

(1996) 07 AHC CK 0110
In the Allahabad High Court
Case No : C.M.W.P. No. 3818 of 1979

Ram Ashish Singh

APPELLANT

Vs

Chief of the Army Staff and Others

RESPONDENT

Date of Decision : 19-07-1996

Acts Referred:

Army Act, 1950 — Section 125, 126, 164(2), 2J, 3(2)
Army Rules, 1954 — Rule 65, 66(1)
Constitution of India, 1950 — Article 136, 19(1), 21, 226, 227
Penal Code, 1860 (IPC) — Section 161, 21

Citation : (1996) 07 AHC CK 0110

Hon'ble Judges : J.C. Gupta, J

Bench : Single Bench

Advocate : S.N. Srivastava, for the Appellant;

Final Decision : Dismissed

Judgement

J.C. Gupta, J.—This petition under Articles 226 and 227 of the Constitution of India has been filed with the prayers to issue a writ in the nature of certiorari quashing the charge-sheet dated 5.10.1977 (Annexure-1), the finding the guilty dated 7.11.1977 (Annexure-3A), sentence order dated 7.11.1977 the confirmation order dated 3rd December, 1977 (Annexure-6) and appellate order dated 31st January, 1979 (Annexure-8) and to issue a writ of mandamus directing the opposite parties to treat the Petitioner in service.

2. The Petitioner was appointed as "Sepoy" on 12.7.1965 in the Army Medical Cor. and was posted at Lucknow. He was promoted on the post of Paid Acting Naik in the year 1976. While serving as Laboratory Assistant in the Military Hospital, Fatehgarh, the Petitioner was duly tried by the District Court Marital for the following charge for committing a civil offence u/s 69 of the Army Act.

The accused No. 13905006 Sepoy/Lab Assistant (Paid Acting Naik) Ram Ashish Singh, Military Hospital, Fatehgarh is charged with : Committing a Civil Offence, that is to say, being a public servant taking gratification other than legal

remuneration in respect of an official act contrary to Section 161 of the Indian Penal Code.

In that he, at Fatehgarh, on 14th June, 1977, while working as Lab Assistant Military Hospital, directly accepted for himself from No. 4445174 Sep Saroop Singh of Depot Coy Sikh Li Regimental Centre, Fatehgarh, the sum of Rs. 100 (Rupees one hundred only) a gratification other than legal remuneration as a motive for doing an official set, to with, to give normal blood report in respect of Shri Autar Singh, a civilian, for favour of enrolment.

Place: Fatehgarh (U.P.) Sd./- (Na Basu) Dated: 3.10.1977 Lt. Col. Commanding Military Hospital, Fatehgarh.

3. The District Court Martial was held on 24.10.1977. Lt. Col. A.K. Arora of Sikh Light Infantry Regimental Centre presided the District Court Martial. The two other members were major Behat Sureshwar and Major Devendra Pratap Singh. Major Satya Kumar Singh was appointed as Judge Advocate. The Petitioner was also provided a defence Counsel Sri. S.S. Chauhan. The Defending Officer Capt. Vijay Pal Singh was also provided by the competent authority. The Petitioner was served with a copy of the charge-sheet to which he pleaded not guilty. Before the District Court Martial a number of witnesses were examined, who were duly cross-examined on behalf of the Petitioner. The Petitioner also examined Sepoy/AA/Shyam Lai Ram in his defence. The prosecution submitted a written closing address to the District Court Martial and the Petitioner's Counsel also submitted his written closing address in support of the defence case, copy of which has been annexed with the petition. The District Court Martial found the Petitioner guilty of the abovementioned charge and the findings were announced in open Court. The District Court Martial vide order dated 7.11.1977 passed the order of sentence in the following terms:

1. To be reduced to the ranks:
2. To suffer rigorous imprisonment for one year; and
3. To be dismissed from the service.
4. The sentence was announced in open Court and was subject to confirmation. Brigadier Commander Lucknow Sub-Area confirmed the finding and sentence of the District Court Martial, but set aside that part of the sentence which directed the Petitioner to be reduced to the ranks. The rest of the order of sentence was confirmed. The Petitioner then filed a petition u/s 164(2) of the Army Act, 1950 (Act for short), praying that the sentence awarded by the District Court Martial as confirmed by the Brigadier Commander Lucknow Sub-Area, be set aside. This petition was, however, rejected by the Chief of the Army Staff, which order was communicated to the Petitioner through letter dated 31.1.1979. Aggrieved by the said action, the Petitioner has approached this Court through this petition. The orders of the District Court Martial and of other authorities have been challenged on various grounds.

