
(1984) 09 J&K CK 0001
In the Jammu And Kashmir High Court
Case No : Writ Petition No. 339 of 1983

Prithpal Singh, Ex-Havaldhar Clerk	Vs	APPELLANT
Union of India & ors.		RESPONDENT

Date of Decision : 04-09-1984

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1984) SriLJ 348

Hon'ble Judges : M.L.Bhat, J

Bench : Single Bench

Advocate : S.T.Hussain, M.Abdul Qayoom, Advocates appearing for the Parties

Judgement

1. The petitioner has been reduced in rank and dismissed .from service. The punishment came to be awarded to the petitioner u/s 39 (a) of the Army Act for allegedly being absent from service without leave; U/Sections 42 (c) for allegedly using insubordinate language to commandant Brig S. C. Katoch and to Dy. Commandant Col. Shashi Kanth. These punishments were awarded by a Summary court Martial on 2. 9. 1983. The petitioner challenges the punishment by means of this writ petition on a number of grounds. It is alleged by the petitioner that Brig. S. C. Katoch' bad personal disliking for him, and wanted to take revenge from him. The punishment awarded to the petitioner is due to bias harbored by the said gentleman against him. The petitioner further alleges that he was refused the right to defend himself and the punishment awarded to him is against the mandate of Army Rules. The proceedings of the summary court martial are illegal and vitiated because Lt. Col. R. S. Mehta did not record the proceedings of the Summary Court Martial which were recorded by Maj. P. Panicker who was not competent to record the same. In violation of

the Army Rules Lt. Col. Mehta had refused to summon the defence witnesses desired to be produced by the petitioner. It is also averred that the Summary Court martial was conducted in contravention of the Army Act and Rules framed thereunder and the procedure contained in the said Act and the Rules was flagrantly violated and punishment was awarded to the petitioner because the authorities were biased and had prejudice against him. A detailed history of bias and alleged victimization is narrated in the petition but for the purpose of this writ petition these facts, which according to the petitioner had compelled the authorities to initiate the proceedings against the petitioner, and ultimately punish the petitioner, are submitted by the petitioner by way of introduction. The respondents have appeared through Mr. ST Hussain Advocate. Respondents 4, 6 and 7 have filed (he reply affidavit which was adopted by Mr. Hussain for the other respondents also. In reply to the affidavit, the petitioner has filed a detailed rejoinder. The respondents have denied the facts stated in the writ petition. Original record of the case was also produced before roe by Mr. Hussain and during the course of arguments he submitted that the petitioner had pleaded guilty to the charges framed against him and had accepted his guilty even then evidence was recorded during the enquiry conducted by the Summary court Martial. The punishment awarded to the petitioner was justified.

2. The petitioner was employed in J&K. Light Infantry Regiment somewhere in 1968 and on the day when he was punished, he was 'Holding the rank of Havaldar Clerk in the said regiment. The charges framed against, the petitioner are reproduced here under :

- a) AA Sec. 39 (a) Absent without, leave :
- b) AA Sec. 42 (c) using insubordinate language to Commandant (Brig. S. C. Katoch :)
- c) As Sec. 42 (d) using insubordinate language to Deputy Commandant (Colonel Shashi Kanth.

3. It is not necessary for me to narrate the history of events which are put forth by the .petitioner in his writ petition, because in case the trial of the petitioner is held to be bad, his punishment is to be set aside and in the event of his trial having been conducted in accordance with the procedure established by law, the punishment awarded can be justified, Learned counsel for

the petitioner at the bar argued that the mandate of the Army Act and the Rules have been flagrantly violated and he was punished in violation of the guarantees contained in the Army Rules and the procedure which is laid for holding such proceedings in the Rules was also violated. Mr. Hussain on the other hand has controverted these submissions of the learned counsel for (he petitioner and has strongly relied on the admission of plea of guilt of the petitioner recorded by Lt. Col, Mehta Decision of this petition, therefore, mainly rest as to whether procedure laid down by the Rules was followed during the Summary Court Martial or not.

4. Procedure laid down in the Army .Rules in respect of Summary Court Martial is elaborate. The procedure affords full protection to an accused

person and is aimed at to give full opportunity to the accused to be heard and trial in the said proceedings is required to be conducted in a fair

manner, Under Rule 129 of the Rules it is required that at the option of the accused any person may be deputed to assist him during the trial who

may give advice to the accused on all points and suggest the questions to be put to the, witnesses. The purpose of this rule appears to be that the

accused must have an opportunity to defend himself in a fair manner during the proceedings Under Rule 115 of The Army Rules it is required that if

an accused person pleads guilty that plea is to be recorded as a finding of the court but before it is recorded it is the duty of the court to ascertain

that the accused understands the nature of the charge to which he ha"" pleaded guilty and he is to be told that what is the effect of his pleading guilty

and is to be advised to withdraw the plea of guilt. These are the safeguardgs which the accused is given to ensure a fair trial which is of a summary

nature but even in summary trials Army Rules have laid down the procedure which ensures safeguards for an accused person. Similarly under Rule

118 an accused is entitled to call witnesses in defence of statements of prosecution witnesses have been recorded and the accused has not pleaded

guilty.

