

(1993) 08 GAU CK 0029
In the Gauhati High Court
Case No : Writ Appeal No. 9 of 1993

JC No.73075 Sub Sk Mandol

APPELLANT

Vs

Inspector General of Assam Rifles

RESPONDENT

Date of Decision : 23-08-1993

Acts Referred:

Army Act, 1950 — Section 2, 2
Army Rules, 1954 — Rule 40, 40, 40(1), 40(1)
Constitution of India, 1950 — Article 226, 226

Citation : (1993) 2 GLJ 333 : (1993) GLR 307 Supp

Hon'ble Judges : U.L.Bhat, C.J. and H.K.Sema, J

Bench : Division Bench

Advocate : N.Kerani Singh, Ashok Potsangbam, Advocates appearing for Parties

Judgement

U. L. Bhat. C.J.

1. Petitioner in Civil Rule No. 263 of 1991 has filed this writ appeal. We heard both sides.

2. Petitioner joined the service of Assam Rifles on 1.1.63. Annexure A/I charge sheet dated 19.4.91 was served on him. First respondent, Inspector General of Assam Rifles (North) on 20.4.91 ordered assembly of a General Court Martial constituted of the officers mentioned therein. Petitioner pleaded not guilty to the charges. On 20.6.91 by Annexure A/3 application he challenged the composition of the GCM as legal. The application was rejected. Civil Rule No. 3350 of 1991 filed by him was rejected with liberty to raise the plea at the appropriate stage. In course of hearing before the GCM, petitioner reiterated his plea. GCM found him guilty of the main charge and not guilty of the alternative charge as seen in Annexure A/6. By Annexure A/7, GCM imposed sentence of dismissal subject to confirmation. This order was challenged in the writ petition and the writ petition was dismissed. Hence the appeal.

3. The following grounds were incorporated in the writ petition :.

(1) The composition of the GCM is illegal.

(2) The alternative charge having been not proved, the first charge could not be found established.

(3) Important defence witnesses were not called.

4. Before the learned Single Judge respondents objected to the maintainability of the petition on the ground that the impugned order was yet to be confirmed by the higher authority and the petitioner has alternative remedy in the department. The learned Single Judge held that the writ petition was premature inasmuch as the confirming authority had not yet confirmed the order. With this conclusion the writ petition could have been disposed of. However, the learned Judge proceeded to consider the arguments advanced on behalf of the petitioner on merits. According to the judgment the only other contention urged related to legality of the composition of the GCM. This contention was overruled.

5. Learned counsel for the appellant has urged the following contentions before us:

A. The conclusion of the learned Single Judge that the writ petition was premature is unsustainable..

B. The composition of the GCM being illegal, the trial, the finding and the sentence are illegal.

C. Alternative charge having been found not proved the main charge falls to the ground.

D. The main charge also has not been made out.

6. Personnel of Assam Rifles are governed by the provisions of the Army Act, 1950 (for short, the Act). Section 2 indicates persons subject to the Act. They are officers of the regular Army, persons enrolled under the Act, persons belonging to Indian Reserve Forces, Supplementary Reserve Forces, officers of the Territorial Army and persons not otherwise subject to military law who, on active service, in camp, on the march or in any frontier post specified by the Central Government by notification in this behalf, are employed by or are in the service of or, are followers of, or accompany any portion of, the regular Army. Section 2 does not attract personnel of Assam Rifles. Learned Central Government Standing Counsel submitted that Assam Rifles has been established under Executive Orders which also render the provisions of the Act applicable to personnel of Assam Rifles.

7. Point A : Learned Single Judge has found that since the sentence imposed on the petitioner is subject to confirmation by the confirming authority, namely Central Government or officer empowered in that behalf by the Central Government under section 154 of the Act and confirmation has not yet been made, the writ petition was premature. The conclusion would be unexceptional in ordinary circumstances. However, in this case, the petitioner challenges the

legality of the constitution of the GCM and consequently the jurisdiction of the GCM therefore, it would be within the discretion of the writ Court to entertain the writ petition. Therefore, we proceed to consider other contentions.

8. Point B : Relying on Rule 40 of the Rules, the appellant contends that the conclusion of the learned Single Judge that the constitution of the GCM was valid is unsustainable. Subrule (1) of Rule 40 of the Rules which alone is relevant for the purpose of this case reads as follows :

"A General Court Martial shall be composed, as far as seems to the convening officer practicable, of officers of different corps or department, and in no case exclusive of officer of the corps or department to which the accused belongs."