5. Firstly, it is alleged that the Petitioner was not a public servant within the definition of Section 21 of the Indian Penal Code and this fact is admitted in paragraph 9 of the counter-affidavit, wherein it is stated that the Petitioner was not a public servant and as such no prior sanction for holding District Court Martial from the Central Government was required. Since the charge mentioned that the Petitioner committed the civil offence being a public servant taking gratification other than legal remuneration in respect of an official act contrary to Section 161 of the Indian Penal Code, trial stood vitiated because of this defect. The learned Standing Counsel appearing for the Respondent argued that in the charge-sheet, it is clearly mentioned that charge was framed in respect of Section 69 of the Army Act. Section 69 of the Army Act permits trial by the Court Martial of a person subject to the Act, who at any place in or beyond India commits any civil offence and the said person would be deemed to be guilty of an offence under this Act, if charged under this section. "Civil Offence" has been defined in Section 3(2) of the Act as an offence, which is triable by a criminal Court.

Civil offence can be sub-divided into three classes, viz., (a) civil offences covered by Section 69 of the Army Act which may be tried by a Court Martial; (b) civil offences not ordinarily triable by a Court Martial (Section 70); (c) civil offences over which the civil and military Courts have concurrent jurisdiction. They are covered by Sections 125 and 126 of the Act.

6. The charge against the Petitioner was that while working as Lab Assistant in Military Hospital at Fatehgarh on 14.6.1977 he accepted for himself from No. 4445174 Sepoy Saroop Singh a sum of Rs. 100 as a gratification other than legal remuneration as a motive for doing an official act, to wit, to give normal blood report in respect of Shri Autar Singh a civilian, for favour of enrolment. The averments disclosed in the charges made out a civil offence covered by Section 69 of the Army Act, which was triable by a District Court Martial. The point raised on behalf of the Petitioner, in my opinion, does not carry weight.

7. It has next been argued by the Petitioner's Counsel that orders of District Court Martial and of the confirming authority are vitiated as do not furnish any reasons. It has also been contended that after closure of evidence, closing address on behalf of the Petitioner was filed before the District Court Martial, copy of which has been annexed as Annexure-2 and, therefore, the District Court Martial was bound to consider the same before recording the findings of guilt against the Petitioner. The learned Counsel for Union of India, on the other hand, urged that the proceedings under the Army Act are different from quasi judicial proceedings. The members of the District Court Martial have to express their opinion as to the findings by word of mouth and the finding on the charge is to be recorded simply as a finding of "guilty" or of "not guilty" and it is not necessary under law for them to record reasons like the criminal Court. The order as contained in.

Annexure-3 contains the findings recorded by the District Court Martial in the

following terms:

Court closed.-The Court is closed for the consideration of the finding.

Findings.-The Court finds that the accused No. 13905006 Sep/Lab Asstt. (Paid Acting Naik) Ram Ashish Singh, Military Hospital, Fatehgarh.

Guilty.- is "Guilty" of the charge.

Announcement of findings

Court re-opened.-The Court being re-opened the accused is again brought before it.

The finding is real in open Court, and is announced as being subject to confirmation.

Annexure-5 contains the order of sentence passed by the District Court Martial and the sentence, which was announced, was subject to confirmation.

Annexure-5 runs as follows:

The Court sentence the accused No. 13905006 Sep/Lab Asstt. (Paid Acting Naik) Ram Ashish Singh, Military Hospital, Fatehgarh.

