

(2002) 08 DEL CK 0050
In the Delhi High Court
Case No : CWP No. 2934 of 2002

L/Nk Netra Pal Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 29-08-2002

Acts Referred:

Army Act, 1950 — Section 120(2), 164, 53
Army Rules, 1954 — Rule 118, 129, 180, 22, 22(1)

Citation : (2002) 08 DEL CK 0050

Hon'ble Judges : S.B. Sinha, C.J;A.K. Sikri, J

Bench : Division Bench

Advocate : Siya Ram, for the Appellant; Sameer Aggarwal, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, J.—The petitioner was enrolled in the Army Medical Corps (AMC) in September, 1985. While he was posted to AFMC, Pune, allegations were made against him to the effect that he had extracted money from the civilians for helping them in getting job in the Army. Summary of evidence was recorded and he was ultimately issued charge-sheet dated 7th January, 2002 u/s 53(b) of the Army Act, 1950 (hereinafter referred to as "the Act") with the following charges:

FIRST CHARGE: Army Act, 1950 Section 53(b): EXACTING WITHOUT PROPER, AUTHORITY MONEY FROM A PERSON.

In that he at kasba peth, Pune between 01 July and 31 Aug.2000 exacted without proper authority money mentioned against each from the persons mentioned herein below:

a) Ms. Kurshed Syed Rs. 1400.00 b) Ms. Samdhya Ramesh Rs. 1050.00 c) Ms. Rohini Satish Trikoné Rs. 1000.00 d) Mr. Maksud Haji Syed. Rs. 1400.00 e) Mr. Ujwala Gorakh Khairmode Rs. 350.00 f) Shri Gokul Sathpute Rs. 550.00 g) Mr. Jitendra Sriram Suprekar Rs. 70.00

SECOND CHARGE: Army Act, 1950 Section 53(b) EXACTING WITHOUT PROPER AUTHORITY MONEY FROM A PERSON.

In that be, at Dattawadi, Pune between 01 Feb.2001 and 17 Mar. 2001 exacted without proper authority money mentioned against each from persons mentioned herein below:

a) Smt. Kiran Ashid Sheikh Rs. 500.00 b) Smt. Bharathi Laxmikanth Rs. 1000.00
c) Shri Ashok Raghunath Satpute. Rs. 1000.00 d) Shri Feros Sayyed. Rs. 1100.00

2. The Summary Court Martial proceedings started on 17th January, 2002 and were concluded on 30th January, 2002. As a result of the Court Martial proceedings, the verdict of the court was as under:

"I am of the opinion on the evidence before me that the accused No. 13964510-Y Sep/AA Netra Pal Singh of the AFMC Pune is not charges is guilty of the First Charge except that

1) In place of Mr. Mhaksud Haji Syed listed at Serial (d) of first charge, the accused had exacted Rs. 1400/- without proper authority from Ms. Ghosia Mhaksud Syed (PW8).

2) Rs. 700/- mentioned as exacted from Mr. Jitendra Sriram Supekar (serial G of the first charge) were included in Rs. 1050/- exacted without proper authority from Ms. Sandhya Ramesh mentioned at. Serial (b) of the same charge.

I am of the opinion on the evidence before me that the accused No. 13964510-Y Sept/AA Netra Pal Singh of AFMC Pune is guilty of the second charge except that the accused had not exacted Rs. 1000/- without proper authority from Shrimati Bharati Laxmi Kanth Kadarem Serial (b) of second charge as mentioned there in."

3. Thereafter "proceedings before sentence" were conducted as a result of which the petitioner was sentenced to suffer rigorous imprisonment for one year and was also dismissed from service. The sentence pronounced by the court was as under:

"Taking all these matters into consideration, I now sentence the accused 13964510-Y Sept/AA Netra Pal Singh the AFMC, Pune (a) to suffer rigorous imprisonment for one year. And I direct that sentence of rigorous imprisonment shall be carried out by confinement in civil prison. The accused is recommended for division C (Or III) while undergoing sentence in Civil prison. If there are only two divisions to be dismissed from service.