Section 3 of the Act is the definition section which opens with the clause "In this Act, unless the context otherwise requires". Clause (vi) of section 3 defines "Corps" as meaning any separate body of persons subject to the Act, which is prescribed as a corps for the purposes of all or any of the provisions of the Act. Clause (ix) of section 3 defines "department" as including any division or branch of a department. Subrule (1) of Rule 187 of the Rules mentions various bodies under clauses (a) to (y) and states that each of those bodies subject to the Act shall be a "Corps" for the purpose of Chapter III and section 43 (a) of the Act and Chapters II and III of the Rules except Rule 13. Subrule (2) states that every unit in which a Court Martial book is maintained is "Corps" for the purpose of section 106 and Rule 183. Subrule (3) indicates various bodies which shall be regarded as "Corps" for the purpose of every other provisions of the Act and the Rules. Clause (a) mentions "Every battalion".

9. The GCM constituted by the Inspector General consisted of the following :

- (1) Colonel Joginder Singh Ghura, 3 Assam Rifles.
- (2) Commandant Mahanbir Singh, 21 Assam Rifles.
- (3) Deputy Commandant Lalit Kumar Karkee, 30 Assam Rifles.
- (4) Major Harcharan Singh, 3 Assam Rifles.
- (5) Captain Hanuman Sharma, 24 Assam Rifles. Waiting Members :
 - (1) Colonel Verma Rajinder Singh, 30 Assam Rifles.
 - (2) Assistant Commandant M. K. Kesavan, 24 Assam Rifles.

10. According to the learned counsel for the appellant the Assam Rifles as an organisation is a department of the Army for the purpose of the Army Act and the requirement of Rule 40 is that to the extent practicable GCM must consist of officers of different corps or departments and since all the officers constituting the GCM are officers of Assam Rifles, there was violation of Rule 40 and the constitution of GCM is illegal. Learned Single Judge relying on *Lt Col. Prithi Pal Singh Bedi vs. Union of India & others*, AIR 1982 SC 1413 overruled this contention. The Supreme Court in the above case had the occasion to consider

the meaning of the word "Corps" used in Rules 40 and 187 of the Rules. The case under consideration related to an officer of the Army. The Court noticed that the meaning prescribed for "corps" in Rule 187 is of wide amplitude and observed :

"If each battalion in the infantry or regiment in cavalry would be a corps for the purpose of R. 40, the selection of personnel for composing a general court martial would not present difficulty. If on the other hand as contended for the petitioners that the expression "Corps" is an interchangeable substitute for the expression army corps", the difficulty of setting up a general court martial in strict compliance with Rule 40 would be insurmountable. ...Translated into functional adaptability officers under the same army corps attached to various divisions, brigades under the various divisions, battalions under the brigades and companies under the battalions will be disqualified from serving on the general court martial because they all belong to the same army corps". That could not be the object underlying Rule 40. Instead of vertical movement, if a downward movement in the army command is taken into account to ascertain the meaning of the expression "corps", Rule 40 will become workable and would be easy to comply with. What is positively desired is that for the composition of a general court martial, one must strive to secure services of officers of different corps or departments and what must be eschewed is its being composed exclusively of officers of corps or departments to which the delinquent officer belongs. If we give a restricted meaning to the expression "corps" the Rule becomes workable. If wider meaning is given so as to substitute "army corps" for "corps" it would be wholly unworkable because officers will have to be summoned from another command altogether. Thus if we taken "army corps to mean the same thing as "corps" and if the accused belongs to a certain army corps all officers belonging to various divisions under the same army corps, to all brigades under all the divisions of the same army corps, to all battalions under all brigades of the same army corps, and to all companies under all battalions of the same army corps will be disqualified, because they do not belong to the different corps, and are likely to be stigmatised as officers exclusively belonging to the same corps. A vertical movement starting from the bottom which is indicated by reference to battalion and regiment in subrule (3) of Rule 187 clearly indicates that the lowest formation in the battalion or the regiment is corps over and above those specifically designated as corps under Rule 187 (1). Therefore, it clearly transpires that the expression "corps" in Rule 40 must be given the same meaning as set out in sub rule (3) of Rule 187 and it would mean that every battalion in the infantry and every regiment in the cavalry would by itself be a corps.""