5. Now it is to be seen whether there has been compliance with the procedure laid down in the aforesaid rules during the proceedings which were

conducted by the summary Court Martial. From the perusal of the record it appears that one Mr. Arun Dhar is styled as a friend of the accused in

terms of Rule 129 of the Army Rules. The accused has not opted for the said

gentleman and had at no stage demanded assistance of the said gentleman, of their own authorities have imposed this gentleman on the accused to assist him and there is material to indicate that the accused had protested about Mr. Arun Dhar being his friend in terms of Rule 129. The plea of guilt recorded during the proceeding was presented before me in original. In reply to each charge word guilty is recorded But therein no signature either of the accused or of any officer who is purported to have written the word guilty. There is nothing on this paper to indicate that the accused was advised not to plead guilty as is required under Rule 115 of the Army Rules. The Summary of evidence of prosecution witnesses is recorded and on facts this court cannot appreciate the evidence but even after recording of evidence this court will certainly look in to the procedure which was adopted by the Summary Court Martial and examine it on the touch stone if the Rules in general and Rules 115 and 129 in particular. Any order which is made to the detriment of the Accused must be made after the compliance with the procedure laid down in the Rules. If there is violation of the procedural safe guards that would be violative of Art. 14 of the Constitution of India because it is now settled that one of the attributes of the principles of natural justice is to ensure fairness during enquiries trials so that the decisions are arrived in such a manner which are free from arbitrariness and bias.

The Army Rules has been framed under the Army Act. Therefore, they have a statutory force and the mandate of the Rules cannot be violated Any procedural deviation or contravention which has the effect of adversely affecting a person bound by the Army Rules shall have to be struck down.

During enquiries of such a nature and trials under the Army Act fairness and principles of natural justice are required to be punctually observed. A person bound by the Army Rules cannot be denied procedural safeguards on the plea that proceedings are of a summary nature or the persons bound by the Army Rules belong to disciplined force. What is the effect of nonobservance of procedural safeguards will be stated by me a little later. The persons bound by the Army Rules do not lose their rights under Art. 14 of the Constitution of India. They cannot be denied equality before law and equal protection of the laws. The State and the authorities under the State are therefore, obliged to afford equal protection of the

laws to its citizens. Art. 14 of the Constitution within its fold embraces fairness, a right of opportunity, to be afforded for being heard. This article is antithesis of arbitrariness and enjoins upon the State and its authorities to deal with the citizens in accordance with the procedure laid down by law. Constitution being source of laws would not permit anything to be done by the State which is violative of Art 14 of the Constitution. In assessing the importance of procedural safeguards regard is to be had to its significance as protection of an individual rights, the relative value that is normally attached to the rights that may be adversely affected by the decision and the importance of the procedural requirement in the overall administrative scheme established by the statutes. If no substantial prejudice is caused the principle that failure to observe 'normal or procedural rules in the administrative process, may be of no, substantial importance but if prejudice is caused, procedural rules in the administrative process are strictly to.

7. That no man is to be judged unheard was a precept known to the Greeks. With the passage of time a concept was evolved through judicial process which enjoins the State to observe the principles of natural justice which will include fair play in action. If a body is constituted to exercise its statutory powers to conduct hearing or enquiry in connection with a disciplinary matter, the hearing or enquiry is to be conducted according to the principles of natural justice. Thus a decision which deprives a citizen of his fundamental rights is to be arrived at after following the procedural safeguards. If the deciding body has the trappings of a judicial tribunal, it is bound to follow procedure prescribed by the statute and cannot give decision, in violation of the procedural safeguards to the detriment of the subjects. Even at common law and in the absence of a written constitution. British Courts have also laid emphasis that fair opportunity should be given to holders of office who are sought to be dismissed or removed from office in a disciplinary proceedings. A classic judgment of Lord Reid in Ridge Vs. Baldwin has also recognized this principle. It is noted that if an occupant of an office is removable for a cause fair opportunity to be heard is to be given which is an implied right of the person likely to be affected. More recently the court of Appeal in S. T. Venson Vs. United Road Transport Union (1977 1 C R 893) has granted a

declaration against the trade union for not having afforded fair hearing to its paid official while recording order of dismissal against him. The Rules

of the Corporation in that case were observed in breach which was viewed seriously by the court of Appeal. This I say to lay down that the

procedural safeguards cannot be bypassed when State or its authorities are dealing with the rights of citizens and are taking decisions adversely

affecting its subjects. If procedural safeguards are overlooked or ignored, in any proceeding or enquiry, punishment or dismissal will be deemed to

be unfair. It is thus open to a citizen to ask a court exercising writ jurisdiction to consider the question of procedural fairness in the light of the

substantive merit of the case and examine that by procedural irregularity or nonobservance of procedure serious prejudice has been caused to him.

