
(2008) 02 DEL CK 0088

In the Delhi High Court

Case No : Writ Petition (C) No. 776 of 1995

L.N.K. Gurdev Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-02-2008

Acts Referred:

Citation : (2008) 6 ILR Delhi 124

Hon'ble Judges : J.M. Malik, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Rekha Palli, for the Appellant; Rajeeve Mehra and Rachitta Mehra, for the Respondent

Judgement

A.K. Sikri, J.—The petitioner herein, who was working in the Army, has been dismissed from service and is also sentenced to one year rigorous imprisonment after holding summary court martial on the charges under Sections 39(f)/40(c)/41(1)/48 of the Army Act. The sum and substance of the imputation leveled against him is that on 15.12.1992 when the petitioner was returning to the company post from Chandel Indoor Stadium after the de-addiction camp, he visited a local house and purchased country liquor and was found intoxicated at 1700 hours. On 14.1.1993, when he was given the charge sheet for his summary court martial by Subedar Nirmal Singh, he uttered filthy abuses. Likewise, on the same day when he was ordered by Subedar Shivpal Singh to proceed to the battalion quarter guard from the living barrack, he uttered filthy abuses to him as well. The petitioner was taken into custody on 15.12.1992. Summary court martial was convened, which commenced its proceedings at 11.00 a.m. on 15.1.1993. As per the summary court proceedings, the petitioner allegedly pleaded guilty to the charges. Proceedings concluded at 11.45 a.m. and resulted in awarding sentence of one year rigorous imprisonment in civil jail and dismissal from service by the said court martial. He was handed over to the civil police to undergo the sentence. The petitioner filed a statutory appeal u/s 164 of the Army Act on 25.4.1993. As nothing was heard by him for almost six months, he filed a

supplement appeal on 12.10.1993. The appeal was rejected vide order dated 10.9.1994 and immediately thereafter, the petitioner approached this Court through the present petition challenging the procedure followed in the conduct of summary court martial and the consequent orders of punishment.

2. The case of the petitioner, to put in nutshell, is that he never pleaded guilty to the charge and the court martial proceedings, as recorded, are bogus and make believe. It is an eyewash and in fact no such proceedings took place inasmuch as the petitioner was handed over to the civil police at 9.55 a.m. along with committal warrants and there was no question of holding summary court martial at 11.00 a.m. when the petitioner was not even present as he was in the police custody at that time and also taken away by them. It is the case of the petitioner that he was not even provided with the alleged summary court martial proceedings and after number of requests, copy of the proceedings were supplied to him only on 21.1.1993 when he came to know of the punishment given to him on the basis of purported court martial proceedings. He has also stated that in the statutory appeal preferred by him on 25.4.1993, he had mentioned the factum of his handing over to the civil police on 15.1.1993 at 9.55 a.m. supported by the certificate issued by the police authorities themselves to this effect, which was enclosed along with the appeal. It is the allegation of the petitioner that the respondent No. 4, namely, Lt. Col. S.K. Sood, who was the company commander, was inimical to him and roped him in a false case. With pre-determined mind, the petitioner was handed over to the police and thereafter summary court martial proceedings were cooked up. It is also alleged that the petitioner was severely beaten and tortured a day before he was handed over to the police. The petitioner was medically examined by the jail authorities after he was handed over to the police and the medical certificates issued by the authorities recording his examination after arrest by the police bore testimony to this aspect. The jail authorities had confirmed this by issuing a certificate on 19.4.1993, which was also enclosed with the statutory appeal preferred on 25.4.1993.

3. We may point out at this stage that the respondents have filed photocopy of the extract of summary court martial proceedings which relate to the recording of plea of guilty by the petitioner and also the photocopy of the verdict of the court. Though the court held the petitioner guilty of all the charges, the higher authority, namely, V.G. Patankar, Brigadier and Commander of the 59, Mountain Brigade has passed the following order thereon on 19.3.1993:

I set aside the findings of "Guilty" by the court on the third and the fourth charges.

I remit the unexpired portion of the sentence of One Year Rigorous Imprisonment awarded by the Court.