Signed at Pune this Wednesday the day of thirtieth January 2002. Mr. 02812 M Brig.J.K. Sethi. Commanding this Troops at AFMC Pune. The trial closes at hrs Ten M.Ten.

Remarks by the Reviewing Officer (AA Section 162). Promulgated and extract taken at AFMC, Pune this thirtieth January 2002."

4. The petitioner submitted representation against the aforesaid sentence under

the provisions of Section 164 of the Act which was followed by legal notice dated 20th April, 2002. However, as no reply was received, the petitioner filed the present writ petition challenging the conduct of Summary Court Martial (SCM) and the resultant punishment.

5. The petition came up for hearing on 10th May, 2002 when Rule D.8 was issued. Mr. Sameer Aggarwal, Advocate accepted notice on behalf of respondents in court and the matter was directed to be listed on 28th May, 2002. The respondents were given one week's time to file the counter affidavit with liberty to the petitioner to file rejoinder affidavit within three days thereafter. On 20th May, 2002 when the matter came up for hearing, the learned counsel for the respondents stated that the counter affidavit could not be filed as record of the proceedings which was to come from Pune, had not been received by the counsel. However, he submitted that since all the relevant documents were filed by the petitioner along with the writ petition and since legal issues were raised, the respondents could argue the matter without filing the counter affidavit. In these circumstances, the matter was heard and judgment reserved. The respondents were, however, directed to file the record immediately on receipt thereof from Pune. The respondents have placed the record of SCM proceedings which has been perused by us.

6. Although many grounds are taken in challenging the SCM proceedings and the impugned sentence, the learned counsel for the petitioner at the time of arguments, pressed the following submissions:

- a) Proper procedure as laid down under Army Rule 22 for hearing of the charges was not followed and in this manner the petitioner was deprived his natural right of defense in arbitrary manner.
- b) The SCM proceedings were held in violation of Rule 51 of Army Rule inasmuch as the proceedings were held for more than six hours which was not permissible as per the aforesaid Rules.
- c) The proceedings were concluded hurriedly which was done deliberately and with malafide intention that has resulted in "Justice hurried justice buried".
- d) The allegations of extracting money from civilians are totally false and the SCM has mainly relied upon hearsay and self-contradictory statements.
- e) At the time of pronouncing the sentence, the petitioner was not informed about the provisions of Section 164 of the Act as per which he could file representation against the impugned sentence and thereby he was deliberately and with malafide intentions deprived of his right to file such representation.

7. Mr. Sameer Aggarwal, learned counsel for the respondents submitted with reference to record that on 18th March, 2001 at about 1450 hours, the petitioner was taken into custody by civil police at Dattawadi police station on receipt of complaints from the villagers that he exacted money from the villagers without proper authority after promising employment at various Army Institutions. On

receipt of a message from the police station, the petitioner was brought to his unit from the police station by the help of Duty JCO Along with two OR at about 1750 hrs. He was marched up to the Brigadier in charge Administration (Brig I/C Adm) and Officer Commanding Troops (OC Tps) for hearing of charges under Army Rule 22, as per Appx "A" to AO 24/94 on 25th June, 2001 for an offence u/s 53(b). As per order of the Brig I/C Adm & of Tps, an officer of the AFMC, Pune was detailed to record Summary of Evidence in this case which was completed on 10th August, 2001. He further submitted that again on 29th September, 2001 at about 2100 hrs. the petitioner was taken into custody by the civil police at Sattoti (Kasba Peth, Pune) police station on receipt of complaints from the villagers that he exacted money from Kasba Peth villagers without proper authority after promising employment at various Army Institutions. On receipt of information regarding his police custody, he was brought to the unit by duty JCO of the day Along with two NCO on the same night. He was marched up to the Brig I/C Adm. & of Tps for hearing of the charge under Army Rule 22 as per Appx "A" to AO 24/94 for the second charge u/s 52(b) of the Act on 4th October, 2001. On hearing of the charge, against an officer, he had been detailed to record Summary of Evidence which was completed on 17th October, 2001.