The Supreme Court proceeded to state further as follows :

"Undoubtedly Rule 40 by its very language is not mandatory. The Rule on its own force insists on compliance with its requirements as far as may be practicable. Even with this leeway, a strict compliance with the requirements of Rule 40 must

be insisted upon and the departure on the ground of practicability will, if challenged, have to be proved within the broad parameters of functional adjustability of the Army requirements...."

11. Assam Rifles is headed by a Director General. Under him are officers including Inspector General. The other personnel are divided into battalions. There are divisions and subdivisions in each battalions. In other words, Assam Rifles is composed of battalions and could therefore, perhaps, be treated as equivalent to Army brigade under which there are battalions. Reading Rule 40 in the light of Rule 187 (3) as indicated by the Supreme Court in the above decision, every battalion is a "corps" and every other separate unit partly or wholly subject to the Act is a "corps". It is not petitioner's case that besides battalions there are separate units in Assam Rifles composed wholly or partly of the persons subject to the Act Of the 5 persons constituting the GCM two are officers of 3rd Battalion of Assam Rifles and the other three officers are of 21st Battalion, 24th Battalion and 30th Battalion of Assam Rifles. The petitioner was attached 7th Battalion, Therefore, it can be seen that no officer of the "corps", that is, battalion to which the petitioner belongs was a member of the GCM.

12. Learned counsel for the petitioner contend that all members of the GCM inasmuch as they are officers of Assam Rifles must be regarded as members of the same department of the Army and hence the GCM in the instant case must be regarded as composed exclusively of officers of the department to which the petitioner belongs and, therefore, there was violation of Rule 40. The Assam Rifles organisation is not a part of the Indian Army. It is an independent organisation or force though its personnel are governed by the provisions of the Army Act. If the contention that the Assam Rifles as a whole is a department of the Army is to be accepted, officers from other departments of the Army like other brigades or divisions or Army corps may have to be included in the GCM. Inspector General of Assam Rifles cannot have authority to summon officers of the Army to be members of the GCM to try Assam Rifles personnel. He does not have the authority to insist on their presence and participation. This circumstance itself is sufficient to reject the contention that Assam Rifles must be regarded as a department of the Army though actually it is not a part of the Army. The challenge against the legality of the constitution of the GCM must, therefore, fail.

Though Rule 40 is not mandatory, every attempt must be made to fulfil the requirement of the Rules, as indicated by the Supreme Court. The fact that Inspector General incharge of Assam Rifles cannot compel officers of the Army to be members of the GCM itself would render it impracticable to constitute GCM in the manner suggested on behalf of the petitioner. Therefore, we reject the contention that the constitution of GCM is illegal.

13 Point C : The charge sheet contains the first charge and alternative second charge, both arising in respect of certain incidents which took place on 4.7.88. The first charge is that the appellant incited Havildar, Naiks and L/Naiks and

other persons of 7 Assam Rifles by exhorting them to combine together, to cause a mutiny, that is to protest against the rates 01 pay and allowances recommended by Fourth Pay Commission by going on strike and refusing to eat food on 6.7.88. The second charge refers to the same incident, namely, addressing the men to go on strike to protest against the rates of pay and allowances recommended by the Fourth Pay Commission and that nobody should have his meal on 6.7.88. 6 witnesses were examined for the prosecution and 8 witnesses were examined for the defence. The GCM held the appellant guilty of the main charge but not guilty of the alternative charge.

14. According to the learned counsel for the appellant if the alternative charge under section 63 of the Act is not proved, charge of mutiny under section 37 (a) also cannot be said to be proved. It is explained in the counter affidavit that appellant was held not guilty under alternative charge in view of Rule 62 ^7) of the Rules. Rule 62 (7) requires that the Court shall not find the accused guilty on more than one of two or more charges laid down in the alternatives, even if conviction upon the charge necessarily connotes guilt upon the alternative charge or charges. In view of this Rule it is clear that the appellant was not exonerated from the alternative charge. He was found not guilty of the charge in view of the finding on the main charge in the light of the above provision.

15. Point D : The next contention is that the charge of mutiny is not made out. No such contention was urged before the learned Single Judge as seen from the judgment. In course of his argument, learned counsel for the appellant has not referred us to the materials on record and has not attempted to show that the finding is perverse or unreasonable. Therefore, this contention must fail.

16. We find no ground to interfere and accordingly dismiss the appeal but without costs.