Reduced to Ranks:

(a) To be reduced to the ranks.

R. I. one year:

(b) To suffer rigorous imprisonment for one year.

Dismissed:

(c) To be dismissed from the service.

Announcement of the sentence

The Court having re-opened, the accused is brought before it. The sentence is announced as being subject to confirmation.

Confirmation order dated 23rd December, 1977 as contained in Annexure-6 runs in the following terms:

I confirm the finding and sentence of the Court but set aside that part of the sentence which reads to be reduced to the ranks.

I direct that the sentence of rigorous imprisonment shall be carried out by confinement in a civil prison.

The accused is recommended Division "B" or II while undergoing sentence in the civil prison. If there are only two divisions of prisoners, the accused is recommended division "B" or II.

8. Under the Constitution of India itself, protection of fundamental rights of the personnel of Armed Forces is limited. The Constitution contains certain special Provisions in regard to the members of the Armed Forces. Article 33 of the Constitution empowers Parliament to make law determining the extent to which any of the rights conferred by Part III of the Constitution shall, in their application to the members of the Armed Forces, be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline amongst them. The appellate jurisdiction of Supreme Court under Article 136 of the Constitution has also been excluded in relation to any judgment, determination, sentence or order passed or made by any Court or Tribunal constituted by or under any law relating to the Armed Forces. Similarly, Clause (4) of Article 227 denies to the High Courts to exercise the power of superintendence over any Court or Tribunal constituted by or under any law relating to the Armed Forces. The Supreme Court and the High Court have simply been vested with the power of judicial review in respect of proceedings of Court Martial and the proceedings subsequent thereto. These Courts can grant appropriate relief if the said proceedings have resulted in denial of the fundamental rights or if they suffer from a jurisdictional error or any error of law apparent on the face of the record. The Apex Court in *Lt.-Col. Prithi Pal Singh Bedi and Others Vs. Union of India (UOI) and Others*, , stated as follows:

Section 2J of the Army Act merely confers an additional power to modify rights conferred by Article 19(1)(a)(c) by Rules and such rules may set out the limits of restriction. But the specific provisions does not derogate from the generality of power conferred by Article 33. Therefore, the law prescribing procedure for trial of offences by Court Martial need not satisfy the requirement of Article 21 because to the extent the procedure is prescribed by law and if it stands in derogation of Article 21, to that extent Article 21 in its application to the Armed Forces is modified by enactment of the procedure in the Army Act itself....In the larger interest of national security and military discipline, Parliament in its wisdom may restrict or abrogate such rights in their application to the Armed Forces but this process should not be carried so far as to create a class of citizens not entitled to the benefits of the liberal spirit of the Constitution....A marked difference in the procedure for trial of an offence by the Criminal Court and the Court Martial is apt to generate dissatisfaction arising out of this differential treatment.

9. In the decision in *Som Datt v. Union of India* AIR 1989 SC 411, it was held that there is no need to give reasons while pronouncing findings and sentence by a Court Martial in proceedings under the Army Act.

10. This question has been reconsidered again in a recent decision by the Hon"ble Supreme Court in *S.N. Mukherjee Vs. Union of India*, . The Apex Court reviewed the legal position and held that the position as to the requirement to furnish reasons in administrative orders in India is more similar to that of the United States of America. The reasons have to be given not only to enable the

aggrieved party to take note of them but to enable an appellate Court or a Court having powers of Judicial review to know the reasons. It was further, held that this requirement could be dispensed with either expressly or by necessary implication. The Hon"ble Supreme Court considered various provisions of the Army Act and Rules, which have a bearing on their requirement to record reasons for the finding and sentence of the Court Martial and after examining them it was held that a Court Martial records its findings after the Judge-advocate sums up in open Court the evidence and gives his opinion upon the legal bearing of the case. The members of the Court have to express their opinion as to the findings by word of mouth on each charge separately, and the finding on each charge is to be recorded simply as a finding of "guilty" or of "not guilty". The Hon"ble Supreme Court in para 43 observed that:

There is no such requirement in other provisions relating to recording of findings and sentence. Rule 66(1) proceeds on the basis that there is no such requirement in other provisions relating to recording of findings and sentence. Rule 66(1) proceeds on the basis that there is no such requirement because if such a requirement was there it would not have been necessary to make a specific provision for recording of reasons for the recommendation to mercy. The said provisions thus negative a requirement to give reasons for its finding and sentence by the Court Martial and reasons are required to be recorded only in cases, where the Court Martial makes a recommendation to mercy.

