
(2015) 07 DEL CK 0339
In the Delhi High Court
Case No : W.P. (C) 718/2014

Lalmon Mishra

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 29-07-2015

Acts Referred:

Army Act, 1950 — Section 26, 40(c), 41

Citation : (2015) 07 DEL CK 0339

Hon'ble Judges : S. Ravindra Bhat and V.K. Shali, JJ.

Bench : Division Bench

Advocate : S.M. Dalal, Advocate, for the Appellant; Rajesh Gogna, CGSC and L. Gangmei, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—The petitioner challenges an order dated 14.06.2010 under Rule 22 of the Army Rules, 1954 by the Commanding Officer of 1812 Pioneer Corps situated at Guwahati at that point of time. The order had imposed a penalty under Section 409(c) and 41 of Army Act, 1950 and consequent summary trial concluding in an award of 28 days of rigorous imprisonment which was subsequently reduced to 21 days.

2. The facts are that on 12.06.2010 the petitioner was on duty at 9:00 PM when PNR N.K. Mishra informed him that he was to proceed to Bangalore the next day, 13.06.2010, for temporary duty to attend a Pre-Drill Course at PCTC. The petitioner contends that the order was a camouflage for running a personal errand for the fourth respondent. He alleges that no movement order and rail warrant was issued. Furthermore, the course was to be conducted between 07.07.2010 to 17.07.2010, with a reporting date of 05.06.2010. The petitioner was given orders to depart on 13.06.2010 and would reach Bangalore near the termination of the course. He also submits that two officers were already sent for the very same course. Petitioner, thus, contended that this proved the malafide nature of the temporary duty and that the real reason was to deliver some

package on behalf of the fourth respondent and deny him his promotion. The petitioner had attended his promotion cadre course, NPC II to I from 01.06.2010 to 12.07.2010 for his ACP.

3. After completing RP duty which he was detailed to from 0600hrs to 1200hrs, he was relieved from his duty at 1000hrs on 13.07.2010 and was marched to the CO and charged with insubordination. The petitioner explained reasons for not leaving. These were not accepted. The petitioner was marched up to the CO on 14.06.2010 on the basis of a chargesheet that was not presented to him. The petitioner refused to sign the chargesheet and alleges that the other formalities under Rule 22 were not actually conducted and the entire summary trial that followed was a facade to mask the vindictive nature of the proceedings. The petitioner claims he was not allowed to cross-examine witnesses, the contents of the offence report were not read out nor was a copy supplied to the Petitioner. He was then awarded 28 days rigorous imprisonment (RI) which was subsequently reduced to 21 days RI. The petitioner contended that undergoing the same caused him emotional and physical trauma. The petitioner further submitted that the fourth respondent continued harassing him by stopping his pay from September 2010 to January 2011. When the petitioner attempted to file a statutory complaint under Section 26 of the Army Act, the fourth respondent refused to accept or forward it.

4. The petitioner submits that he filed a statutory complaint on 10.04.12 when he was posted to 1811 Pioneer Corps in Delhi. When no decision was given in 8 months, the petitioner preferred W.P. 745/2013 to this Court. Directions were issued on 08.02.2013 in this regard to decide the complaint in 6 weeks time. However, when such time elapsed the petitioner filed Contempt Petition Cont.Case(C) 780/ 2013, which was decided on 08.10.2013. The respondent sought time stating that the comments of the erstwhile CO were required who had retired. This Court issued directions to dispose of the complaint within 4 weeks. On 05.11.2013 the statutory complaint was rejected, which the petitioner challenges on grounds of non-application of mind.

5. Learned counsel for the petitioner submits that no inquiry or proceeding was held and that the petitioner was punished with detention without following any procedure. It was argued that the procedure prescribed in Rule 22 of the Army Rules, 1954 was given a go-bye. It was highlighted that without following the mandate of Rule 180, the proceeding could not have been held. Counsel further submitted that the petitioner was ordered to be relieved from RP duty at 10 AM and taken to the office of the Commanding Office (CO) the fourth respondent, where he was asked to explain the reason as to why did he not proceed to Bangalore to attend the Drill Course. The petitioner apprised the CO that no written/formal order was passed detailing him to go to Bangalore. Even the essential documents like Movement order and Railway warrant were not issued to him, which are the authority for a soldier to move out of his unit to another unit. The petitioner further informed his CO that he was already attending NPC II to I

cadre w.e.f. 01 Jun 2010.

6. It was submitted that the CO asked the petitioner to sign on a Certificate contents of which were false, because below Para 2 of Appendix "A" to AO 6/2009, it was mentioned that court of inquiry had been held and provisions of Army Rule 180 were invoked, rest of the form was blank. Contents of Para 2 being false the petitioner refused to sign. No tentative charge sheet was served upon the petitioner. The CO got this form signed by two JCOs of the unit to the effect that the petitioner refused to sign on the said form i.e. Appendix A to AO 6/2009. No inquiry was conducted in the matter. Hearing of Charge proceedings under Army Rule 22 were not carried out by the CO. Contents of the offence report were not read to the petitioner nor was he supplied copy of the same. No witness was examined by CO in the presence of the petitioner nor was he allowed to cross examine any witness. The charges listed in the offence report are false and fabricated and there is no evidence on record to support the allegations. Names of witnesses mentioned in the Appendix are the same persons who had made allegations against the petitioner, which shows the tony nature of the proceedings. No independent witnesses were examined by the CO. It is submitted that the documents said to have been part of the record of proceedings are a sham and do not reflect the reality.

