

(1982) 04 MAD CK 0033
In the Madras High Court

R. Shanmugam

APPELLANT

Vs

The Officer Commanding 65 Coy. ASS Supply (Type B) and
Others

RESPONDENT

Date of Decision : 27-04-1982

Acts Referred:

Army Act, 1950 — Section 63
Constitution of India, 1950 — Article 311

Citation : (1983) 2 MLJ 401

Hon'ble Judges : P.R. Gokulakrishnan, J

Bench : Division Bench

Judgement

P.R. Gokulakrishnan, J.—The appellant was enrolled in the Army on 13th December, 1956, and had put in several years of service in NFA, Jammu and Kashmir, Bangalore, Himachal Pradesh, etc., before he was posted to Madras in May, 1972, as Naik (Store Hand Technical) to work in the Kerbside Pump in Fort St. George, Madras-9. The appellant joined duty on 31st May, 1972, and the responsibility of supplying petrol to Army vehicles on production of indent forms issued by the Army units was that of the appellant. During the period when the appellant was discharging his duties as such it was found that the appellant was not in a position to account for 5,298 litres of petrol valued at Rs. 7,417.20 p. A charge-sheet was, therefore, framed against the appellant on 4th October, 1973, charging the appellant u/s 63 of the Army Act, 1950, (hereinafter referred to as the Act) in that he had been negligent in the performance of his duties and was also unable to account for a large quantity of petrol. The appellant was thereafter tried by the Summary Court Martial held on 9th and 10th October, 1973, and was sentenced to three months rigorous imprisonment and was directed also to be reduced in rank. It is not in dispute that later the appellant was also dismissed from service. Since the appellant had already served the period of rigorous imprisonment to which he was sentenced, the appellant challenged the order passed by the Court Martial reducing the rank, which led to his dismissal in W.P. No. 1876 of 1975. The grounds urged by the appellant were two. The first was

that in the verdict of the Court Martial there was absolutely no discussion of the evidence against the appellant and, therefore, the order passed by the Court Martial cannot be termed as a speaking order, which can be given effect to. The second ground was that his past record had been considered without the appellant having been afforded an opportunity of stating whatever he had to say as regards that. These grounds were not countenanced by Mohan J., who dismissed the writ petition. It is the correctness of this order that is challenged by the appellant in this appeal.

2. The learned Counsel for the appellant first submitted that Sections 63 and 71 to 73 of the Act make it clear that when once a sentence of rigorous imprisonment for three months is awarded the Court Martial has no power to award dismissal from service also as punishment. In this connection, the learned Counsel for the appellant also relied upon the language employed in Section 73 of the Act. On the other hand, the learned Counsel appearing for the respondents submitted that several offences punishable under the Act are set out under Sections 34 to 68 of the Act and that those sections prescribed the punishment as well, but that Section 71 of the Act refers to the various kinds of punishments which may be inflicted upon persons convicted by the Court Martial and that Section 73 of the Act merely provides for the award of a combination of punishments and that therefrom it cannot be inferred that the award of one kind of punishment would preclude the authorities from inflicting another punishment on the delinquent. Reliance in this connection was placed by the learned Counsel for the respondents on the decision in *Soubhagya Chandra Patnaik Vs. Union of India (UOI)*, .

3. In order to appreciate this contention, it is necessary to make a brief reference to certain relevant provisions of the Act. Chapter VI of the Act sets out the various kinds of offences which may be committed by a person subject to the provisions of the Act. Sections 34 to 68 of the Act catalogue those offences punishable under the Act and the different punishments that may be inflicted on a person convicted of these offences are also indicated therein. In the present case, as seen earlier, the appellant was found guilty of an offence u/s 63 of the Act and the punishment thereunder is imprisonment for a term which may extend to seven years or such less punishment as mentioned in the Act. Section 71 of the Act prescribes the different punishments awardable by Courts Martial as under:

71. Punishments may be inflicted in respect of offences committed by persons subject to this Act and convicted by Court Martial, according to the scale following, that is to say

(a) death;

(b) transportation for life or for any period not less than seven years;