In para 45, again It was held that confirming authority is also not required to record reasons while confirming the findings and sentence of the Court Martial nor such reasons are required to be recorded, be Insisted upon at the stage of consideration of post confirmation petition u/s 164(2) of the Act. The same view has been expressed by Kerala High Court in the decision in Purushothaman N. v. Officer Commanding 1992 Lab IC 1924.

11. In view of the above legal position, no force is found In the submission of the learned Counsel for the Petitioner that the orders as contained in Annexure-3, Annexure-5, Annexure-6 and Annexure-8 are bad for non-disclosure of reasons.

12. Next it has been pointed out by the learned Counsel for the Petitioner that the evidence of Major Sarmukh Singh and Major Avinash Chandra was in the nature of accomplice, as such in the absence of any independent corroboration of their evidence, the District Court Martial ought not to have placed reliance upon the same and, therefore, there was no material to accept the prosecution allegation of acceptance of bribe by the Petitioner. The learned standing Counsel, on the other hand, contended that this Court while exercising powers under Article 226 of the Constitution cannot reappraise the evidence nor can it act as a Court of appeal.

13. In the decision in Ruval Kumar Vasave v. Chief of Army Staff, Army Head Quarters, New Delhi and Ors. 1986 UPLBEC 663. The Division Bench of this Court refused to reappraise the evidence to set aside the findings of the Court Martial.

It held that this Court under Article 226 of the Constitution does not sit as a Court of Appeal and, as such, is not entitled to reappraise evidence and come to its own findings. The Army Act and the Rules framed thereunder provides the procedure relating to the investigation and trial of an army personnel and the proceedings if under the Act had become final, the High Court cannot, under Article 226 of the Constitution reverse that finding. The Army Act makes the findings and sentences of the Court Martial final, conclusive and binding upon all.

14. In the decision in *S.N. Mukherjee v. Union of India*. (supra), the Hon''ble Supreme Court held that the High Court has the power of Judicial review, in respect of the proceedings of Courts Martial as well as the proceedings subsequent thereto, even though to a limited extent, and can In appropriate cases, grant relief, where there has been denial of the fundamental rights of the citizen or if the proceedings before the Court Martial suffer from a jurisdictional defect or any error of law apparent on the face of the record.

15. In the decision in *Ranjit Thakur v. Union of India* AIR 1987 SC 2386, it was laid down that "Judicial review, generally speaking, is not directed against a decision, but is directed against the decision making process. Irrationality and perversity has also been held to be recognised grounds of judicial review.

16. The view taken in the case, *S.R. Bommai and others Vs. Union of India and others etc. etc.*, , was that judicial review is not concerned with the merits of the decision, but the manner in which the decision was taken.

17. In another decision, *Union of India (UOI) and Others Vs. Upendra Singh*, , the Hon''ble Supreme Court held that a judicial review cannot extend to the examination of the correctness of charge or reasonableness of a decision.

Judicial review is not an appeal from a decision but a review in the manner in which the decision is made.

