

(1987) 11 DEL CK 0004

In the Delhi High Court

Case No : Civil Writ Petition No. 1253 of 1978

K.K. Taneja

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 02-11-1987

Acts Referred:

Citation : (1988) 14 DRJ 121

Hon'ble Judges : Sunanda Bhandare, J

Bench : Single Bench

Advocate : P. Verma and P. Dayal, for the Appellant;

Judgement

Sunanda Bhandare, J.

(1) The petitioner was appointed as a regular Commissioned Officer in the Indian Army in December, 1965. Thereafter, in the year 1967 he was promoted to the rank of Lieutenant and in April, 1969 to the rank of Acting Captain. The petitioner was working as Acting Major since 1974. While the petitioner was working as an Acting Major he was charged for an offence u/s 69 of the Army Act, 1950 (hereinafter referred to as the Act) on the allegation that on 7th May, 1976 at about 23.00 hours while the train was at Tughlakabad he used criminal force on Mrs. Yashpal Kaur intending to outrage her modesty in a military special train which moved from Gwalior to Delhi. After completing the formality of investigation into the allegations, a charge-sheet was framed against the petitioner and a general court martial was convened to inquire into the said charge. Thereafter, the general court martial proceeded with the trial and though the petitioner pleaded not guilty, the general court martial on evidence found the petitioner guilty of the charge and the proceedings were closed for consideration of the sentence. The general court martial announced the sentence subject to confirmation as follows : (a) To forfeit 5 years of service for the purposes of promotion ; and (b) To be severely reprimanded Since u/s 153 of the Act no finding and sentence of a general, district or summary general, court martial, is valid unless it is confirmed as provided under the Act, the sentence was sent for

confirmation to Major General Bhardwaj, General Officer, Commanding 19 Infantry Division. The said officer passed an order on 17th November 1976 directing the general court martial to re-assemble again for the purposes of re-considering the sentence awarded by it in the light of the observations made in the said order. In pursuance of this order, on 18th November, 1976 the general court martial re-assembled and a revised sentence was passed as follows :- "The. court having attentively considered the observations of the confirming authority and the whole of the proceedings do now revoke the sentence and now sentence the accused IC-16741 F Ex-Captain Taneja Kuldip Kumar 21 Rajput, attached 2nd Battalion, Jammu & Kashmir Rifles, to be dismissed from the service." This sentence was again sent for confirmation, however before the revised sentence was confirmed by the competent authority, the petitioner submitted a petition u/s 164 of the Act to the Chief of Army Staff pointing out various illegalities and irregularities committed by the court in the proceedings and prayed that he be allowed to serve the Army. But, before any orders on this petition were communicated to the petitioner he was informed that by order dated 28th January, 1977 the Chief of Army Staff had confirmed the revised sentence passed on the petitioner. Thereafter, the sentence was promulgated on 16th March, 1977. Later on the petitioner was informed on 27th April, 1977 that the pre-confirmation petition u/s 164 of the Act was considered and rejected by the Chief of Army Staff. The petitioner then submitted a post-confirmation petition on 8th June, 1977 to the Central Government u/s 164(2) of the Act. However, by letter dated 21st November, 1977 the petitioner was intimated that the post-confirmation petition of the petitioner was also rejected by the Central Government. These court martial proceedings mentioned hereinabove have been challenged by the petitioner in this petition under Article 226 of the Constitution of India on the ground that the same are without jurisdiction and against the principles of natural justice.

(2) Learned counsel for the petitioner challenged the court martial proceedings on various grounds. It was contended that the whole procedure followed by the general court martial was against the provisions of law and was in violation of the principles of natural justice. It was submitted that the procedure for investigation prescribed under Rule 21 to 25 of the Army Rules was not followed, it was submitted that though under the Rules it was required to give an opportunity to the petitioner to cross-examine the witnesses who had deposed against the petitioner, this opportunity was not given to the petitioner. The procedure followed was thus against the principles of natural justice and the court martial proceedings should be set aside on this ground. It was secondly submitted that the petitioner was not allowed to be defended by an officer of his choice inasmuch as Captain R.K. Trivedi who was appointed by the petitioner as defending officer having accepted the brief of the petitioner, later on appeared for the prosecution as the prosecuting officer. Reliance was placed on certain correspondence between the petitioner. Captain G.S. Bindra and the Prosecuting Officer himself. It was submitted that the petitioner had a right to chose his own

defending officer and that being not allowed the court martial proceedings were vitiated. Thirdly, it was submitted that the Judge Advocate General in his summary has referred to the extra judicial confession made to Public Witness 1 i.e. the husband of Smt.Yashpal Kaur, which according to the petitioner was never made because the petitioner was not in station on the day the extra judicial confession was stated to have been made. Learned counsel submitted that the Judge Advocate General emphasised his case on the extra judicial confession stated to have been made by the petitioner relying on the evidence of Public Witness 1. It was contended that there was inordinate delay in initiating proceedings inasmuch as the date on which the offence is alleged to have been committed was 7th May, 1976 whereas for one month thereafter no steps were taken for even recording the summary of evidence. Learned counsel relied on Mahesh Kumar v. State of Madhya Pradesh, 1986(3) SLR 42 Thulia Kali Vs. The State of Tamil Nadu, , and Lt. Col. Jagjit Singh v. Union of India, 1981 Rlr 6 in support of this contention.