8. Duty to act fairly is a long settled principle governing the exercise of jurisdiction. It denotes obligation to follow procedural safeguards. Even in

administrative matters it is the duty of administrative tribunals to act fairly. Administrative tribunals may not be required to act judicially but they are

obliged to act fairly. That would not mean that acting judicially in administrative matters is less important. It will be violative of guarantees contained

in Art. 14 of the Constitution of India, therefore if procedural safeguards are denied to a person against whom an enquiry is conducted, that would

amount to denying him protection of law. In its classic judgment given in *Menka Gandhi's Case* AIR 1978 S.C. 595 the magnitude and dimensions

of the guarantees contained in Art. 14 of the constitution of India have been explained by the Hon'ble Judges of the Supreme Court in a

characteristic manner. It is the glory of Art. 14 which was highlighted by the Supreme Court in this judgment. Commenting on the importance of Art.

14 in the realm of rule of law which says:

In fact equality and arbitrariness are sworn enemies. One belongs to the rule of law in a republic while the other, to the whim and caprice of an

absolute monarch where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore,

violative of Art. 14. Article 14 strikes at arbitrariness in state action and ensures fairness, equality of treatment. The principle of reasonableness,

which legally as well as philosophically, is an essential element of equality or non arbitrariness pervades Art. 14 like a brooding omnipresence and

the procedure contemplated by Art. 21 must answer the test of reasonableness in order to be in conformity with Art 14. It must be right and just

and fair and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Art. 21 would not be satisfied.;;

Quoting extensively from English and American authorities, their Lordships have laid that State action must be reasonable, fair and free from

arbitrariness, concurring with Justice Bhagwati Justice Iyer in his characteristic style has traced the history of equality clause in his brief judgment in

the Maneka Gandhi's case (Supra). His Lordships have considered the importance of procedural safeguards and said:

procedural safeguards are the indispensable essence of liberty. In fact, the history of personal liberty is large the history of procedural safeguards

and right to a hearing has a humanright ring. In India because of poverty and illiteracy, the people are unable to protect and defend their rights

observance of fundamental rights is not regarded as good politics and their transgression as bad politics. I sometimes pensively reflect that people's

militant awareness rights and duties is a surer constitutional assurance of governmental respect and response than the sound and fury of 'question

hour' and the slow and unsure delivery of court writ 'Community Consciousness and the Indian constitution' is a fascinating subject of sociological

relevance in many areas.

From what has been stated hereinabove, it is manifestly clear that where State action affects or is likely to affect a citizen the action must be taken

only after following procedure established by law. There is no scope for the argument that procedural requirement in taking decision or in taking

action can be ignored or overlooked.

9. Coming to the present case, I have stated the requirement of Rules 115 and 129 of the Army Rules. The procedure laid down in the said Rules

cannot be observed breach in by Summary court Martial. It is Revealed from the record that at no stage the petitioner has accepted Mr. Arun

Dhar as a friend under Rule 129; yet he was imposed on him against his wish. This would amount denial of right to the person in having a friend to

assist him as required by Rule 129 of the Army Rules. So the proceedings conducted cannot be termed to be fair because an important right of the

petitioner was arbitrarily taken away in violation of Art. 14 of the constitution of

India. He way to be given equal protection of laws, that protection has been denied to him. Therefore, the decision taken by the Summary Court Martial in awarding punishment to the petitioner is tainted with arbitrariness and unfairness.

10. The most important aspect of She case is as to whether the petitioner had pleaded guilty to the charges AS is suggested by Mr. Hussain or not.

Plea of guilt recorded by Lt. Col. Mehta is dehen of Rule 115 of the Army Rules, In the first place the alleged plea of guilt is unsigned by the

authorities. Surprisingly the petitioner also has not signed the alleged plea of guilt. At what stags word ""guilty"" was recorded against each change is

not known. If it was recorded in presence of the Accusedpetitioner obviously his signatures would have been obtained on it. Then the minutes o

the enquiry should have contained an advice to the petitioner not to plead guilty as enjoined by Rule 115 of the Army Rules. This important

mandate of the Rule has been flagrantly violated, therefore, the proceedings conducted by the Summary Court Martial which have affected the

petitioner's fundamental rights, as he is deprived of his job, are vitiated. The protection afforded by the procedure should not have been denied to

the petitioner if it was intended to proceed against him under the Army Rules. As to whether charges were correct or not, as already observed, this

court cannot go into that aspect of the matter. But certainly this court will set aside the punishment which is awarded to the petitioner on the ground

that the decision to punish the petitioner was taken by contravening the mandate of the Rules. Such a decision would be arbitrary and shall be

violative of the guarantees; contained .in Art. 14 of the constitution. The argument of the learned counsel for the respondent that the petitioner was

not prejudiced in any manner during the summary court martial proceedings is devoid of force. The petitioner has suffered punishment of dismissal

from service and the punishment is awarded by conducting proceedings in such a manner which were neither fair nor judicial. Could the summary

court martial observe the Rules governing the conduct of summary court martial in breach. Answer to this question will be emphatic no, in view of

the glory of the constitution and rights guaranteed by it.

11. I, therefore, am of the view that the punishment awarded to the petitioner must be set aside and quashed. Allowing the writ petition, I quash the

impugned order of punishment whereby the petitioner has been reduced in rank and dismissed from service. The petitioner shall be reinstated and

given all benefits which are attached to his posh In view of the peculiar circumstances of the case, there will be no order as to costs.