

(2002) 09 GAU CK 0043
In the Gauhati High Court
Case No : WP (C) No. 5999 of 1999

Rakesh Kumar Gaur

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-09-2002

Acts Referred:

Citation : (2003) 1 GLR 544 : (2003) 1 GLT 144

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : R.P. Sarma and B. Chakraborty, for the Appellant; A. Thakur, CGSC, for the Respondent

Final Decision : Allowed

Judgement

Ranjan Gogoi, J.—The petitioner was working as Havildar in the Assam Rifles at the relevant point of time. On 13.8.1998, a Court of Enquiry was held by the Assam Rifles authorities with regard to an incident of loss/ disappearance of the Arms and Ammunition allotted to the writ petitioner while he was in transit from Dimapur to Diphu, The Court of Enquiry recorded its findings adverse to the writ petitioner and the authority on consideration of the findings of the said Court of Enquiry, recommended a departmental proceeding against the petitioner by an order dated 20.10.1998. The petitioner was served with a show cause notice dated 13.2.1999 and the summary of evidence in the case was recorded on 26.3.1999. The statements of four persons including the petitioner were recorded. Thereafter, on 19.6.1999, a Charge Sheet was issued against the writ petitioner and pursuant thereto a Summary Court Martial was held on 24.6.1999. The petitioner was found guilty in the said proceedings and dismissed from service. Aggrieved, the instant writ application has been filed.

2. The charge framed against the writ petitioner in the Summary Court Martial held against him may be usefully set out as hereunder:

"The accused No. S/355443 A Ciph/Hav Rakesh Gaur of 16 Assam Rifles is

charged with :

Army Act Section 54(b) : LOSING BY NEGLECT ARMS THE PROPERTY OF THE GOVERNMENT ISSUED TO HIM FOR HIS USE

in that be, at filed, while travelling from Dimapur to Diphu by train, lost by neglect Carbine Machine 9 mm Butt No. 283 Regd. No. HH 4185 with 3 Magazines on night of 12/13August 98, the property of the Govt. issued to him for his use."

3. In the Court Martial proceedings, the minutes of which has been brought on record by the respondents, the charge levelled against the writ petitioner, it is claimed, was explained to him and the writ petitioner pleaded guilty to the said charge. Thereafter, following the provisions of Rule 115 of the Army Rules, the Officer conducting the Court Martial proceeding made the necessary recordings as mandated by the aforesaid provisions of the Rules and, thereafter, the impugned punishment was imposed. The proceedings of the Summary Court Martial including the punishment imposed having been concurred with by the competent authority, an appeal was filed by the present writ petitioner. However, before the same could be finalised, the instant recourse to the writ jurisdiction was made by the writ petitioner. Having regard to the time which has elapsed during the pendency of the present proceeding, this Court is not inclined to send the matter back to the appellate authority for consideration and instead considers it more appropriate to hear the writ petition on merits and finally adjudicate on the entitlement of the writ petitioner to the relief/reliefs claimed.

4. Three contentions, in the main, have been advanced By Mr. R.P. Sarma, learned counsel appearing for the writ petitioner.

According to the writ petitioner, in the instant case, the provisions of the Rule 115 of the Army Rules requiring the officer presiding over the Court Martial to make necessary recordings on a plea of guilt being advanced by the charged Officer have not been followed. According to the learned counsel in view of the statements made by the charged Officer, in the summary of evidence recorded prior to the Court Martial proceedings as well as in view of the statement of other persons so recorded, it was incumbent on the Officer presiding over the Court Martial to explain to the Charged Officer the possible consequences that may follow on the plea of guilt being recorded. According to the learned counsel, the recordings made by the Presiding Officer do not indicate that the requirements imposed by Rule 115(2) of the Army Rules have been followed in the instant case. The entire of the Court Martial proceeding, therefore, is contended to be vitiated and a decision of this Court in the case of *Sadacharan K. and Ors. v. Union of India and Ors.* reported in (1992) 1 GLR 445 has been cited in support.

Secondly, it has been argued on behalf of the writ petitioner that the Court Martial proceedings were conducted in the English language and the petitioner not being conversant with the said language, prejudice was caused to him. Lastly, it has been contended that having regard to the facts and circumstances

of the case, as evident from the statements of the persons recorded, the punishment of dismissal from service is grossly excessive, requiring interference by this Court in exercise of powers under Article 226 of the Constitution.