(3) The main ground on which the learned counsel for the petitioner laid great emphasis was that after the sentence was passed by the court martial on 8th October, 1976 forfeiting 5 years service for the purposes of promotion and a severe reprimand, the sentence was sent for confirmation to Major General Bhardwaj who was not a competent authority to either consider a revision petition against that sentence or confirm the sentence passed by the general court martial. Thus, consequently the revised sentence passed by the general court martial on the basis of the observations made by Major General Bhardwaj and the confirmation of this revised sentence was illegal.. It was submitted that u/s 153 of the Act no finding or sentence of a general, district or summary general, court martial is valid except so far as it may be confirmed as provided under the Act. The power to confirm the finding and sentence of a general court martial as contained in Section 154 of the Act provides for confirmation by the Central Government or by any officer empowered in this behalf by the warrant of the Central Government. Learned counsel submitted that under Para 471 of the Regulations for the Army 1962 (hereinafter referred to as the Regulations) the powers of officers who can confirm the proceedings of a general court martial have been restricted and the sentence on the petitioner was required to be confirmed either by the Central Government or by the General Officer Commanding in Chief (hereinafter referred to as G.O.C.-in-C. Major General Bhardwaj who was the General Officer, Commanding, 19 Infantry Division was not the officer of the rank of G.O.C.-in-C and, Therefore, he could not have been the confirming officer. Since he could not confirm the sentence he could not also order revision of the sentence as he did by his order dated 17th November 1977. Thus, the revised sentence passed by the general court martial was illegal and consequently the confirmation of the revised sentence was also illegal and without jurisdiction.

(4) Since it was felt that there was substantial force in the last submission made by the learned counsel for the petitioner I called upon the learned counsel for the

respondents to first address the court on this point. Learned counsel for the respondent did not dispute that the proceedings and sentence of the general court martial had to be confirmed as provided u/s 154 of the Act and also that a revision u/s 160 of the Act could be dealt with only by the confirming authority. He however contended that the Central Government had the power to issue a warrant empowering an officer even subordinate to G.O.C.-in-C to confirm the order of a general court martial even in a case like this. He submitted that the Central Government had in fact issued a notification empowering an officer of the rank of G.O.C.- 19 Infantry Division to perform the functions u/s 154 of the Act. He was however unable to produce any such notification in court. Learned counsel for the petitioner had placed on record Para 471 of the Regulations but the learned counsel for the petitioner was unable to produce in court any notification empowering the G.O.C. 19 Infantry Division to confirm the proceedings.

(5) Section 153 of the Act provides that no finding or sentence of a general, district or summary general, court martial, shall be valid except so far as it may be confirmed as provided by the Act. Section 154 provides that the finding and sentence of general court martial may be confirmed by the Central Government, or by any officer empowered in this behalf by warrant of the Central Government. Section 156 provides that a warrant issued u/s 154 or Section 155 may contain such restrictions, reservations or conditions as the authority issuing it may think fit. Section 160 of the Act gives the power to the confirming authority to revise any finding or sentence of a court martial which requires confirmation. Para 2, Chapter 10 of the Regulations deals with discipline courts martial. Para 471 of these Regulations deals with confirmation of court martial proceedings. The relevant portion of Para 471 of these Regulations reads thus : "471. Confirmation of Court Martial proceedings-The powers of officers to confirm the proceedings of a General Court martial are restricted as under :- (a) The proceedings of a General Court Martial or Summary General Court Martial where any of the sentences specified under column I below is passed will be reserved for confirmation by the authority specified opposite under column II below: I II (i) Death sentences Central Government (ii) Sentences passed on offences of dismissal) or higher in the scale of punishment set) out in Section 71 of the Army Act.)) Coas (iii) Sentences passed on officers who hold or) held the rank of Colonel or above at the) time of commission of the offence or at) the time of cognizance of offence.) 125 (iv) All sentences passed on officers not) required to be reserved for confirmation) by Coas under items (ii) and (iii) above.) GOC-in-C) Command (v) Sentences passed on JCOs of dismissal) or higher in the scale of punishment set) out in Section 71 of the Army Act.)

(6) Thus, the sentence passed in the present case by the court martial on 8-10-1976 had to be confirmed by G.O.C.-in-C, Command before it became valid. It is not disputed that Major General Bhardwaj who passed the revisional order dated 17-11-1976 and pursuant to which the court martial met again and revised the sentence, at the relevant time was only a General Officer,

Commanding, 19 Infantry Division and not a G.O.C.-in-C. A chart filed by the petitioner indicating the hierarchy of the officers indicates that a G.O.C. Commanding a Division is two ranks below the G.O.C.- in-C. This chart is also not disputed by the learned counsel for the respondents. It is, Therefore, clear that the order passed by Major General Bhardwaj on 17-11-1976 was without jurisdiction. Since the order dated 17-11-1976 was passed by an officer not competent to do so, the subsequent revision of the sentence by the court martial in pursuance of the directions given by Major General Bhardwaj was also irregular and invalid. In my opinion, confirmation of the revised sentence dated 28-2-1977 by the Chief of Army Staff or by a competent authority to do so under Para 471 of the Regulations cannot validate the revised sentence. Therefore, since the whole procedure followed in the case after passing of the first sentence by the court martial was invalid and against the provisions of the Act, this petition deserves to be allowed on that ground alone.

(7) The writ petition is allowed and the Rule is made absolute. The proceedings and sentence of the general court martial are set aside. The petitioner will be entitled to all other consequential relief. There will be no order as to costs.