
(1985) 07 RAJ CK 0083
In the Rajasthan High Court
Case No : Civil Writ Petition No. 722 of 1978

Hari Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-07-1985

Acts Referred:

Army Act, 1950 — Section 160, 164

Citation : (1985) WLN 167

Hon'ble Judges : S.N. Bhargava, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.N. Bhargava, J.—The petitioner was serving as substantive Naik in No. 5. Training Company, the Grenadiers Regimental Centre, Jabalpur. He was served with a charge-sheet dated 9-4-1976 for committing an unnatural offence with Rect. Surrender Singh District Court Martial was ordered, who after the enquiry and examining a number of witnesses by both the sides and hearing arguments found by his order dated 23-7-1976 the petitioner not guilty. The confirming authority did not agree with the findings and remanded the case to the District Court Martial for reassessment of the evidence in the light of the observations made therein u/s 160 of the Army Act and Rule 68 of the Army Rules. After the remand of the case, the District Court Martial recorded fresh evidence and recalled some of the witnesses earlier examined and found the petitioner guilty by his order dated 17 11-1976 and he was sentenced to suffer one year's rigorous imprisonment in the civil jail in addition to being dismissed from service, and the said order of the District Court Martial was confirmed vide Annex. 9 promulgation dated 11-1-1977 and 6 months out of one year rigorous imprisonment was remitted. The petitioner moved a petition u/s 164 of the Army Act and the said petition was rejected vide order dated 2-8-1978 by a one line order "your petition was placed before Army Commander, who after due consideration has rejected the same" It is in these circumstances the present

writ petition was filed. A show-cause notice was issued as to why the writ petition be not admitted. The non-petitioners filed a reply to the show-cause notice and after hearing both the counsel for the parties the writ petition was admitted on 19-7-1979 inspite of a preliminary objection raised by the learned counsel for the respondents that the writ petition was not maintainable and this Court had no jurisdiction to entertain the writ petition.

2. I have heard learned counsel for the parties. Learned counsel for the respondents has pressed before me also that this Court should not entertain the writ petition as the orders were not passed within the territorial jurisdiction of this Court and he has placed reliance on S.S. Mittal Vs. Bar Council of India and Others, On the other hand, learned counsel for the petitioner has placed reliance on Prem Cables Pvt. Ltd. v. The Asstt. Collector Customs and Anr. ILR (1978) Raj. 963 and Krishnatosh Das Gupta v. Union of India and Ors. 1979 LIC 1154. I have given my thoughtful consideration to the whole matter. This Court after hearing both the learned counsel for the parties had admitted the writ petition and rejected the argument that the petition is not maintainable. After 7 years on this technical ground it will not be in the interest of justice to accept this argument and, therefore, I over rule this preliminary objection. On merits, learned counsel for the non-petitioner has placed reliance on Rule 143 of the Army Rules which gives power and authorises for recalling of witnesses at the request of the prosecutor or of the accused and has submitted that the District Court Martial has inherent powers even after the remand of the case and merely because no specific directions or permission was given to the District Court Martial to recall any witness or to examine fresh witnesses the District Court Martial cannot be said to have acted without jurisdiction or against the directions in recalling the witnesses or examining fresh evidence. The revision order (Ex. 4) dated 25-10-1976 is very specific. It is observed in paragraph 4 as under:

The court should consider their finding in the light of the above observations and re-appreciate the evidence whether the earlier statement of PW 1 corroborated by the testimony of PW 2, PW 3, PW 4, PW 6 and PW 7 and the confessional statements made by the accused before PWs 6 and 7 is reliable or his subsequent statement denying the incident is true under the circumstances of this case. If the court revokes its original finding, it should record its revised finding and pass a sentence.

In this order itself the attention of the court was invited to Section 160 and Rule 68 which are quoted here under:

160. Revision of finding or sentence--(1) Any finding or sentence of a court martial which requires confirmation may be once revised by order of the confirming authority and on such revision, the court, if so directed by the confirming authority, may take additional evidence.

(2) The court, on revision, shall consist of the same officers as were present when the original decision was passed, unless any of those officers are

unavoidably absent.

(3) In case of such unavoidable absence the cause thereof shall be duly certified in the proceedings, and the court shall proceed with the revision, provided that, if a general court martial, it shall consist of five officers, or, if a summary, general or district court martial, of three officers.

68. Revision--(1) Where the finding is sent back for revision u/s 160, the court shall reassemble in open court, the revision order shall be read, and if the court is directed to take fresh evidence, such evidence shall also be taken in open court. The court shall then deliberate on its finding in closed court.

(2) Where the finding is sent back for revision and the court does not adhere to its former finding, it shall revoke the finding and sentence, and record the new finding, and if such new finding involves a sentence, pass sentence afresh.

(3) Where the sentence alone is sent back for revision, the court shall not revise the finding.

(4) After the revision, the Presiding Officer shall date and sign the decision of the court, and the proceedings, upon being signed by the judge-advocate, if any, shall at once be transmitted for confirmation.

There is no application in writing or any request made by the prosecution for recalling any witness or examine fresh evidence and the petitioner had no opportunity to object such a request nor there is any order under Rule 143 wherein the authority has to be satisfied that it is in the interest of justice so to do as it considers it expedient to allow a witness to be recalled or allow fresh evidence. Rule 143 of the Army Rules runs as under:

143. Re-calling of witnesses and calling of witnesses in reply:

(1) At the request of the prosecutor or of the accused, a witness may, by leave of the court, be recalled at any time before the closing address of or on behalf of the accused (or at a summary court-martial at any time before the finding of the court) for the purpose of having any question put to him through the Presiding Officer, the judge-advocate (if any) or the officer holding the trial

(2) The court may, if it considers it expedient, in the interest of justice, so to do, allow a witness to be called or recalled by the prosecutor, before the closing address of or on behalf of the accused, for the purpose of rebutting any material statement made by a witness for the defence or for the purpose of giving evidence on any new matter which the prosecutor could not reasonably have foreseen

(3) Where the accused has called witnesses to evaluate character, the prosecutor before the closing address of or on behalf of the accused, may call or re-call witnesses for the purpose of proving a previous conviction or entries in the defaulters" book against the accused

(4) The court may call or re-call any witness at any time before the finding, if it considers that it is necessary for the ends of justice.

After the remand of the case, the District Court Martial should have conducted the trial only and strictly within the bounds fixed by the revision order i.e. re-appraisal or re-assessment of the evidence in the light of the observations made in the revision order and the District Court Martial had no authority to record any fresh evidence or to accede to the request of recalling any witness.

3. In view of the matters, the order finding the petitioner guilty dated 17-11-1976 and the promulgation dated 11-1-1977 is hereby quashed. The District Court Martial will reassess the evidence as directed by the revision order dated 25-10-1976. The writ petition is, therefore, allowed. The parties are left to bear their own costs.