18. Bearing in mind the aforesaid legal principles regarding scope of inquiry in exercise of power under Article 226 of the Constitution, the question which falls for consideration is whether there was any evidence in support of the finding of guilt recorded by the District Court Martial. The learned Counsel for the Petitioner took me through the statements of witnesses, which have been annexed with the supplementary affidavit and I have also examined the proceedings of the Court. A perusal of the same indicates that the Petitioner committed civil offence u/s 69 of the Army Act and it cannot be said that there was absolutely no evidence to warrant finding of guilt. Whether there was sufficient evidence to sustain the conviction is a question which was to be answered by the Court Martial and this Court will not go into the sufficiency or insufficiency of the evidence adduced against the Petitioner before the District Court Martial. As already pointed out above, this Court in writ jurisdiction will not interfere even if another view on the evidence was possible. The present case is not one of those cases where the Court Martial recorded finding of guilt without there being any evidence at all. The order and sentence, therefore, cannot be quashed on the basis of this

ground also. The learned Counsel for the Petitioner also could not satisfy me that the Petitioner did not have a fair trial before the District Court Martial and no illegality in the procedure could be pointed out by the learned Counsel for the Petitioner. The Petitioner was afforded full opportunity to defend himself and the proceedings were held in consonance with the provisions of the Army Act and Rules framed therein.

19. The next point urged by the Petitioner's Counsel is that the Army Authorities had no power to award the sentence of dismissal from service in addition to imprisonment. In this connection, he referred to Rule 65 of the Army Rules, 1954, which runs as under:

65. Sentence-The Court shall award a single sentence in respect of all the offences of which the accused is found guilty, and such sentence shall be deemed to be awarded in respect of the offence in each charge in respect of which it can be legally given, and not to be awarded in respect of any offence in a charge in respect of which it cannot be legally given.

20. According to the contention of the learned Counsel for the Petitioner, two punishments awarded to the Petitioner, one of sentence of Rigorous Imprisonment for one year and the other of dismissal from service, are against the spirit of the said Rule and not warranted in law. The learned standing Counsel, however, argued that these are two different types of punishments and can be combined together to form one single sentence. He, in support of his arguments, referred to the provisions of Sections 71, 72 and 73 of the Army Act. He also placed reliance on the decision in *Purushothaman N. v. Officer Commanding (Independent) Artillery Brigade Workshop Company and Ors.* 1992 Lab IC 1924. In that decision, a Division Bench of Kerala High Court after making reference to the relevant statutory provisions as contained in Sections 41, 71, 72 and 73 held that Section 73 refers to the combination of punishments which states that the Court Martial may award punishments specified in Clause (d) or Clause (e) of Section 71 and any one or more of the punishments specified in Clauses (f) to (i) of that section in addition to any other sentence or without any other punishment. The Court Martial has jurisdiction to inflict the punishment of dismissal in addition to punishment of imprisonment.

21. Similar view was taken by Division Bench of this Court in *Ranjit Singh Chaurasia Vs. The Union of India (UOI) and Others*, and by other High Courts, See *Soubhagya Chandra Patnaik Vs. Union of India (UOI)*, .

22. In the instant case, the District Court Martial passed the sentence against the Petitioner for reduction to ranks, to suffer R.I. for one year and of dismissal from service. However, the confirming authority set aside that part of the sentence which relates to the reduction to the ranks and the rest of the sentence was confirmed which included the dismissal from service and R.I. for one year. This was permissible under the provisions of Section 73 of the Army Act. Rule 65 is not In conflict to Section 73 of the Army Act. Rule 65 is to be read together with

Sections 70 to 73 and not in isolation. In view of this clear legal position, I do not find any merits in this submission also of the learned Counsel for the Petitioner.

23. Lastly, it was argued by the learned Counsel for the Petitioner that the sentence of dismissal and imprisonment imposed on the Petitioner was wholly disproportionate to the gravity of the offence proved. In this connection, it may be stated that the High Court and Tribunal has no power to go into the question of adequacy of penalty unless it is mala fide. What punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and if imposed on proved misconduct, the High Court would not ordinarily interfere and substitute its own decision for that of the authority. In the instant case, no mala fide has been established and the facts and circumstances of the case indicate that the Petitioner has been sentenced for committing civil offence u/s 69 of the Army Act on the grave charge of accepting bribe and I do not think that the Petitioner deserves any leniency or sympathy in the matter of quantum of punishment. No merit is found in this submission as well.

24. For the above reasons and discussions, this writ petition must fail and accordingly it is dismissed with costs on parties.