7. In response learned counsel for the respondents submits that the petitioner refused to follow the order to leave for temporary duty to PCTC, Bangalore. They have contended that the relevant movement order and rail warrant was issued to petitioner but he refused to accept the same because he was attending his Promotion Cadre. The respondents further contended that the Petitioner used insubordinate language against a superior officer which was produced in the Chargesheet. On 14.06.2010, he was charged and therein refused to sign the charge sheet/proceedings and the same was signed by two witnesses and order was passed against him. The charges framed against him were disobeying lawful command of a Senior Officer u/s. 41 and using insubordinate language quoted as, "I will not go anywhere, you can do whatever you want.", under Section 40(c) of the Act. It is stated that he pleaded guilty and did not wish to cross-examine witnesses.

8. Counsel also contends that the complaint under Section 26 is clearly an afterthought as there was a two year waiting period from the date of trial to the filing of complaint. Besides, they argue, the statutory complaint did not allege irregularity or victimization and generally spoke that the petitioner was unfairly charged.

9. The rival submissions have been considered. The only issue which this Court has to decide is whether the summary trial and charges that were framed were conducted in a proper manner. All other contentions have no substantiation in fact and are thus treated as mere conjecture. Thus, we proceed to the only issue at contention, whether summary trial charging the petitioner under Sections 41 and 40(c) was correctly held.

10. For any act of disobedience of orders of a superior officer it must firstly be shown that such lawful order was in fact given to the subordinate. The Respondent has annexed a letter requesting filling of vacancy in Pre-Drill Course at PCTC, Bangalore which is dated 26.05.2010. This no doubt raises a question as to why it took so long for the Commanding Officer to choose which subordinate to select for such course, knowing full well that the reporting date is 05.06.2010. No doubt, the petitioner was on leave; he reported back for duties at the end of May, 2010. However, he was asked to join a Drill Course, at the end of which, he was asked to report for duties to Bangalore. Considering these circumstances, it is rather strange that the CO deemed it appropriate to ask the petitioner to join the course at Bangalore, at its fag end. While allegations of mala fides are easy to level and hard to find, the rather odd circumstances in which the episode occurred cannot but be highlighted. Section 41 of the Army Act empowers imposition of punishment for disobeying the command of a superior officer, given either orally or in writing. The penalty attracted is severe. Here, we are conscious that a communication had been addressed to all units on 01.05.2010 that

"CO units may please ensure that all PBOR of your unit who have passed NPC classification Class II and have more than four years service are afforded necessary facilities to pass NPG-I by 31 Oct 2010. Accordingly this office has to submit a detailed report to Integrated HQ. of MoD (Army), DDG Pnrs regarding numbers of PBOR who have qualified/passed NPC Class-I. Therefore, all Coys are requested to forward a copy of Board Proceedings in respect of PBOR of their Coys who- have- qualified subject cadre class so as to reach this office, by 15 Nov2010. "

11. The respondents have also produced a list, of officers and JCOs numbering 225 who had not completed the course. It is further a matter of record that the petitioner had been asked to join a drill course immediately previous to his temporary attachment for the NPG-I. Considering that the letter dated 01.05.2010 was clear that all personnel deemed deficient had to be sent to attend the course, it would not be unrealistic to say that the CO did deploy the petitioner- albeit late. This mere circumstance as urged by the petitioner: in the absence of anything else, cannot lead the Court to hold that there were mala fides.

12. To verify the truth of charge under Section 40(c) would be nigh impossible as we only have the word of the CO, who such language was used against and the subordinates who signed as independent witnesses. Likewise, to quash it merely on the basis of the averments of the petitioner would be equally unfounded. However, we must look into another aspect of this, which is that the Summary Trial records state that the petitioner pleaded guilty but refused to sign the documents. It would be unlikely of a man who contends that there is no evidence on record against him to plead guilty. Likewise, a man who has pleaded guilty would not refuse to sign the chargesheet and order. When viewed collectively it

certainly adds a taint to the proceedings as a whole. We must also entertain the possibility that the petitioner on being told to proceed to Bangalore, voiced his indignation.

13. It is pertinent in this context that the complaint has been filed nearly two years after the incident in question. While the petitioner has contended that he was unable to file the same because the fourth respondent refused to entertain the complaint, it is has not been shown that he has stated the same in his complaint when he could do so upon his posting to Delhi. Furthermore, he had the opportunity to do the same when sent on duty to Bangalore, PNR Corps Training Centre, where he was sent for 179 days on 13th July, 2010, but has not done so. For whatever reason, it appears that the Petitioner has waited - for reasons best known to him- before filing said statutory complaint. The respondents clearly state, in their counter affidavit that "the movement order & railway warrant were also prepared in the name of No. 803646IM Pnr Lalmon Mishra which Petitioner wilfully failed to collect."

