
(2014) 02 DEL CK 0250
In the Delhi High Court
Case No : Writ Petition (C) 1486 of 2003

Manjit Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 26-02-2014

Acts Referred:

Army Act, 1950 — Section 116 36(d) 49(b)

Citation : (2014) 02 DEL CK 0250

Hon'ble Judges : Pradeep Nandrajog, J; Jayant Nath, J

Bench : Division Bench

Advocate : S.K. Sanan and Ms. Mamta Mehra, for the Appellant; Jatan Singh, Advocate Along and Major Jitender Singh, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—The writ petitioner seeks quashing of the Summary Court Martial Proceedings held on January 15, 2000, culminating in an order of penalty reducing the petitioner in rank and to undergo rigorous imprisonment for 21 days in Military Custody. As a consequential relief, the petitioner seeks emoluments which would have accrued to him had he not been reduced in rank together with interest @ 18% per annum reckoned from the date the payment become due till when the payment is made. Enrolled in the Indian Army in the Sikh Regiment on December 04, 1985, petitioner was posted to the Sikh Regimental Centre, Ramgarh as of May 06, 1998. Detailed for duty as a Guard Commander from 06:00 hours on January 03, 2000 the petitioner was to be relieved at 06:00 hours the next day on January 04, 2000.

2. It needs to be highlighted that admittedly petitioner was serving with an administrative battalion i.e. a unit of the Sikh Regiment.

3. The charges for which the petitioner was tried at the Summary Court Martial were two in numbers. The first was for the offence u/s 36(d) of the Army Act, 1950 i.e. without orders from the superior officer leaving his guard. It was

alleged that while on duty the petitioner left the quarter guard between 04:00 hours to 05:45 hours on January 04, 2000 without permission from his superior officer. The second charge was of having committed an offence u/s 49(b) of the Army Act 1950 on the allegation that the act of being away from the duty place facilitated a prisoner Yadhwindar Singh to escape from the custody.

4. We need not note the evidence led at the Trial for the reason no argument was advanced pertaining thereto at the hearing of the writ petition on February 19, 2014. Learned counsel for the petitioner had conceded that there was sufficient evidence to prove the fact that as per two charges the petitioner was posted on duty as a Guard at the Quarter Guard and he had abandoned the place i.e. the Quarter Guard and that Yadhwindar Singh had escaped.

5. What then are we to decide?

6. Three technical pleas were advanced by learned counsel for the petitioner. The first is that the offence u/s 49(b) of the Army Act is of "willful or without reasonable excuse allows to escape any person who is committed to his charge or whom it is his duty to keep or guard".

7. The argument is interesting. It is based on the following reasoning: As per the first charge, the petitioner had committed the offence u/s 36(d) of the Army Act by leaving the guard duty post without orders from his superior officer. If this be so, the question of the petitioner willfully allowing Yadhwindar Singh to escape would not arise. Hence, the second charge was not even maintainable.

8. The truncated argument is based on a convoluted logic. Section 49(b) of the Army Act 1950 makes it an offence where a person subject to the Act commits the offence of willfully or without reasonable excuse allowing any person to escape who is committed to his charge or whom it is his duty to keep or guard.

9. The argument is premised on the presumption that unless the escape is with the willful connivance of the person against whom the offence is alleged, the offence cannot be made out. The argument overlooks the fact that Section 49(b), while relating to the escape of a person under the context of a person who is alleged to be a wrong doer, refers to the words "willful or without reasonable excuse".

10. Now the act of willfully leaving the post of Guard duty resulting in a person escaping from the guard would amount to permitting a person to escape without reasonable excuse by the offender.

11. Whereas willfully may be indicative of a positive mens rea. The words "without reasonable excuse" would signify an act of omission.

12. The second contention advanced is that the first charge negates the second.

13. The reasoning for the argument is the same as for the first contention. For the above reasoning while negating the first contention the sequitur would be that the second contention has to be rejected. The charge of committing an

offence u/s 36(d) is independent of the charge for committing an offence u/s 49(b). The offence u/s 36(d) is leaving the guard without orders from the superior officer. Even if a prisoner had not escaped, the charge would have established itself on independent evidence being led. If as a result of willfully leaving the guard place, a person who is under guard escapes, the offence u/s 49(b) i.e. without reasonable excuse allowing a person to escape from the guard would be made out.

14. The third contention advanced was that trial by Lieutenant Colonel Y.K. Katoch was vitiated. The reason for the argument was that the petitioner was attached to the Sikh Regimental Centre and as per Section 116 of the Army Act 1950 only the Commanding Officer of the Sikh Regimental could have sanctioned the trial of the petitioner and only he could have tried the petitioner.

15. Section 116 of the Army Act, 1950 reads as under:-

116. Summary court-martial.

(1) A summary court-martial may be held by the commanding officer of any corps, department or detachment of the regular Army, and he shall alone constitute the court.

(2) The proceedings shall be attended throughout by two other persons who shall be officers or junior commissioned officers or one of either, and who shall not as such, be sworn or affirmed.

16. Section 116 requires a Summary Court Martial to be held by the commanding officer of any corps, department or detachment of the regular Army. He alone has to constitute the Court.

17. Rule 187(3) of the Army Rules, 1954 reads as under:-

(3) For the purposes of every other provision of the said Act and of these rules each of the following separate bodies shall be "corps":-

(a) Every battalion.

(b) Every company, which does NOT form part of battalion.

(c) Every regiment of cavalry, armoured corps or artillery

(d) Every squadron or battery which does NOT form part of regiment of cavalry, armoured corps or artillery

(e) Every school of instruction, training centre, or regimental centre.

(f) Every other separate unit composed wholly or partly of persons subject to the Act.

18. It is apparent that for the purposes of every other provision of the Army Act and the Army Rules, every battalion, every company which does not form part of battalion, every regiment of cavalry, armoured corps or artillery, every squadron

of battery which does not form part of regiment of cavalry armoured corps or artillery, every school of instruction, training centre, or regimental centre, every other separate unit composed wholly or partly of persons subject to the Act, shall be treated as "corps".

19. Concededly, the petitioner was attached to an administrative battalion, the Officer Commander whereof was Lieutenant Colonel Y.K. Katoch. The argument of the petitioner that only Brigadier R. Sharma, the Commanding Officer of the Sikh Regimental Centre was competent to order trial and act as a Court is negated accordingly.

20. A brief argument was sought to be advanced by the respondents that in the order dated January 08, 2000 preceding the trial, when Summary of Evidence was directed to be reduced to writing, the name of the officer written is Brigadier R. Sharma. The argument is neither here nor there for the reason the order in question has been passed by Lieutenant Colonel Y.K. Katoch. It is apparent that inadvertently the order recorded that Brigadier R. Sharma had ordered the Summery of Evidence to be reduced to writing.

21. The original file had been produced for our perusal and where we find that it is Lieutenant Colonel Y.K. Katoch who had signed the order requiring Summery of Evidence to be reduced to writing.

22. Learned counsel urged that the penalty is disproportionate to the gravity of the wrong. The basis for the argument was that on being reduced to rank the petitioner superannuated with reference to his age of retirement pertaining to the rank. As is well known in the Army as one picks up ranks the age of superannuation is enhanced.

23. It is trite that unless a penalty shakes a judicial conscious it cannot be labelled as arbitrary. It is trite that the quantum of penalty to be levied has to be left to the discretion of the appropriate authority.

24. For the wrong committed by the petitioner, of abandoning the duty post and as a consequence thereof a prisoner escaping, would justify the penalty of reduction in rank to be levied. The consequences of reduction in rank have to follow. We dismiss the writ petition, but without any order as to costs.