petitioner had sent a Notice dated 7th September, 1992 but thereafter appears to have taken no action right up to 30th January, 1997 when Ex. Major S.K. Sharma sent a notice on his behalf by Regd. AD Post. The Reminder dated 16th November, 1992 and

the letters, sent by the petitioner dated 9th January, 1993; 25th May, 1993; 9th April, 1994; 3rd May, 1994, 9th July, 1995, 8th July, 1996 and 20th September, 1996, do not inspire much confidence as they have all been sent by UPC. It is not possible to believe that the petitioner who had sent a registered legal notice on 7th September, 1992 would send subsequent reminders by UPC. The latter notice sent on 30th January, 1992 again been sent by registered AD. Thus it is not possible to accept the plea of the petitioner that the reminders dated 9th January, 1993; 25th May, 1993; 9th April, 1994; 3rd May, 1994, 9th July, 1995, 8th July, 1996 and 20th September, 1996 were sent. The subsequent letter dated 30.1.1997, sent by Ex. Major S.K. Sharma on petitioner's behalf by Regd. AD Post evoked a response on 26th February, 1997 and thus it is clear that if the letters had been sent as alleged from 6.11.1992 to 20.9.1996 by registered AD, a response may have been sent by the respondents. Thus I find that the petitioner has not been able to explain the period of laches between 7.9.1992 and 30.1.1997 when the notice by his subsequent Advocate Ex. Major S.K. Sharma was sent by Regd. AD. In my view, these laches are sufficient to disentitle the petitioner to seek a relief which seeks to quash the impugned notice of discharge issued as far back as in 1991. The reinstatement of the services in the Armed Forces should be granted to a deserving petitioner and the facts of the petitioner's case do indicate prima facie that the petitioner had a reasonable case. However, the long passage of time has rendered nugatory the rights which may have accrued to the petitioner depending upon the determination of the legality of the impugned order of discharge. Since I am satisfied that the petitioner has not satisfactorily explained the laches in filing of the writ petition, on the merits of the present case in so far as it relates to reinstatement, I am not inclined to grant any relief to the petitioner. However, whether the petitioner is entitled to any other relief will depend upon the affidavit directed to be filed by the Office of the Judge Advocate General. In view of the above findings on laches, it is not necessary to go into the merits of the averments in the writ petition in detail. However, the petitioner has adequately demonstrated by reference to the finding of the Court of Inquiry, and the respondents have indeed by their conduct, further strengthened the belief of this Court, that there was merit in the petitioner's grievance about coercion exercised against him by the respondent No. 5. This Court has prima facie come to a conclusion that the respondents have made regrettable efforts to shield respondent No. 5 which efforts began from the misleading nature of Paragraph 23 of the counter affidavit which only attempted to extract findings against non-commissioned officers, Pritam Singh and Ramesh Singh and deliberately omitted any reference to respondent No. 5, Lt. Col. H.S. Ghuman. The affidavit of the Judge Advocate General as directed above by this Court shall be filed within the stipulated period of 8 weeks from today with an advance copy to the petitioner's counsel.

11. List the writ petition for reporting compliance and further orders on 20th September, 2002.