14. Rule 22 prescribes procedure for hearing of charge at a stage anterior to the convening of court-martial. After this preliminary hearing of the charge, if further action is contemplated, Rule 23 prescribes procedure for recording summary of evidence. After recording summary of evidence, Rule 24 enables the Commanding officer either to remand the accused for trial by a court-martial or refer the case to the proper superior military authority or if he thinks it desirable, re-hear the case and either dismiss the charge or dispose of it summarily. Rule 25 provides procedure for inquiry of charge against an officer, the salient feature of it is that the procedure prescribed in rule 22 and 23 is required to be followed in the case of an officer if he so requires.

15. As regard the contention of the proceedings having been vitiated on account of omission to follow Rule 180, this Court notices that the same issue was involved in Lt.-Col. Prithi Pal Singh Bedi and Others Vs. Union of India (UOI) and Others, , where it was held that:

"Rule 180 cannot be construed to mean that whenever or wherever in any inquiry in respect of any person subject to the Act his character or military reputation is likely to be affected setting up of a Court of inquiry is a sine qua non. Rule 180 merely makes it obligatory that whenever a court of inquiry is set up and in the course of inquiry by the court of inquiry character or military reputation of a person is likely to be effected then such a person must be given a full opportunity to participate in the proceedings of court of inquiry. Court of inquiry by its very nature is likely to examine certain issue generally concerning a situation or persons. Where collective fine is desired to be imposed, a court of inquiry may generally examine the shortfall to ascertain how many persons are responsible. In the course of such an inquiry there may be a distinct possibility of character or military reputation of a person subject to the Act likely to be affected. His participation cannot be avoided on the specious plea that no specific inquiry was directed against the person whose character or military reputation is

involved. To ensure that such a person whose character or military reputation is likely to be affected by the proceedings of the court of inquiry should be afforded full opportunity so that nothing is done at his back and without opportunity of participation, rule 180 merely makes an enabling provision to ensure such participation. But it cannot be used to say that whenever in any other inquiry or an inquiry before a commanding officer under rule 22 or a convening officer under rule 37 of the trial by a court martial, character or military reputation of the officer concerned is likely to be affected a prior inquiry by the court of inquiry is *sine qua non*. Therefore, the contention being without merits must be negatived."

16. As to the procedure to be adopted in terms of Rule 22, the Supreme Court, in Union of India (UOI) Vs. Major S.K. Sharma, , commented as follows:

"Where, however, the proceeding is taken by an Army authority under the Army Act reference must be made to the provisions of Rule 22 onwards of the Army Rules. The Rules provide for the hearing of a charge, in which the accused has liberty to cross examine any witness against him and to call any witnesses and make any statement in his defence. If the Commanding Officer investigating the charge finds no offence has been committed he must dismiss the charge. He may also do so if, in his discretion, he is satisfied that the charge has not to be proceeded with. If the charge is to be proceeded with he may pass any of the orders detailed in Rule 22(3). They include proceedings for trial by a Court Martial."

17. The copy of record of proceedings held by the CO, which the petitioner has produced, clearly shows the presence of two witnesses. The petitioner was charged with two counts of insubordination of the superior officer. The record shows that the petitioner did not plead guilty; he also refused to sign the proceedings; the witnesses did so. He did not cross examine the witnesses. The veracity of what transpired on the relevant date has to be also seen in the background of the circumstances. Maybe, the petitioner felt aggrieved by the attachment; he had returned from leave and had been sent for another course. Therefore, his late deployment to a course which had commenced was not to his liking; he states as much in the averments in the petition. However, he nowhere states that the allegations of his insubordination are false. All averments in the petition centre on the denial of principles of natural justice. The court has to be in these circumstances, aware that the refusal of the petitioner to depart for the duty, led to his being "marched up". The petitioner clearly alleges that he was deployed and on being asked why he did not leave, he gave the explanation that some others had been deployed. Now, whether others were deployed or not and whether it was necessary for him to be sent for the course at that stage or some other date, was not a decision that he could make; he does not claim such power to do so. In these circumstances, his refusal to obey the order was clearly borne out. As to his act of insubordination, the court has to keep in mind that the state of mind that the petitioner was in resulted in such a likelihood rather than

otherwise. Perhaps the CO could have been more patient and explained to him the compulsion of deploying him in the light of the letter dated 01.05.2010. However, its absence cannot condone the petitioner's behavior, which appears to have been witnessed by two persons, who attended the proceedings.

18. Having regard to all these circumstances and the fact that the record of proceedings were produced and considered by this Court at the time of hearing, we are of opinion that the impugned order, whereby the petitioner was sentenced to imprisonment for 21 days, cannot be faulted. The writ petition, therefore, fails and is dismissed.