5. Mr. A. Thakur, learned CGSC appearing for the respondent has controverted the contentions advanced on behalf of the writ petitioner. It is argued by the learned CGSC that the requirements imposed by Rule 115 of the Army Rules do not cast any obligation on the authority to make the recordings in any particular form. It is the substance of the matter and not the form which matters, it is argued. The learned CGSC by referring to the document enclosed as Annexure-V to the Respondent's affidavit has sought to contend that the contention now advanced to the effect that the Court Martial proceeding having been conducted in English, prejudice has been caused to the writ petitioner, are mere after thoughts. Insofar as the quantum of punishment is concerned, it is submitted by the learned CGSC that having regard to the gravity of offence, i.e., loss of arms and ammunition allotted to the writ petitioner, the punishment of dismissal would be appropriate. The learned CGSC has also relied on the Apex Court's decision in the case of Union of India (UOI) and Others Vs. Narain Singh, in support of the argument that in cases pertaining to the military, paramilitary and others such disciplined forces, the Writ Court should be slow to interfere with the punishment imposed by the authority.

6. I have considered the submissions advanced on behalf of the rival parties. Insofar as the argument relating to infraction of Rule 115 of the Army Rules is concerned, it is the considered view of the Court that the requirement to record the fact that the charge has been explained to the Charged Officer as also the consequences that may follow upon the plea of guilt being recorded can not be couched in any particular form or language. Much would depend on the facts of the given case. In the instant case, there is no ambiguity in the charge levelled. There is hardly any material for this Court to hold that the Charged Officer did not understand the charge brought against him. As to what could be the possible consequences of admitting such a charge must be construed in the light of the understanding of a reasonable man. The knowledge that serious consequences may visit the charged officer upon admission of guilt, can be reasonably attributed in the instant case. The argument, as regards infraction of Rule 115 of the Army Rules, advanced on behalf of the writ petitioner, therefore, has to fail. The Judgment of this Court in the case of Sadacharan K. and Ors. v. Union of India and Ors. (supra) must be understood in the context of the facts of that case without laying down any law of general application. The second argument advanced on behalf of the writ petitioner that the language in which the Court Martial proceeding was conducted i.e. English was not understood by the writ petitioner, stands belied by the materials on record. The stand of the Respondents is that the Writ Petitioner being a non-commissioned officer of the Assam Rifles had the basic knowledge of English. That apart, the signed document of the writ petitioner annexed as Annexure-V to the affidavit filed by the respondents, clearly shows that the documents which were in English

language was understood by him. The second argument advanced on behalf of the writ petitioner, therefore, has to fail.

7. Coming to the question of the quantum of sentence imposed on the writ petitioner, I find that the Apex Court in the case of *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology and Ors.* (supra) has laid down the law that in cases where members of military, paramilitary and other disciplined forces are involved, reduction of sentence by the Court can have a demoralising effect and would be a retrograde step so far as the discipline in the Armed Forces is concerned. The writ Court would always refrain from exercising its powers if such exercise has a baneful effect on discipline in the Armed Forces. But the law laid down by the Apex Court cannot be understood to mean that if the conscience of writ Court is shocked by a sentence imposed, the writ court will be powerless in the matter. Regard must, therefore, be always had to be totality of the facts and circumstances of the case before deciding as to whether in a given case, the facts are appropriate for interference with the punishment imposed. If on such consideration, the punishment imposed is found to be excessive, shocking judicial conscience, interference has to be made.

8. In the instant case, the undisputed facts would go to show that the petitioner had undergone a major surgery on 24.7.1998 and he was discharged from the Hospital on 3.8.1998. He was advised 4 weeks rest by the Doctors. His request for the aforesaid period of rest was granted by the authority and it is to avail the said rest period, as granted by the authority, that the petitioner was on move to Diphu on the date when the incident occurred, i.e., 12.8.1998. The petitioner before boarding the train was allowed to take rest on account of ill health and eventually he boarded the train in the mid-night. The compartment was crowded. At the time when the train entered the Diphu Station, the petitioner was in the toilet and by the time he came out of the toilet, the train was already in the platform. The petitioner alighted from the said train and as the entire luggage of the army personnel travelled along with the petitioner was unloaded, the petitioner was under the impression that box containing the arms and ammunition allotted to him was also unloaded. By the time he could trace out that the Box containing the arms and ammunition is missing, the train had already left the platform. No doubt, the petitioner was negligent but can it be said that his negligence was so gross and inexcusable that no other penalty except the penalty of dismissal should be made. Discipline had to be enforced in the Armed Forces but in enforcing such discipline, the eyes to the realities of the situation cannot be shut.

9. Having regard to the facts and circumstances of the case as narrated above in which the incident of loss of arms and ammunition had occurred, I am of the considered view that ends of justice would be met by imposing a lesser punishment on the writ petitioner. What would be the appropriate lesser punishment is a question that in my considered view should be left to the authority of Assam Rifles to determine. Consequently, while interfering with the

order of dismissal imposed on the writ petitioner, I remit the matter back to the concerned authority of Assam Rifles for imposing such lesser sentence as may be considered appropriate in the facts and circumstances of the case.

The writ petition is allowed to the extent indicated above.