4. It is clear from the above that the petitioner was not only held not guilty of 3rd and 4th charges, which relate to abusive language used against officers and

for which the petitioner was arraigned u/s 40(c) and 41(1) of the Army Act, the unexpired portion of this sentence was also remitted. Normally , with this remission on 19.3.1993, the petitioner should have been released forthwith, but he was released only on 20.4.1993, which would indicate that the order of the higher authority remitting the unexpired portion of sentence was not communicated to the jail authorities forthwith because of which the petitioner had to suffer imprisonment for more than one month even after these orders.

5. In the counter affidavit filed by the respondents, the respondents have denied the allegations raised in this petition. It is specifically denied that the respondent No. 4, who was officiating commanding officer of the petitioner, with a view to take revenge, weaved a false case against the petitioner and fabricated the summary court martial proceedings. It is also denied that the petitioner was handed over to the civil police at 10.00 a.m. According to the respondents, he was handed over to the civil police on 15.1.1993 at 11.55 a.m. after the conclusion of the summary court martial proceedings and to support this plea reference is made to the said proceedings wherein it is recorded that the petitioner was handed over to the civil police at 11.55 a.m. It is further pleaded that the proceedings in fact took place in accordance with law where the petitioner voluntarily and willingly pleaded guilty after he was apprised of the nature of charge and the consequence of pleading guilty after following the procedure laid down in Rule 115 of the Army Rules, as would be clear from the court martial proceedings.

6. We have gone through the record and with reference thereto considered the respective submissions of counsel for the parties.

7. The first issue is about the genuineness of the summary court martial proceedings which hinges on the question as to when the petitioner was handed over to the police. The petitioner has placed on record copy of the certificate issued by the police authorities. Since heavy reliance is placed upon this document by the petitioner and it has significant bearing on the issue involved, we deem it proper to reproduce the said certificate in entirety:

Certificate issued by the Kakching P.S. regarding Shri Gurdev Singh.

1. It is a fact that the on 15.1.1993 the Army of 7 para Regiment at old airport (Pallel) through Telephone message by the Lt.Col. S.K. Sud at about 8.30 AM regarding Shri Gurdev Singh (Naik) for Sumari Court Martial.

2. That, since the telephone message there was no signed of any authorities.

3. That, the Police party of Kakching P.S. rushed there and reached at about 9.30 at 7 para of Kakching.

4. That, Shri Lukram Deven Singh S.I. (2nd Officer) on duty collected the above Shri Gurdev Singh at about 10.00 AM who was handed over by Shri Lt. Col. S.K. Sud by that the accused was completely found severely allover the body.

5. That, the Police party returned back at about 10.45 AM and later on the said Gurdev Singh sent to Central Jail at about 2 P.M.

6. That, there was food and other necessary were issued by the Army authorities when he was in the Central Jail.

When he was in the Central Jail and other necessary expenses were borne by the state of Manipur. This is the facts regarding the Gurdev Singh who was one time handed over to our Police Station.

Sd/-

8.5.93

Officer in charge,

Kakching Police Station,

Therbai Distt. Manipur.

8. As per this certificate, a telephone message was received from the respondent No. 4 by the police at 8.30 a.m. regarding the petitioner. The police party of Kakching Police Station reached the unit at 9.30 a.m. It was handed over the custody of the petitioner at 10.00 a.m. by the respondent No. 4. At that time, the petitioner was found "severely all over the body" and the police party returned back at about 10.45 a.m. Later on the petitioner was sent to the Central Jail at 2.00 p.m. If this certificate is to be believed, it will prove the case of the petitioner to the hilt and expose the fabrication of the summary court martial proceedings inasmuch as if the petitioner was taken away at 10.00 a.m. and was in the police station at 10.45 a.m., there could not have been any court martial proceedings which allegedly commenced at 11.00 a.m. as the petitioner was not there at all. Having regard to the seriousness of the consequences which flow from this certificate of the police authorities, on 17.8.2007 when this matter came up for hearing, the Court reminded the respondents about the order which was passed one year ago directing the respondents to determine the authenticity of this document. Along with it, the same exercise was to be undertaken in respect of the medical certificate issued by the Medical Officer, Jail Hospital, Manipur Central Jail, Imphal, as per which when the petitioner was brought to the jail he was found to be suffering from pain all over his body due to torture before. This certificate also discloses that after close examination, he was found to be suffering from Lumber Spound IIT is which causes sciatica and due to this his right foot was paralysed. The doctor had also opined that long treatment and good management only could fully cure the petitioner. As the respondents had not undertaken any exercise to determine the authenticity of these documents, on 17.8.2007 one final adjournment of four weeks was given for the said purpose. On the next date, i.e. on 26.9.2007, the respondents produced photocopy of a fax message dated 8.9.2007 which was to the effect that genuineness of this certificate cannot be ascertained since the signatory has died and it was an old record. Following order was passed on that date:

On the last date of hearing, we had granted a final adjournment to the Respondents to determine the genuineness of Annexure P-13 which is a Certificate issued by the P.S. Kakching. A typed copy of this Certificate is Annexure P-13 to the Petition filed in 1995. Originals have been seen by us and returned.

