

(2015) 03 DEL CK 0261
In the Delhi High Court
Case No : Writ Petition (C) 6178/2011

Hav Prem Singh

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 20-03-2015

Acts Referred:

Army Act, 1950 — Section 120, 63, 80, 80, 81

Citation : (2015) 3 AD 765

Hon'ble Judges : Pratibha Rani, J.;Pradeep Nandrajog, J.

Bench : Division Bench

Advocate : S.S. Pandey, for the Appellant; Monika Arora, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Joining the Indian Army and allocated Kumaon Regiment as the parent regiment on March 26, 1983, the petitioner earned promotion to the rank of Havildar. During the period he served the Indian Army, the petitioner was punished thrice when the penalty of severe reprimand was inflicted upon him resulting in three red ink entries being made in his service record.

2. Due for promotion to the rank of Naik Subedar on October 01, 2007, the petitioner was deputed to undergo the Junior Commissioned Cadre Course in March 2007; which he successfully cleared. The case of the petitioner is that while posted with 17th Kumaon Regiment he was served with a tentative charge-sheet on May 12, 2007 by the then Commanding Officer alleging that he had committed an offence punishable under Section 63 of the Army Act, 1950 i.e. did an act prejudicial to good order and military discipline. The allegation of fact was that while at Pithoragarh, on May 09, 2007 the petitioner made an unauthorized contact over the cellular telephone with a lady, which was contrary to the instructions issued vide Inter Office Note No. 100/6/GS(Int.) dated July 28, 2006.

3. The petitioner alleges that the issuance of the charge-sheet was an act of

malice towards him to deprive him the promotion because if the petitioner would not be promoted the beneficiary would be one Devendra Singh. As per the petitioner Devendra Singh was the complainant.

4. It is the case of the petitioner that he was tried summarily on May 15, 2007. The punishment being the result of a plea of guilt entered in the summary proceedings held on May 15, 2007, the petitioner pleads that the proceedings were a sham evidenced by his signatures not being obtained on record of the summary trial proceedings. The petitioner claims that he did not plead guilty. The petitioner claims that his signatures were obtained on some papers concerning leaving of the charge. As per the petitioner, nothing of the kind transpired on May 15, 2007 as is entered in the record.

5. In a nut shell the petitioner questions the penalty imposed by pleadings two facts. Firstly that he never pleaded guilty at the summary trial and for which the proof is that his signatures have not been obtained on the plea of guilt entered by him. Secondly that the entire proceedings are sham.

6. Needless to state, the respondents denied the allegations made by the petitioner.

7. Rule 22 of the Army Rules, 1954 reads as under:-

"22. Hearing of Charge. -

(1) Every Charge against a person subject to the Act shall be heard by the Commanding Officer in the presence of the accused. The accused shall have full liberty to cross-examine any witness against him, and to call such witness and make such statement as may be necessary for his defence:

Provided that where the charge against the accused arises as a result of investigation by a Court of inquiry, wherein the provisions of rule 180 have been employed with in respect of that accused, the commanding officer may dispense with the procedure in sub-rule (1).

(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, he is satisfied that the charge ought not to be proceeded with:

Provided that the commanding officer shall not dismiss a charge, which he is debarred, to try under sub-section (2) of Sec. 120 without reference to superior authority as specified therein.

(3) After compliance of sub-rule (1), if the commanding officer is of opinion that the charge ought to be proceeded with, he shall within a reasonable time-

(a) Dispose of the case under section 80 in accordance with the manner and form in Appendix III; 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-

- (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.
- (4) Where the evidence taken in accordance with sub-rule (3) of this rule discloses an offence other than the offence which was the subject of the investigation, the commanding officer may frame suitable charge(s) on the basis of the evidence so taken as well as the investigation of the original charge."

8. The mandate of the Rule is that every charge against a person subject to the Act shall be heard by the Commanding Officer in the presence of the accused who shall have full opportunity to cross-examine the witnesses against him and would have also a right to call such witnesses and make such statement as the person may deem necessary for his defence.

9. In view of the evidence led, the Commanding Officer may dismiss the charge if in his opinion the evidence does not show that the offence alleged against the person has been committed. If the Commanding Officer is of the opinion that the charge ought to be proceeded with, he has to take action and proceed further in accordance with Section 80 of the Army Act, and make a record thereof in the manner prescribed by the Appendix III to the Rules.