(c) imprisonment, either rigorous or simple, for any period not exceeding fourteen years;

(d) cashiering, in the case of officers;

(e) dismissal from the service;

(f) reduction to the ranks or to a lower rank or grade or place in the list of their rank, in the case of warrant officers; and reduction to the ranks or to a lower rank or grade, in the case of non-commissioned officers :

Provided that a warrant officer reduced to the ranks shall not be required to serve in the ranks as asepoy;

(g) forfeiture of seniority of rank, in the case of officers, junior commissioned officers, warrant officers and noncommissioned officers; and forfeiture of all or any part of their service for the purpose of promotion, in the case of any of them whose promotion depends upon length of service;

(h) forfeiture of service for the purpose of increased pay, pension or any other prescribed purpose;

(i) severe reprimand or reprimand, in the case of officers, junior commissioned officers, warrant officers 2nd non-commissioned officers;

(j) forfeiture of pay and allowances for a period not exceeding three months for an offence committed on active service;

(k) forfeiture in the case of a person sentenced to cashiering or dismissal from the service of all arrears of pay and allowances and other public money due to him at the time of such cashiering or dismissal;

(i) stoppage of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good.

The power to award alternative punishments by the Court Martial is contained in Section 72 of the Act and by that section, the Court Martial is empowered either to award the particular punishment with which the offence is stated in Section 34 to 63 of the Act to be punishable, or, in lieu thereof, any one of the punishments lower in the scale set out in Section 71 of the Act regard being had to the nature and degree of the offence. Then Section 73 of the Act, enables the Court Martialto awards combination of the different punishments referred to in Section 71 of the Act. The sum and substance of Section 73 of the Act is that a Court Martial may award either in addition to or without any other punishment, the punishments mentioned in Clause (d) or Clause (e) of Section 71 of the Act and any one or more of the punishments specified in Clauses (f) to (i) of that section. Section 73 of the Act really vests a power in the Court Martial to) choose and award a combination of the punishments enumerated in Section 71, depending upon the nature and degree of the offence. In the instant case we find that the appellant had been sentenced to rigorous imprisonment for three months u/s 71 (c) and has also been dismissed from service u/s 71(c) of the Act. This would, therefore, be a combination of punishments u/s 71(e) and 7(e) of the Act, which in our opinion is permissible u/s 73 of the Act. Having regard to the plain

intendment of the section, the contention of the learned Counsel for the appellant cannot be accepted. We find that the view expressed by as above is supported by the decision in Soubhagya Chandra Patnaik Vs. Union of India (UOI), relied on by the learned Counsel for the correspondents. We may add that in Ranjit Singh Chaurasia Vs. The Union of India (UOI) and Others, also a similar interpretation has been put upon Sections 71 to 73 of the Act. Under these circumstances, the first contention of the learned Counsel for the appellant has to fail

4 The next contention of the learned Counsel for the appellant is that the responsibility of the appellant for the loss of 5.298 litres of petrol valued at Rs. 7,417. 30p. had already been fixed on the appellant by a superior officer in his proceedings, dated 31st June, 1973, and that the Court Martial and other inferior officers had merely carried out what had already been decided by the superior officer and, therefore, the proceedings cannot be stated to be valid. On the other hand, the learned Counsel for the respondents submitted that what was expressed by the superior officer was merely his opinion and cannot be taken either as an instruction or a direction to the lower officers or the Court Martial to proceed in any particular manner and fix the responsibility on the appellant and that, therefore, there is no substance in the complaint of the appellant. The opinion of the G.O.C. has been given after looking into the recommendation of the Commander and the direction therein is to initiate disciplinary action against the appellant, on a prima Facie satisfaction that a ground has been made out for such action. This is not the same thing as saying that the superior officer had already decided about the involvement of the appellant or his responsibility for the shortage in petrol and that the Court Martial and other officers had merely carried out the same. We are, therefore, unable to agree with this contention of the learned Counsel for the appellant.