8. Learned counsel for the respondents rebutted various submissions advanced by the petitioner's counsel and submitted that all these contentions were factually incorrect and against the record. His submission was that proper procedure prescribed under Army Rule 22 was followed, all the pre-trial safeguards were provided to the petitioner who was also allowed to avail services of Lt. Col. (Retd.) M. Swamy, Advocate Mumbai High Court as his friend. Since the petitioner pleaded "not guilty" to the charges, the SCM proceeded with the trial in accordance with the Army Rule 118. Many prosecution witnesses were examined who were allowed to be cross-examined by the petitioner with the assistance of his Advocate and were extensively cross-examined. Trial which commenced on 17th January, 2002 went up to 30th January, 2002, and Therefore, it was utterly wrong on the part of the petitioner to contend that the proceedings were concluded hurriedly. It was further submitted that based on the evidence on the record, the charges were held to be proved beyond reasonable doubt and the findings recorded do not suffer from any perversity or arbitrariness. This court was not sitting as appellate authority over the findings. In fact after the sentence was pronounced, the proceedings of SCM on review were found to be legally in order by the reviewing authority and the same was duly countersigned by the Chief of Staff, Southern Command, Pune. The sentence was given keeping in view the gravity of the offence involved and it was, Therefore, reasonable and not disproportionate. It was also submitted that the petitioner was infact informed of his right to file petition u/s 164 of the Act.

9. We have gone through the pleadings and record and have also considered the submissions made by counsel on either side. We do not agree with the submissions of the petitioner that procedure prescribed under Army Rule 22 for hearing the parties was not followed. Army Rules 22 and 23 are in the following

terms:

"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 defense:

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 complied 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 Section 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 u/s 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.

23. Procedure for taking down the summary of evidence.-(1) Where the case is

adjourned for the purpose of having the evidence reduced to writing, at the adjourned hearing evidence of the witnesses who were present and gave evidence before the commanding officer, whether against or for the accused, and of any other person whose evidence appears to be relevant, shall be taken down in writing in the presence and hearing of the accused before the commanding officer or such officer as he directs.

(2) The accused may put in I cross-examination such questions as he thinks fit to any witness, and the questions together with the answers thereto shall be added to the evidence recorded.

(3) The evidence of each witness after it has been recorded as provided in the rule when taken down, shall be read over to him, and shall be signed by him, or if he cannot write his name shall be attested by his mark and witnessed as a token of the correctness of the evidence recorded. After all the evidence against the accused has been recorded, the accused will be asked: "Do you wish to make any statement? You are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence." Any statement thereupon made by the accused shall be taken down and read to him, but he will not be cross-examined upon it. The accused may then call his witnesses, if he so desires, any witnesses as to character.

(4) The evidence of the witnesses and the statement (if any) of the accused shall be recorded in the English language. If the witness of accused, as the case may be, does not understand the English language, the evidence or statement, as recorded, shall be interpreted to him in a language which he understands.

(5) If a person cannot be compelled to attend as a witness, or if owing to the exigencies of service or any other grounds (including the expenses and loss of time involved), the attendance or any witness cannot in the opinion of the officer baking the summary (to be certified by him in writing), be readily procured, a written statement of his evidence purporting to be signed by him may be read to the accused and included in the summary of evidence.

(6) any witness who is not subject to military law may be summoned to attend by order under the hand of the commanding officer of the accused. The summons shall be in the form provided in Appendix III."

10. The record reveals that on 25th June, 2001 the proceedings before the Commanding Officer under Army Rule 22 were recorded. As per these proceedings which were duly signed by the petitioner, charges against the petitioner were read out and explained to him. Seven prosecution witnesses were heard by the Commanding Officer in presence of the petitioner who declined to cross-examine six of them but cross-examined one witness. He also declined to make his statement. To the same effect are the proceedings dated 4th October, 2001 recorded under Army Rule 22 when seven more witnesses were examined and the petitioner cross-examined one of them. Record also reveals summary of evidence in respect of each of the aforesaid prosecution witnesses recorded.