A photocopy of a fax message dated 8.9.2007 has been produced which is to the effect that the genuineness of the Certificate cannot be ascertained since the signatory has died and the record/document is 14 years old and is not traceable. Since Annexure P-13 had been filed along with the Petition in 1995, we will proceed on the basis that it is genuine.

List for hearing on 29.1.2008.

9. The Court, thus, recorded the opinion that it would proceed on the basis that the certificate issued by the jail authorities disclosing the details of the custody of the petitioner by the police shall be treated as genuine. This opinion was recorded because of the fact that the said certificate was filed along with the petition in the year 1995. We may add that even in the statutory appeal preferred u/s 164 of the Army Act this fact was specifically mentioned. However, at that time the appellate authority chose not even to look into this serious allegation of the petitioner supported by documentary evidence produced before the jail authorities. The appeal was rejected by a non-speaking one line order dated 10.9.1994 and the entire order of two paragraphs running into six lines is as under:

1. The petitions submitted by Number 13613274 ex Naik Gurdev Singh of 7 parachute Regiment were placed before the General Officer Commanding-in-Chief, Eastern Command, who has perused the same Along with connected documents.

2. The General Officer Commanding-in-Chief, directs that the petitions be rejected.

10. No. doubt, the respondent on the basis of the proceedings recorded in the summary court martial, contends that the petitioner was handed over to the police only at 11.55 a.m. However, it amounts to begging the question as the respondents are trying to prove their case from the same documents, authenticity whereof is under question. There can hardly be any reason to disbelieve the certificate given by the police authorities, more particularly when no Explanation is forthwith coming from the respondents as to why such certificate be not believed. It is not alleged that the police authorities mixed up with the petitioner and gave a false certificate. No. motive of any other kind is also imputed. Our discussion that follows hereafter would further confirm the view which we have taken, namely, to believe this certificate as against the purported summary court martial proceedings, which is as follows.

11. Even as per the respondents, the petitioner was handed over to the police at

1155 hours on 15.1.1993. As per the respondents, the court martial proceedings finished at 1145 hours. Can it be believed that after the conclusion of court martial proceedings at 1145 hours, within 10 minutes the police was informed, the police reached the unit and the custody of the petitioner was handed over to the police? If the police was informed in advance, was it known to the respondents, even before the summary court martial proceedings commenced, that the petitioner would plead guilty and, Therefore, entire proceedings would get finished in 45 minutes? This itself speaks volumes about such court martial proceedings. Coupled with this, we now make few comments about the recording of the court martial proceedings.

12. Though the petitioner has allegedly admitted the charge by pleading guilty, his signatures nowhere appear on the purported plea of guilt. When an accused person pleads guilty, it would be necessary to obtain his signatures to lend authenticity to such proceedings. This basic requirement was not even adhered to, the absence whereof lends credence to the allegation of the petitioner that he was not even present at the time of recording of the summary court martial proceedings and he never pleaded guilty.

13. In our recent judgment pronounced on 17.1.2008 in LPA No. 254/2001 entitled *The Chief of Army Staff and Ors. v. Ex. 14257873 K. Sigm Trilochan Behera*, we have concluded that such court martial proceedings would be of no consequence and would not stand the judicial scrutiny. In forming this opinion, we had referred to the judgment of the Jammu and Kashmir High Court in the case of *Prithpal Singh v. Union of India and Ors.* 1984 (3) SLR 675 (Jan). We had also take note of the instructions issued by the respondents themselves in the year 1984, based on the aforesaid judgment of the Jammu and Kashmir High Court, mandating that signatures of the accused pleading guilty of charge be obtained and if there is an infraction of this procedural requirement, it would violate the mandatory procedural safeguard provided in Rule 115(2) of the Army Rules and would also be violative of Article 14 of the Constitution of India. Faced with this, an innovative justification was sought to be given by the respondents, namely, the said guidelines were issued by Northern Command whereas the petitioner was tried by the unit in Eastern Command. We feel that the law of the land has uniform application across the country and there cannot be one law for a particular command and different law for another command under the Army. We may note that even this Court has taken similar view in *Lachhman (Ex. Rect.) v. Union of India and Ors.* 2003 II AD (Delhi) 103 wherein it was held as under:

13. The record of the proceedings shows that the plea of guilty has not been entered into by the accused nor has it been recorded as per Rule 115 inasmuch neither it has been recorded as finding of court nor was the accused informed about the general effect of plea of guilt nor about the difference in procedure which is involved in plea of guilt nor did he advise the petitioner to withdraw the plea if it appeared from the summary of evidence that the accused ought to plead not guilty nor is the factum of compliance of Sub-rule (2) has been

recorded by the Commanding Officer in the manner prescribed in Sub rule 2(A). Thus the stand of the respondents that the petitioner had entered into the plea of guilt stands on highly feeble foundation.

Same view was taken by the Allahabad High Court in *Uma Shanker Pathak v. Union of India and Ors.* 1989 (3) SLR 405. The Jammu and Kashmir High Court has reiterated its opinion in a recent judgment in *Sukanta Mitra v. Union of India and Ors.* 2007 (2) 197 (Jan), wherein the Court held as follows:

9. This apart the fact remains that the appellant has been convicted and sentenced on the basis of his plea of guilt. The plea of guilt recorded by the Court does not bear the signatures of the appellant. The question arising for consideration, Therefore, is whether obtaining of signatures was necessary. In a case *T.N. Janardhanan Pillai Vs. State*, , a Division Bench of this Court has observed:

The other point which has been made basis for quashing the sentence awarded to respondent-accused relates to clause (2) of Rule 115. Under this mandatory provision the court is required to ascertain, before it records plea of guilt of the accused, as to whether the accused undertakes the nature of the charge to which he has pleaded guilty and shall inform him of the general effect of that plea and in particular of the meaning of charge to which he has pleaded guilty. The Court is further required under this provision of law to advise the accused to withdraw that plea if it appears from summary of evidence or otherwise that the accused ought to plead not guilty. How to follow this procedure is the main crux of the question involved in this case. Rule 125 provides that the court shall date and sign the sentence and such signatures shall authenticate of the same. We may take it that the signature of the accused are not required even after recording plea of guilt but as a matter of caution same should have been taken.

14. The matter does not end here. As per the court martial proceedings, the petitioner pleaded guilty to all the four charges, on the basis of which the court held him guilty of these charges. However, interestingly the superior authority exonerated the petitioner on charges 3 and 4. It shows that notwithstanding the alleged plea of guilty, the superior authority did not find the said charges as proved on the basis of evidence produced. Further, as mentioned above, the appellate authority did not even consider it proper to give any significance to the certificate issued by the police authorities and, Therefore, took no steps to get the same verified. The appellate authority should have treated the matter as serious when there was another certificate supporting the plea of the petitioner, namely, doctor's certificate, about the medical condition of the petitioner when he was handed over to the police. This certificate clearly mentions that the petitioner was found to be suffering from pain all over his body due to torture before and was suffering from serious illness which had rendered his right foot paralysed and requires long treatment and good management to enable the petitioner to be fully cured. It was the bounden duty of the respondent authorities to attach seriousness to this official documents which they deserved

rather on turning a blind eye on the same.

15. We have, thus, no hesitation in quashing such proceedings which are cooked up, malicious and vocative of the principles of natural justice and there is a total lack of fair play. We would have directed the official respondents even to take action against the respondent No. 4. However, we are unable to do so as the services of the respondent No. 4 had been terminated in the meantime and he could not be served in these proceedings. Thus, on 17.8.2007, his name was struck off from the array of parties as the petitioner did not want the decision in the writ petition to be further delayed.

16. Accordingly, the rule is made absolute. The summary court martial proceedings dated 15.1.1993 whereby the petitioner was dismissed from service and also awarded rigorous imprisonment for one year is set aside. The consequence of this would be the reinstatement of the petitioner in service by the respondents with all consequential benefits. The petitioner shall also be entitled to costs which are quantified at Rs. 25,000/-.