10. The relevant record which was produced by the respondents at the hearing of the writ petition would evince that on May 12, 2007 the charge was drawn up and served upon the petitioner alleging that while at Pithoragarh on May 09, 2007 he made an unauthorized call to a lady using a cellular phone which was contrary to instructions issued vide Inter Office Note No. 100/6/GS(Int.) dated July 28, 2006.

11. Proceedings under Rule 22 of the Army Rules, 1950 were conducted by the Commanding Officer on May 15, 2007. The proceedings record that the charge against the accused has been read out and explained to the accused. Signatures of the petitioner have been obtained.

12. Thereafter it is recorded in the record of proceedings that the hearing commenced at 12:30 hrs on May 15, 2007 and No. 4178306 H CHM Devendra Singh was examined as a witness. Opportunity was granted to the petitioner to cross-examine the witness which he declined to do so.

13. It is then recorded that the Commanding Officer directed the petitioner to be tried summarily. Thereafter signatures of the petitioner have been obtained once again.

14. IC 64164 X Capt Madappa KM, SS41290 X Capt Joseph Christy and JC 208169 N Sub Maj Harak Singh Bora have been shown as persons present during proceedings conducted under the Army Rule 22 as independent witnesses to vouch the correctness of the record drawn up. Signatures of all three have been obtained.

15. No malice has been alleged against the Commanding Officer Col. D.D. Baloni of the 17th Kumaon Regiment and thus we hold that the presumption of truth that official proceedings as recorded in the official record are correct, stand reinforced.

16. The record would evince that on the same day the petitioner was summarily tried in terms of the decision taken by the Commanding Officer concerning proceedings relating to the hearing of the charge envisaged by Rule 22 of the Army Rules, 1950.

17. The prescribed proforma has been used. The prescribed proforma which has been filled up records that for the offence in question the petitioner pleaded guilty and punishment of severe reprimand was inflicted upon the petitioner.

18. Signatures of the petitioner have not been obtained on the record of the proceedings conducted under Section 80-82 of the Army Act. The reason being that the proforma has no column for obtaining signatures of the accused if he pleads guilty to the charge.

19. Concerning Summary Court Martial proceedings the consistent view taken by this Court that notwithstanding the Rules or the Act not mandating signatures of the accused being obtained at Summary Court Martial trial, if plea of guilt is entered, principles of caution would require the signatures of the accused to be obtained. The decisions of this Court are: (i) KLJ 1991 513 UOI and Ors.vs.Ex-Havildar Clerk Prithpal Singh and Ors.; (ii) unreported decision dated February 01, 2008 disposing of WP(C) 776/1995 L.N.K. Gurdev Singh vs. Union of India and Ors.

20. But where there is sufficient evidence that a plea of guilt was entered and that proceedings did take place as claimed by the department, the omission to obtain signatures on the plea of guilt would not be fatal. It would be an act of irregularity at the most and not illegality.

21. In the instant case, before the petitioner approached this Court he filed a statutory complaint against the penalty inflicted upon him. In paragraph 4 of the statutory complaint the petitioner has pleaded as under:-

"As per IA FD-901 (attached appendix "D") petitioner has neither accepted the charge as guilty nor understand the meaning of guilty as per the personal

knowledge of the appellant the word "guilty" is in roman English known as mistake in English language instead of acceptance of charge as such the endorsement of guilty as acceptance of charge is still beyond the comprehension of the petitioner." 22. From a perusal of the case pleaded by the petitioner in the statutory complaint it is apparent that he admits proceedings at the summary trial being conducted in his presence. He admits that he pleaded guilty, but explains that he did not understand the meaning of "guilty". As per him, it is a word of English language and he understood it to mean a "mistake".

23. Now, whether one calls it a mistake to contact a lady over mobile phone in violation of the Inter Office Note No. 100/6/GS (Int.) dated July 28, 2006 or to plead guilty to the same is one and the same thing keeping in view the nature of indictment in the instant case.

24. We could appreciate the argument if the charge is of unauthorized absence and the accused claims that he understood the plea of guilty to mean that he accepted the absence and not the unauthorized nature thereof. In such a case he pleads that he had a good reason for the absence and for said reason the absence would not be unauthorized, the argument could be looked into and little further.

25. But where the charge is of making unauthorized contact with a lady over a mobile phone, a plea of accepting the mistake would tantamount to a plea of guilt being entered.

26. Noting that as a result of the penalty levied a fourth red ink entry was made in the service record of the petitioner and this was the reason why he was not promoted when his turn matured on October 01, 2007, we dismiss the writ petition but without any order as to costs.