5. The next contention of the learned Counsel for the appellant is that Rules 106 and 141 of the Army Rules, 1954, framed under the Army Act, 1950, had not been followed in the instant case. In the affidavit in support of the writ petition, the appellant stated in Paragraphs 6(c) and 6 (d) that no evidence was actually taken down in the proceedings and no oral statements were made by the witnesses and that no questions were also put to the appellant to explain the circumstances appearing against him in the evidence. In the counter-affidavit filed by the respondents, it has been stated that the correct procedure had been followed and that the appellant cannot have any grievance on the ground that there had been a violation of procedure. In addition, it is also brought to the notice of the Court that as many as five witnesses were examined and that the appellant cross-examined p.w.s. 1 to 3, but declined to cross-examine the other two witnesses. This has not been controverted by the learned Counsel for the appellant. We are, therefore, satisfied that in the present case the rules had been adhered to and the proceedings had also been conducted and evidence recorded in accordance with the Rules, but that it was only the appellant who declined to participate in the enquiry by refraining from cross-ex a mining the witnesses

examined by the prosecution to establish the offence against the appellant. We have also perused the records and we are satisfied that there has been no procedural irregularity of the nature complained of by the appellant. We are, therefore, unable to accept this contention of the appellant as well.

6. The learned Counsel for the appellant next submitted that no reasons had been given in the judgment of the Court Martial and that there is no speaking Proper as such analysing the evidence against the appellant which would justify the conclusion as well as the sentence of the Court Martial. It was also further submitted that the opinion of the Court Martial in this case was not in accordance with Rules 120 and 121 of the Army Rules. This objection is met by the learned Counsel for the respondents by inviting our attention to Rules 61 and 62 of the Army Rules under which there is no mention of either the evidence or the reason by which the finding is arrived at by the Court Martial and by contending that it is not necessary to set out elaborately the evidence on the basis of which the conclusion is arrived at, Rules 61 and 62 of the Army Rules are to the following effect:

61. Consideration of finding.--(1) The Court shall deliberate on its finding in closed Court in the presence of the judge-advocate.

(2) The opinion of each member of the Court as to the finding shall be given by word of mouth on each charge separately.

62. Form record and announcement of finding. -(1) The finding on every charge upon which the accused is arraigned shall be recorded and, except as provided in these rules, shall be recorded simply as a finding of Guilty or of "Not guilty"....

(10) the finding on each charge shall be announced forthwith in open Court as subject to confirmation.

A consideration of the order passed by the Court Martial in the instant case does not establish that there was any violation of the procedure contemplated under Rules 61 and 62 of the Army Rules. Indeed in *Som Datt Datta Vs. Union of India (UOI) and Others*, the Supreme Court had pointed out that apart from any requirement imposed by the statute or statutory rule either expressly or by necessary implication, it cannot be said that there is a general principle or any rule of natural justice that a statutory tribunal should always and in every case give reasons in support of its decision and that such orders can be held to be illegal for not giving any reasons.

7. A complaint was feebly attempted to be made out that past records regarding which there was no effective opportunity afforded to the appellant had been pressed into service before the Court Martial came to the conclusion that the appellant was guilty and, therefore in the absence of such an opportunity to the appellant to establish contra, the proceedings culminating in the infliction of punishment on the appellant would be invalid. Reliance was also sought to be placed in this connection upon the decision of the Supreme Court in *Railway*

Board Representing The Union of India (UOI) Vs. Niranjn Singh, . the nature of the proceedings before a summary Court Martial is such as seen before that there is no need for a detailed judgment or even discussion of evidence and the appellant cannot claim that he would be governed by the principles which would apply to a civil servant under Article 311 of the Constitution of India, as members of the defence service hold office during the pleasure of the President and are not entitled to the protection under Article 311 of the Constitution of India. The decision in Railway Board Representing The Union of India (UOI) Vs. Niranjn Singh, Cannot be applied to the appellant as in that case what was dealt with was the applicability of Article 311 of the Constitution of India. Therefore, looked at from any point of view, there is no substance in any of the contentions raised by the learned Counsel for the appellant. We have, therefore, no hesitation in holding that the writ petition filed by the appellant was rightly dismissed. Consequently, the writ appeal also fails and is dismissed. There will be however, no order as to costs.