These proceedings clearly show that the procedure as prescribed under Army Rule 22 for hearing the charges was followed and the summary of evidence was recorded in terms of Army Rule 23. Thereafter, after obtaining the legal advice, the Commanding Officer ordered the trial of the petitioner by SCM in terms of his powers under Sections 116 and 120 of the Act. Therefore, the contention of the petitioner to the effect that the provisions of Army Rule 22 were not complied with is factually incorrect. (Refer: Major G.S. Sodhi Vs. Union of India (UOI), and Indu Engineering and Textile Ltd. Vs. Delhi Development Authority, .

11. The record also amply demonstrates that all the pre-trial safeguards were provided to the petitioner inasmuch as copies of Summary of Evidence and charge-sheet were handed over to the petitioner on 7th January, 2002 i.e. 10 days prior commencement of trial by SCM which was scheduled for 17th January, 2002. This is duly acknowledged by him. The petitioner was provided with the services of an army officer as friend of the accused at the trial in terms of Army Rule 129. During the trial the petitioner after pleading "not guilty" to the charges submitted that he wished to avail services of Lt. Col. (Retd.) M. Swamy, Advocate, Mumbai High Court as his friend. The SCM permitted the petitioner to avail services of Lt. Col. M. Swamy. This is clearly borne out from the proceedings dated 17th January, 2002 which make following reading:

"The accused wants to have the services of Lt Col (Retd) M Swamy Advocate High Court Mumbai at his own cost.

At this stage NTR-16662 M Lt Iswar Dass is relieved of the duties of "Friend of the Accused", he withdraws from the court.

Lt. Col (Retd) M. Swamy is permitted to join and act as "Friend of the Accused". He takes his seat in the Court."

12. It is also not correct that the proceedings of SCM were concluded hurriedly. On the contrary the record reveals that after recording the plea of "not guilty" the SCM proceeded with the trial in accordance with Army Rule 118. As many as 18 prosecution witnesses were examined who were extensively cross-examined by the petitioner with the assistance of his Advocate. The trial commenced on 17th January, 2002 and concluded on 30th January, 2002. The record thus defies the contention of the petitioner that SCM was concluded hurriedly.

13. We are also not impressed by the contention of the petitioner that the provisions of Rule 81 were violated alleging that the proceedings were held for more than six hours. The petitioner has quoted only three instances where the limit of six hours were exceeded by 20 minutes, 45 minutes and 1 hour and 95 minutes respectively. However, it is also a matter of record that some time is consumed in formally assembling the court martial. It is also found that the proceedings are not held continuously and the breaks are given in between. Furthermore, one cannot ignore the fact that at times when a particular witness is examined and is under cross-examination, it is always appropriate, in the interest of defense itself, that the deposition of said witness is concluded on the

same day. If because of all this the proceedings overshot the required hours by few minutes, that would not invalidate the same. More so, when the petitioner neither objected to continuation of the proceedings nor he has shown any prejudice having been caused to him as a result thereof. (Refer: Union of India (UOI) and Others Vs. Major A. Hussain (IC-14827), .

14. We find from the record that the prosecution has examined various witnesses who were duly cross-examined by the petitioner and his counsel. The petitioner was provided with proper opportunity to defend himself and the relevant Rules and Regulations were complied with in this respect. The findings of guilt recorded on the basis of such evidence cannot be interfered with in exercise of power of judicial review. The SCM proceedings were duly reviewed by the reviewing authority as well and were found to be legally in order. The officer holding the trial has given reasons for awarding the sentence as well.

15. We also find merit in the submission of learned counsel for the respondents that this court is not to act as appellate authority over the findings of the SCM. The scope of judicial review is limited. It is not a case of "no evidence". It also cannot be said that the findings of the SCM are perverse. Reappreciation of the evidence is not the function of this court. It has been a settled principle of law. If any authorities are needed for this proposition, one may usefully refer to the judgments of the Supreme Court in the cases of 1) Union of India and others Vs. J.S. Brar, , 2) Union of India (UOI) and Others Vs. Major A. Hussain (IC-14827), and 3) Union of India and Others Vs. Himmat Singh Chahar,

16. Following the aforesaid judgments, this court has also taken the same view in the case of Balwan Singh v. Union of India and Anr. reported in 2000 VII AD (Delhi) 724.

17. We, accordingly, do not find any merit in this writ petition which is dismissed.

18. No costs.