

(1995) 08 AHC CK 0056
In the Allahabad High Court
Case No : C.M.W.P. No. 44364 of 1993

Lt. Col. Jit Pal Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-08-1995

Acts Referred:

Army Act, 1950 — Section 179
Army Rules, 1954 — Rule 53(1)
Constitution of India, 1950 — Article 226

Citation : (1996) AWC 275 Supp

Hon'ble Judges : N.B. Asthana, J; D.S. Sinha, J

Bench : Division Bench

Advocate : Rajesh Pathik, G.D. Mukherjee and P.P. Srivastava, for the Appellant;
S.C. and Shishir Kumar, for the Respondent

Final Decision : Dismissed

Judgement

D.S. Sinha, J.—Heard Sri G. D. Mukherjee, learned Counsel for the Petitioner and Sri Shishir Kumar, learned Counsel appearing for the Respondents, at length and in detail.

2. By means of Instant writ petition under Article 226 of the Constitution of India, the Petitioner, a Lieutenant Colonel belonging to the Army Supply Corps of the Indian Army, seeks to challenge the order dated 23rd September, 1993 (Annexure "15" to the petition) passed by the Lt. General Officer Commanding I Corps, Mathura whereby he has been directed to be tried by a General Court Martial.

3. The Petitioner was posted as Administrative Officer at Mathura. During the period between 10th July, 1991 and 13th March, 1993, there were complaints against him regarding financial Irregularities relating to reimbursement of medical bills and claims pertaining to night duty allowances. On the basis of these complaints, a Court of Inquiry was constituted for investigating the complaints. The Court of Inquiry, it appears, found substance in the allegations

against the Petitioner. This was followed by a charge-sheet dated 21st September, 1993, a true copy whereof is Annexure CA-1 to the counter-affidavit filed on behalf of the Respondents, and also passing of the impugned order dated 23rd September, 1993. The charge-sheet along with the impugned order was served on the Petitioner on 4th October, 1993 and he was put in close arrest.

4. On 23rd November, 1993, the Petitioner filed this writ petition which was admitted on 3rd March, 1994 and the proceedings pursuant to the impugned order were stayed.

5. The learned Counsel for the Petitioner contends that trial of the Petitioner by the General Court Martial cannot proceed in view of the provisions of Rule 53(1) (b) of the Army Rules, 1954, (hereinafter called the Rules), and the provisions of Regulation 327 contained in Chapter VIII of Part II of Volume I of the Defence Services Regulations (Regulations for the Army), (hereinafter referred to as the Regulations), Inasmuch as the Petitioner had already been administered warning by the Station Commander, Station Headquarter, Mathura, the Respondent No. 5, vide order dated 15th February, 1993, a copy whereof is Annexure-"11" to the petition, and, according to the learned Counsel, the administration of the warning will have the effect of closing the case and grant of pardon to the Petitioner as contemplated by the Regulation 327 of the Regulations and Rule 53(1)(b) of the Rules.

6. Learned Counsel appearing for the Respondents counters the contention of the learned Counsel of the Petitioner and submits that the order dated 15th February, 1993 (Annexure "11" to the petition) cannot be construed as either grant of pardon to the Petitioner or closure of the case against him.

7. Rule 53(1)(b) of the Rules provides that the accused at the time of his general plea of guilty or not guilty to a charge or offence may offer a plea in bar of trial on the ground that the offence has been pardoned or condoned by competent military authority.

8. Regulation 327 contains the provisions regarding reproof which may be verbal or in writing or both. Clause (d) of Regulation 327 envisages that It should be ensured that before administering reproof by way of warning or otherwise, the competent authority applies its mind to the case and comes to a conclusion that ends of justice would be met by closing the case with reproof, and once a decision has been arrived at and the case closed by administration of a reproof by a competent authority, no superior authority can reopen the case.

9. The court has examined the submission of the learned Counsel for the Petitioner very carefully but does not find any substance therein.

10. Order dated 15th February, 1993 (Annexure "11" to the petition) relied upon by the learned Counsel of the Petitioner to buttress the plea of pardon and closure of the case, cannot be read to be an order either granting pardon to the Petitioner or directing closure of the case. This order purported to warn the

Petitioner in connection with certain lapses in signing the documents involving financial transactions during the period September, 1992 and advise him to ensure correctness of the documents before signing the same. This order was passed by one Brig. R. Gopal, Station Commander, Mathura.

11. The warning contemplated in Regulation 327 of the Regulations can be administered by the Officer Commanding or by an authority superior in command to the Officer Commanding. Further, the decision with regard to the closure of the case after administration of warning and upon a conclusion that ends of justice would be met by closing the case with reproof also has to be taken by the competent authority, namely, the Officer Commanding or by an authority superior in command to the Officer Commanding.

12. The order dated 15th February, 1993 was passed by the Station Commander, Station Headquarter, Mathura. The learned Counsel for the Petitioner concedes that the authority which passed the order dated 15th February, 1993 was neither the Officer Commanding nor an authority superior in command to the Officer Commanding. Thus, even if the order dated 15th February, 1993 may be taken to be a warning for the alleged financial irregularities for which the Petitioner is to be tried by the General Court Martial, it will not be a warning as contemplated in Regulation 327 of the Regulations as it was not administered by an authority competent to do so. So far as the assertion of the closure of the case is concerned, the order nowhere directs for the closure of the case. The plea of the Petitioner that his trial is barred by the provision contained in Regulation 327, therefore, fails.

13. The plea in bar of trial on the ground of pardon, founded on the provision of Rule 53(1)(b) of the Rules, also lacks substance. A perusal of Section 179 of the Army Act, 1950 makes it abundantly clear that the stage of pardon comes after any person subject to Army Act has been convicted by a court martial of any offence. The Petitioner has neither been tried nor convicted by a court martial for the charges contained in the charge-sheet dated 21st September, 1993. The plea in bar of trial by the General Court Martial on the ground of alleged pardon, therefore, cannot be sustained.

14. For the foregoing reasons, the court is clearly of the opinion that there is no legal bar against the trial of the Petitioner by the General Court Martial, as ordered by the impugned order dated 23rd September, 1993. The impugned order is perfect and does not suffer from any such infirmity which may justify interference by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India.

15. The petition lacks merit. It is, therefore, dismissed. The ad interim order dated 3rd March, 1994 shall stand discharged. There will be no order as to costs.